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## Title 34 – Education

### Subtitle A – Office of the Secretary, Department of Education

#### Part 79 Intergovernmental Review of Department of Education Programs and Activities

- § 79.1 What is the purpose of these regulations?
- § 79.2 What definitions apply to these regulations?
- § 79.3 What programs and activities of the Department are subject to these regulations?
- § 79.4 What are the Secretary's general responsibilities under the Order?
- § 79.5 What is the Secretary's obligation with respect to Federal interagency coordination?
- § 79.6 What procedures apply to the selection of programs and activities under these regulations?
- § 79.7 How does the Secretary communicate with State and local officials concerning the Department's programs and activities?
- § 79.8 How does the Secretary provide States an opportunity to comment on proposed Federal financial assistance?
- § 79.9 How does the Secretary receive and respond to comments?
- § 79.10 How does the Secretary make efforts to accommodate intergovernmental concerns?
- § 79.11 What are the Secretary's obligations in interstate situations?
- § 79.12 How may a State simplify, consolidate, or substitute federally required State plans?
- § 79.13 *[Reserved]*

## PART 79—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF EDUCATION PROGRAMS AND ACTIVITIES

**Authority:** 31 U.S.C. 6506; 42 U.S.C. 3334; and E.O. 12372, unless otherwise noted.

Section 79.2 also issued under E.O. 12372.

**Source:** 48 FR 29166, June 24, 1983, unless otherwise noted.

**Editorial Note:** Nomenclature changes to part appear at 89 FR 70343, Aug. 29, 2024.

### § 79.1 What is the purpose of these regulations?

- (a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983.
- (b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on State processes and on State, areawide, regional, and local coordination for review of proposed federal financial assistance.

- (c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

(Authority: E.O. 12372)

[48 FR 29166, June 24, 1983, as amended at 89 FR 70343, Aug. 29, 2024]

## § 79.2 What definitions apply to these regulations?

*Order* means Executive Order 12372, issued July 14, 1982, amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

*State* means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

[48 FR 29166, June 24, 1983, as amended at 89 FR 70343, Aug. 29, 2024]

## § 79.3 What programs and activities of the Department are subject to these regulations?

- (a) The Secretary publishes in the FEDERAL REGISTER a list of the Department's programs and activities that are subject to these regulations
- (b) If a program or activity of the Department that provides Federal financial assistance does not have implementing regulations, the regulations in this part apply to that program or activity.
- (c) The following programs and activities are excluded from coverage under this part:
  - (1) Proposed legislation.
  - (2) Regulation and budget formulation.
  - (3) National security matters.
  - (4) Procurement.
  - (5) Direct payments to individuals.
  - (6) Financial transfers for which the Department has no funding discretion or direct authority to approve specific sites or projects.
  - (7) Research and development that is national in scope.
  - (8) Assistance to federally recognized Indian tribes.
- (d) In addition to the programs and activities excluded in paragraph (c) of this section, the Secretary may only exclude a Federal financial assistance program or activity from coverage under this part if the program or activity does not directly affect State or local governments.

(Authority: E.O. 12372)

[48 FR 29166, June 24, 1983, as amended at 51 FR 20824, June 9, 1986; 89 FR 70343, Aug. 29, 2024]

### § 79.4 What are the Secretary's general responsibilities under the Order?

- (a) The Secretary provides opportunities for consultation by elected officials of those State and local governments that would provide the nonfederal funds for, or that would be directly affected by, proposed federal financial assistance from the Department.
- (b) If a State adopts a process under the Order to review and coordinate proposed federal financial assistance, the Secretary, to the extent permitted by law:
  - (1) Uses the State process to determine official views of State and local elected officials;
  - (2) Communicates with State and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;
  - (3) Makes efforts to accommodate State and local elected officials' concerns with proposed federal financial assistance that are communicated through the State process;
  - (4) Allows the States to simplify and consolidate existing federally required State plan submissions;
  - (5) Where State planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of State plans for federally required State plans;
  - (6) Seeks the coordination of views of affected State and local elected officials in one State with those of another State when proposed federal financial assistance has an impact on interstate metropolitan urban centers or other interstate areas; and
  - (7) Supports State and local governments by discouraging the reauthorization or creation of any planning organization which is federally funded, which has a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

(Authority: E.O. 12372, Sec. 2)

[48 FR 29166, June 24, 1983, as amended at 89 FR 70343, Aug. 29, 2024]

### § 79.5 What is the Secretary's obligation with respect to Federal interagency coordination?

The Secretary, to the maximum extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to ensure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

(Authority: E.O. 12372)

[48 FR 29166, June 24, 1983, as amended at 89 FR 70343, Aug. 29, 2024]

### § 79.6 What procedures apply to the selection of programs and activities under these regulations?

- (a) A State may select any program or activity published in the FEDERAL REGISTER in accordance with § 79.3 for intergovernmental review under these regulations. Each State, before selecting programs and activities, shall consult with local elected officials.
- (b) Each State that adopts a process shall notify the Secretary of the Department's programs and activities selected for that process.

- (c) A State may notify the Secretary of changes in its selections at any time. For each change, the State shall submit to the Secretary an assurance that the State has consulted with local elected officials regarding the change. The Department may establish deadlines by which States are required to inform the Secretary of changes in their program selections.
- (d) The Secretary uses a State's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

(Authority: E.O. 12372, sec. 2)

[48 FR 29166, June 24, 1983, as amended at 89 FR 70343, Aug. 29, 2024]

### **§ 79.7 How does the Secretary communicate with State and local officials concerning the Department's programs and activities?**

(a) [Reserved]

(b)

- (1) The Secretary provides notice to directly affected State, areawide, regional, and local entities in a State of proposed federal financial assistance if:
  - (i) The State has not adopted a process under the Order; or
  - (ii) The assistance involves a program or activity not selected for the State process.
- (2) This notice may be made by publication in the FEDERAL REGISTER or other means which the Secretary determine appropriate.

(Authority: E.O. 12372, Sec. 2)

### **§ 79.8 How does the Secretary provide States an opportunity to comment on proposed Federal financial assistance?**

- (a) Except in unusual circumstances, the Secretary gives State processes or directly affected State, areawide, regional, and local officials and entities—
  - (1) At least 30 days to comment on proposed Federal financial assistance in the form of noncompeting continuation awards; and
  - (2) At least 60 days to comment on proposed Federal financial assistance other than noncompeting continuation awards.
- (b) The Secretary establishes a date for mailing or hand-delivering comments under paragraph (a) of this section using one of the following two procedures:
  - (1) If the comments relate to continuation award applications, the Secretary notifies each applicant and each State Single Point of Contact (SPOC) of the date by which SPOC comments should be submitted.
  - (2) If the comments relate to applications for new grants, the Secretary establishes the date in a notice published in the FEDERAL REGISTER.
- (c) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

(Authority: E.O. 12372, Sec. 2)

[48 FR 29166, June 24, 1983, as amended at 51 FR 20825, June 9, 1986; 89 FR 70343, Aug. 29, 2024]

### **§ 79.9 How does the Secretary receive and respond to comments?**

- (a) The Secretary follows the procedure in § 79.10 if:
  - (1) A State office or official is designated to act as a single point of contact between a State process and all federal agencies, and
  - (2) That office or official transmits a State process recommendation, and identifies it as such, for a program selected under § 79.6.
- (b)
  - (1) The single point of contact is not obligated to transmit comments from State, areawide, regional, or local officials and entities if there is no State process recommendation.
  - (2) If a State process recommendation is transmitted by a single point of contact, all comments from State, areawide, regional, and local officials and entities that differ from it must also be transmitted.
- (c) If a State has not established a process, or is unable to submit a State process recommendation, State, areawide, regional, and local officials and entities may submit comments to the Department.
- (d) If a program or activity is not selected for a State process, State, areawide, regional, and local officials and entities may submit comments to the Department. In addition, if a State process recommendation for a nonselected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 79.10.
- (e) The Secretary considers comments which do not constitute a State process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 79.10, if those comments are provided by a single point of contact, or directly to the Department by a commenting party.

(Authority: E.O. 12372, Sec. 2)

[48 FR 29166, June 24, 1983, as amended at 51 FR 20825, June 9, 1986; 89 FR 70343, Aug. 29, 2024]

### **§ 79.10 How does the Secretary make efforts to accommodate intergovernmental concerns?**

- (a) If a State process provides a State process recommendation to the Department through its single point of contact, the Secretary either:
  - (1) Accepts the recommendation;
  - (2) Reaches an agreement with the State; or
  - (3) Provides the single point of contact with a written explanation of the decision in such form as the Secretary deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

- (b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:
  - (1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or
  - (2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.
- (c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of the notification.

(Authority: E.O. 12372, Sec. 2)

[48 FR 29166, June 24, 1983, as amended at 89 FR 70343, Aug. 29, 2024]

### § 79.11 What are the Secretary's obligations in interstate situations?

- (a) The Secretary is responsible for:
  - (1) Identifying proposed federal financial assistance that has an impact on interstate areas;
  - (2) Notifying appropriate officials and entities in States which have adopted a process and which select the Department's program or activity.
  - (3) Making efforts to identify and notify the affected State, areawide, regional, and local officials and entities in those States that have not adopted a process under the Order or do not select the Department's program or activity;
  - (4) Responding under § 79.10 if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.
- (b) In an interstate situation subject to this section, the Secretary uses the procedures in § 79.10 if a State process provides a State process recommendation to the Department through a single point of contact.

(Authority: E.O. 12372, Sec. 2(e))

### § 79.12 How may a State simplify, consolidate, or substitute federally required State plans?

- (a) As used in this section:
  - (1) **Simplify** means that a State may develop its own format, choose its own submission date, and select the planning period for a State plan.
  - (2) **Consolidate** means that a State may meet statutory and regulatory requirements by combining two or more plans into one document and that the State can select the format, submission date, and planning period for the consolidated plan.
  - (3) **Substitute** means that a State may use a plan or other document that it has developed for its own purposes to meet Federal requirements.
- (b) If not inconsistent with law, a State may decide to try to simplify, consolidate, or substitute federally required State plans without prior approval by the Secretary.

- (c) The Secretary reviews each State plan that a State has simplified, consolidated, or substituted and accepts the plan only if its contents meet federal requirements.

(Authority: E.O. 12372, sec. 2)

**§ 79.13 [Reserved]**