School Innovation Fund (SIF) Grantee Guide

(Successful Administration of a Federal Grant)

New York State Education Department
SIF
January 30, 2012

Foreword

The purpose of this Handbook is to assist you, grantee, in understanding your role in administrating the School Innovation Fund. It provides you with important guidelines for reviewing the fiscal and programmatic protocols required and the New York State Education Department's expectations of you as a program administrator.

Thank you for your important contribution to school turnaround and happy reading!

I. INTRODUCTION TO THE SIF GRANT ADMINISTRATION 1

A. Background 1

B. Purpose 1

C. Program Requirements 1

D. Program Requirements Specific to Each Design Framework 2

II. PROJECT PERIOD 6

A. Planning Phase Timeline 9

B. Year 1 Timeline 10

C. Year 2 Timeline 11

III. BUDGET 12

IV. REPORT REVIEW 14

A. Description 14

V. THE REPORT REVIEW PROCESS 15

A. Report Dates 15

B. Report Timeline 15

VI. SITE VISITS 16

VII. APPENDICES 19

Appendix A: Performance Agreement Template 1-9

Appendix B: LEA-Partner MOU Guidance and Template 1-6

Appendix C: Budget Forms and Quarterly/Annual Reporting Forms 1-15

Appendix D: Federal and State Guidelines for Grant Administration 1-44

I. INTRODUCTION TO THE SIF GRANT ADMINISTRATION

A. Background

In order to fully develop a robust and coherent system of education for the students of New York, NYSED is committed to dramatically improve the State's lowest performing schools and create new, innovative, high-quality education options for all students. In December of 2009, the New York State Board of Regents approved a bold reform agenda to meet these aims. This grant, as a part of New York's Race to the Top (RttT) initiative will contribute the following goals of the Regents reform agenda:

- Provide every student with a world-class curriculum that synthesizes rigorous content and skills to prepare students for college, the global economy, 21st century citizenship, and lifelong learning.
- Work with school districts to implement strategies for closing chronically underperforming schools in order to dramatically improve student outcomes.
- Raise graduation rates for at-risk student populations (particularly English language learners, students with disabilities, low-income students, African-American and Latino students) through the redesign and launch of schools to increase student engagement and to ensure college and career readiness.

B. Purpose

The School Innovation Fund programs support whole school redesign in districts that have schools identified as Tier III. The purposes of the School Innovation Fund are to increase high school graduation, college persistence, and college graduation rates by increasing the availability of new high quality seats for students at most risk for dropout, disengagement, and poor academic performance.

C. Program Requirements

School Innovation Fund Grant programs must have at least one of following design frameworks or a combination to launch a new school. It must contain evidence that LEA applicants have engaged in valid, systematic, and critical processes of district-wide student-population and system/structural needs analysis. Based on these analyses, LEAs must recruit, screen, and select partner organizations that have the skill and capacity to fill identified gaps in essential district systems and structures and fully participate in the co-design, development, and implementation of new or wholly redesigned schools. (LEA applicants must submit a separate application for each new school it intends to seek funding). An eligible partnership must involve partner organizations with a **proven track record** of success in turning around low-achieving schools and/or raising student achievement and the change management process.

School Innovation Fund Design Frameworks:

1. College Pathways School Design
2. Full-Service (wrap-around services) Design
3. Arts and/or Cultural Education School Design
4. Industry Partnership Design
5. Virtual/Blended/Online School Design
6. Education Partnership Organization / Charter Management Organization (EPO/CMO)

D. Program Requirements Specific to Each Design Framework

LEA-partner organization proposals to launch a new school or total re-design of an existing school must be positioned around any one or combination of the six design frameworks described in this section. The particular design framework proposed and the scope of the re-design must be clearly identified and justified as a valid and well-reasoned solution to identified district gaps and needs in its ability provide a menu of high quality options for students in the context of a larger district portfolio strategy. The following two features must be present across all design frameworks. All new school design framework must:

- Serve low-income youth, first generation college goers, English language learners, students of color, and other young people underrepresented in higher education
- Utilize specialized instructional practices that enable diverse learners to achieve college-ready standards. These practices include teaching foundation literacy and numeracy skills in the context of intellectually challenging tasks and providing scaffolding so that students advance continuously to higher levels based on proficiency

College Pathways School Design: College pathway schools are small, autonomous schools, operated in close connection with a postsecondary institution. The schools are designed so that all students have the opportunity to earn college credits tuition free along with a high school diploma. The schools are intended for low-income youth, first-generation college goers, English language learners, students of color, and other young people underrepresented in higher education. College pathway schools:

- Provide the opportunity for students to earn up to 40 college credits, tuition free along with a high school diploma (*or are designed at the middle-level to prepare students to take dual enrollment and college-credit bearing courses in high school)
- Utilize organizational practices that reinforce an effort-based, college-going culture in which all students are supported as full members of a community of learners striving to achieve high standards
- Work with an intermediary organization with a proven track-record of success in designing and building college pathway experiences
- Establish eligibility policies that permit students to take college-level courses in individual subject areas for which they are prepared, based on multiple measures of readiness in those areas

- Focus counseling on dual enrollment postsecondary options to enable students to make informed choices about their programs of study. (In some cases, high schools preselect courses to ensure they meet career certificate or general education requirements for two-year institutions—and are transferable to four-year colleges.)
- Ensure that course content, student assessments, and instructor qualifications meet IHE standards

Full-service (wrap-around services) Design: A full-service school is a community school, operating in a public school building, that is open to students, families and the community before, during and after-school, often seven days a week, all year long. It is jointly operated and financed through a partnership between the school system and one or more community agencies. Full-service schools:

- Are open buildings serving the community beyond the school day (before and after school, evenings, vacations, and summers)
- Operate jointly through a partnership between the school and one or more community agencies that take the lead in finding and coordinating resources for students and adults in the community
- Provide access to health, dental and mental health services (either directly via on-site health center and/or through direct services within a neighborhood or community zone)
- Provide a family resource center and opportunities for parents and families to be involved in the school
- Ensure that after school and summer enrichment programs reinforce and extend the academic experiences for students and adults
- Offer social and educational services for families and community members
- Strengthen the neighborhood's ability to address its identified needs and wants

Arts and Cultural Education: Arts and or cultural education schools provide a specialized educational program and learning environment which integrate content and resources from the arts and cultural institutions into traditional core subject areas. Additionally, arts and/or cultural education schools are conducive to artistic and academic excellence for promising students of the arts. Arts and cultural education schools:

- Balance core academic rigor with independent, creative, and artistic thinking and performance
- Leverage cultural resources within the community, connecting schools to libraries, museums, and practicing artists
- Include one or more comprehensive partnerships with museums, libraries, or other cultural organizations, a public broadcasting station, or artists in residence
- Provide instruction by highly qualified educators and artists in the school and in community settings

Industry Partnership Design: Industry partnership schools provide real-world, project-based personalized learning opportunities for all students, including apprenticeship and career internship, and/or work

scholarship experiences. These schools will benefit from the coordinated efforts of LEAs and one or more of the following external entities; private business, chambers of commerce, non-profit industry coalitions, unions, and/or economic development organizations. Industry partnership schools:

- Provide students education and training that will result in a readiness to enter the workforce in specific career fields upon graduation or enter college in specialized technical professions
- Provide an individualized college and career readiness plan for all students
- Provide teachers with yearly education-based and career & technical based professional development
- Create apprenticeships/internships with local employers based on student individualized learning plan
- Coordinate with local employers to provide job and college placement services for graduates

Virtual/Online/Blended School Design[1]: A virtual/blended/online school provides learning experiences where high quality, personalized, instructional interaction occurs through digital and/or Internet-connected technology. A fully virtual/online school delivers a majority of the instructional experience through a digital or Internet-connected learning environment. A blended school design provides any combination of face-to-face and digital, virtual, and/or Internet-connected instructional interaction. Virtual/online and blended school designs provide flexibility of time and place of instruction, in order to meet individual student learning needs. Virtual/Online/Blended schools must:

- Provide high-quality digital content, virtual and blended courses, that are aligned to the common core and other New York State Standards of Learning for all enrolled students
- Ensure digital learning involves high quality instructional interactions between teacher and student, student and content, and other students
- Provide high-quality college or career-prep courses to earn a high school diploma
- Personalize learning for each student enrolled
- Allow for a progression of learning and award credit for course completion based on demonstration of competency
- Allow for flexible scheduling for students to take full advantage of peak learning times and to complete learning experiences
- Plan and provide for academic and social-emotional development and supports
- Ensure administrators and teachers have substantial, ongoing, and job-embedded professional development to better utilize technology for teaching
- Demonstrate a transparent and rigorous process for selecting digital content and course management providers, evaluated by student learning data

1 The essential characteristics for virtual and blended school models have been adapted from The 10 Elements of High Quality Digital Learning, released by the Digital Learning Council, in December of 2010. (available at: http://www.excelined.org/Docs/Digital%20Learning%20Now%20Report%20FINAL.pdf)

- Demonstrate a sustainable technology infrastructure for learning and course management
- Comply with Commissioner's regulations for online learning

EPO/CMO Partnership: A school modeled after a successful EPO/CMO design, will be planned and launched in partnership with the EPO/CMO responsible for the original design and network management of similar school designs. The EPO/CMO design must replicate the organizational and education features of the school. Specific shared governance of the school must be explicit in the roles and responsibilities articulated in the final MOU between the LEA and EPO/CMO. EPO/CMO design schools:

- Become a part of the EPO/CMO network of support
- Replicate the organizational and education features of the successful school/network
- Create a shared governance agreement where LEA and EPO/CMO are jointly accountable for school and student success, with explicit roles and responsibilities articulated in the final MOU

II. PROJECT PERIOD

Each funded partnership will be required to work with the NYSED State School Turnaround Office, which will provide support in developing key innovation and turnaround partnership agreements at the local level and facilitate sharing of best practices Statewide.

The expected start date of this funding program is January 1, 2012, for a planning phase. The planning phase is expected to end June 30, 2012, and the implementation phase is expected to begin July 1, 2012. New schools will enroll the first cohort of students in September, 2012. LEAs and Lead Partner/Partner Consortium will be required to submit an initial Memorandum of Understanding (MOU) upon application and a final MOU by the end of the planning period. Funding past the planning period is contingent upon performance and fully executed partnership MOU and NYSED approved performance agreement. Additionally, LEAs and partner organizations will be held jointly accountable for interim performance indicators and summative student performance metrics through an explicit performance agreement to be finalized and approved by NYSED.

- Initial project period (planning phase) will be January 1, 2012 to June 30, 2012
- Grant awards will include an NYSED option for a 1-year extension
- The implementation phase will be July 1 2012 to June 30, 2013 and July 1 2013 to July 1 2014. (For successful applicants with an already established new-school, phasing in a new cohort, the implementation period may begin in year one, contingent upon an approved performance agreement.)
- A separate FS-10 budget must be submitted for each year of the project period. A FS-10 for the first year only must be submitted with this application.

School Turnaround Office (STO) Role:

During each phase of the grant period, STO staff will provide oversight and guidance to ensure goals and objectives have been addressed in compliance with state, federal, and grant guidelines.

- **Initial project period (Planning phase)- January 1, 2012 to June 30, 2012**
  1. STO staff will schedule will contact all grantees in January/February
  2. STO staff will visit with grantees in March/April
  3. STO will communicate "next steps" to the grantees
  4. STO will host a webinar/or visit grantees to assist with budget or programmatic questions
  5. STO staff will contact the grantees as a reminder when Year 1 report is due (May)
  6. STO will review grantee file to ensure all documents required during implementation have been received (June)

- **Implementation phase (Year One) - July 1 2012 to June 30, 2013**
  1. STO staff will telephone/e-mail grantees July/August regarding Year 1 report & any amendments
  2. STO will conduct quarterly calls/visits to address concerns or inquiries (September 15, December 15, March 15, June 15)
  3. STO will conduct webinars/information sessions (August 15, November 15, February 15, May 15)

- **Year 2 - July 1 2013 to July 1 2014**
  1. STO staff will telephone/e-mail grantees July/August regarding Year 1 report & any amendments
  2. STO will conduct quarterly calls/visits to address concerns or inquiries (September 15, December 15, March 15, June 15)
  3. STO will conduct webinars/information sessions (August 15, November 15, February 15, May 15)

Grantee Role:

During each phase of the grant period, grantees will be responsible to provide quarterly reports, host on-site visits, and communicate via e-mail and phone on the status of the "**culture of innovation**" while remaining in compliance with state, federal, and grant guidelines.

- **Initial project period (planning phase) - January 1, 2012 to June 30, 2012**
  1. Grantees will host STO visits in March/April and discuss fiscal and programmatic goals, ensure MOU (s) and Performance Contract (s) have been executed
  2. Grantees can provide commentary on STO site visit status report received within 2-weeks of visit (March/April)
  3. Grantees will participate in budget/grant management and status webinars to ensure of successful eligibility to participate in Year 1 (May)
  4. Grantees will respond to follow-up calls conducted by STO staff 2-weeks after webinar and schedule on–site visit if necessary (May)
  5. Grantees will prepare Year 1 report and contact STO with questions or concerns(May)
  6. Grantees will follow-up with STO to ensure all documents required during implementation have been received (June)

- **Implementation phase - July 1 2012 to June 30, 2013**
  1. Grantees will participate field calls with STO July/August regarding Year 1 report & any amendments
  2. Grantees will participate in/host quarterly calls/visits in concert with reporting schedule (September 15, December 15, March 15, June 15)
  3. Grantees will participate webinars/information sessions (August 15, November 15, February 15, May 15)
  4. Report submission dates (October 30, January 30, April 30, July 31)

- **Year 2 - July 1 2013 to July 1 2014**
  1. Grantees will participate field calls with STO July/August regarding Year 1 report & any amendments
  2. Grantees will participate in/host quarterly calls/visits in concert with reporting schedule (September 15, December 15, March 15, June 15)
  3. Grantees will participate webinars/information sessions (August 15, November 15, February 15, May 15)
  4. Report submission dates (October 30, January 30, April 30, July 31)

A. Planning Phase Timeline

- January 6, 2012 — Initial phone contact from The School Turnaround Office (STO)
- January 30, 2012 — Orientation for SIF grantees held at NYSED
- February 15, 2012 — Follow-up call/ e-mail SIF grantees & respond to inquiries
- March 2012 — "Check-in" visits hosted by grantees. STO staff will coordinate with grantees the date, time, and logistics of visit.
- March 30, 2012 — End Quarter 1 of Planning Phase: Performance Agreement, MOU-status report
- April 30, 2012 — Follow-up call/ e-mail SIF grantees & respond to inquiries
- May 15, 2012 — Reminder: Performance Agreement, MOU-status report
  Formal notice to field to submit FS 10 for Year 1 to submit all contract agreements prior to June 30
- June 30, 2012 — Year 1 (2012-2013) Action Plan and Budget (FS -10), MOU's, Performance Contracts Due

B. Year 1 Timeline

- August 2012 — Check-in visits (meeting with SIF leadership team)
- September 2012 — SIF Grantees begin Implementation Year
  Reminder quarterly report due October 10
- September 30, 2012 — End Quarter 1
- October 2012 — Webinar Q& A for grantees (reporting questions)
- October 10, 2012 — Quarterly Report due (Q1)
- December 30, 2012 — End Quarter 2
- January 10, 2013 — Quarterly Report due (Q2)
- March 2013 — Site Review Visits (fiscal expenditure, document check)
  Reminder (Q3) report due April 10
- March 30, 2013 — End Quarter 3
- April 2013 — Upcoming events announcement from STO
- April 10, 2013 — Quarterly Report due (Q3)
- May 15, 2013 — Reminder Quarterly Report (Q4) due July 10
- June 1, 2013 — FS 10 for Year 2 (2013-2014) DUE
- June 30, 2013 — End Quarter 4
- July 10, 2013 — Quarterly Report due (Q4)

C. Year 2 Timeline

- August 2013 — Check-in visits (fiscal expenditure, document check)
- September 2013 — SIF Grantees begin Year 2
  Reminder Annual Report (FS 10-F) for Year 1 due September 30
- September 30, 2013 — Annual Report (FS 10-F) for Year 1 due
  Reminder Quarterly Report (Q1) due October 10
  End Quarter 1
- October 2013 — Webinar Q& A for grantees (reporting questions, site visit outcomes)
- October 10, 2013 — Quarterly Report due (Q1)
- December 30, 2013 — End Quarter 2
- January 10, 2014 — Quarterly Report due (Q2)
- March 2014 — Site Review Visits (fiscal expenditure, document check)
- March 30, 2014 — End Quarter 3
- April 2014 — Upcoming events announcement
- April 10, 2014 — Quarterly Report due (Q3)
- April 30, 2014 — Quarterly Report = Expenditure and Performance Data
- May 15, 2014 — Reminder Quarterly Report (Q4) due June 10
- May 30, 2014 — Formal notice to field to submit Annual Report (FS 10-F) for Year 2
- June 2014 — Formal notice to field of outcomes from review of report status and budget
- July 10, 2014 — Quarterly Report due (Q4)
- September 30, 2014 — FS 10-F for Year 2 (Final Report) due September 30

III. BUDGET

As per the proposal, the applicant must have completed the FS-10 Budget Form for the first period of the project (October 1, 2011 to June 30, 2012) with the application. The FS-10 Budget Form and information about the categories of expenditures and general information on allowable costs, applicable cost principles and administrative regulations are available in the Fiscal Guidelines for Federal and State Aided Grants. In addition, the applicant must have completed the 3-Year Budget Summary Chart.

Allowable Activities and Costs
Allowable activities are those activities that are directly related to meeting the overall and individual design framework program requirements. The purchase of non-instructional equipment is not allowed.

Additional Requirements
LEAs receiving a grant must:

- Administer the grant funds and submit the required reports to account for the use of the funds;
- Provide targeted training on Education Law 3012-c during the 2011-12 planning phase and agree to fully implement the provisions of Education Law 3012-c during the 2012-2013 and 2013-2014 (these activities do not need to be budgeted for through this award);
- Key project personnel must attend two, two-day capacity building events in Albany, NY each project period. (This travel should be budgeted for within the grant);
- Require partner organization(s) to sign an agreement (preliminary Memorandum of Understanding) that specifically outlines all services each partner agrees to provide;
- Not act as a flow-through for funds to pass to other entities. LEA level of participation is not less than 20% of the annual budget;
- If the LEA chooses, up to 15% of grant funds may be used for district-level capacity building activities. (85% must be directed toward the identified school activities);
- Not sub-grant funds to other entities. The LEA is only permitted to contract for services with the identified partner organizations to provide services that the LEA cannot provide.

The electronic version of the required budget forms can be found at the following link: *http://www.oms.nysed.gov/cafe/forms*
(*recommendation – make the above link your favorite)

Standards for Payment/Cash Flow
For the SIF grant, there will be no initial payment sent upon notice of award. Upon notice of award from Grants Finance, each grantee will be able to submit an FS-25 to the NYSED Grants Finance Office (address below) for reimbursement of actual expenditures, plus anticipated expenditures for the next 30 days (if needed).

The University of the State of New York
THE STATE EDUCATION DEPARTMENT
Grants Finance, Rm. 510W EB
Albany, NY 12234

[*Note: an FS-25 is not required with the quarterly report (FS-10)]

Carryover
Carryover guidance will be provided to the Program Area by Counsel and Finance Office in collaboration with the designated oversight agencies. Once a determination has been made; all grantees will be informed of and provided detailed instructions on how to request "a carryover"; if necessary.

Amendments (Budget and Program)
All amendments must be submitted to the NYSED School Turnaround Office thirty days (30) prior to any proposed changes from the original proposal submitted. Upon receipt of the amendment, the STO staff will provide a decision within ten (10) days.

There are two kinds of amendments; one for proposed fiscal changes to the budget and the other is programmatic. Both amendments require a narrative explanation for the proposed changes.

Budget Amendment
Grantees will submit a proposed budget amendment with a narrative explanation for the affected budget guidelines. The budget amendment can be found in the reporting section of this handbook and on the corresponding link (***http://www.oms.nysed.gov/cafe/guidance/guidelines.html***) of the NYSED website.

Program Amendment
Grantees will submit a narrative explaining the program changes. You must identify the activities, resources, partner(s) that may change and how it will impact any identifiable goals and objectives or benchmarks as stated in the original proposal. While there are no funds being impacted with this particular amendment, the change must not adversely impact or change the original scope of the proposed plan. As stated previously, prior approval from NYSED is needed before the changes can take effect.

IV. REPORT REVIEW

A. Description

Given the SIF grant requires a quarterly reporting on fiscal and programmatic status of the use of federal funds, all reports must be submitted timely. One format will be the FS-10, a reporting of expenditures to date. The second format will be a performance data report recording quarterly performance of grantee goals as stated in the grant.

The grantee will:

- Submit once copy of the quarterly report via the SIF e-mail address (SIFGRANT@MAIL.NYSED.GOV) by the deadline

- Submit one original fiscal and program report with original signatures, by the deadline to the following address:

  ATTN: SIF GRANT
  School Turnaround Office
  481 EBA
  89 Washington Avenue
  Albany, NY 12234

- Notify STO staff if report will be delayed and provide alternative date

- Prepare to respond to any written or verbal inquiries for clarification of submitted report

V. THE REPORT REVIEW PROCESS

The State Education Department School Turnaround Office within the Office of School Innovation is responsible for administering the School Innovation Fund project that supports whole school redesign in districts that have schools identified as Tier III. The measurable objectives may include, but are not limited to the following: increase high school graduation, college persistence, and college graduation rates. To accomplish this task, STO relies on a process of quarterly fiscal and programmatic review that requires grantees to submit an FS-10 budget, program narrative and performance report. STO will review timely reporting submissions for eligibility and conformity to the general administrative regulations, state finance laws, and grant requirements.

(*see Appendix C for Review Form)

A. Report Dates

Quarterly Reporting Period	Report Due Date
July – September	October 10
October – December	January 10
January – March	April 10
April – June	July 10

B. Report Timeline

A report will be reviewed within two weeks of receipt. The grantee will receive a letter via e-mail indicating the outcome of the review and when funds can be drawn down or instructions on submitting amendments to clear report for payment.

Report Due Date	Review Completed
October 10	October 24
January 10	January 24
April 10	April 24
July 10	July 24

VI. Site Visits

The NYSED STO within the NYSED Office of School Innovation is responsible for administering the SIF project and as such, will conduct site visits with each grantee. The primary purpose of a site visit will be to gather information that evidences a grantees' progress towards meeting its goals as identified within your School Innovation application.

As indicated in Section II Project Period A-C timelines, site visits will occur at mid-year; but not to the exclusion of additional opportunities that may present a reason for an on-site meeting. Below are the guiding principles for the structure of on-site school visits, which will be conducted in collaboration with the district and school leadership for a positive and informative experience. (*Please note that due to the fact that projects may only be in planning and upstart during the initial planning phase, "check-in" visits during this time may be an abbreviated or modified version of review framework identified below.)

On-site school visits and the resulting report are guided by the following structure:

A. Introduction and morning orientation
• STO team member will introduce the team to LEA SIF leadership team. • STO team will establish the context for the visit and orient team members to the purpose and goals. • STO team will review schedule for the day and finalize focus group assignments. • School leadership will briefly orient the team to the building and establish context for classroom visits.
B. Site visit team conducts classroom visits, document review, focus group interviews and additional information gathering
• STO team members may participate in a combination of classroom visits, document review, optional follow-up focus group interviews and additional information gathering depending on specifics of the school visit. • Conversations and observations will be guided by the site-visit protocol and program specific questions.
C. Focus group interviews
• A STO team will facilitate all focus group interviews. • Focus groups should be no larger than eight persons. • STO team member will introduce him/herself, and establish the context. • STO team member will establish discussion topics, provide the time frame and inform the group that questions asked are drawn from a set pool of focus group questions. • Introductions will be made among team and focus group members gathered. • The STO team member will facilitate the conversation, opening with common questions asked of all groups at all schools. Questioning may then become more specific and tailored to the specific school context. STO team member will guide the focus group members to ground their answers with specific evidence and data. • The STO team member takes notes and asks follow-up questions, as appropriate. • The STO team member will thank focus group participants and end the focus group on time.

D. Classroom observations

- School leadership informs school staff in advance that the site-visit STO team will be in classrooms.
- Collectively, the STO team will visit as many classrooms as possible.
- STO team members should observe at least one opening of a lesson, one closing of a lesson, and a few transitions between lessons.
- One STO team member at a time will observe a classroom.
- STO team members will not be disruptive to classroom activities. STO team members will not interrupt the lesson, and will take cues from the teachers and students as to where to sit and, if appropriate, to talk with students.

E. Framework observations

College Pathways

Demonstrating students can earn up to 40 college credits
Demonstrating college-going culture
Students accessibility to college level courses
Demonstrating counseling focused on dual enrollment
Students aware of dual enrollment criteria
Designing Student Assessments to meet IHE

Full-Service

Open building beyond typical school days
School in partnership with one or more community agencies
Access to health services
Provide family resources and school involvement
Effective plan for summer enrichment
Provide social and educational services to families

Virtual Blended/Online

High quality courses aligned to Common Core
High quality instructional interactions between teachers/students
Allow for progression in learning
Flexible learning schedule for peak learning times
Provide academic and social emotional support
Provide job-embedded professional development
Provide sustainable technology infrastructure and assistive technology for students with disabilities
Comply with Commissioner's regulations for learning

EPO/CMO

Become a part of an EPO/CMO network
Replicate features of a successful network
Create shared governance (LEA and EPO/CMO) with shared accountability

Arts and/or Cultural Education

Balance academic rigor with creative learning
Leverage cultural resources (museums, library, etc.)
Create partnership with one or more cultural resource organization
Provide instruction by highly qualified educators and artists

Industry Partnership

Provide career readiness training and education
Provide individualized career and college readiness
Provide annual career and technical training for teachers
Create internships/apprenticeship with local employers
Coordinate local job and college placement services
Coordinate vocational services for students with disabilities

F. Team organization and debrief preparation

- STO team members will refrain from judgment and base comments on evidence, observations and data.
- STO team members will conduct a debriefing of the day, structured on classroom observations, focus group responses and/or document review.
- STO team members will gather additional evidence and data to fill in gaps through follow-up conversations with key school staff.
- STO team creates initial preliminary observations and outlines the next steps of reviewing the resulting site-visit report.

G. School community report out/debrief

- STO team members will thank school and district leadership for hosting the site-visit and outlines the timeline for preparing and issuing the SIF Monitoring Report.
- STO team members will share their initial findings, structured by classroom observations, focus group responses and document review.

H. Site-visit report
• STO team members will draft the SIF Monitoring Report for internal NYSED review within one week of the visit. • STO team members will review the report to ensure that it is factually accurate and reflects the collective findings of the STO team on the day of the visit. Corrections and suggestions for improvement are incorporated according to consensus approximately two to four weeks after the visit. • STO team members will review and issue the final report to the school and district leadership. The SIF Monitoring Report is sent to the school via e-mail approximately two weeks after the visit.

Reporting

At the end of the on-site visit, the STO staff shares their initial observations with the school in a brief report-out. At the time of the report-out, the STO staff observations are statements of fact, grounded in evidence collected throughout the day, and do not culminate in formal suggestions or recommendations for improvement at that time.

After the visit, NYSED prepares a written report that includes STO findings, the evidence to support those findings and may include suggestions or recommendations for improvement. The report serves as a tool for grantees to make potential changes to the current operations of the grant. There are alternative solutions to improving grant performance that a grantee may make that is within their purview with the recommended amendment requirements. This report will serve as a record of the information obtained through observation and provides the grantee and NYSED STO staff an opportunity to reflect on potential improvements for grant administration.

VII. APPENDICES

The following documents represent the reports and instructions thereof to be submitted by the lead fiscal and program agent of the School Innovation Grant. Additionally, provided are the federal and state guidelines for the administration of the federally awarded grant.

The School Turnaround Office staff will be accessible for any inquiries relative the administration of the grant and it is encouraged that prior to the submission of any report that you seek their guidance. The following documents are applicable for the administration of the School Innovation Fund:

- **Appendix A**: Performance Contract Template
  - Overview and Signature Page
  - Leading, Academic, and School Design Indicators
  - Key Strategies, Actions, and Timeline
  - Quarterly Indicators of Success

- **Appendix B**: LEA- Partner MOU Guidance and Template
  - Guidance
  - Sample MOU Template

- **Appendix C**: Budget Forms and Quarterly/Annual Reporting Forms
  - Budget (FS-10)
  - Project Budget Narrative (written explanation of expenditures)
  - Budget Amendment (FS-10a)
  - Request for Payment (FS-25)
  - Performance Data Report (applicable quarterly data)
  - Annual Budget Report (FS-10F)

- **Appendix D**: Federal and State Guidance for Grant Administration
  - OMB Circular A-87
  - Subpart B – Audits
  - EDGAR guidance
  - Subpart C – Post Award Requirements

APPENDIX A
School Innovation Fund (SIF) Performance Agreement

The SIF performance agreement is an accountability agreement between the New York State Education Department (NYSED) and a local education agency receiving a SIF grant for any number of its low-performing schools. The SIF performance agreement also serves as a tool for local leadership teams to review plans and performance, and make continuous improvements based on data. The performance agreement identifies the key actions, indicators of success, and performance targets the school has agreed to meet during its first two years of funding. Since a core feature of the SIF is joint accountability for improved student achievement between an LEA and its lead partner or partner consortia, the performance agreement should identify specifically, which key actions, indicators, and performance metrics are joint responsibility (partner and LEA), which are the responsibility of the LEA, and which are the responsibility of the SIF partners. In addition, the areas, actions, actions and specific metrics to which partners are accountable should be identified explicitly in the Memorandum of Understanding between the LEA and the partner. Ultimately the LEA is responsible for holding the partner accountable for the delivery and effectiveness of its services.

Each school receiving a SIF grant must submit a separate performance agreement, approved by NYSED, by July 1, 2012. In addition, schools receiving a SIF grant must have collective bargaining agreements in place and approved by the Commissioner of Education, that are consistent with the provisions of Education Law 3012c for the annual professional performance review of teachers and principals by July 1, 2012. Failure to have approved performance agreement and collective bargaining agreement approved by NYSED and the Commissioner of Education will result in fund-stoppage for project years two and three.

By signing below, the local education agency and key external partners agree meeting the key actions, indicators, and performance metrics identified in the agreement. Failure to meet the actions, indicators and targets identified in the performance agreement may result in a delayed or stopped payment.

CHIEF ADMINISTRATIVE OFFICER (Superintendent)	
Signature (in blue ink)	Date
Type or print the name and title of the Chief Administrative Officer	
EXTERNAL PARTNER	
Signature (in blue ink)	Date
Type or print the name and title and organization of the partner	
EXTERNAL PARTNER	
Signature (in blue ink)	Date
Type or print the name and title and organization of the partner	
EXTERNAL PARTNER	
Signature (in blue ink)	Date
Type or print the name and title and organization of the partner	

Performance Targets

	Unit	NYS State Average	District Average	Baseline Data	Target for 2012-2013	Target for 2013-2014
I. Leading Indicators						
a. Number of minutes in the school year	min					
b. Student participation in State ELA assessment	%					
c. Student participation in State Math assessment	%					
d. Drop-out rate	%					
e. Student average daily attendance	%					
f. Student completion of advanced coursework						
g. Suspension rate	%					
h. Number of discipline referrals	num					
i. Truancy rate	%					
j. Teacher attendance rate	%					
k. Teachers rated as “effective” and “highly effective”	%					
l. Hours of professional development to improve teacher performance	num					
m. Hours of professional development to improve leadership and governance	num					
n. Hours of professional development in the of high quality interim assessments and data-driven action	num					
II. Academic Indicators						
o. ELA performance index	PI					
p. Math performance index	PI					
q. Student scoring “proficient” or higher on ELA assessment	%					
r. Students scoring “proficient” or higher on Math assessment	%					
s. Average SAT score	score					
t. Students taking PSAT	num					
u. Students receiving Regents diploma with advanced designation	%					
v. High school graduation rate	%					
w. Ninth graders being retained	%					
x. High school graduates accepted into two or four year colleges	%					
School Design-specific Indicators						
a.						
b.						
c.						
d.						
e.						
f.						
g.						
h.						

School Leadership and Governance Structures and Functions
Key Strategies
•
•
•

		Timeline (mark or shade-in the box representing the month in which the key action or event will occur)											
Key Actions / Events / Outputs (please which performance metrics a particular action is intended to impact upon)	**Lead Responsible**	**July 2012**	**Aug 2012**	**Sept. 2012**	**Oct. 2012**	**Nov. 2012**	**Dec. 2012**	**Jan. 2013**	**Feb. 2013**	**Mar. 2013**	**Apr. 2013**	**May 2013**	**June 2013**

Quarterly Indicators of Success	(identify leading, academic, and school-design metrics that will provide early evidence of meeting annual performance targets)
Quarter 1 July – September	
Quarter 2 October – December	
Quarter 3 January – March	
Quarter 4 April – June	

Curriculum and Instruction (and implementation of the Common Core Learning Standards)
Key Strategies
•
•
•

		Timeline (mark or shade-in the box representing the month in which the key action or event will occur)											
Key Actions / Events / Outputs (please which performance metrics a particular action is intended to impact upon)	**Lead Responsible**	**July 2012**	**Aug 2012**	**Sept. 2012**	**Oct. 2012**	**Nov. 2012**	**Dec. 2012**	**Jan. 2013**	**Feb. 2013**	**Mar. 2013**	**Apr. 2013**	**May 2013**	**June 2013**

Quarterly Indicators of Success	(identify leading, academic, and school-design metrics that will provide early evidence of meeting annual performance targets)
Quarter 1 July – September	
Quarter 2 October – December	
Quarter 3 January – March	
Quarter 4 April – June	

Data-driven Inquiry and the Use of Common Interim Assessment Data to Improve Student Achievement
Key Strategies
•
•
•

		Timeline (mark or shade-in the box representing the month in which the key action or event will occur)											
Key Actions / Events / Outputs (please which performance metrics a particular action is intended to impact upon)	**Lead Responsible**	**July 2012**	**Aug 2012**	**Sept. 2012**	**Oct. 2012**	**Nov. 2012**	**Dec. 2012**	**Jan. 2013**	**Feb. 2013**	**Mar. 2013**	**Apr. 2013**	**May 2013**	**June 2013**

Quarterly Indicators of Success	(identify leading, academic, and school-design metrics that will provide early evidence of meeting annual performance targets)
Quarter 1 July – September	
Quarter 2 October – December	
Quarter 3 January – March	
Quarter 4 April – June	

School Climate, Culture, and Discipline
Key Strategies
•
•
•

		Timeline (mark or shade-in the box representing the month in which the key action or event will occur)											
Key Actions / Events / Outputs (please which performance metrics a particular action is intended to impact upon)	**Lead Responsible**	**July 2012**	**Aug 2012**	**Sept. 2012**	**Oct. 2012**	**Nov. 2012**	**Dec. 2012**	**Jan. 2013**	**Feb. 2013**	**Mar. 2013**	**Apr. 2013**	**May 2013**	**June 2013**

Quarterly Indicators of Success	(identify leading, academic, and school-design metrics that will provide early evidence of meeting annual performance targets)
Quarter 1 July – September	
Quarter 2 October – December	
Quarter 3 January – March	
Quarter 4 April – June	

Annual Professional Performance Review of Teachers and Principals in the full implementation of Education Law 3012c
Key Strategies
•
•
•

		Timeline (mark or shade-in the box representing the month in which the key action or event will occur)											
Key Actions / Events / Outputs (please which performance metrics a particular action is intended to impact upon)	**Lead Responsible**	**July 2012**	**Aug 2012**	**Sept. 2012**	**Oct. 2012**	**Nov. 2012**	**Dec. 2012**	**Jan. 2013**	**Feb. 2013**	**Mar. 2013**	**Apr. 2013**	**May 2013**	**June 2013**

Quarterly Indicators of Success	(identify leading, academic, and school-design metrics that will provide early evidence of meeting annual performance targets)
Quarter 1 July – September	
Quarter 2 October – December	
Quarter 3 January – March	
Quarter 4 April – June	

Use of Time Throughout the School Day and After School to Improve Instructional and Enrichment Opportunities
Key Strategies
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•
•

		Timeline (mark or shade-in the box representing the month in which the key action or event will occur)											
Key Actions / Events / Outputs (please which performance metrics a particular action is intended to impact upon)	**Lead Responsible**	**July 2012**	**Aug 2012**	**Sept. 2012**	**Oct. 2012**	**Nov. 2012**	**Dec. 2012**	**Jan. 2013**	**Feb. 2013**	**Mar. 2013**	**Apr. 2013**	**May 2013**	**June 2013**

Quarterly Indicators of Success	(identify leading, academic, and school-design metrics that will provide early evidence of meeting annual performance targets)
Quarter 1 July – September	
Quarter 2 October – December	
Quarter 3 January – March	
Quarter 4 April – June	

Meeting the Needs of Unique Student Populations
Key Strategies
•
•
•

		Timeline (mark or shade-in the box representing the month in which the key action or event will occur)											
Key Actions / Events / Outputs (please which performance metrics a particular action is intended to impact upon)	**Lead Responsible**	**July 2012**	**Aug 2012**	**Sept. 2012**	**Oct. 2012**	**Nov. 2012**	**Dec. 2012**	**Jan. 2013**	**Feb. 2013**	**Mar. 2013**	**Apr. 2013**	**May 2013**	**June 2013**

Quarterly Indicators of Success	(identify leading, academic, and school-design metrics that will provide early evidence of meeting annual performance targets)
Quarter 1 July – September	
Quarter 2 October – December	
Quarter 3 January – March	
Quarter 4 April – June	

APPENDIX B
MOU Guidance
New York State School Innovation Fund Memorandum of Understanding Guidance: An Overview

The purpose of this document is to offer guidance on the design and implementation of a memorandum of understanding (MOU) between an LEA and Partner funded through the School Innovation Fund (SIF). SIF funded schools aim to increase high school graduation, college persistence, and college graduation rates by increasing the availability of new high quality education option for students at most risk for dropout, disengagement, and poor academic performance. The aims of the SIF are congruent with the following goals of the Regents reform agenda:

- Provide every student with a world-class curriculum that synthesizes rigorous content and skills to prepare students for college, the global economy, 21st century citizenship, and lifelong learning
- Work with school districts to implement strategies for closing chronically underperforming schools in order to dramatically improve student outcomes
- Raise graduation rates for at-risk student populations (particularly English language learners, students with disabilities, low-income students, African-American and Latino students) through the redesign and launch of schools to increase student engagement and to ensure college and career readiness.

The MOU guidance defined in this document, is based upon currently recoginized best-practices, and will assist local education agencies and external partner organizations in creating the foundation for the planning, implementation, and evaluation necessary for school systems, structures, and supports to be cohesive and fully integrated into the fabric of the comprehensive educational program, increasing the likelihood of sustainability and student success.[2]

LEAs and Lead Partner/Partner Consortia will be required to submit an initial Memorandum of Understanding (MOU) upon application and a final MOU by the end of the planning period. Funding past the planning period is contingent upon performance and a fully executed partnership MOU and NYSED approved performance agreement. Additionally, LEAs and partner organizations will be held jointly accountable for interim performance indicators and summative student performance metrics through an explicit performance agreement to be finalized and approved by NYSED.

Please keep in mind that the following is guidance only. MOUs between LEAs and Partners should be consistent with LEA approved policies and procedures and consistent with all applicable law.

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2 Mass Insight Education & Research Institute (2010). *Designing MOUs for Lead Partners*. Available: http://www.massinsight.org/publications/stg-resources/83/file/1/pubs/2010/04/20/MOU_Lead_Partner_tool_2.17.10.pdf
Public Impact for the Colorado Department of Education (2011) *Contracting with External Providers: Guidance for Districts*
Guide to Working with External Providers - Partnerships to Improve Teaching and Learning. Learning Point Associates, by Bryan Hassel and Lucy Steiner, Second Edition (September 2010). (106 pages) Available: http://www.learningpt.org/pdfs/External_Provider_Guide.pdf

Five Guidelines and Key Questions for an Effective LEA-Partner MOU

1. *Program Goals/Purposes:* The main purpose of this section is to explain why the parties in question are entering into a relationship and what they hope to accomplish by working together. This section of the MOU should be driven by the stated purpose of SIF and the model chosen by the grantee when their application was submitted. It should express a broad, overarching goal (or goals) of the project in measurable terms but should not include detailed objectives for each program initiative).

2. *Roles and Responsibilities:* This section should clearly outline and detail what each party will be doing during planning and implementation of the project. These should be expressed in terms of district, partner, and joint activities/responsibilities and should consider the following questions:

   - Staffing: What staff members from district and partner will be assigned to the project? What are the specific duties of each position named in the application (job descriptions)? When will project staff (district or partner) be required to be on site? What are the financial requirements of each position funded by the grant (salary, benefits, etc.)? Who will hire, supervise, and evaluate staff for each project position?
   - Autonomies: What decision making powers will the district/board grant to the partners(s)? (Examples include decisions related to the following: scheduling, personnel, budget, curriculum and instruction, curriculum and instruction and professional development) What district/board policies will be waived or modified for implementation of the project?
   - Facilities Management: What space or equipment will the district provide to the partner(s)? (for example, office space, classrooms, computers and phones) Who will be responsible for the maintenance of space and equipment?
   - Curriculum and Instruction: What changes will the partner(s) make to district curricula, including eliminating existing components and creating new components? What changes will the partner(s) make to district instructional practices, including eliminating existing components and creating new components? What professional development (PD) will the partner(s) provide to instructional staff? (Please provide a comprehensive PD plan that details the content and materials to be taught, provides a schedule of who will be taught when, and accounts for how implementation will be supported and evaluated.) What accommodations or modifications will be required to address special education and ELL issues?
   - Project Specific Initiatives: What activities not covered in sections above are unique to the school design type you selected in your application? Who will be responsible for them? What expertise will your partner(s) provide related to the school design type you selected in your application?

3. *Accountability and Evaluation:* This section should clearly identify measurable benchmarks for all significant project activities (activities listed in your project plan). The district and partner(s) must also show a commitment to complying with the STO SIF reporting process described in this handbook and indicate who will be responsible for ensuring compliance.

   - For each significant project activity the following should be identified: What specifically will be measured? How will it be measured? When/how often will it be measured? Who will collect measurement data? How will data be documented and reported? What are the consequences of not meeting benchmarks?

   - Another important element of accountability is frequent, effective communication between district and partner(s). Both parties should commit to a communication plan detailing the following: Who will communicate with whom? When will communication take place (schedule)? What mechanisms will be used (phone, email, face-to-face)? How will communication be documented [provide a form(s)]?

4. *Legal Components*: This section should contain components standard to legal contracts. The following should be addressed:

   - Financial: It should be clear how much partners are being compensated for all activities they conduct and services they provide. All funds to be distributed to partners should be accounted for. Partner(s) and district should express a commitment to follow STO SIF financial reporting procedures as explained in this handbook (and presented at the 1/3012 SIF orientation event).
   - Dispute Resolution: Parties should detail a plan for addressing any disputes related to planning or implementation of the project as a whole, or any significant activities. Parties will commit to contacting STO when a dispute arises.
   - Amendments: Parties should detail a plan for making amendments to the project as a whole, or any significant activities. Parties will commit to contacting STO to approve any amendments.
   - Terms: Terms will reflect the length of the SIF grant period (through June 30, 2014)
   - Assurances: This section should refer to all assurances required for the submission of a SIF application.
   - Termination, renewal, non-renewal: Parties should agree to what circumstances will lead to termination, renewal, or non-renewal. Parties will commit to contacting STO when considering termination or non-renewal of the MOU
   - Confidentiality: Parties should agree to how confidentiality of students, staff, and families will be handled for all aspects of the project. Parties should agree to what data collected on students, staff, and families will be shared. (Will you need signed waivers from participants for certain data?)
   - Intellectual Property: Parties should agree to what ideas or information created during planning and/or implementation of the project will be considered intellectual property, and how any such intellectual property will be protected.
   - Liability: This section should address standard liability issues for parties engaging in similar activities.

5. *Appendices:* You may find it useful to include the documents listed below as attachments/appendices to the MOU. They should be developed in collaboration concurrently with the MOU and reflect the terms, content, and agreements.

- Project Plan
- Professional Development (PD) Plan
- Communication Plan

Sample MOU

(Insert Name) School District and (Insert Name) School and (Insert Name) Lead Partner/Partner(s) Organization
School Innovation Fund Program

This cooperative agreement reflects the overall commitment as well as the specific responsibilities and the roles of the (Insert Name) School District and (Insert Name) School and (Insert Name) Lead Partner or Partner Organization (s) to support dramatic whole school change, from beginning to end, can be fully embedded within essential district. The purpose of this partnership is to work collaboratively to ensure increasing the likelihood of sustainability and student success served by the selected framework of innovation to create new, innovative, high-quality education options for all students.

Up front Planning Activities: _____
_____

SPECIFIC ROLES AND RESPONSIBILITIES

The partnership of the (Insert Name) School District and (Insert Name) School and (Insert Name) Lead Partner or Partner Organization(s) entails the following:

The (Insert Name) School District agrees to:	**The (Insert Name) Lead Partner or Partner Organization(s) agrees to:**
List all activities/services/etc. that the School District will provide to the partnership.	List all activities/services/etc. that the (Insert Name) Lead Partner or Partner Organization(s) will provide to the partnership.

Name of School District_____ Signature _____Date_____

Superintendent_____ Signature_____ Date_____

Name of (Insert Name) Lead Partner or Partner Organization(s)
_____

Superintendent/Dean/CEO_____Signature_____ Date_____

THE AGREEMENT FOR YOUR PROGAM SHOULD REFLECT THE SPECIFICS OF YOUR PROGRAM AND YOUR PARTNERS. ALL ACTIVITIES/SERVICES, ETC. THAT ARE PERTINENT TO YOUR PROJECT SHOULD BE INCLUDED.

Sample

ASSURANCE OF JOINT COMMITMENT FORM

By signing below, the local education agency and key external partners agree to meet the key actions, indicators, and performance metrics identified in the agreement. Failure to meet the actions, indicators and targets identified in the performance agreement may result in a delayed or stopped payment.

In addition, the areas, actions, actions and specific metrics to which partners are accountable should be identified explicitly in the Memorandum of Understanding between the LEA and the partner. Ultimately the LEA is responsible for holding the partner accountable for the delivery and effectiveness of its services.

District Name:

_____

CHIEF ADMINISTRATIVE OFFICER (Superintendent)	
Signature (in blue ink)	Date
Type or print the name and title of the Chief Administrative Officer	
EXTERNAL PARTNER	
Signature (in blue ink)	Date
Type or print the name and title and organization of the partner	
EXTERNAL PARTNER	
Signature (in blue ink)	Date
Type or print the name and title and organization of the partner	
EXTERNAL PARTNER	
Signature (in blue ink)	Date
Type or print the name and title and organization of the partner	

PARTICIPATING SCHOOL DATA

The following information is required as part of the application.

	Unit	NYS State Average	District Average	Baseline Data	Target for 2012-2013	Target for 2013-2014
I. Leading Indicators						
a. Number of minutes in the school year	min					
b. Student participation in State ELA assessment	%					
c. Student participation in State Math assessment	%					
d. Drop-out rate	%					
e. Student average daily attendance	%					
f. Student completion of advanced coursework						
g. Suspension rate	%					
h. Number of discipline referrals	num					
i. Truancy rate	%					
j. Teacher attendance rate	%					
k. Teachers rated as “effective” and “highly effective”	%					
l. Hours of professional development to improve teacher performance	num					
m. Hours of professional development to improve leadership and governance	num					
n. Hours of professional development in the of high quality interim assessments and data-driven action	num					
II. Academic Indicators						
a. ELA performance index	PI					
b. Math performance index	PI					
c. Student scoring “proficient” or higher on ELA assessment	%					
d. Students scoring “proficient” or higher on Math assessment	%					
e. Average SAT score	score					
f. Students taking PSAT	num					
g. Students receiving Regents diploma with advanced designation	%					
h. High school graduation rate	%					
i. Ninth graders being retained	%					
j. High school graduates accepted into two or four year colleges	%					
School Design-specific Indicators						
a.						
b.						
c.						
d.						
e.						

Lead Partner or Partner Organization
BUDGET SUMMARY OF FUNDS REQUESTED
FOR THE PROGRAM
For the Period: January 1, 2012 through June 30, 2014

SUBTOTAL	CODE	Planning Period 1/1/12 – 6/30/12	PROJECT COSTS YEAR 2 7/1/12 – 6/30/13	PROJECT COSTS YEAR 3 7/1/13 – 6/30/14	TOTAL
Professional Salaries	15				
Support Staff Salaries	16				
Purchased Services	40				
Supplies and Materials	45				
Travel Expenses	46				
Employee Benefits	80				
Indirect Cost	90				
BOCES Services	49				
Minor Remodeling	30				
Equipment	20				
GRANT TOTAL					
District and/or Other Source contributions, if any.					

This form should reflect partner funds requested for your proposal summarized for each year of the project period.

APPENDIX C

The University of the State of New York
THE STATE EDUCATION DEPARTMENT
(see instructions for mailing address)

PROPOSED BUDGET FOR A
FEDERAL OR STATE PROJECT
FS-10 (03/10)

Local Agency Information

Funding Source: _____

Report Prepared By:	
Agency Name:	
Mailing Address:	
	Street
	City / State / Zip Code

Telephone #: _____ County: _____

E-Mail Address: _____

Project Operation Dates: ____/____/____ Start ____/____/____ End

INSTRUCTIONS

- **Submit the original budget and the required number of copies along with the completed application directly to the appropriate State Education Department office as indicated in the application instructions for the grant program for which you are applying.** DO NOT submit this form to the Grants Finance.
- Enter whole dollar amounts only.
- Prior approval by means of an approved budget (FS-10) or budget amendment (FS-10-A) is required for:
  - Personnel positions, number and type
  - Beginning with the 2005-06 budgets, equipment items having a unit value of $5,000 or more, number and type
  - Budgets for 2004-05 and earlier years equipment items having a unit value of $1,000 or more, number and type
  - Minor remodeling
  - Any increase in a budget subtotal (professional salaries, purchased services, travel, etc.) by more than 10 percent or $1,000, whichever is greater
  - Any increase in the total budget amount.
- Certification on page 8 must be signed by Chief Administrative Officer or designee.
- High quality computer generated reproductions of this form may be used.
- For changes in agency or payee address contact the State Education Department office indicated on the application instructions for the grant program for which you are applying.
- For further information on budgeting, please refer to the Fiscal Guidelines for Federal and State Aided Grants which may be accessed at www.oms.nysed.gov/cafe/ or call Grants Finance at (518) 474-4815.

SALARIES FOR PROFESSIONAL STAFF: Code 15

Include only staff that are employees of the agency. Do not include consultants or per diem staff. Do not include central administrative staff that are considered to be indirect costs, e.g., business office staff. One full-time equivalent (FTE) equals one person working an entire week each week of the project. Express partial FTE's in decimals, e.g., a teacher working one day per week equals .2 FTE.

Specific Position Title	Full-Time Equivalent	Annualized Rate of Pay	Project Salary
		Subtotal - Code 15	

SALARIES FOR SUPPORT STAFF: Code 16

Include salaries for teacher aides, secretarial and clerical assistance, and for personnel in pupil transportation and building operation and maintenance. Do not include central administrative staff that are considered to be indirect costs, e.g., account clerks.

Specific Position Title	Full-Time Equivalent	Annualized Rate of Pay	Project Salary
		Subtotal - Code 16	

PURCHASED SERVICES: Code 40

Include consultants (indicate per diem rate), rentals, tuition, and other contractual services. Copies of contracts may be requested by the State Education Department. Purchased Services from a BOCES, if other than applicant agency, should be budgeted under Purchased Services with BOCES, Code 49.

Description of Item	Provider of Services	Calculation of Cost	Proposed Expenditure
		Subtotal - Code 40	

SUPPLIES AND MATERIALS: Code 45

Beginning with the 2005-06 year include computer software, library books and equipment items under $5,000 per unit.

For earlier years include computer software, library books and equipment items under 1,000 per unit.

Description of Item	Quantity	Unit Cost	Proposed Expenditure
		Subtotal - Code 45	

TRAVEL EXPENSES: Code 46

Include pupil transportation, conference costs and travel of staff between instructional sites. Specify agency approved mileage rate for travel by personal car or school-owned vehicle.

Position of Traveler	Destination and Purpose	Calculation of Cost	Proposed Expenditures
		Subtotal - Code 46	

EMPLOYEE BENEFITS: Code 80

Rates used for project personnel must be the same as those used for other agency personnel.

Benefit		Proposed Expenditure
Social Security		
Retirement	**New York State Teachers**	
	New York State Employees	
	Other	
Health Insurance		
Worker's Compensation		
Unemployment Insurance		
Other (Identify)		
	Subtotal – Code 80	

INDIRECT COST: Code 90

A. Modified Direct Cost Base – Sum of all preceding subtotals (codes 15, 16, 40, 45, 46, and 80 and excludes the portion of each subcontract exceeding $25,000 and any flow through funds)	$	(A)
B. Approved Restricted Indirect Cost Rate	%	(B)
C. (A) x (B) = Total Indirect Cost Subtotal – Code 90	$	(C)

PURCHASED SERVICES WITH BOCES: Code 49

Description of Services	Name of BOCES	Calculation of Cost	Proposed Expenditure
		Subtotal – Code 49	

MINOR REMODELING: Code 30

Allowable costs include salaries, associated employee benefits, purchased services, and supplies and materials related to alterations to existing sites.

Description of Work To be Performed	Calculation of Cost	Proposed Expenditure
	Subtotal – Code 30	

EQUIPMENT: Code 20

Beginning with the 2005-06 year all equipment to be purchased in support of this project with a unit cost of $5,000 or more should be itemized in this category. Equipment items under $5,000 should be budgeted under Supplies and Materials, Code 45. Repairs of equipment should be budgeted under Purchased Services, Code 40.

For earlier years the threshold for reporting equipment purchases was $1,000 or more. Equipment items under $1,000 should be budgeted under Supplies and Materials.

Description of Item	Quantity	Unit Cost	Proposed Expenditure
		Subtotal – Code 20	

HELPFUL REMINDERS

- Check for the required number of copies to be submitted, including the number of original signature copies. The number of copies may vary from program to program. If unsure, contact the State Education Department office responsible for the program for which you are applying.

- An approved copy of the FS-10 will be returned to the contact person at the address completed on page 1. A window envelope will be used for the return mailing; please make sure that the contact information is accurate, legible, and confined to the address field.

- Be sure to check your math and carry all subtotals forward to the Summary on Page 8. Simple mathematical errors often require Grants Finance to contact both the local agency and other State Education Department offices, resulting in unnecessary delays in program approval. And remember, use whole dollars only.

- School districts and BOCES should use the restricted indirect cost rate that has been approved for the school year in which the grant will operate. Most other agencies are subject to a fixed maximum rate depending on the grant program and type of agency. Contact Grants Finance at (518) 474-4815 if you have any questions regarding indirect costs.

- The modified direct cost used in the calculation of indirect cost must exclude equipment, minor remodeling, the portion of each subcontract exceeding $25,000 and any flow through funds.

- Be sure to complete the Agency Code on Page 8 as well as the Project #, if pre-assigned.

- For Special Legislative projects and Grant Contracts, please enter the Contract #.

- For ease of data entry at the State Education Department, please make sure that Page 8 faces out.

- Submit forms to:

ATTN: SIF GRANT
School Turnaround Office
481 EBA
89 Washington Avenue
Albany, NY 12234

BUDGET SUMMARY

SUBTOTAL	CODE	PROJECT COSTS
Professional Salaries	15	
Support Staff Salaries	16	
Purchased Services	40	
Supplies and Materials	45	
Travel Expenses	46	
Employee Benefits	80	
Indirect Cost	90	
BOCES Services	49	
Minor Remodeling	30	
Equipment	20	
Grand Total		

Agency Code: ☐☐☐☐☐☐ ☐☐ ☐☐☐☐

Project #:
(If pre-assigned) ☐☐☐☐ ☐☐ ☐☐☐☐

Contract #: ☐☐☐☐☐☐☐

Federal Employer ID #:
(New non-municipal agencies only) ☐☐☐☐☐☐☐☐☐

Agency Name: _____

FOR DEPARTMENT USE ONLY

Funding Dates: _____/_____/_____ _____/_____/_____
From To

Program Approval: _____ Date: _____

Fiscal Year	Amount Budgeted	First Payment
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Finance:

Voucher #	First Payment

Log	Approved	MIR

CHIEF ADMINISTRATOR'S CERTIFICATION

I hereby certify that the requested budget amounts are necessary for the implementation of this project and that this agency is in compliance with applicable Federal and State laws and regulations.

____/____/____ _____
Date Signature

_____
Name and Title of Chief Administrative Officer

NYS School Innovation Fund
Annual Project Budget Narrative

LEA School Name: _____

Please reference your approved application including the revised multi-year budget summary and any amendments submitted when explaining expenditures. When referencing the project narrative please provide a page number.

CODE/BUDGET CATEGORY	EXPLANATION OF EXPENDITURES IN THIS CATEGORY
Code 15 **Professional Salaries**	
Code 16 **Support Staff Salaries**	
Code 40 **Purchased Services**	

CODE/BUDGET CATEGORY	EXPLANATION OF EXPENDITURES IN THIS CATEGORY
Code 45 **Supplies and Materials**	
Code 46 **Travel Expenses**	
Code 80 **Employee Benefits**	
Code 90 **Indirect Cost**	

CODE/BUDGET CATEGORY	EXPLANATION OF EXPENDITURES IN THIS CATEGORY
Code 49 **BOCES Services**	
Code 30 **Minor Remodeling**	
Code 20 **Equipment**	

Performance Data Report

SECTION A - Performance Objectives Information and Related Performance Measures Data. Use as many pages as necessary.)

1. Project Objective [ ] Check if this is a status update for the previous budget period.

a. School Leadership and Governance Structures and Functions
b. Curriculum and Instruction (and implementation of the Common Core Learning Standards)
c. Data-driven Inquiry and the Use of Common Interim Assessment Data to Improve Student Achievement
d. School Climate, Culture, and Discipline
e. Annual Professional Performance Review of Teachers and Principals in the full implementation of Education Law 3012c
f. Use of Time Throughout the School Day and After School to Improve Instructional and Enrichment Opportunities
g. Meeting the Needs of Unique Student Populations

Key Strategies

-
-
-

		Timeline (mark or shade-in the box representing the month in which the key action or event will occur)											
Key Actions / Events / Outputs (please which performance metrics a particular action is intended to impact upon)	**Lead Responsible**	**July 2012**	**Aug 2012**	**Sept. 2012**	**Oct. 2012**	**Nov. 2012**	**Dec. 2012**	**Jan. 2013**	**Feb. 2013**	**Mar. 2013**	**Apr. 2013**	**May 2013**	**June 2013**

Quarterly Indicators of Success	(identify leading, academic, and school-design metrics that will provide early evidence of meeting annual performance targets)
Quarter 1 July – September	
Quarter 2 October – December	
Quarter 3 January – March	
Quarter 4 April – June	

2. Project Summative Statements

SECTION B - Explanation of Progress (Include Qualitative Data and Data Collection Information)

SECTION C - Budget Information (See Instructions. Use as many pages as necessary.)

SECTION D - Additional Information (See Instructions. Use as many pages as necessary.)

Request for Funds FS-25

Project # | | | | | | **Contract #**

Agency Code: | | | | | |

Funding Source: ______________________

Agency Name: ______________________

Mailing Address: ______________________
Street

______________ ______________ ______________
City *State* *Zip Code*

Contact Person: ______________ **Telephone:** ______________

E-Mail Address ______________

MONTH YEAR

CHIEF ADMINISTRATOR'S CERTIFICATION

I hereby certify that all information reported herein is true and accurate.

Date: ______________ **Signature:** ______________

1. Amount of Approved Budget (Include approved amendments) $
2. Project Payments Received to Date $
3. Project Cash Expenditures to Date $
4. Cash Expenditures Anticipated During Next Month $
5. Additional Funds Requested (Entries 3 plus 4 minus 2) $

FOR DEPARTMENT USE ONLY

	Fiscal Year	Payment Split
		$
		$
Voucher # ______________		$
		$
Finance: Log / MIR		$

Instructions

Use this form to request funds from a grant approved by the State Education Department. Before submitting a request to Grants Finance, local agency staff must have a clear understanding of the policies and procedures regarding payments for federal and State grants. The Department will consider the Chief Administrator's signature on the form to be confirmation of the agency's knowledge of and agreement to meet the requirements. The requirements that must be met in order to receive funds using form FS-25 are addressed in Grants Finance's Fiscal Guidelines for Federal and State Grants at http://www.oms.nysed.gov/cafe/guidance/.

Please review your agency's budget, amendment, expenditure and payment records prior to completing the FS-25.

Line 1 - Amount of Approved Budget: Enter the total amount of the approved budget plus any approved budget amendments.

Line 2 – Project Payments Received to Date: Enter the total of any payments received by the agency for this particular grant.

Line 3 – Project Cash Expenditures to Date: Enter the total amount of actual expenditures made under this grant.

Line 4 – Cash Expenditures Anticipated During the Next Month: Request only what is needed to support grant activities during the next month, minimizing the time between receipt of the funds and disbursement. Enter zero if the grant program is reimbursement only or if your agency is receiving payments on a reimbursement-only basis.

Line 5 – Additional Funds Requested: Add lines 3 and 4, then subtract 2. Enter the result in line 5. If line 5 is zero or less, do not submit a form FS-25.

Please use whole dollar amounts.

Send one copy with original signature directly to Grants Finance for each grant. For Special Legislative Projects, send one original and two copies to Grants Finance.

APPENDIX D

Federal and State Guidance for Grant Administration

OMB CIRCULAR A-87

Definitions

11. "Cost objective" means a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred.

12. "Federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

13. "Governmental unit" means the entire State, local, or federally recognized Indian tribal government, including any component thereof. Components of governmental units may function independently of the governmental unit in accordance with the term of the award.

14. "Grantee department or agency" means the component of a State, local, or federally recognized Indian tribal government which is responsible for the performance or administration of all or some part of a Federal award.

15. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or component thereof to substantiate its request for the establishment of an indirect cost rate as described in Attachment E of this Circular.

16. "Local government" means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non profit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

17. "Public assistance cost allocation plan" means a narrative description of the procedures that will be used in identifying, measuring and allocating all administrative costs to all of the programs administered or supervised by State public assistance agencies as described in Attachment D of this Circular.

18. "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

C. ***Basic Guidelines***

1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.

b. Be allocable to Federal awards under the provisions of this Circular.

c. Be authorized or not prohibited under State or local laws or regulations.

d. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.

e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.

f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

g. Except as otherwise provided for in this Circular, be determined in accordance with generally accepted accounting principles.

h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.

i. Be the net of all applicable credits.

j. Be adequately documented.

2. Reasonable costs. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally funded. In determining reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.

b. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.

c. Market prices for comparable goods or services.

d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.

e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

3. Allocable costs.

a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

b. All activities which benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs.

c. Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons.

d. Where an accumulation of indirect costs will ultimately result in charges to a Federal award, a cost allocation plan will be required as described in Attachments C, D, and E.

4. Applicable credits.

a. Applicable credits refer to those receipts or reduction of expenditure type transactions that offset or reduce expense items allocable to Federal awards as direct or indirect costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the governmental unit relate to allowable costs, they shall be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance activities or service operations of the governmental unit should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or amounts to be charged to Federal awards. (See Attachment B, item 11, "Depreciation and use allowances," for areas of potential application in the matter of Federal financing of activities.)

D. ***Composition of Cost***

1. Total cost. The total cost of Federal awards is comprised of the allowable direct cost of the program, plus its allocable portion of allowable indirect costs, less applicable credits.

2. Classification of costs. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost be treated consistently in like circumstances either as a direct or an indirect cost. Guidelines for determining direct and indirect costs charged to Federal awards are provided in the sections that follow.

1. ***Advertising and public relations costs.***

a. The term advertising costs means the costs of advertising media and corollary administrative costs.

Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the governmental unit of obligations arising under a Federal award ;

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when governmental units are reimbursed for disposal costs at a predetermined amount; or

(4) Other specific purposes necessary to meet the requirements of the Federal award.

d. The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of Federal awards (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Costs identified in subsections c and d if incurred for more than one Federal award or for both sponsored work and other work of the governmental unit, are allowable to the extent that the principles in Attachment A, sections E. ("Direct Costs") and F. ("Indirect Costs") are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections c, d, and e;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the governmental unit, including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the governmental unit.

8. ***Compensation for personal services.***

a. General. Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this Circular, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non Federal activities;

(2) Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal law, where applicable; and

(3) Is determined and supported as provided in subsection h.

b. Reasonableness. Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. In cases where the kinds of employees required for Federal awards are not found in the other activities of the governmental unit, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

c. Unallowable costs. Costs which are unallowable under other sections of these principles shall not be allowable under this section solely on the basis that they constitute personnel

compensation.

d. Fringe benefits.

(1) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit employee agreement, or an established policy of the governmental unit.

(2) The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave, and other similar benefits, are allowable if: (a) they are provided under established written leave policies; (b) the costs are equitably allocated to all related activities, including Federal awards; and, (c) the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit.

(3) When a governmental unit uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment provided they are allocated as a general administrative expense to all activities of the governmental unit or component.

(4) The accrual basis may be only used for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When a governmental unit uses the accrual basis of accounting, in accordance with GAAP, allowable leave costs are the lesser of the amount accrued or funded.

(5) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in section 22, Insurance and indemnification); pension plan costs (see subsection e.); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, whether treated as indirect costs or as direct costs, shall be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities.

e. Pension plan costs. Pension plan costs may be computed using a pay as you go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For pension plans financed on a pay as you go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) Pension costs calculated using an actuarial cost based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the

cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the governmental unit's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(3) Amounts funded by the governmental unit in excess of the actuarially determined amount for a fiscal year may be used as the governmental unit's contribution in future periods.

(4) When a governmental unit converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion shall be allowable if amortized over a period of years in accordance with GAAP.

(5) The Federal Government shall receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

f. Post retirement health benefits. Post retirement health benefits (PRHB) refers to costs of health insurance or health services not included in a pension plan covered by subsection e. for retirees and their spouses, dependents, and survivors. PRHB costs may be computed using a pay as you go method or an acceptable actuarial cost method in accordance with established written polices of the governmental unit.

(1) For PRHB financed on a pay as you go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHB costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the governmental unit's contributions to the PRHB fund. Adjustments may be made by cash refund, reduction in current year's PRHB costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHB fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the government's contribution in a future period.

(4) When a governmental unit converts to an acceptable actuarial cost method and funds PRHB costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency.

(5) To be allowable in the current year, the PRHB costs must be paid either to:

(a) An insurer or other benefit provider as current year costs or premiums, or

(b) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post retirement benefits to retirees and other beneficiaries.

(6) The Federal Government shall receive an equitable share of any amounts of previously allowed post retirement benefit costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

g. Severance pay.

(1) Payments in addition to regular salaries and wages made to workers whose employment is being terminated are allowable to the extent that, in each case, they are required by (a) law, (b) employer employee agreement, or (c) established written policy.

(2) Severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit as an indirect cost.

(3) Abnormal or mass severance pay will be considered on a case by case basis and is allowable only if approved by the cognizant Federal agency.

h. Support of salaries and wages. These standards regarding time distribution are in addition to the standards for payroll documentation.

(1) Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.

(2) No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.

(3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection (5) unless a statistical sampling system (see subsection (6)) or other substitute system has been approved by the cognizant Federal agency. Such documentary support will be required where employees work on:

(a) More than one Federal award,

(b) A Federal award and a non Federal award,

(c) An indirect cost activity and a direct cost activity,

(d) Two or more indirect activities which are allocated using different allocation bases, or

(e) An unallowable activity and a direct or indirect cost activity.

(5) Personnel activity reports or equivalent documentation must meet the following standards:

(a) They must reflect an after the fact distribution of the actual activity of each employee,

(b) They must account for the total activity for which each employee is compensated,

(c) They must be prepared at least monthly and must coincide with one or more pay periods, and

(d) They must be signed by the employee.

(e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes, provided that:

(i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;

(ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and

(iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.

(6) Substitute systems for allocating salaries and wages to Federal awards may be used in place of activity reports. These systems are subject to approval if required by the cognizant agency. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort.

(a) Substitute systems which use sampling methods (primarily for Temporary Assistance to Needy Families (TANF), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(i) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in subsection (c);

(ii) The entire time period involved must be covered by the sample; and

(iii) The results must be statistically valid and applied to the period being sampled.

(b) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(c) Less than full compliance with the statistical sampling standards noted in subsection (a) may be accepted by the cognizant agency if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal awards than a system which complies with the standards.
(7) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as those claimed as allowable costs under Federal awards.

i. Donated services.

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of the Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

27. ***Meetings and conferences.*** Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. But see Attachment B, section 14, Entertainment costs.

43. ***Travel costs.***

a. General. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the governmental unit. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the governmental unit’s non-federally sponsored activities. Notwithstanding the provisions of Attachment B, section 19, General government expenses, travel costs of officials covered by that section are

allowable with the prior approval of an awarding agency when they are specifically related to Federal awards.

b. Lodging and subsistence. Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as the result of the governmental unit's written travel policy. In the absence of an acceptable, written governmental unit policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57, Title 5, United States Code ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter shall apply to travel under Federal awards (48 CFR 31.205-46(a)).

c. Commercial air travel.

(1) Airfare costs in excess of the customary standard commercial airfare (coach or equivalent), Federal Government contract airfare (where authorized and available), or the lowest commercial discount airfare are unallowable except when such accommodations would:

(a) require circuitous routing;
(b) require travel during unreasonable hours;
(c) excessively prolong travel;
(d) result in additional costs that would offset the transportation savings; or
(e) offer accommodations not reasonably adequate for the traveler's medical needs. The governmental unit must justify and document these conditions on a case-by-case basis in order for the use of first-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a governmental unit's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the governmental unit can demonstrate either of the following: (a) that such airfare was not available in the specific case; or (b) that it is the governmental unit's overall practice to make routine use of such airfare.

d. Air travel by other than commercial carrier. Costs of travel by governmental unit-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of allowable commercial air travel, as provided for in subsection c., is unallowable.

e. Foreign travel. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must receive such approval. For purposes of this provision, "foreign travel" includes any travel outside Canada, Mexico, the United States, and any United States territories and possessions. However, the term "foreign travel" for a governmental unit located in a foreign country means travel outside that country.

Subpart B—Audits

§___.210 Subrecipient and vendor determinations.

(a) General. An auditee may be a recipient, a subrecipient, and avendor. Federal awards expended as a recipient or a subrecipient would besubject to audit under this part. The payments received for goods or servicesprovided as a vendor would not be considered Federal awards. The guidance inparagraphs **(b)** and **(c)** of this section should be considered in determiningwhether payments constitute a Federal award or a payment for goods andservices.

(b) Federal award. Characteristics indicative of a Federal award received by a subrecipient are when the organization:

(1) Determines who is eligible to receive what Federal financial assistance;

(2) Has its performance measured against whether the objectives of the Federal program are met;

(3) Has responsibility for programmatic decision making;

(4) Has responsibility for adherence to applicable Federal program compliance requirements; and

(5) Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

(c) Payment for goods and services. Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

(1) Provides the goods and services within normal business operations;

operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program.

(d) Use of judgment in making determination. There may be unusual circumstances or exceptions to the listed characteristics. In making thedetermination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipientor vendor.

(e) For-profit subrecipient. Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients.The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits.

(f) Compliance responsibility for vendors. In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in complianc ewith laws, regulations, and the provisions of contracts or grant agreements.

(2)purchasers; Provides similar goods or services to many different

(3) Operates in a competitive environment;

(4) Provides goods or services that are ancillary to the

Subpart B--Audits§___.200 Audit requirements.

(a) Audit required. Non-Federal entities that expend $300,000*($500,000 for fiscal years ending after December 31, 2003)* or more in a yearin Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part. Guidance on determining Federal awards expended is provided in **§___.205**.

(b) Single audit. Non-Federal entities that expend $300,000 *($500,000 for fiscal years ending after December 31, 2003)* or more in a year in Federal awards shall have a single audit conducted in accordance with **§___.500** except when they elect to have a program-specific audit conducted in accordance with paragraph **(c)** of this section.

(c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with **§___.235**. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) Exemption when Federal awards expended are less than $300,000*($500,000 for fiscal years ending after December 31, 2003)*. Non-Federal entities that expend less than $300,000 *($500,000 for fiscal years ending after December 31, 2003)* a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in **§___.215(a)**, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

(e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

§___.320 Report submission.

(a) General. The audit shall be completed and the data collection form described in paragraph **(b)** of this section and reporting package described in paragraph **(c)** of this section shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the data collection form and reporting package shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period.) Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

(b) Data Collection. (1) The auditee shall submit a data collection form which states whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The form shall be approved by OMB, available from the Federal clearinghouse designated by OMB, and include data elements similar to those presented in this paragraph. A senior level representative of the auditee (e.g., State controller, director of finance, chief executive officer, or chief financial officer) shall sign a statement to be included as part of the form certifying that: the auditee complied with the requirements of this part, the form was prepared in accordance with this part (and the instructions accompanying the form), and the information included in the form, in its entirety, are accurate and complete.

(2) The data collection form shall include the following data elements:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee.
(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses.
(v) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion qualified opinion adverse opinion, or disclaimer of opinion).
(vi) A list of the Federal awarding agencies which will receive a copy of the reporting package pursuant to **§___.320(d)(2)** of OMB Circular
A-133.
(vii) A yes or no statement as to whether the auditee qualified as a low-risk auditee under **§___.530** of OMB Circular A-133.
(viii) The dollar threshold used to distinguish between Type A and Type B programs as defined in **§___.520(b)** of OMB Circular A-133.
(ix) The Catalog of Federal Domestic Assistance (CFDA) number for each
Federal program, as applicable.
(x) The name of each Federal program and identification of each major
program. Individual programs within a cluster of programs should be
listed in the same level of detail as they are listed in the schedule
of expenditures of Federal awards.
(xi) The amount of expenditures in the schedule of expenditures of Federal awards associated with each Federal program.
(xii) For each Federal program, a yes or no statement as to whether there are audit findings in each of the following types of compliance
requirements and the total amount of any questioned costs:
(A) Activities allowed or unallowed.
(B) Allowable costs/cost principles.
(C) Cash management.
(D) Davis-Bacon Act.
(E) Eligibility.
(F) Equipment and real property management.
(G) Matching, level of effort, earmarking.
(H) Period of availability of Federal funds.
(I) Procurement and suspension and debarment.
(J) Program income.
(K) Real property acquisition and relocation assistance.
(L) Reporting.
(M) Subrecipient monitoring.
(N) Special tests and provisions.
(xiii) Auditee Name, Employer Identification Number(s), Name and Title of Certifying Official, Telephone Number, Signature, and Date.
(xiv) Auditor Name, Name and Title of Contact Person, Auditor Address, Auditor Telephone Number, Signature, and Date.
(xv) Whether the auditee has either a cognizant or oversight agency for audit.
(xvi) The name of the cognizant or oversight agency for audit determined in accordance with **§___.400(a)** and **§___.400(b)**, respectively.
(3) Using the information included in the reporting package described in paragraph **(c)** of this section, the auditor shall complete the applicable sections of the form. The auditor shall sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph **(c)** of this section, and that the content of the form is limited to the data elements prescribed by OMB.

(c) Reporting package. The reporting package shall include the:

(1) Financial statements and schedule of expenditures ofFederal awards discussed in **§___.310(a)** and **§___.310(b)**, respectively;
(2) Summary schedule of prior audit findings discussed in**§___.315(b)**;
(3) Auditor's report(s) discussed in **§___.505**; and

(4) Corrective action plan discussed in **§___.315(c)**.
(d) Submission to clearinghouse. All auditees shall submit to the Federal clearinghouse designated by OMB the data collection form described in paragraph **(b)** of this section and one copy of the reporting package described in paragraph **(c)** of this section for: and questioned costs disclosed audit findings relating to Federal awards that the Federal awarding agency provided directly or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the Federal awarding agency provided directly.

(e) Additional submission by subrecipients. (1) In addition to the requirements discussed in paragraph **(d)** of this section, auditees that are also subrecipients shall submit to each pass-through entity one copy of the reporting package described in paragraph **(c)** of this section for each pass-through entity when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the pass-through entity provided or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the pass-through entity provided.

(2) Instead of submitting the reporting package to a pass-through entity, when a subrecipient is not required to submit a reporting package to a pass-through entity pursuant to paragraph **(e)(1)** of this section, the subrecipient shall provide written notification to the pass-through entity that: an audit of the subrecipient was conducted in accordance with this part(including the period covered by the audit and the name, amount, and CFDA number of the Federal award(s) provided by the pass-through entity); the schedule of findings and questioned costs disclosed no audit findings relating to the Federal award(s) that the pass-through entity provided; and, the summary schedule of prior audit findings did not report on the status of any audit findings relating to the Federal award(s) that the pass-through entity provided. A subrecipient may submit a copy of the reporting package described in paragraph **(c)** of this section to a pass-through entity to comply with this notification requirement.

(f) Requests for report copies. In response to requests by a Federal agency or pass-through entity, auditees shall submit the appropriate copies of the reporting package described in paragraph **(c)** of this section and, if requested, a copy of any management letters issued by the auditor.
(g) Report retention requirements. Auditees shall keep one copy of the data collection form described in paragraph **(b)** of this section and one copy of the reporting package described in paragraph **(c)** of this section on file for three years from the date of submission to the Federal clearinghouse designated by OMB. Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt.
(h) Clearinghouse responsibilities. The Federal clearinghouse designated by OMB shall distribute the reporting packages received in accordance with paragraph **(d)(2)** of this section and **§___.235(c)(3)** to applicable Federal awarding agencies, maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees which have not submitted the required data collection forms and reporting packages.
(i) Clearinghouse address. The address of the Federal clearinghouse currently designated by OMB is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132.
(j) Electronic filing. Nothing in this part shall preclude electronic submissions to the Federal clearinghouse in such manner as may be approved by OMB. With OMB approval, the Federal clearinghouse may pilot test methods of electronic submissions.

Subpart D--Federal Agencies and Pass-Through Entities§___.400 Responsibilities.

(d) Pass-through entity responsibilities. A pass-through entity shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award.

(2) Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

(3) Monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

(4) Ensure that subrecipients expending $300,000 *($500,000 for fiscal years ending after December 31, 2003)* or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.

(5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

(6) Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

(7) Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

EDGAR

Education
Department
General
Administrative
Regulations

34 CFR Parts 74,
75, 76, 77, 79, 80,
81, 82, 84, 85, 86,
97, 98, 99
December 2008

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PART 76—STATE-ADMINISTERED PROGRAMS

§ 76.401 Disapproval of an application—opportunity for a hearing.
(a) *State agency hearing before disapproval.* Under the programs listed in the chart below, the State agency that administers the program shall provide an applicant with notice and an opportunity for a hearing before it may disapprove the application.

Program	Authorizing statute	Implementing regulations Title 34 CFR Part
Chapter 1, Program in Local Educational Agencies	Title I, Chapter 1, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701–2731, 2821–2838, 2851–2854, and 2891–2901)	200
Chapter 1, Program for Neglected and Delinquent Children	Title 1, Chapter 1, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2801–2804)	203
State Grants for Strengthening Instruction in Mathematics and Science	Title II, Part A, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2981–2993)	208
Federal, State, and Local Partnership for Educational Improvement	Title I, Chapter 2, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C.2911–2952 and 2971–2976)	298
Assistance to States for Education of Handicapped Children	Part B, Individuals with Disabilities Education Act(except Section 619) (20 U.S.C.1411–1420)	300
Preschool Grants	Section 619, Individuals	301

	with Disabilities Education Act (20 U. S.C. 1419)	
Chapter 1, State-Operated or Supported Programs for Handicapped Children	Title 1, Chapter 1, Elementary and Secondary Education Act of1965, as amended (20 U.S.C.2791–2795)	302
Transition Program for Refugee Children	Section 412(d), Immigration and Naturalization Act (8 U.S.C. 1522(d))	538
Emergency Immigrant Education Program	Emergency Immigrant Education Act (20 U.S.C. 3121–3130)	581
Financial Assistance for Construction, Reconstruction, or Renovation of Higher Education Facilities	Section 711, Higher Education Act of 1965 (20 U.S.C. 1132b)	617

(b) *Other programs—hearings not required.* Under other programs covered by this part, a State agency—other than a State educational agency—is not required to provide an opportunity for a hearing regarding the agency's disapproval of an application.
(c) If an applicant for a subgrant alleges that any of the following actions of a State educational agency violates a State or Federal statute or regulation, the State educational agency and the applicant shall use the procedures in paragraph (d) of this section:
(1) Disapproval of or failure to approve the application or project in whole or in part.
(2) Failure to provide funds in amounts in accordance with the requirements of statutes and regulations.
(d) *State educational agency hearing procedures.* (1) If the applicant applied under a program listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing before the agency disapproves the application.
(2) If the applicant applied under a program not listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing either before or after the agency disapproves the application.
(3) The applicant shall request the hearing within 30 days of the action of the State educational agency.
(4)(i) Within 30 days after it receives a request, the State educational agency shall hold a hearing on the record and shall review its action.
(ii) No later than 10 days after the hearing the agency shall issue its written ruling, including findings of fact and reasons for the ruling.
(iii) If the agency determines that its action was contrary to State or Federal statutes or regulations that govern the applicable program, the agency shall rescind its action.

(5) If the State educational agency does not rescind its final action after a review under this paragraph, the applicant may appeal to the Secretary. The applicant shall file a notice of the appeal with the Secretary within 20 days after the applicant has been notified by the State educational agency of the results of the agency's review. If supported by substantial evidence, findings of fact of the State educational agency are final.
(6)(i) The Secretary may also issue interim orders to State educational agencies as he or she may decide are necessary and appropriate pending appeal or review.
(ii) If the Secretary determines that the action of the State educational agency was contrary to Federal statutes or regulations that govern the applicable program, the Secretary issues an order that requires the State educational agency to take appropriate action.
(7) Each State educational agency shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.
(8) If a State educational agency does not comply with any provision of this section, or with any order of the Secretary under this section, the Secretary terminates all assistance to the State educational agency under the applicable program or issues such other orders as the Secretary deems appropriate to achieve compliance.
(e) *Other State agency hearing procedures.* State agencies that are required to provide a hearing under paragraph (a) of this section—other than State educational agencies—are not required to use the procedures in paragraph (d) of this section.
Note: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.
(Authority: 20 U.S.C. 1221e–3, 1231b–2, 3474, and 6511(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 45 FR 86296,
Dec. 30, 1980; 50 FR 43545, Oct. 25, 1985; 52 FR 27805, July 24, 1987; 54 FR 21775, May 19, 1989; 55
FR 14816, Apr. 18, 1990; 57 FR 30341, July 8, 1992; 60 FR 46493, Sept. 6, 1995]

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

§ 76.707 When obligations are made.

The following table shows when a State or a subgrantee makes obligations for various kinds of property
and services.

If the obligation is for—	The obligation is made—
(a) Acquisition of real or personal property	On the date on which the State or subgrantee makes a binding written commitment to acquire the property.
(b) Personal services by an employee of the State or subgrantee	When the services are performed.

c) Personal services by a contractor who is not an employee of the State or subgrantee	On the date on which the State or subgrantee makes a binding written commitment to obtain the services.
(d) Performance of work other than personal services	On the date on which the State or subgrantee makes a binding written commitment to obtain the work.
(e) Public utility services	When the State or subgrantee receives the services.
(f) Travel	When the travel is taken.
(g) Rental of real or personal property	When the State or subgrantee uses the property.
(h) A preagreement cost that was properly approved by the State under the cost principals identified in 34 CFR 74.171 and 80.22.	

(Authority: 20 U.S.C. 1221e–3, 3474, and 6511(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 55 FR 14817,Apr. 18, 1990; 57 FR 30342, July 8, 1992]

§ 76.708 When certain subgrantees may begin to obligate funds.
(a) If the authorizing statute for a program requires a State to make subgrants on the basis of a formula (see §76.5), the State may not authorize an applicant for a subgrant to obligate funds until the later of the following two dates:
(1) The date that the State may begin to obligate funds under §76.703; or
(2) The date that the applicant submits its application to the State in substantially approvable form.
(b) Reimbursement for obligations under paragraph (a) of this section is subject to final approval of the application.
(c) If the authorizing statute for a program gives the State discretion to select subgrantees, the State may not authorize an applicant for a subgrant to obligate funds until the subgrant is made. However, the State may approve pre-agreement costs in accordance with the cost principles that are appended to 34 CFR part 74 (Appendices C–F).

(Authority: 20 U.S.C. 1221e–3, 3474, and 6511(a))
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980. Further redesignated at 60 FR
41295, Aug. 11, 1995]

**§ 76.710 Obligations made during a carryover period are subject to current statutes, regulations,
and applications.**

A State and a subgrantee shall use carryover funds in accordance with:
(a) The Federal statutes and regulations that apply to the program and are in effect for the carryover period; and
(b) Any State plan, or application for a subgrant, that the State or subgrantee is required to submit for the carryover period.

Note: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under section 427 or other applicable law.

(Authority: U.S.C. 1221e–3, 1225(b), and 3474)

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 45 FR 86296, Dec. 30, 1980. Redesignated at 60 FR 41295, Aug. 11, 1995]

§ 76.730 Records related to grant funds.
A State and a subgrantee shall keep records that fully show:
(a) The amount of funds under the grant or subgrant;
(b) How the State or subgrantee uses the funds;
(c) The total cost of the project;
(d) The share of that cost provided from other sources; and
(e) Other records to facilitate an effective audit.
(Approved by the Office of Management and Budget under control number 1880–0513)
(Authority: 20 U.S.C. 1232f)
[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 53 FR 49143,
Dec. 6, 1988]

Subpart C—Post-Award Requirements

Financial Administration

§ 80.20 Standards for financial management systems.
(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to:
(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and
(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:
(1) ***Financial reporting.*** Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.
(2) ***Accounting records****.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
(3**)** ***Internal control****.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
(4) ***Budget control.*** Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
(5) ***Allowable cost****.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.
(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.
(7) ***Cash management****.* Procedures for minimizing the time elapsing between the transfer of funds from the
U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.
(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

(Approved by the Office of Management and Budget under control number 1880–0517)

(Authority: 20 U.S.C. 3474; OMB Circular A–102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 49143, Dec. 6, 1988]

§ 80.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:
(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and
(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.
(b) For each kind of organization, there is a set of Federal principles for determining allowable costs. For the costs of a State, local, or Indian tribal government, the Secretary applies the cost principles in OMB Circular A–87, as amended on June 9, 1987.

For the costs of a—	**Use the principles in—**
State, local or Indian tribal government	OMB Circular A–87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 as not subject to that circular	OMB Circular A–122.
Educational institutions.	OMB Circular A–21.
For-profit organization other than a hospital and an organization named in OBM Circular A–122 as not subject to that circular	48 CFR part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

(Authority: 20 U.S.C. 3474; OMB Circular A–102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988]

§ 80.23 Period of availability of funds.
(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.
(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269). The Federal agency may extend this deadline at the request of the grantee.

(Authority: 20 U.S.C. 3474; OMB Circular A–102)

§ 80.32 Equipment.
(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.
(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.
(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.
(3) Notwithstanding the encouragement in §80.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.
(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.
(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:
(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.
(4) Adequate maintenance procedures must be developed to keep the property in good condition.
(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
(e) ***Disposition****.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a
Federal agency, disposition of the equipment will be made as follows:
(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.
(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.
(f) ***Federal equipment***. In the event a grantee or subgrantee is provided federally-owned equipment:
(1) Title will remain vested in the Federal Government.
(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.
(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.
(g) ***Right to transfer title***. The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:
(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.
(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow §80.32(e).
(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.
(h) The provisions of paragraphs (c), (d), (e), and (g) of this section do not apply to disaster assistance under 20 U.S.C. 241–1(b)–(c) and the construction provisions of the Impact Aid Program, 20 U.S.C. 631–
647.
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1988]

§ 80.36 Procurement.
(a) ***States***. When procuring property and services under a grant, a State will follow the same policies andprocedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.
(b) ***Procurement standards.*** (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.
(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
(i) The employee, officer or agent,
(ii) Any member of his immediate family,
(iii) His or her partner, or
(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.
(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.
(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
(10) Grantees and subgrantees will use time and material type contracts only:
(i) After a determination that no other contract is suitable, and
(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.
(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:
(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and
(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.
(c) ***Competition***. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §80.36. Some of the situations considered to be restrictive of competition include but are not limited to:
(i) Placing unreasonable requirements on firms in order for them to qualify to do business,
(ii) Requiring unnecessary experience and excessive bonding,
(iii) Noncompetitive pricing practices between firms or between affiliated companies,
(iv) Noncompetitive awards to consultants that are on retainer contracts,
(v) Organizational conflicts of interest,
(vi) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement, and
(vii) Any arbitrary action in the procurement process.
(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:
(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to

make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and
(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.
(d) ***Methods of procurement to be followed*** —(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.
C. 403(11) (currently set at $100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.
(2) ***Procurement by sealed bids (formal advertising)****.* Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in §80.36(d)(2)(i) apply.
(i) In order for sealed bidding to be feasible, the following conditions should be present:
(A) A complete, adequate, and realistic specification or purchase description is available;
(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and
(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
(ii) If sealed bids are used, the following requirements apply:
(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
(E) Any or all bids may be rejected if there is a sound documented reason.
(3) ***Procurement by competitive proposals****.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
(ii) Proposals will be solicited from an adequate number of qualified sources;
(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/
E firms are a potential source to perform the proposed effort.
(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.
(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:
(A) The item is available only from a single source;
(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
(C) The awarding agency authorizes noncompetitive proposals; or
(D) After solicitation of a number of sources, competition is determined inadequate.
(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.
(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.
(e) ***Contracting with small and minority firms, women's business enterprise and labor surplus area firms.***
(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
(2) Affirmative steps shall include:
(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
(v) Using the services and assistance of the Small Business Administration, and the Minority Business

Development Agency of the Department of Commerce; and
(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e) (2) (i) through (v) of this section.
(f) ***Contract cost and price***. (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.
(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see §80.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.
(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.
(g) ***Awarding agency review***. (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:
(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or
(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or
(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a “brand name” product; or
(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.
(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.
(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.
(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.
(h) ***Bonding requirements****.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:
(1) ***A bid guarantee from each bidder equivalent to five percent of the bid price****.* The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
(2) ***A performance bond on the part of the contractor for 100 percent of the contract price****.* A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
(3) ***A payment bond on the part of the contractor for 100 percent of the contract price.*** A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
(i) ***Contract provisions****.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.
(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)
(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)
(3) Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All

construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)
(4) Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)
(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2000 awarded by grantees and
subgrantees when required by Federal grant program legislation)
(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)
(7) Notice of awarding agency requirements and regulations pertaining to reporting.
(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.
(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order
11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)
(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).
(j) ***Contracting with faith-based organizations***. (1)(i) A faith-based organization is eligible to contract with grantees and subgrantees, including States, on the same basis as any other private organization, with respect to contracts for which such other organizations are eligible.
(ii) In the selection of goods and services providers, grantees and subgrantees, including States, shall not discriminate for or against a private organization on the basis of the organization's religious character or affiliation.
(2) The provisions of §§75.532 and 76.532 applicable to grantees and subgrantees apply to a faith-based organization that contracts with a grantee or subgrantee, including a State, unless the faith-based organization is selected as a result of the genuine and independent private choices of individual beneficiaries of the program and provided the organization otherwise satisfies the requirements of the program.

(3) A private organization that engages in inherently religious activities, such as religious worship, instruction, or proselytization, must offer those services separately in time or location from any programs or services supported by a contract with a grantee or subgrantee, including a State, and participation in any such inherently religious activities by beneficiaries of the programs supported by the contract must be voluntary, unless the organization is selected as a result of the genuine and independent private choices of individual beneficiaries of the program and provided the organization otherwise satisfies the requirements of the program.
(4)(i) A faith-based organization that contracts with a grantee or subgrantee, including a State, may retain its independence, autonomy, right of expression, religious character, and authority over its governance.
(ii) A faith-based organization may, among other things—
(A) Retain religious terms in its name;
(B) Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;
(C) Use its facilities to provide services without removing or altering religious art, icons, scriptures, or other symbols from these facilities;
(D) Select its board members and otherwise govern itself on a religious basis; and
(E) Include religious references in its mission statement and other chartering or governing documents.
(5) A private organization that contracts with a grantee or subgrantee, including a State, shall not discriminate against a beneficiary or prospective beneficiary in the provision of program services on the basis of religion or religious belief.
(6) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, is not forfeited when the organization contracts with a grantee or subgrantee.

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Reports, Records Retention, and Enforcement
§ 80.40 Monitoring and reporting program performance.
(a) ***Monitoring by grantees***. Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.
(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly.
Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.
(2) Performance reports will contain, for each grant, brief information on the following:
(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.
(ii) The reasons for slippage if established objectives were not met.
(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
(3) Grantees will not be required to submit more than the original and two copies of performance reports.
(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.
(c) ***Construction performance reports****.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.
(d) ***Significant developments****.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:
(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.
(e) Federal agencies may make site visits as warranted by program needs.
(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.
(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

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§ 80.42 Retention and access requirements for records.
(a) ***Applicability***. (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:
(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or
(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.
(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see §80.36(i)(10).
(b) ***Length of retention period***. (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.
(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.
(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.
(4) A recipient that receives funds under a program subject to 20 U.S.C. 1232f (section 437 of the General Education Provisions Act) shall retain records for a minimum of three years after the starting date specified in paragraph (c) of this section.
(c) ***Starting date of retention period***—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period.
However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year.
In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been
due.
(2) ***Real property and equipment records***. The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.
(3) ***Records for income transactions after grant or subgrant support.*** In some cases grantees must report income after the period of grant support. Where there is such a

requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.
(4) ***Indirect cost rate proposals, cost allocations plans, etc.*** This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the
Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.
(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.
(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.
(e) *Access to records* —(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.
(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.
(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.
(Approved by the Office of Management and Budget under control number 1880–0517)

(Authority: 20 U.S.C. 3474; OMB Circular A–102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988; 53 FR 49143, Dec. 6,
1988; 64 FR 50392, Sept. 16, 1999]

§ 80.43 Enforcement.
(a) ***Remedies for noncompliance.*** If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:
(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,
(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
(4) Withhold further awards for the program, or
(5) Take other remedies that may be legally available.
(b) ***Hearings, appeals***. In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.
(c) ***Effects of suspension and termination***. Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:
(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,
(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.
(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to “Debarment and Suspension” under E.O. 12549 (see §80.35).

(Authority: 20 U.S.C. 3474; OMB Circular A–102)

§ 81.32 Proportionality.
(a)(1) A recipient that made an unallowable expenditure or otherwise failed to account properly for funds shall return an amount that is proportional to the extent of the harm its violation caused to an identifiable
Federal interest associated with the program under which it received the grant or cooperative agreement.
(2) An identifiable Federal interest under paragraph (a)(1) of this section includes, but is not limited to, the following:
(i) Serving only eligible beneficiaries.
(ii) Providing only authorized services or benefits.
(iii) Complying with expenditure requirements and conditions, such as set-aside, excess cost, maintenance of effort, comparability, supplement-not-supplant, and matching requirements.
(iv) Preserving the integrity of planning, application, recordkeeping, and reporting requirements.
(v) Maintaining accountability for the use of funds.
(b) The appendix to this part contains examples that illustrate how the standards for proportionality apply.
The examples present hypothetical cases and do not represent interpretations of any actual program statute or regulation.
(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234b(a), and 3474(a))
[54 FR 19512, May 5, 1989. Redesignated at 58 FR 43473, Aug. 16, 1993]

§ 81.33 Mitigating circumstances.
(a) A recipient that is a State or local educational agency and that has made an unallowable expenditure or otherwise failed to account properly for funds is not required to return any amount that is attributable to the mitigating circumstances described in paragraph (b), (c), or (d) of this section.
(b) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by erroneous written guidance from the department. To prove mitigating circumstances under this paragraph, the recipient shall prove that—
(1) The guidance was provided in response to a specific written request from the recipient that was submitted to the Department at the address provided by notice published in the Federal Register under this section;
(2) The guidance was provided by a Departmental official authorized to provide the guidance, as described by that notice;
(3) The recipient actually relied on the guidance as the basis for the conduct that constituted the violation; and
(4) The recipient's reliance on the guidance was reasonable.
(c) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by the Department's failure to provide timely guidance. To prove mitigating circumstances under this paragraph, the recipient shall prove that—
(1) The recipient in good faith submitted a written request for guidance with respect to the legality of a proposed expenditure or practice;
(2) The request was submitted to the Department at the address provided by notice published in the Federal Register under this section;
(3) The request—
(i) Accurately described the proposed expenditure or practice; and
(ii) Included the facts necessary for the Department's determination of its legality;
(4) The request contained the certification of the chief legal officer of the appropriate State educational agency that the officer—
(i) Examined the proposed expenditure or practice; and
(ii) Believed it was permissible under State and Federal law applicable at the time of the certification;
(5) The recipient reasonably believed the proposed expenditure or practice was permissible under State and Federal law applicable at the time it submitted the request to the Department;
(6) No Departmental official authorized to provide the requested guidance responded to the request within 90 days of its receipt by the Department; and
(7) The recipient made the proposed expenditure or engaged in the proposed practice after the expiration of the 90–day period.
(d) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by the recipient's compliance with a judicial decree from a court of competent jurisdiction. To prove mitigating circumstances under this paragraph, the recipient shall prove that—
(1) The recipient was legally bound by the decree;

(2) The recipient actually relied on the decree when it engaged in the conduct that constituted the violation; and
(3) The recipient's reliance on the decree was reasonable.
(e) If a Departmental official authorized to provide the requested guidance responds to a request described in paragraph (c) of this section more than 90 days after its receipt, the recipient that made the request shall comply with the guidance at the earliest practicable time.
(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234b(b), and 3474(a))
[54 FR 19512, May 5, 1989. Redesignated at 58 FR 43473, Aug. 16, 1993]

Appendix to Part 81—Illustrations of Proportionality
(1) ***Ineligible beneficiaries****.* A State uses 15 percent of its grant to meet the special educational needs of children who were migratory, but who have not migrated for more than five years as a Federal program statute requires for eligibility to participate in the program. Result: Recovery of 15 percent of the grant—all program funds spent for the benefit of those children. Although the services were authorized, the children were not eligible to receive them.
(2) ***Ineligible beneficiaries****.* A Federal program designed to meet the special educational needs of gifted and talented children requires that at least 80 percent of the children served in any project must be identified as gifted or talented. A local educational agency (LEA) conducts a project in which 76 students are identified as gifted or talented and 24 are not. The project was designed and implemented to meet the special educational needs of gifted and talented students. Result: The LEA must return five percent of the project costs. The LEA provided authorized services for a project in which the 76 target students had to constitute at least 80 percent of the total. Thus, the maximum number of non-target students permitted was 19. Project costs relating to the remaining five students must be returned.
(3) ***Ineligible beneficiaries****.* Same as the example in paragraph (2), except that only 15 percent of the children were identified as gifted or talented. On the basis of the low percentage of these children and other evidence, the authorized Departmental official finds that the project as a whole did not address their special educational needs and was outside the purpose of the statute. Result: The LEA must return its entire award. The difference between the required percentage of gifted and talented children and the percentage actually enrolled is so substantial that, if consistent with other evidence, the official may reasonably conclude the entire grant was misused.
(4) ***Ineligible beneficiaries****.* Same as the example in paragraph (2), except that 60 percent of the children were identified as gifted or talented, and it is not clear whether the project was designed or implemented to meet the special educational needs of these children. Result: If it is determined that the project was designed and implemented to serve their special educational needs, the LEA must return 25 percent of the project costs. A project that included 60 target children would meet the requirement that 80 percent of the children served be gifted and talented if it included no more than 15 other children. Thus, while the LEA provided authorized services, only 75 percent of the beneficiaries were authorized to participate in the project (60 target children and 15 others). If the authorized Departmental official, after examining all the relevant facts, determines that the project was not designed and implemented to serve the special educational needs of gifted or talented students, the

LEA must return its entire award because it did not provide services authorized by the statute.

(5) ***Unauthorized activities***. An LEA uses ten percent of its grant under a Federal program that authorizes activities only to meet the special educational needs of educationally deprived children to pay for health services that are available to all children in the LEA. All the children who use the Federally funded health services happen to be educationally deprived, and thus eligible to receive program services. Result: Recovery of ten percent of the grant—all program funds spent for the health services. Although the children were eligible to receive program services, the health services were unrelated to a special educational need and, therefore, not authorized by law.

(6) ***Set-aside requirement***. A State uses 22 percent of its grant for one fiscal year under a Federal adult education program to provide programs of equivalency to a certificate of graduation from a secondary school. The adult education program statute restricts those programs to no more than 20 percent of the State's grant. Result: Two percent of the State's grant must be returned. Although all 22 percent of the funds supported adult education, the State had no authority to spend more than 20 percent on secondary school equivalency programs.

(7) ***Set-aside requirement***. A State uses eight percent of its basic State grant under a Federal vocational education program to pay for the excess cost of vocational education services and activities for handicapped individuals. The program statute requires a State to use ten percent of its basic State grant for this purpose. Result: The State must return two percent of its basic State grant, regardless of how it was used. Because the State was required to spend that two percent on services and activities for handicapped individuals and did not do so, it diverted those funds from their intended purposes, and the Federal interest was harmed to that extent.

(8) ***Excess cost requirement***. An LEA uses funds reserved for the disadvantaged under a Federal vocational education program to pay for the cost of the same vocational education services it provides to non-disadvantaged individuals. The program statute requires that funds reserved for the disadvantaged must be used to pay only for the supplemental or additional costs of vocational education services that are not provided to other individuals and that are required for disadvantaged individuals to participate in vocational education. Result: All the funds spent on the disadvantaged must be returned. Although the funds were spent to serve the disadvantaged, the funds were available to pay for only the supplemental or additional costs of providing services to the disadvantaged.

(9) ***Maintenance-of-effort requirement***. An LEA participates in a Federal program in fiscal year 1988 that requires it to maintain its expenditures from non-Federal sources for program purposes to receive its full allotment. The program statute requires that non-Federal funds expended in the first preceding fiscal year must be at least 90 percent of non-Federal funds expended in the second preceding fiscal year and provides for a reduction in grant amount proportional to the shortfall in expenditures. No waiver of the requirement is authorized. In fiscal year 1986 the LEA spent $100,000 from non-Federal sources for program purposes; in fiscal year 1987, only $87,000. Result: The LEA must return 1/30 of its fiscal year 1988 grant—the amount of its grant that equals the proportion of its shortfall ($3,000) to the required level of expenditures ($90,000). If, instead, the statute made maintenance of expenditures a clear condition of the LEA's eligibility to receive funds and did not provide for a proportional reduction in the grant award, the LEA would be required to return its entire grant.

(10) ***Supplanting prohibition.*** An LEA uses funds under a Federal drug education program to provide drug abuse prevention counseling to students in the eighth grade. The LEA is required to provide that same counseling under State law. Funds under the Federal program statute are subject to a supplement-not supplant requirement. Result: All the funds used to provide the required counseling to the eighth-grade students must be returned. The Federal funds did not increase the total amount of spending for program purposes because the counseling would have been provided with non-Federal funds if the Federal funds were not available.

(11) ***Matching requirement.*** A State receives an allotment of $90,000 for fiscal year 1988 under a Federal adult education program. It expends its full allotment and $8,000 from its own resources for adult education. Under the Federal statute, the Federal share of expenditures for the State's program is 90 percent. Result: The State must return the unmatched Federal funds, or $18,000. Expenditure of a $90,000 Federal allotment required $10,000 in matching State expenditures, $2,000 more than the State's actual expenditures. At a ratio of one State dollar for every nine Federal dollars, $18,000 in Federal funds were unmatched.

(12**) *Application requirements.*** In order to receive funds under a Federal program that supports a wide range of activities designed to improve the quality of elementary and secondary education, an LEA submits an application to its State educational agency (SEA) for a subgrant to carry out school-level basic skills development programs. The LEA submits its application after conducting an assessment of the needs of its students in consultation with parents, teachers, community leaders, and interested members of the general public. The Federal program statute requires the application and consultation processes.

The SEA reviews the LEA's application, determines that the proposed programs are sound and the application is in compliance with Federal law, and approves the application. After the LEA receives the subgrant, it unilaterally decides to use 20 percent of the funds for gifted and talented elementary school students—an authorized activity under the Federal statute. However, the LEA does not consult with interested parties and does not amend its application. Result: 20 percent of the LEA's subgrant must be returned. The LEA had no legal authority to use Federal funds for programs or activities other than those described in its approved application, and its actions with respect to 20 percent of the subgrant not only impaired the integrity of the application process, but caused significant harm to other Federal interests associated with the program as follows: the required planning process was circumvented because the LEA did not consult with the specified local interests; program accountability was impaired because neither the SEA nor the various local interests that were to be consulted had an opportunity to review and comment on the merits of the gifted and talented program activities, and the LEA never had to justify those activities to them; and fiscal accountability was impaired because the SEA and those various local interests were, in effect, misled by the LEA's unamended application regarding the expenditure of Federal funds.

(13) *Harmless violation.* Under a Federal program, a grantee is required to establish a 15-member advisory council of affected teachers, school administrators, parents, and students to assist in program design, monitoring, and evaluation. Although the law requires at least three student members of the council, a grantee's council contains only two. The project is carried out, and no damage to the project attributable to the lack of a third student member

can be identified. Result: No financial recovery is required, although the grantee must take other appropriate steps to come into compliance with the law.
The grantee's violation has not measurably harmed a Federal interest associated with the program.
(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234b(a), and 3474(a))
[54 FR 19512, May 5, 1989; 54 FR 21622, May 19, 1989]