## DEPARTMENT OF EDUCATION

### 34 CFR Parts 76 and 667

RIN 1880-AA59

# State-administered Programs; State Postsecondary Review Program

**AGENCY:** Department of Education. **ACTION:** Final regulations.

SUMMARY: The Secretary amends Part 76 of the Education Department General Administrative Regulations (EDGAR) to require a State to file its State plan and other related documents under a given program by a date certain or face deferral of the date on which the State may begin to obligate funds under the program. The Secretary also modifies the policy announced in the notice of proposed rulemaking (NPRM) regarding pre-award costs incurred after the date funds are available for obligation by the Secretary and before the date a State has an approved State plan. Under the modified policy, the Secretary will allow pre-award costs for matching and Maintenance of Effort expenditures because these expenditures are not subject to the Cash Management Improvement Act of 1990 (CMIA). The Secretary takes these actions to protect the Federal Government from interest liabilities under the CMIA when the Department is late in making an initial payment under a State-administered program because the State failed to submit a substantially approvable plan or other required document in a timely fashion. The Secretary also makes conforming amendments to Part 667. DATES: These regulations take effect on September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Wathen-Dunn, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4434, Washington, D.C. 20202–2243. Telephone: (202) 401– 6700. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Cash Management Improvement Act of 1990 (CMIA) was passed by Congress to ensure greater efficiency, effectiveness, and equity in the exchange of funds between the Federal Government and the States. Under this statute and the Treasury Department's implementing regulations at 31 CFR Part 205, the Federal Government is liable for interest payments to a State that disburses its own funds for Federal program purposes before the date that Federal funds are deposited to the State's bank account for those obligations, 31 U.S.C. 6503(d). Conversely, a State must pay interest to the Federal Government from the time Federal funds are deposited to the State's account until the time that those funds are paid out by the State, 31 U.S.C. 6503(c).

The CMIA applies to "major Federal assistance programs," which are determined under a chart in the implementing Treasury regulations at 31 CFR 205.4 and Appendix A to Part 205, Subpart A. The chart establishes thresholds for CMIA coverage based on a comparison between the amount of Federal funds expended in a State under a particular program and the total Federal funds expended in the State. The Treasury Department negotiates agreements with each of the States that cover a number of issues under the CMIA, including which programs of the Federal Government are covered by the CMIA in that State. Under the Treasury-State agreement, a State may choose to cover more programs under the CMIA than would be required under the regulatory chart. Thus, to determine whether a program administered by the Department is covered by the CMIA in a particular State, contact the CMIA contact person for the State. These people are usually located in fiscal offices such as a State controller's office. Many of the formula grant Stateadministered programs of the Department meet the threshold for coverage in most, if not all, States.

The Department of Education (Department) published a notice of proposed rulemaking (NPRM) in the Federal Register on December 16, 1993, (58 FR 65856) that proposed regulations to limit the Federal Government's interest liability under the CMIA. The Secretary received 60 comments in response to the NPRM from State educational agencies, State fiscal offices, a trust territory, the Treasury Department, and three national organizations. In addition to the comments, the Department has discussed this rule with the States at various conferences and presentations over the past one and one-half years. Most States asked the Department to defer the proposed rule so that it would not apply to funds made available for obligation by the Secretary starting in calendar year 1994. The reason advanced most often to support the deferral request was to give States time to adjust their schedules to a new clearance process designed to submit State plans to the Department on an earlier date. Commenters who were responsible for State administration of programs that are current-funded, such

as the Library Services and Construction Act, suggested that the change in submission date would be particularly burdensome for them without greater advance notice of the change in the regulations. The commenters also asked that the Secretary not apply, in 1994, the decision not to grant pre-award costs if a State is late in submitting its State plan.

In addition to asking for the deferrals, the commenters raised many questions that had to be answered before the regulations could become effective. The Secretary decided to defer both application of the proposed rule and the decision not to grant pre-award costs so that States would have additional time to adjust their State plan development processes to the timelines in the proposed regulations. Thus, the Secretary published a notice in the Federal Register on May 26, 1994 (59 FR 27404) indicating his decision to defer application of the actions proposed in the NPRM until the submission of State plans in the spring and summer of 1995. After considering the comments, the Secretary has decided to apply this final rule to applications submitted in the spring and summer of 1996.

The NPRM for these regulations discussed the basis for these regulations, the history of how the Department treated late State plans in past years, the effect of the Treasury regulations implementing the Act on the Department's practices, and the Department's proposed regulations.

### Analysis of Comments and Changes

An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. These regulations are designed to cover the full spectrum of the Department's Stateadministered programs. Thus, this preamble uses examples from many programs to illustrate the applicability of the final regulations. If you have questions about the application of these regulations to a specific program of the Department, contact the program office responsible for the program.

Technical changes to the regulations have been made to improve their quality. These changes, which do not affect substance, are not discussed in this preamble.

### General Comments on Interest Liability

*Comment:* Several commenters expressed concern over the proposed regulatory changes that would limit interest liability to States. Some States concurred with the regulations that would require States to submit a timely State plan and the Department of