

Part II. Compliance With the Laws of The State of Minnesota

Section 1.—Persons Under 21 Years of Age; Restrictions

The Council shall enforce the State of Minnesota laws regarding restrictions on those persons under the age of 21 years in any Community establishment operating pursuant to the provisions of this Ordinance.

(a) No Community operated or licensed establishment shall sell, barter, furnish, give or allow to be consumed therein alcoholic beverages to and by a person under 21 years of age;

(b) Any Community operated or licensed establishment shall require proof of age for purchasing or consuming alcoholic beverages by requiring a valid drivers license or State of Minnesota identification card, or in the case of a foreign national a valid passport to be shown at any time deemed necessary while on the premises of a Community operated or licensed establishment;

(c) Any Community operated or licensed establishment shall prohibit all persons under the age of 21 years to enter the establishment except to: (1) Perform work if the person is 18, 19 or 20 years of age; (2) consume meals while accompanied by an adult who is the legal guardian or parent of the person; and (3) attend social functions that are held in a portion of the establishment where alcoholic beverages are not sold;

(d) No Community operated or licensed establishment shall employ any person under the age of 18 years to serve or sell alcoholic beverages.

Section 2.—Restrictions on Intoxicated Persons

No Community operated or licensed establishment shall sell, give, or furnish any alcoholic beverage or in any way allow any alcoholic beverage to be sold, given or furnished to a person who is obviously intoxicated, or known to be a habitual drunkard.

Section 3.—Liability Insurance

For the purpose of obtaining a State of Minnesota liquor license for a Community operated establishment, the Council or operator shall demonstrate proof of financial responsibility by obtaining the necessary liability insurance required by Minnesota law chapter 340A.409.

Section 4.—Hours and Days of Sale

(a) No Community operated or licensed establishment shall sell or furnish alcoholic beverages for on-sale purposes between 1 a.m. and 8 a.m. on the days of Monday through Saturday, or after 1 a.m. on Sundays; or otherwise not in compliance with Minnesota law chapter 340A.504.

(b) No Community operated or licensed establishment shall sell or furnish alcoholic beverages for off-sale purposes: (1) on Sundays; (2) before 8 a.m. on Monday through Saturday; (3) after 10 p.m. on Monday through Saturday; or (4) otherwise not in compliance with Minnesota law chapter 340A.504.

Part III.—Community Licensing and Regulation

Section 1.—Power to License and Tax

The power to establish licenses and levy taxes under the provisions of this Ordinance is vested exclusively with the Council. If the Council enters into any tax agreements with the State, the agreement shall be deemed tribal law.

Section 2.—Community Liquor Licenses

The Council can issue by resolution, upon proper application and Council approval, a Community liquor license to any establishment wishing to sell, serve, or furnish alcoholic beverages or conduct transactions involving alcoholic beverages within the boundaries of the Upper Sioux Community Reservation.

Section 3.—Classes of Licenses

Classes of licenses under this part shall be as follows:

- (a) Class A Off-Sale Liquor store;
- (b) Class B On-Sale Dealer

Section 4.—Community Operated Establishments

The Council can issue by resolution an appropriate license to a Community operated establishment upon determining the site for the establishment, creating an operating infrastructure for the establishment and obtaining the appropriate licensing from the State of Minnesota.

Section 5.—Regulations

The Council shall adopt regulations to implement this Ordinance.

Section 6.—Beverage Board

The Council shall set annual fees for licenses and appoint a beverage board

consisting of three members, each serving three years on staggered terms. Initially, the members shall serve 1, 2 and 3 years unless re-appointed. The beverage board shall administer all licenses and regulation of licenses, as delegated by tribal law. The board members serve at the pleasure of the Council.

Section 7.—No Vested Rights

No license shall be assigned or transferred except with approval of the Council. A new license fee shall be charged for a transfer. Licenses are a privilege and no person shall have vested rights therein.

Section 8.—Appeals

A person challenging a decision of the Beverage Board must file a written appeal with the Council within seven (7) days. The Council may appoint a hearing officer if necessary for a recommended decision.

Part IV.—Distribution of Profits

Section 1.—Distribution of Profits

All profits from the sale of alcoholic beverages on the Upper Sioux Community Reservation are subject to distribution of the Council in accordance with its usual appropriation procedures for essential governmental and social services.

Part V.—Construction

Section 1.—Severability

If any section of any part of this Ordinance, or the application thereof to any party, person, or entity or to any circumstances, shall be held invalid for any reason whatsoever, the remainder of the part or Ordinance shall not be affected thereby, and shall remain in full force and effect as though no part thereof had been declared to be invalid.

Section 2.—Amendment or Repeal of Ordinance

This Ordinance may be amended or repealed only by a majority vote of the Council in regular session.

Section 3.—Sovereign Immunity

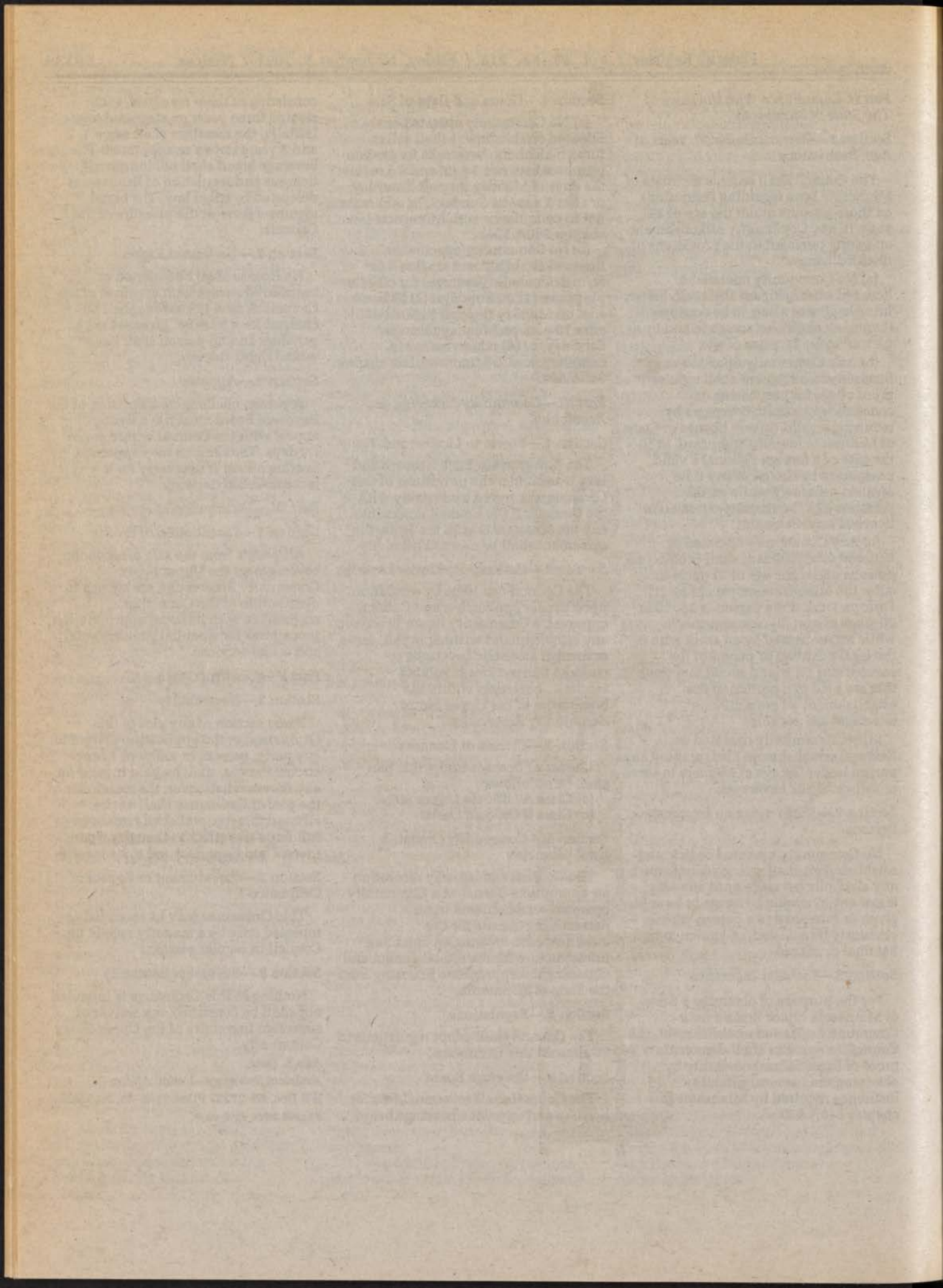
Nothing in this Ordinance is intended nor shall be construed as a waiver of sovereign immunity of the Upper Sioux Community.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93-27237 Filed 11-4-93; 8:45 am]

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federal register

Friday
November 5, 1993

Part VI

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 226

**Leasing of Osage Reservation Lands for
Oil and Gas Mining; Proposed Rule**

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 226

RIN 1076-AC09

Leasing of Osage Reservation Lands for Oil and Gas Mining

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to amend the regulations concerning the leasing of Osage reservation lands for oil and gas mining to eliminate premium, bonus, or other like payments from consideration in the calculation of the royalty price for crude oil in Osage County. This proposed amendment will eliminate the language that caused differences in interpretation that led to appeals to the IBIA.

DATES: Comments must be received on or before January 4, 1994.

ADDRESSES: Written comments should be directed to Gordon Jackson, Superintendent, Osage Agency, Bureau of Indian Affairs, Pawhuska, Oklahoma 74056, telephone (918) 287-1032.

FOR FURTHER INFORMATION CONTACT: Gordon Jackson, Superintendent, Osage Agency, Bureau of Indian Affairs, Pawhuska, Oklahoma 74056, telephone (918) 287-1032.

SUPPLEMENTARY INFORMATION: This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM8.

The purpose of this proposed rule is to amend 25 CFR 226.11(a)(2) to eliminate premium, bonus, or other like payments from consideration in the calculation of the royalty price for crude oil in Osage County.

The existing regulation was the subject of administrative appeals by numerous oil producers over the meaning of: "and settlement shall be based on the highest of the bona fide selling price, posted or offered price by a major purchaser (as defined in Sec. 226.1(h)) in Osage County, Oklahoma, who purchases production from Osage oil leases." The Bureau of Indian Affairs has interpreted that language to mean that when a higher price is offered and paid for crude oil in Osage County, that price shall be used for royalty computation for all oil of the same quality sold in the County. However, there is reason to believe that this

interpretation has discouraged purchasers from offering bonus prices.

The Interior Board of Indian Appeals (IBIA) issued its decision in favor of the producers on February 5, 1993, in *Okie Crude Co., et al. v. Muskogee Area Director, Bureau of Indian Affairs*, IBIA 92-18-A, et al. The IBIA concluded that the current regulations require a producer to pay royalty on the highest price available to it, whether or not it actually receives that price. Prices not available to a producer would not be used to calculate royalties due from that producer. This proposed amendment will eliminate the language that caused the differences in interpretation that led to the appeals to the IBIA.

It is the consensus of the BIA and the Osage Tribal Council that this proposed amendment to 25 CFR 226.11(a)(2) will create a positive economic benefit in the form of increased royalty income to the Osage headright holders. This rule change would remove the existing disincentive to purchasers to remain in Osage County resulting from bonus payments paid to some producers but not all. The producers in Osage County would then have incentive to receive bonus payments, which would increase mineral activity in the Osage mineral estate.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. In accordance with the Executive Order 12630, the Department has determined that this rule does not have significant takings implications.

In accordance with Executive Order No. 12612, the Department has determined that this rule does not have significant federalism effects.

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the locations identified in the ADDRESSES section of this document.

Since this document does not constitute a major Federal action under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (1982),

no environmental impact statements or environmental assessments were made.

The information collections contained in 25 CFR part 226 are required by the Secretary, Department of the Interior, and are necessary to comply with the requirements of Office of Management and Budget (OMB) Circular No. A-102. The Standard Form 424 and attachments prescribed by such circular are approved by OMB under 44 U.S.C. 3501 et seq. (1982) and assigned approval number 0348-0006. These sections describe the types of information that would satisfy the requirements of Circular A-102. The information will be utilized in leasing of Osage lands for oil and gas mining. Response is mandatory.

William Haney, Field Solicitor, was the primary author of this document. For further information contact Gordon Jackson, Superintendent, Osage Agency, at (918) 287-1032.

List of Subjects in 25 CFR Part 226

Indian lands, Mineral resources, Mines, Oil and gas exploration.

For the reasons set out in the preamble, part 226 of title I, chapter 25 of the Code of Federal regulations is proposed to be amended as set forth below.

PART 226—LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS MINING

1. The authority citation for 25 CFR part 226 continues to read as follows:

Authority: Sec. 3, 34 Stat. 543; secs. 1, 2, 45 Stat. 1478; sec. 3, 52 Stat. 1034, 1035; sec. 2(a), 92 Stat. 1660.

2. Section 226.11(a)(2) is revised to read as follows:

§ 226.11 Royalty payments.

(a) * * *

(2) Unless the Osage Tribal Council, with approval of the Secretary, shall elect to take the royalty in kind, payment is owing at the time of sale or removal of the oil, except where payments are made on division orders, and settlement shall be based on the actual selling price, but at not less than the highest posted price by a major purchaser (as defined in § 226.1(h)) in Osage County, Oklahoma, who purchases production from Osage oil leases.

* * * * *

Stan Speaks,

Acting Assistant Secretary-Indian Affairs.

[FR Doc. 93-27238 Filed 11-4-93; 8:45 am]

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Federal Register

Friday
November 5, 1993

Part VII

Department of Education

34 CFR Part 643

Talent Search Program; Final Regulations
and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 643

RIN 1840-AB94

Talent Search Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Talent Search program. The Talent Search program is authorized under title IV of the Higher Education Act of 1965 (HEA), and these final regulations implement changes made to the HEA by the Higher Education Amendments of 1992, Public Law 102-325. In addition to incorporating statutory changes, the regulations clarify and simplify requirements governing the program and revise the funding criteria.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write to the Department of Education contact person. A notice announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

Prince O. Teal or Peggy J. Whitehead, U.S. Department of Education, 400 Maryland Avenue SW., room 5065, Washington, DC 20202-5249.

Telephone: (202) 708-4804. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purposes and allowable activities of the Talent Search program support the National Education Goals. Specifically, the program funds projects designed to improve high school graduation rates (Goal #2), and to improve academic competency of program participants (Goal #3).

On June 10, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for the Talent Search program in the Federal Register (58 FR 32580). The NPRM included a summary of regulations proposed to implement statutory changes and other regulations proposed to clarify and simplify requirements governing the program.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 161 persons

submitted comments on the proposed regulations. An analysis of the comments and of the changes that have been made in the regulations since publication of the NPRM is published as an appendix to these final regulations.

Major Changes in the Regulations

The major differences between the NPRM and these final regulations are as follows:

Section 643.3 (Eligible Participants)

The eligibility provisions for a project participant have been revised to delete the requirement that a participant reside in the target area or attend a target school. Further, this section clarifies the eligibility of a person who needs Talent Search services in order to reenter a program of postsecondary education.

Section 643.7 (Definitions)

The definition of participant has been modified to eliminate an apparent redundancy.

The definition of target school has been revised to delete "secondary" as a modifier of "school" and to provide that such a school is one designated by the applicant as a focus of project services.

The definition of "potential first-generation college student" has been clarified and expanded.

Section 643.20 (Evaluation of Applications)

The method used to select applications in cases of ties has been revised to clarify that priority will be given to areas or eligible populations that have been underserved by the Talent Search program.

Section 643.21 (Selection Criteria)

This section has been revised to change the number of points awarded for each criterion as follows:

- (a) Need for the project—24 points.
- (b) Objectives—8 points.
- (c) Plan of operation—30 points.
- (d) Applicant and community support—16 points.
- (e) Quality of personnel—9 points.
- (f) Budget—5 points.
- (g) Evaluation plan—8 points.

The reasons for the changes and the revisions of sub-criteria are included in the appendix.

Section 643.22 (Prior Experience)

This section has been revised to redistribute the points more equitably between the second and third criteria. As revised, each criterion is valued at 6 points. The total weight for prior experience continues to be 15 points.

Section 643.30 (Allowable Costs)

This section has been revised to include, as an allowable cost, lodging for project participants and staff for college visits that require an overnight stay. Also, fees for college admissions applications and college entrance examinations are now permissible under certain conditions.

Section 643.31 (Unallowable Costs)

This section has been revised to conform to the changes made in the allowable costs section and to delete the provision that bars costs for certain duplicative services.

Section 643.32 (Other Requirements)

Paragraph (b) of this section has been revised to require generally that each project serve a minimum of 600 participants.

This section has also been revised to require the grantee to give the project director sufficient authority to administer the project effectively.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 643

Colleges and Universities, Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements, Secondary education. (Catalog of Federal Domestic Assistance Number 84.044 Talent Search Program)

Dated: November 1, 1993.

Richard W. Riley,
Secretary of Education.

The Secretary revises part 643 of title 34 of the Code of Federal Regulations to read as follows:

PART 643—TALENT SEARCH

Subpart A—General

Sec.

- 643.1 What is the Talent Search program?
- 643.2 Who is eligible for a grant?
- 643.3 Who is eligible to participate in a project?
- 643.4 What services may a project provide?
- 643.5 How long is a project period?
- 643.6 What regulations apply?
- 643.7 What definitions apply?

Subpart B—Assurances

- 643.10 What assurances must an applicant submit?

Subpart C—How Does the Secretary Make a Grant?

- 643.20 How does the Secretary decide which new grants to make?
- 643.21 What selection criteria does the Secretary use?
- 643.22 How does the Secretary evaluate prior experience?
- 643.23 How does the Secretary set the amount of a grant?

Subpart D—What Conditions Must Be Met by a Grantee?

- 643.30 What are allowable costs?
- 643.31 What are unallowable costs?
- 643.32 What other requirements must a grantee meet?

Authority: 20 U.S.C. 1070a-11 and 1070a-12, unless otherwise noted.

Subpart A—General

§ 643.1 What is the Talent Search program?

The Talent Search program provides grants for projects designed to—

(a) Identify qualified youths with potential for education at the postsecondary level and encourage them to complete secondary school and undertake a program of postsecondary education;

(b) Publicize the availability of student financial assistance for persons who seek to pursue postsecondary education; and

(c) Encourage persons who have not completed education programs at the secondary or postsecondary level, but who have the ability to do so, to reenter these programs.

(Authority: 20 U.S.C. 1070a-12)

§ 643.2 Who is eligible for a grant?

The following are eligible for a grant to carry out a Talent Search project:

- (a) An institution of higher education.
- (b) A public or private agency or organization.

(c) A combination of the types of institutions, agencies, and organizations described in paragraphs (a) and (b) of this section.

(d) A secondary school, under exceptional circumstances such as if no institution, agency, or organization described in paragraphs (a) and (b) of this section is capable of carrying out a Talent Search project in the target area to be served by the proposed project.

(Authority: 20 U.S.C. 1070a-11)

§ 643.3 Who is eligible to participate in a project?

(a) An individual is eligible to participate in a Talent Search project if the individual meets all the following requirements:

- (1) (i) Is a citizen or national of the United States;
- (ii) Is a permanent resident of the United States;
- (iii) Is in the United States for other than a temporary purpose and provides evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident;
- (iv) Is a permanent resident of Guam, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands (Palau); or
- (v) Is a resident of the Freely Associated States—the Federated States of Micronesia or the Republic of the Marshall Islands.

(2) (i) Has completed five years of elementary education or is at least 11 years of age but not more than 27 years of age.

(ii) However, an individual who is more than 27 years of age may participate in a Talent Search project if the individual cannot be appropriately served by an Educational Opportunity Center project under 34 CFR part 644 and if the individual's participation would not dilute the Talent Search project's services to individuals described in paragraph (a)(2)(i) of this section.

(3) (i) Is enrolled in or has dropped out of any grade from six through 12, or has graduated from secondary school, has potential for a program of postsecondary education, and needs one or more of the services provided by the project in order to undertake such a program; or

(ii) Has undertaken, but is not presently enrolled in, a program of postsecondary education, has the ability to complete such a program, and needs one or more of the services provided by the project to reenter such a program.

(b) A veteran as defined in § 643.6(b), regardless of age, is eligible to participate in a Talent Search project if he or she satisfies the eligibility

requirements in paragraph (a) of this section other than the age requirement in paragraph (a)(2).

(Authority: 20 U.S.C. 1070a-11 and 1070a-12)

§ 643.4 What services may a project provide?

A Talent Search project may provide the following services:

(a) Academic advice and assistance in secondary school and college course selection.

(b) Assistance in completing college admission and financial aid applications.

(c) Assistance in preparing for college entrance examinations.

(d) Guidance on secondary school reentry or entry to other programs leading to a secondary school diploma or its equivalent.

(e) Personal and career counseling.

(f) Tutorial services.

(g) Exposure to college campuses as well as cultural events, academic programs, and other sites or activities not usually available to disadvantaged youth.

(h) Workshops and counseling for parents of students served.

(i) Mentoring programs involving elementary or secondary school teachers, faculty members at institutions of higher education, students, or any combination of these persons.

(j) Activities described in paragraphs (a) through (i) of this section that are specifically designed for students of limited English proficiency.

(k) Other activities designed to meet the purposes of the Talent Search program stated in § 643.1, including activities to meet the specific educational needs of individuals in grades six through eight.

(Authority: 20 U.S.C. 1070a-12)

§ 643.5 How long is a project period?

(a) Except as provided in paragraph (b) of this section, a project period under the Talent Search program is four years.

(b) The Secretary approves a project period of five years for applications that score in the highest ten percent of all applications approved for new grants under the criteria in § 643.21.

(Authority: 20 U.S.C. 1070a-11)

§ 643.6 What regulations apply?

The following regulations apply to the Talent Search program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs), except for § 75.511.

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations), except for the definition of "secondary school" in § 77.1.

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 643.

(Authority: 20 U.S.C. 1070a-11 and 1070a-12)

§ 643.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Budget
Budget period
EDGAR
Equipment
Facilities
Fiscal year
Grant
Grantee
Private
Project
Project period
Public
Secretary
Supplies

(b) *Other definitions.* The following definitions also apply to this part:

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

Institution of higher education means an educational institution as defined in sections 1201(a) and 481 of the HEA.

Low-income individual means an individual whose family's taxable income did not exceed 150 percent of the poverty level amount in the calendar year preceding the year in which the individual initially participated in the project. The poverty level amount is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

Participant means an individual who—

(1) Is determined to be eligible to participate in the project under § 643.3; and

(2) Receives project services designed for his or her age or grade level.

Postsecondary education means education beyond the secondary school level.

Potential first-generation college student means—

(1) An individual neither of whose natural or adoptive parents received a baccalaureate degree; or

(2) An individual who, prior to the age of 18, regularly resided with and received support from only one parent and whose supporting parent did not receive a baccalaureate degree; or

(3) An individual who, prior to the age of 18, did not regularly reside with or receive support from a natural or an adoptive parent.

Secondary school means a school that provides secondary education as determined under State law, except that it does not include education beyond grade 12.

Target area means a geographic area served by a Talent Search project.

Target school means a school designated by the applicant as a focus of project services.

Veteran means a person who served on active duty as a member of the Armed Forces of the United States—

(1) For a period of more than 180 days, any part of which occurred after January 31, 1955, and who was discharged or released from active duty under conditions other than dishonorable; or

(2) After January 31, 1955, and who was discharged or released from active duty because of a service-connected disability.

(Authority: 20 U.S.C. 1070a-11, 1070a-12 and 1141)

Subpart B—Assurances

§ 643.10 What assurances must an applicant submit?

An applicant shall submit, as part of its application, assurances that—

(a) At least two-thirds of the individuals it serves under its proposed Talent Search project will be low-income individuals who are potential first-generation college students;

(b) Individuals who are receiving services from another Talent Search project or an Educational Opportunity Center project under 34 CFR part 644 will not receive services under the proposed project;

(c) The project will be located in a setting or settings accessible to the individuals proposed to be served by the project; and

(d) If the applicant is an institution of higher education, it will not use the project as a part of its recruitment program.

(Authority: 20 U.S.C. 1070a-12)

Subpart C—How Does the Secretary Make a Grant?

§ 643.20 How does the Secretary decide which new grants to make?

(a) The Secretary evaluates an application for a new grant as follows:

(1) (i) The Secretary evaluates the application on the basis of the selection criteria in § 643.21.

(ii) The maximum score for all the criteria in § 643.21 is 100 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(2) (i) For an application for a new grant to continue to serve substantially the same populations or campuses that the applicant is serving under an expiring project, the Secretary evaluates the applicant's prior experience in delivering services under the expiring project on the basis of the criteria in § 643.22.

(ii) The maximum score for all the criteria in § 643.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(3) The Secretary awards additional points equal to 10 percent of the application's score under paragraphs (a)(1) and (2) of this section to an application for a project in Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands (Palau), or the Northern Mariana Islands if the applicant meets the requirements of Subparts A, B, and D of this part.

(b) The Secretary makes new grants in rank order on the basis of the applications' total scores under paragraphs (a)(1) through (3) of this section.

(c) If the total scores of two or more applications are the same and there are insufficient funds for these applications after the approval of higher-ranked applications, the Secretary uses the remaining funds to serve geographic areas and eligible populations that have been underserved by the Talent Search program.

(d) The Secretary may decline to make a grant to an applicant that carried out a project that involved the fraudulent use of funds under section 402A(c)(2)(B) of the HEA.

(Authority: 20 U.S.C. 1070a-11, 1070a-12, and 1144a(a))

§ 643.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application for a new grant:

(a) *Need for the project* (24 points). The Secretary evaluates the need for a Talent Search project in the proposed

target area on the basis of the extent to which the application contains clear evidence of the following:

(1) A high number or percentage, or both, of low-income families residing in the target area;

(2) A high number or percentage, or both, of individuals residing in the target area with education completion levels below the baccalaureate level;

(3) A high student dropout rate in the proposed target schools in the preceding three years;

(4) A low rate of enrollment in programs of postsecondary education by graduates of the target schools in the preceding three years;

(5) A high ratio of students to school counselors in the target schools; and

(6) Other indicators of need for a Talent Search project, including the presence of unaddressed academic or socio-economic problems of students in the target schools or the target area.

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's proposed project objectives on the basis of the extent to which they—

(1) Include both process and outcome objectives relating to each of the purposes of the Talent Search program stated in § 643.1;

(2) Address the needs of the target area;

(3) Are clearly described, specific, and measurable; and

(4) Are ambitious but attainable within each budget period and the project period given the project budget and other resources.

(c) *Plan of operation* (30 points). The Secretary evaluates the quality of the applicant's plan of operation on the basis of the following:

(1) (4 points) The plan to inform the residents, schools, and community organizations in the target area of the goals, objectives, and services of the project and the eligibility requirements for participation in the project;

(2) (4 points) The plan to identify and select eligible participants and ensure their participation without regard to race, color, national origin, gender, or disability;

(3) (2 points) The plan to assess each participant's need for services provided by the project;

(4) (12 points) The plan to provide services that meet participants' needs and achieve the objectives of the project; and

(5) (8 points) The plan, including the project's organizational structure and the time committed to the project by the project director and other personnel, to ensure the proper and efficient administration of the project.

(d) *Applicant and community support* (16 points). The Secretary evaluates the applicant and community support for the proposed project on the basis of the extent to which the applicant has made provision for resources to supplement the grant and enhance the project's services, including—

(1) (8 points) Facilities, equipment, supplies, personnel, and other resources committed by the applicant; and

(2) (8 points) Resources secured through written commitments from schools, community organizations, and others.

(e) *Quality of personnel* (9 points). (1) The Secretary evaluates the quality of the personnel the applicant plans to use in the project on the basis of the following:

(i) The qualifications required of the project director.

(ii) The qualifications required of each of the other personnel to be used in the project.

(iii) The plan to employ personnel who have succeeded in overcoming the disadvantages of circumstances like those of the population of the target area.

(2) In evaluating the qualifications of a person, the Secretary considers his or her experience and training in fields related to the objectives of the project.

(f) *Budget* (5 points). The Secretary evaluates the extent to which the project budget is reasonable, cost-effective, and adequate to support the project.

(g) *Evaluation plan* (8 points). The Secretary evaluates the quality of the evaluation plan for the project on the basis of the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project's objectives;

(2) Provide for the applicant to determine, using specific and quantifiable measures, the success of the project in—

(i) Making progress toward achieving its objectives (a formative evaluation); and

(ii) Achieving its objectives at the end of the project period (a summative evaluation); and

(3) Provide for the disclosure of unanticipated project outcomes, using quantifiable measures if appropriate. (Approved by the Office of Management and Budget under control number 1840-0549)

(Authority: 20 U.S.C. 1070a-12)

§ 643.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 643.20(a)(2)(i), the Secretary reviews information relating to an applicant's performance under its

expiring Talent Search project. This information includes performance reports, audit reports, site visit reports, and project evaluation reports.

(b) The Secretary evaluates the applicant's prior experience in delivering services on the basis of the following criteria:

(1) (3 points) (i) Whether the applicant provided services to the number of participants required to be served under the approved application; and

(ii) Whether two-thirds of all participants served were low-income individuals and potential first-generation college students.

(2) (6 points) The extent to which the applicant met or exceeded its objectives regarding the retention, reentry, and graduation levels of secondary school participants.

(3) (6 points) The extent to which the applicant met or exceeded its objectives regarding the admission or reentry of participants to programs of postsecondary education.

(Approved by the Office of Management and Budget under control number 1840-0549)

(Authority: 20 U.S.C. 1070a-12)

§ 643.23 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233, for new grants; and

(2) 34 CFR 75.253, for the second and subsequent years of a project period.

(b) If the circumstances described in section 402A(b)(3) of the HEA exist, the Secretary uses the available funds to set the amount of the grant beginning in fiscal year 1994 at the lesser of—

(1) \$180,000; or

(2) The amount requested by the applicant.

(Approved by the Office of Management and Budget under control number 1840-0549)

(Authority: 20 U.S.C. 1070a-11)

Subpart D—What Conditions Must Be Met by a Grantee?

§ 643.30 What are allowable costs?

The cost principles that apply to the Talent Search program are in 34 CFR part 74, subpart Q. Allowable costs include the following if they are reasonably related to the objectives of the project:

(a) Transportation, meals, and, if necessary, lodging for participants and staff for—

(1) Visits to postsecondary educational institutions to obtain

information relating to the admission of participants to those institutions;

(2) Participation in "College Day" activities; and

(3) Field trips to observe and meet with persons who are employed in various career fields in the target area and who can act as role models for participants.

(b) Purchase of testing materials.

(c) Fees required for college admissions applications or entrance examinations if—

(1) A waiver of the fee is unavailable; and

(2) The fee is paid by the grantee to a third party on behalf of a participant.

(d) In-service training of project staff.

(e) Rental of space if—

(1) Space is not available at the site of the grantee; and

(2) The rented space is not owned by the grantee.

(f) Purchase of computer hardware, computer software, or other equipment for student development, project administration, and recordkeeping, if the applicant demonstrates to the Secretary's satisfaction that the equipment is required to meet the objectives of the project more economically or efficiently.

(Authority: 20 U.S.C. 1070a-11 and 1070a-12)

§ 643.31 What are unallowable costs?

Costs that are unallowable under the Talent Search program include, but are not limited to, the following:

(a) Tuition, stipends, and other forms of direct financial support for participants.

(b) Application fees for financial aid.

(c) Research not directly related to the evaluation or improvement of the project.

(d) Construction, renovation, and remodeling of any facilities.

(Authority: 20 U.S.C. 1070a-11 and 1070a-12)

§ 643.32 What other requirements must a grantee meet?

(a) *Eligibility of participants.* (1) A grantee shall determine the eligibility of each participant in the project at the time that the individual is selected to participate.

(2) A grantee shall determine the status of a low-income individual on the basis of the documentation described in section 402A(e) of the HEA.

(b) *Number of participants.* A grantee shall serve a minimum of 600 participants in each budget period. However, the Secretary may reduce the minimum number of these participants if the amount of the grant for the budget period is less than \$180,000.

(c) *Recordkeeping.* For each participant, a grantee shall maintain a record of—

(1) The basis for the grantee's determination that the participant is eligible to participate in the project under § 643.3;

(2) The grantee's needs assessment for the participant;

(3) The services that are provided to the participant; and

(4) The specific educational progress made by the participant as a result of the services.

(d) *Project director.* (1) A grantee shall employ a full-time project director unless paragraph (d)(3) of this section applies.

(2) The grantee shall give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirement in paragraph (d)(1) of this section if the applicant demonstrates that the requirement will hinder coordination—

(i) Among the Federal TRIO Programs (sections 402A through 402F of the HEA); or

(ii) Between the programs funded under sections 402A through 410 of the HEA and similar programs funded through other sources.

(Approved by the Office of Management and Budget under control number 1840-0549)

(Authority: 20 U.S.C. 1070a-11 and 1070a-12)

Appendix—Analysis of Comments and Responses

(Note: This appendix will not be codified in the Code of Federal Regulations)

The following is an analysis of the comments and the changes in the regulations since publication of the NPRM on June 10, 1993 (58 FR 32580). Substantive issues are discussed under the section of the regulations to which they pertain. Minor changes made to the language published in the NPRM—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are generally not addressed.

What Is the Talent Search Program? (§ 643.1)

Comment: One commenter objected to the stated purposes in § 643.1 of the proposed regulations because the Secretary included the phrase "[e]ncourage persons who have not completed education programs at the secondary or postsecondary level, but who have the ability to do so, to reenter these programs." The commenter suggested that the phrase implied that a Talent Search grant applicant would be penalized in an application competition if its design did not serve out-of-school populations.

Discussion: The purposes of the Talent Search program in § 643.1 are taken directly from the statutory authority for the program. Under the final regulations the Secretary

evaluates the objectives of a proposed project on the basis of the extent to which the objectives relate to each of the purposes of the Talent Search program. Section 643.21(b)(1). An application, in all likelihood, would be penalized if the applicant failed to show that low-income, first-generation youth who have dropped out of secondary school would not be served by that project.

Changes: None.

Who Is Eligible for a Grant? (§ 643.2)

Comment: Two commenters suggested that the Secretary change § 643.2 of the proposed regulations to explain which applicant or applicants would be held accountable for Federal funds if a combination of applicants receives a grant.

Discussion: The Secretary has determined that it is unnecessary to change § 643.2 because combination applicants are regulated by the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.127-75.129). The pertinent EDGAR provisions require combination applicants to designate one member of the combination to make the application on behalf of the group. In the alternative, EDGAR allows a combination of eligible parties to create a separate legal entity to apply for the grant. Under either application procedure, each member of the combination must enter into an agreement that delineates the duties of each member of the combination. The agreement must also bind each member to the statements and assurances made in the application.

Changes: None.

Who Is Eligible To Participate in a Project? (§ 643.3)

Comment: Many commenters suggested that the Secretary change § 643.3 by deleting the eligibility requirements concerning residence in a target area or attendance at a target school because it could cause a documentation burden and was contrary to an asserted congressional intent to allow all citizens to obtain information from a Talent Search project.

Discussion: The primary purpose of a Talent Search project is to provide services to persons residing in a discrete geographic area or attending schools located in that area. Under the Talent Search program, this area is called the target area. These regulations provide for the award of new grants based in substantial part on the need for the project in the target area. At the same time, the Secretary is persuaded that a Talent Search project should not be precluded from serving individuals who do not live in the target area or attend a target school. In light of these considerations, the Secretary has deleted the requirement in § 643.3 that a project participant must reside in, or attend a school located in, the target area.

Changes: The Secretary has deleted the phrase "resides in the target area or attends a target school" from the participant eligibility requirements in § 643.3.

Comment: Many commenters suggested that the Secretary delete the provision in the proposed regulations that required that participants have potential for a program of

postsecondary education. Commenters were concerned that the requirement would force project staff to engage in unnecessary speculation and burdensome recordkeeping.

Discussion: The Secretary believes that the provision in question accurately reflects the pertinent language of the authorizing statute. The overarching purpose of the Talent Search program is to assist participants to enroll in postsecondary education. The Secretary views the provision as necessary to ensure that projects serve those who will benefit from the program. The Secretary believes that a participant's potential for postsecondary education is neither too speculative to be considered nor too burdensome to record. Therefore, the Secretary declines to make the requested change.

The Secretary does not require project staff to make an elaborate assessment of potential or a detailed record of that assessment. However, project personnel must exercise reasonable professional judgment in deciding whether a prospective participant has potential. Section 643.32(c)(1) requires that project staff make a record that describes the basis on which each participant is selected to receive services.

Changes: None.

Comment: Many commenters suggested that § 643.3 of the proposed regulations be changed to eliminate the requirement that projects determine whether each participant needs one or more of the services provided by the project. The commenters were concerned that the proposed requirement would impose an unnecessary assessment and recordkeeping burden. The commenters contended that people do not seek the services of a Talent Search project unless they need the services.

Discussion: The Secretary views needs assessments as a necessary first step in establishing effective counselor-client relationships. Further, such an initial contact encourages project staff to exercise their professional judgment in (1) ascribing meaning to the word "need," (2) differentiating between those who need services and those who do not, and (3) creating a record that reasonably describes the basis on which each participant was determined to need Talent Search services. Section 643.32(c)(2) requires that a grantee maintain a record of needs assessments.

Changes: None.

What Services May a Project Provide? (§ 643.4)

Comment: Three commenters recommended that the Secretary clarify the list of permissible services in § 643.4 of the proposed regulations. Commenters were concerned that the list did not provide sufficient guidance to prospective applicants.

Discussion: The Secretary encourages applicants and grantees to exercise reasonable professional judgment when designing and delivering services. The Secretary finds that it would be inappropriate to delineate, with greater specificity, the types of services that may be provided by a Talent Search project. By listing a broad range of permissible services, the Secretary intends to encourage applicants to identify from a wide variety of possibilities the means

of furthering the purposes of the Talent Search program in their communities.

Changes: None.

How Long Is a Project Period? (§ 643.5)

Comment: Two commenters requested that the Secretary clarify § 643.5 of the proposed regulations, which describes the period for which Talent Search grants are awarded.

Discussion: The Secretary agrees that the proposed § 643.5 was unclear. The word "approved" was inadvertently omitted from the proposed § 643.5. The error has been corrected, thus eliminating what might have caused confusion on the part of the commenters.

Changes: The Secretary has changed § 643.5(b) to read "[t]he Secretary approves a project period of five years for applications that score in the highest ten percent of all applications approved for new grants under the criteria in § 643.21."

What Definitions Apply? (§ 643.7)

Comment: Many commenters requested that the Secretary change the proposed definition of "participant," which required that a participant be able to benefit from one or more of the services available from the project. Commenters complained that the requirement was ambiguous and could not be measured.

Discussion: The Secretary agrees that the phrase "able to benefit" does not offer sufficient guidance. Further, the Secretary believes that the proposed definition of "participant" was somewhat redundant. The first part of the definition required that a participant be determined to be eligible to participate in the project under § 643.3. The second part of the definition required that the participant be determined to be able to benefit from participating. The Secretary believes that an individual who is determined to be eligible for services under § 643.3 will have necessarily demonstrated a need for and an ability to benefit from project services.

Changes: The Secretary has revised the definition of "participant" to mean "an individual who—(1) [i]s determined to be eligible to participate in the project under § 643.3; and (2) [r]eceives project services designed for his or her age or grade level."

Comment: Many commenters requested that the Secretary revise the definition of "potential first-generation college student" in § 643.7(b). The commenters asserted that the Secretary's definition of "potential first-generation college student" was confusing and that it would not allow project staff to determine the first-generation status of foster children or children whose parents are divorced.

Discussion: The proposed definition of "potential first-generation college student" has been revised to address the commenters' concerns. The definition has been amended to clarify that it embraces both natural and adoptive parents. The Secretary believes that revised paragraph (2) of the definition applies to many children whose parents are divorced, as well as other children in single-parent families. A new paragraph (3) has been added to address foster children and other similarly-situated individuals.

Changes: In paragraph (1) of the definition, the words "natural or adoptive" have been added as modifiers of the term "parents." In paragraph (2), the phrase "prior to the age of 18" has been added to clarify the period in which the individual regularly resided with and received support from only one parent. A new paragraph (3) provides that "potential first-generation college student" includes "[a]n individual who, prior to the age of 18, did not regularly reside with or receive support from a natural or an adoptive parent."

Comment: Many commenters suggested that the word "secondary" be stricken from the definition of "target school" in § 643.7(b) of the proposed regulations. The commenters pointed out that the 1992 amendments to the Higher Education Act allow projects to serve students who have completed five years of elementary school, but the requirement that a target school be a secondary school would preclude services to sixth graders.

Discussion: The Higher Education Act defines a secondary school as a day or residential school that provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12. The Secretary finds that State law often defines secondary education as not including the sixth grade. The Secretary also finds that limiting target schools as proposed would, in some cases, exclude individuals who are eligible to participate in Talent Search projects.

Changes: Section 643.7(b) of the final regulations defines target school as "a school designated by the applicant as a focus of project services."

How Does the Secretary Decide Which New Grants To Make? (§ 643.20)

Comment: Several commenters objected to § 643.20(c) of the proposed regulations, which describes how the Secretary awards grants when two or more applications receive identical scores and all of these applications cannot be funded. The commenters suggested that the decision should not be made on the basis of what appeared to them to be a subjective judgment.

Discussion: The Secretary believes that the standards for awards in the circumstances described should be clarified. The Secretary has therefore changed the language to mirror congressional concern regarding equitable distribution of services to geographic areas and eligible populations that have been underserved by the program.

Changes: In the final regulations, § 643.20(c) reads: "[i]f the total scores of two or more applications are the same and there are insufficient funds for these applications after the approval of higher-ranked applications, the Secretary uses the remaining funds to serve geographic areas and eligible populations that have been underserved by the Talent Search program."

What Selection Criteria Does the Secretary Use? (§ 643.21)

Comment: Many commenters suggested that the Secretary change the point distribution in § 643.21 of the proposed regulations. The commenters offered the following table as a summary of their suggestions:

	Points in NPRM	Suggested points
Need for the project	24	25
Objectives	8	0
Plan of operation	33	32
Applicant and community support	8	20
Quality of personnel	9	10
Budget	10	5
Evaluation plan	8	8
Total	100	100

The commenters suggested that the criterion listed under the heading "Plan of operation" be combined with the criterion listed under the heading "Objectives" and that the combined criteria be allocated 32 points. They argued that merging the criteria would simplify the application process by eliminating unnecessary duplication.

The commenters suggested that the "Applicant and community support" criterion be allotted 20 points instead of 8 points because the criterion is so important to the success of a project.

The commenters suggested that the "Budget" criterion be allotted 5 points instead of 10 points because (1) many field readers are not familiar with local personnel and other operating costs, and (2) the budget submitted with an application is not the budget that ultimately governs the project.

Finally, the commenters suggested that the Secretary allot an additional point to the "Need for the project" criterion and one additional point to the "Quality of personnel" criterion. The commenters did not present a specific argument in support of these suggestions.

Discussion: The Secretary has reconsidered the entire point distribution and agrees with the commenters, in whole or in part, with regard to the "Applicant and community support," "Plan of operation," and "Budget" criteria. However, the Secretary believes that it is unnecessary to change the points for the "Need for the project," "Objectives," or "Quality of personnel."

The Secretary was persuaded by the commenters' assertion that the "Applicant and community support" criterion had been undervalued in the proposed regulations. The Secretary agrees with the commenters that support from the host institution and community is often vital to the success of a Talent Search project. The Secretary has therefore doubled the points allotted to the criterion.

The Secretary also agrees with the commenters that there may have been some duplication between the "Objectives" criterion and the "Plan of operation" criterion. However, the Secretary has chosen not to combine the two criteria. Instead, the Secretary has eliminated any possible duplication by clarifying the language in each criterion. The Secretary has also decreased the points allotted to the "Plan of operation" criterion to allow more points in the "Applicant and community support" criterion.

The Secretary agrees with the commenters that some field readers may not be familiar

with local salary levels and other operating costs. The Secretary also acknowledges that the budget submitted with an application is not always the budget that ultimately governs the project because the Department often negotiates a new budget after an applicant has been selected for funding. The Secretary also agrees that the application budget may not be as good an indicator of a high quality project as is applicant and community support. Therefore, the Secretary has redistributed five points from the "Budget" criterion to the "Applicant and community support" criterion.

The Secretary has declined to increase the points allotted to the "Need for the project" and "Quality of personnel" criteria because the Secretary was unable to ascertain the commenters' reasons for recommending those changes.

Changes: Section 643.21(a) (Need for the project): Minor editorial changes have been made in paragraphs (a)(1) and (a)(6).

Section 643.21(b) (Objectives): No change in point allocation was made, but the Secretary has changed the language of the criterion to eliminate overlap with the "Plan of operation" criterion and for other purposes. Paragraph (b)(1) now provides for an evaluation of objectives on the basis of the extent to which they "[i]nclude both process and outcome objectives relating to each" of the program purposes. Paragraph (b)(2) of the proposed criterion has been eliminated and a new provision has been substituted to provide for an evaluation of the extent to which the objectives "[a]ddress the needs of the target area." Finally, paragraph (b)(4) now refers to "each budget period" as well as the project period.

Section 643.21(c) (Plan of operation): The Secretary has decreased the number of points allotted to this criterion from 33 points to 30 points. The Secretary also revised the provision in order to describe more explicitly the various key components of an effective and comprehensive operating plan.

Section 643.21(d) (Applicant and community support): The Secretary increased the number of points allotted to this criterion to 16 points and made minor editorial changes in the language. Each of the two sub-criteria is allotted eight points.

Section 643.21(e) Quality of personnel: A minor editorial change has been made in paragraph (e)(1)(iii).

Section 643.21(f) Budget: The Secretary has reduced the points allotted to this criterion from ten to five points and simplified the language.

Comment: One commenter suggested that § 643.21(e) of the proposed regulations, relating to the quality of key personnel, be amended to require at least a master's degree for all project directors.

Discussion: The Secretary believes that it is appropriate to rely on applicants to use their professional judgment in deciding what credentials are necessary and proper for personnel in a proposed project. Allowing each applicant to establish its own hiring standards ensures that applicants have the flexibility they need to design projects that will meet the unique needs of the target area they propose to serve. The Secretary also believes that academic achievement is not

the only indicator of a project director's potential for success.

Changes: None.

Comment: One commenter suggested that the regulations include provisions allowing Talent Search projects to enter into partnerships with a variety of agencies and community organizations.

Discussion: Section 643.2(c) of the regulations allows for partnerships, and § 643.21(d)(2) encourages all Talent Search projects to establish a variety of collaborative and supportive relationships with local schools and community organizations. However, neither the enabling legislation nor the regulations requires formal partnership agreements.

Changes: None.

Comment: Several commenters suggested that the Secretary change § 643.21(e)(1)(iii) of the proposed regulations, which allocates points to an applicant based on the applicant's plan to employ personnel who have overcome the disadvantages of circumstances like those of the population in the target area. Some commenters suggested that the Secretary include a list of groups from which applicants should hire. Various commenters suggested that the Secretary evaluate whether the applicant planned to hire members of racial and ethnic minorities, women, persons with physical disabilities, or elderly persons. One commenter argued that the proposed § 643.21(e)(1)(iii) was too broad and open to too much interpretation by field readers. Another commenter argued that the provision was discriminatory.

Discussion: Other sources of Federal law prohibit employment discrimination based on race, ethnicity, age, gender, or disability. The provision set out in § 643.21(e)(1)(iii) is an evaluation criterion designed to encourage Talent Search applicants to develop strategies for hiring persons who have experienced the same kinds of difficulties as those being faced by Talent Search participants. It is the Secretary's experience that successful Talent Search projects have these types of individuals on their staffs.

Changes: None.

How Does the Secretary Evaluate Prior Experience? (§ 643.22)

Comment: One commenter suggested that the Secretary change § 643.22(a) of the proposed regulations, which provides for an evaluation of the prior experience of a grantee under the Talent Search program during the three fiscal years immediately preceding the year in which the grantee submits a new application. The commenter suggested that the Secretary consider the prior experience of grantees who administered programs within a six-year period before the competition. The commenter noted that a six-year limit would allow the Secretary to evaluate and award prior experience points to more applicants.

The commenter pointed out that applicants with prior experience administering a Talent Search project may not have been funded during the last three years and asked that the Secretary consider the experience of those applicants.

Discussion: The Secretary has reviewed proposed § 643.22(a) and has changed the

language of the provision. Section 643.22(a) is designed to obtain and use the most recent data available to judge a current grantee's performance and to promote the continuity of successful projects. It recognizes the strong working relationships the project may have established within a community, the growing attachment that disadvantaged youth may have to the project, and the disruption that might occur if the project were discontinued. The underlying rationale for providing points for prior experience is to promote continuity in appropriate cases—not to reward previously-funded projects.

Inasmuch as the project period for expiring Talent Search projects does not always coincide with fiscal years, the language of the proposed regulations has been revised to delete references to fiscal years and provide for a review of the applicant's performance under the entire project period of the expiring project.

Changes: The language of paragraph (a) of this section has been modified as follows: " * * * the Secretary reviews information relating to an applicant's performance under its expiring Talent Search project."

Comment: Several commenters suggested that the Secretary change § 643.22(b) of the proposed regulations because the proposed section was unbalanced. The commenters argued that the proposed regulations awarded a disproportionately high number of points to an applicant based on the applicant's prior experience in promoting secondary school retention, reentry, and graduation. The commenters contended that an equal number of points should be awarded to an applicant who can show successful prior experience in enrolling or re-enrolling participants in postsecondary education.

Discussion: The Secretary is persuaded by the commenters and has revised the section accordingly.

Changes: The Secretary has changed § 643.22(b) to provide for a maximum of six points for the project's success in meeting its secondary school objectives and six points for its success in meeting its postsecondary school objectives. Minor editorial changes to this paragraph have also been made.

Comment: Many commenters suggested that a fourth criterion be added to the prior experience section. The fourth criterion would take into account an applicant's success in achieving other objectives.

Discussion: The Secretary believes the three criteria in the proposed regulations are sufficiently inclusive to cover the essential outcomes of a Talent Search project. The Secretary believes that the criterion suggested by the commenters that would allocate points to applicants who have achieved "other" objectives is too vague to be used in evaluating the performance of an applicant.

Changes: None.

What Are Allowable Costs? (§ 643.30)

Comment: Many commenters suggested the Secretary amend § 643.30 of the proposed regulations to include lodging for project participants for college visits in the list of allowable costs. The commenters suggested that permitting lodging costs would allow many Talent Search projects greater

flexibility in exposing participants to college campuses.

Discussion: The Secretary has determined that some Talent Search projects are prevented from bringing their participants to visit colleges because they cannot complete the trip to and from the college or university campus in one day. The Secretary believes that college visits help Talent Search participants learn about postsecondary opportunities. The Secretary has, therefore, determined that lodging may be an allowable cost.

Changes: The Secretary has changed § 643.30 so that the list of allowable costs includes transportation, meals, and, if necessary lodging for participants and staff for (1) visits to postsecondary educational institutions to obtain information relating to the admission of participants to those institutions; (2) participation in "College Day" activities; and (3) field trips to observe and meet with people who are employed in various career fields in the target area and who can act as role models for participants.

Comment: Many commenters suggested that the Secretary amend § 643.30 of the proposed regulations to include college admission fees and college entrance examination fees in the list of allowable costs.

Discussion: The Secretary has found that college admission application fees are often barriers that prevent students from low-income families from filing applications to postsecondary schools. The Secretary has also found that waivers of college admission application fees are not always available to low-income students. Some State-supported institutions are legally prohibited from waiving admission application fees, and private institutions may or may not waive admission application fees for low-income applicants. The high cost of admission application fees and the unavailability of fee waivers have the detrimental effect of preventing Talent Search participants from completing applications to certain four-year colleges and universities. The Secretary has concluded that admission fees should be included in the list of allowable costs under certain circumstances described in the regulations.

Talent Search participants have historically benefitted from having testing materials available in order to prepare students for the SAT, ACT, and other standardized tests. The Secretary believes that it is appropriate to allow Talent Search projects to pay for testing even when the examination will be administered by a third party. Therefore, the Secretary has included entrance examination fees in the circumstances described in the regulations in the list of allowable costs.

Changes: The Secretary has changed § 643.30 so that the list of allowable costs includes fees required for college admissions applications or entrance examinations if (1) a waiver of the fee is unavailable; and (2) the fee is paid by the grantee to a third party on behalf of a participant.

Comment: Several commenters suggested that allowable costs include specific fees and services not listed in § 643.30 of the proposed regulations. Among the items suggested were

(1) the price of tickets to cultural events, (2) fees for various types of academic programs, (3) tutorial activities, (4) workshop fees, (5) student leadership conference fees, (6) entrance fees for cultural enhancement activities, (7) stipends, and (8) monetary incentives or awards for participants.

Discussion: The list of costs in § 643.30 is intended to provide examples of the types of expenses that a grantee may cover with a Talent Search grant. The list is only illustrative; it is not exhaustive. Most expenses that are directly related to the provision of an allowable service may be covered by a Talent Search grant. However, the Secretary does not allow direct payments to participants.

Changes: None.

Comment: One commenter requested that the Secretary change the list of allowable costs in § 643.30 so that the list would include costs associated with the translation of materials or the purchase of translated materials for students or parents of limited English proficiency.

Discussion: The Higher Education Act authorizes programs and activities designed for students of limited English proficiency as permissible services. This legislative mandate is reflected in § 643.4(j) of the regulations, which specifically allows a Talent Search project to tailor its services to meet the specific needs of students of limited English proficiency. Although the costs of translation are not specifically listed under § 643.30, a project may expend grant monies on translations if these costs are necessary to effectively serve participants of limited English proficiency.

Changes: None.

What Are Unallowable Costs? (§ 643.31)

Comment: Many commenters suggested that the provision regarding duplicative services contained in § 643.31(d) of the proposed regulations be eliminated in view of section 402A(c)(6) of the Higher Education Act, which provides that "[t]he Secretary shall not limit an entity's eligibility to receive funds * * * because such entity sponsors a program similar to the program to be assisted * * *, regardless of the funding source of such program."

Discussion: The Secretary agrees that proposed § 643.31(d), relating to duplicative services, is not necessary and that it is better to accentuate the positive impact of effective coordination and cooperation. If this coordination takes place, unnecessary duplication of services will be prevented.

Changes: The Secretary has removed costs for services that duplicate services available from other sources from the list of unallowable costs.

What Other Requirements Must a Grantee Meet? (§ 643.32)

Comment: Some commenters suggested that the Secretary change § 643.32(a)(1) to make it more clear that grantees do not have to reestablish a participant's eligibility for services each year.

Discussion: The Secretary finds the suggested change unnecessary. The pertinent language in § 643.32(a)(1) provides that: "a grantee shall determine the eligibility of each

participant * * * at the time that the individual is selected to participate." Under this language, a grantee does not have to revalidate a participant's eligibility each year.

Changes: None.

Comment: One commenter requested that the Secretary change the proposed regulations to allow project staff to request and use free lunch lists as documentation of a potential participant's low-income status.

Discussion: Under section 402(A)(e) of the HEA, project staff may use verification from another governmental source to determine low-income status. Free lunch lists qualify as verification from another governmental source and may be used as documentation of a participant's low-income status.

Changes: None.

Comment: Many commenters suggested that the Secretary eliminate § 643.32(c)(2) of the proposed regulations, which required a grantee to maintain a record of "[t]he basis for the grantee's determination that the participant is able to benefit from one or more services available from the project." The commenters argued that the proposed regulations were subjective, unnecessary, and burdensome.

Discussion: The Secretary agrees that the proposed regulations imposed an unnecessary burden and has changed the provision. In the final regulations, § 643.32(c)(2) does not require an elaborate assessment of need. The section requires only that project personnel exercise reasonable professional judgment in deciding whether an individual needs the services of the project.

Changes: The Secretary has changed § 643.32(c)(2) so that it requires a grantee to maintain a record of "[t]he grantee's needs assessment for the participant."

Comment: Some commenters suggested that the Secretary change § 643.32(c)(4) of the proposed regulations, which required that a grantee keep a record of the specific

educational benefits to the participant that resulted from the services. The commenters asserted that the proposed provision was too vague and that the educational benefits should be specified by the Department.

Discussion: The Secretary believes that the purposes of the Talent Search program are best served when grantees are free to exercise their professional judgment in evaluating whether a project has been helpful to a participant. The Secretary has therefore changed the wording in § 643.32(c)(4) to require that grantees keep a record of the specific educational progress being made by Talent Search participants as a result of services under the project.

The regulations do not require an elaborate record. The regulations do require that project personnel exercise reasonable professional judgment in deciding what facts indicating educational progress should be recorded.

Changes: Section 643.3(c)(4) has been changed to require that for each participant, a grantee shall maintain a record of the specific educational progress made by the participant as a result of the services.

Comment: Many commenters requested that the Secretary amend § 643.32 to include a regulatory provision that would ensure project directors sufficient authority to conduct their projects effectively. The commenters suggested that the project director's authority be described in the regulations.

Discussion: In 1992, the Secretary removed several provisions of the Education Department General Administrative Regulations (EDGAR), including a provision that required that the grantee give its project director sufficient authority to conduct the project effectively. See 34 CFR 75.510(c) (1991). The Secretary has determined that some Talent Search grantees may have misinterpreted this action. By eliminating § 75.510(c) of EDGAR, the Secretary did not

intend to imply that grantees could refrain from providing project directors with sufficient authority to conduct projects effectively. Therefore, the Secretary has added a provision to the Talent Search regulations that expressly states that Talent Search grantees must give sufficient managerial authority to Talent Search project directors.

Changes: The Secretary has added the following provision to § 643.32(d): "(2) The grantee shall give the project director sufficient authority to administer the project effectively." *Should Talent Search grants be proportionate to the number of participants served by a project?*

Comment: One commenter suggested that funding be proportionate to the number of participants that a project serves. According to the commenter, if a project serves 600 participants and is awarded \$180,000, it would be unfair to award only \$250,000 to a project that serves 1500 participants. The commenter requested that the Secretary create a regulation that would equalize the amount of money that all projects could spend on each participant. The commenter suggested that uniformity in expenditures would ensure a more consistent level of quality.

Discussion: Each Talent Search applicant indicates how many participants it intends to serve and how much money it will need to serve that number. The Secretary believes that numerous variables such as cost of living, availability of community support, and target area size uniquely influence the cost of services at different project sites. The Secretary has concluded, therefore, that a formula would not be an equitable means of determining either the size of the grant or the number of participants to be served.

Changes: None.

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.044]

Talent Search Program; Inviting Applications for New Awards Under the Talent Search Program for Fiscal Year (FY) 1994

Purpose of Program: To provide grants to enable applicants to conduct projects designed to (1) identify qualified youths who are low-income and potential first-generation college students and to encourage them to complete high school and enroll in postsecondary education; (2) publicize the availability of student financial assistance at the postsecondary level; and, (3) encourage persons who have not completed secondary or postsecondary education to reenter these programs. This program supports the National Education Goals. Specifically, the program funds projects designed to improve high school graduation rates (Goal #2) and to

improve academic competency of program participants (Goal #3).

Eligible Applicants: Institutions of higher education, public and private agencies and organizations, combinations of institutions, agencies, and organizations, and, in exceptional cases, secondary schools, if there are no other applicants capable of providing a Talent Search project in the proposed target area.

Deadline for Transmittal of Applications: December 22, 1993.

Deadline for Intergovernmental Review: February 20, 1994.

Applications Available: November 8, 1993.

Available Funds: \$70 million.

Estimated Range of Awards: \$180,000-\$450,000.

Estimated Average Size of Awards: \$240,000.

Note: The Department is not bound by any estimates in this notice.

Estimated Number of Awards: 300.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 643, as amended in this issue of the **Federal Register**.

For Applications or Information Contact: Prince O. Teal, U.S. Department of Education, 400 Maryland Avenue, SW., room 5065, Washington, DC 20202-5249. Telephone: (202) 708-4804. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: October 22, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93-27313 Filed 11-4-93; 6:45 am]

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