

DEPARTMENT OF EDUCATION

34 CFR Parts 400, 401, 402, 403, 406, 410, 411, 412, 413, 415, 421, 425, 426, 427, 428, 429, 460, 461, 464, 472, 477, 489, 490, and 491

Regulatory Reinvention for Vocational and Adult Education Programs

AGENCY: Department of Education.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Secretary is giving the public early notice of regulatory actions the Secretary intends to take regarding the vocational and adult education programs. This notice solicits public input to help guide the Department in revising and simplifying regulations and reducing regulatory burden.

DATES: Comments will be most useful if submitted by November 15, 1996.

ADDRESS: Patricia W. McNeil, Assistant Secretary for Vocational and Adult Education, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 4090, Switzer Building), Washington, D.C. 20202-7100.

FOR FURTHER INFORMATION CONTACT: Jon Weintraub, telephone (202) 205-5602. 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 except Federal holidays. Internet: jon_weintraub@ed.gov

SUPPLEMENTARY INFORMATION:

Background

The President, on March 4, 1995, announced a Regulatory Reinvention Initiative to reform the Federal regulatory system. The Initiative requires all Federal agencies to review their regulations page by page in an effort to eliminate obsolete regulations, improve or reinvent regulations, revise regulations to reward results rather than process, and streamline regulations to achieve agency goals in the most efficient and least intrusive way possible. Since then, the Department has been thoroughly reviewing all of its regulations pursuant to the President's instructions.

As directed by the President, in June of 1995 each Federal agency submitted a plan to the Director of the Office of Management and Budget describing the actions it planned to take to eliminate or improve existing regulations. The Secretary committed to the President to eliminate or reinvent 1,984 pages of regulations, representing 93 percent of

the Department's regulations. As of August 31, 1996, the Department had eliminated or reinvented 1,827 pages (approximately 92%) of the regulations the Department is committed to changing. These numbers include proposed significant statutory changes that, if enacted, would lead to immediate regulatory elimination or reinvention.

Regulatory review and improvement are occurring Departmentwide. The Department already instituted a number of reforms that have led to fewer regulations and better decisions about when to regulate. For example, the Department's Office of Vocational and Adult Education identified regulations that were no longer necessary for 20 programs, eliminating over 80 pages in the Code of Federal Regulations in May 1995 (see 60 FR 27223, May 23, 1995). Efforts in other offices have resulted in elimination of paperwork burden, increased flexibility, and fewer regulatory requirements.

Reinvention of Vocational and Adult Education Programs

Comprehensive legislative reform proposals that would have significantly changed the existing vocational and adult education programs were not enacted by the 104th Congress. Because these proposals were not enacted, the Department plans to move forward on its normal cycle for reviewing the existing regulations governing these programs.

General Questions

In an initial review of the remaining regulations governing the adult and vocational education programs, the Secretary has identified four broad categories of regulatory provisions:

1. Regulations that merely restate statutory language.
2. Obsolete regulations, i.e., those that govern unfunded programs or contain provisions that no longer have any meaning or effect.
3. Regulations that both restate statutory language and interpret the statute.
4. Regulations that impose requirements not explicitly required by statute. The Secretary plans to eliminate regulations that fall into the first two categories unless the public gives the Secretary reasons to retain those types of regulations. The Secretary would like input from the public in deciding how to treat the regulations in the third and fourth categories. For regulations in the third and fourth categories that are determined, at the conclusion of the review process, to be necessary for effective program administration, the

Secretary would maintain, but review and improve them. Examples of all these types of regulations and specific questions follow in the sections describing the vocational and adult education programs.

In addition to the specific questions that follow, the Secretary requests comments on the following general questions:

- Are there reasons why the Department should not eliminate regulations that simply restate the law? If the Department eliminates these provisions, would it be helpful to explain statutory requirements and information currently codified in regulations in a guidebook or other resource?
- Would the changes proposed in this notice have any effects the Department may not have anticipated?
- Would the actions described in this advance notice provide useful regulatory relief?
- Are there other ways the Secretary could reduce costs and burdens associated with these regulations?

Vocational Education Programs

The Carl D. Perkins Vocational and Applied Technology Education Act, Public Law 101-392, (Perkins Act) authorizes the Department to fund vocational programs offered in secondary and postsecondary schools. Under the State Vocational and Applied Technology Education Program, the Department makes formula grants to States and Outlying Areas to expand and improve their programs of vocational education and provide equal access in vocational education to members of special populations, such as individuals with disabilities or economically disadvantaged students. In addition, the national programs authorized by the Perkins Act support research, demonstration, development, and dissemination activities, with special emphasis on the integration of academic and vocational education, and development of business and education standards designed to improve vocational education across the country. Emphasis is also given to improving access of populations, such as American Indians and Native Hawaiians, to quality vocational education programs.

The vocational education programs governed by regulations in Title 34 of the Code of Federal Regulations (CFR) are:

- Indian Vocational Education Program (Part 401)
- Native Hawaiian Vocational Education Program (Part 402)

- State Vocational and Applied Technology Education Program (Part 403)
- State-Administered Tech-Prep Education Program (Part 406)
- Tribally Controlled Postsecondary Vocational Institutions Program (Part 410)
- Vocational Education Research Program (Part 411)
- National Network for Curriculum Coordination in Vocational and Technical Education (Part 412)
- National Center or Centers for Research in Vocational Education (Part 413)
- Demonstration Centers for the Training of Dislocated Workers Program (Part 415)
- Business and Education Standards Program (Part 421)
- Demonstration Projects for the Integration of Vocational and Academic Learning Program (Part 425)
- Cooperative Demonstration Program (Part 426)
- Bilingual Vocational Training Program (Part 427)
- Bilingual Vocational Instructor Training Program (Part 428)
- Bilingual Vocational Materials, Methods, and Techniques Program (Part 429)

In addition to reviewing regulations governing specific vocational education programs, the Secretary is reviewing and may revise the regulations in 34 CFR Part 400, Vocational and Applied Technology Education Programs—General Provisions, which apply to all of the vocational education programs.

Section 563 of the Improving America's Schools Act, however, restricts the Department from changing any regulations regarding special populations and local evaluations until the Perkins Act is reauthorized. Therefore, those regulations are not included in this effort to review and improve the regulations governing the vocational education programs.

Examples of Vocational Education Regulations to Eliminate

The Secretary plans to eliminate the regulations described in this section because they repeat statutory language. Examples include § 403.61, which restates section 516(c) of the Perkins Act, and § 403.62, which restates sections 516(b) and (d) of the Perkins Act, in the State Vocational and Applied Technology Education Program. These sections describe permissible project services and activities under the basic grant and the applicable administrative provisions. Another example of a regulatory provision that the Secretary intends to eliminate is § 403.70, which

restates section 201 of the Act regarding how a State must use funds to conduct programs, projects, services, and activities under the State Programs and State Leadership Activities. An example of a regulatory provision in the State-Administered Tech-Prep Education Program that restates statutory language is § 406.3. This provision repeats the requirements in section 344 of the Perkins Act, regarding the projects that a State board assists and how funds must be spent. All of these are examples of the types of regulations that the Secretary plans to eliminate.

In addition, there are a number of regulatory provisions that merely restate statutory language, but that consolidate related requirements from many sections of the Perkins Act in one regulatory provision for convenience and clarity. For example, § 403.32 consolidates requirements related to the State plan for vocational education that are imposed by 15 provisions of the Perkins Act. The Secretary would like input from the public on how to approach regulations, such as § 403.32, that both restate statutory language and consolidate related requirements. Are there ways that are as good or better than regulations for providing the same consolidation and clarification that would allow the Department to shorten the regulations and make clear which requirements are statutory? Would it be useful to retain these types of regulatory provisions?

Moreover, the Department plans to eliminate regulations that address unfunded programs. For example, the Department would eliminate Subpart F (§ 403.130–§ 403.174) of the regulations governing the State Vocational and Applied Technology Education Program (34 CFR Part 403). Subpart F governs the special programs in Title III of the Perkins Act which were last funded in fiscal year 1994. Other unfunded programs for which the Secretary intends to eliminate regulations are the Bilingual Vocational Training Program (34 CFR Part 427) and Bilingual Vocational Instructor Training Program (34 CFR Part 428). The Secretary does not expect to have additional funding for any of these programs prior to the enactment of new legislation that would authorize vocational education programs.

The Secretary is considering removing sections governing requirements or procedures provided for in the Education Department General Administrative Regulations (EDGAR). For example, § 411.23, which applies to the Vocational Education Research Program, establishes procedures for evaluating unsolicited applications. The

Secretary is considering removing § 411.23 and following the procedures for evaluating unsolicited applications in EDGAR. Using the EDGAR procedures would create more uniformity for applicants, particularly for those who apply for a number of Department grants.

Some regulations provide examples that do not impose requirements on grantees or applicants and, thus, do not need to exist in regulations. For instance, in the Business and Education Standards Program, § 421.2(d) provides examples of comparable national organizations. Also, Appendix B to Part 403 (State Vocational and Applied Technology Education Program) contains examples of methods by which a local educational agency can demonstrate its compliance with certain comparability requirements. Are examples in the regulations such as these useful? Or would streamlined regulations, with examples and other information on implementation provided in other easily accessible formats, be more desirable?

Examples of Vocational Education Regulations to Review and Improve

Some regulations governing vocational education programs interpret statutory language or add requirements not explicitly required by statute. For example, in § 403.31(c), which relates to the State Vocational and Applied Technology Education Program, the Secretary implements the statutory phrase “appropriate and sufficient notice” as required by section 113(a)(2)(B) of the Perkins Act through a regulatory provision that requires notice “at least 30 days prior to the hearings.” The Secretary is inclined to delete these specific regulatory requirements that implement general statutory language and that do not affect significantly the operation of the program. The Secretary wants to give States greater flexibility to judge whether notice is appropriate and sufficient. Is the more specific requirement necessary to protect the public? Should the Secretary remove provisions such as this one?

Other regulations that interpret the statute or add requirements were thought to be needed to clarify statutory requirements that could have been implemented in a wide variety of ways and that were expected to affect significantly the operation of the program. The Secretary expects to review and improve these sections while maintaining appropriate requirements to facilitate program administration. Examples of these types of regulations are the following

provisions regarding the Vocational Education Basic Grant Program (34 CFR Part 403): § 403.118 which establishes criteria for approving an alternative method for determining how a State may distribute funds for the Postsecondary and Adult Vocational Education Program; § 403.184 which establishes procedures for seeking a waiver of the maintenance-of-effort requirement; and § 403.180(c)(3) which explains in detail the procedure for meeting the "hold-harmless" requirements in section 102(c) of the Perkins Act. In the State-Administered Tech-Prep Education Program (34 CFR Part 406), the Secretary would retain § 406.10(d), which interprets and clarifies the statutory requirements for applications, and other sections similar to § 406.10(d). How can the Secretary improve sections such as these? Should the Secretary make any changes to these regulations?

Adult Education Programs

Programs authorized by the Adult Education Act, Public Law 89-750, as amended, support and promote services that assist educationally disadvantaged adults in developing basic skills, including furthering literacy, achieving certification of high school equivalency, and learning English. Through the Adult Education State-Administered Basic Grant Program (34 CFR Part 461), the Department assists State efforts to provide these services to adults who lack a high school diploma or the basic skills to function effectively in the workplace and their daily lives. At the national level, the Department funds applied research, dissemination, evaluation, technical assistance, and other activities that show promise of contributing to the improvement and expansion of adult education. In addition to the Adult Education State-Administered Basic Grant Program, the adult education programs governed by regulations in Title 34 of the CFR are:

- State Literacy Resource Centers Program (Part 464)
- National Workplace Literacy Program (Part 472)
- State Program Analysis Assistance and Policy Studies Program (Part 477)
- Functional Literacy for State and Local Prisoners Program (Part 489)
- Life Skills for State and Local Prisoners Program (Part 490)
- Adult Education for the Homeless Program (Part 491)

In addition to reviewing regulations governing specific adult education programs, the Secretary is reviewing and may revise the regulations in 34 CFR Part 460, Adult Education—

General Provisions, which apply to all of the adult education programs.

Examples of Adult Education Regulations to Eliminate

The Secretary plans to eliminate the regulations described in this section because they either merely repeat statutory language or are obsolete.

Under the Adult Education State-Administered Basic Grant Program (34 CFR Part 461), § 461.2 merely repeats sections 321 and 331(a) of the Adult Education Act regarding which entities are eligible for an award; § 461.11 restates sections 342(a)(1)–(2) and (b) of the Adult Education Act, which specify what a State educational agency (SEA) must do in formulating a State plan; and § 461.40 repeats the statutory requirements in sections 323 and 331(c) of the Adult Education Act regarding administrative costs. Are there reasons to retain these regulations?

Also, under this program, § 461.3(b)(7) requires that, by July 25, 1993, each SEA develop and implement indicators of program quality. Because this deadline occurred more than three years ago, and because SEAs are required by the Adult Education Act to continue using indicators of program quality, the Secretary plans to eliminate this requirement.

Examples of Adult Education Regulations to Review and Improve

The Secretary would like input from the public on how to approach regulations that both restate statutory language and interpret the statute. Examples of regulations that the Secretary is considering changing follow in this section of the notice.

Section 461.10 of the Adult Education State-Administered Basic Grant Program describes the documents that a State must submit to receive a grant. Many of the requirements included in this provision are explicitly required by the statute; other explicit statutory requirements are recast in this regulatory provision as assurances that a State must provide in its application. This provision also requires that applicants assure that they will meet certain requirements not explicitly provided for in the statute. Are there reasons not to eliminate those portions of the regulation that merely repeat statutory language, including the assurances based on statutory requirements? How would it affect SEAs if the Department retained only those parts of the regulations that set forth requirements beyond those explicitly provided for in the statute?

Section 461.12 is another example of a regulatory provision that contains both

repetition of statutory language and additional requirements not explicitly contained in the statute. This section prescribes the required contents of a State plan and an interpretation of the statutory "direct and equitable" requirement, which the Department plans to retain. Is there any reason not to eliminate those portions of the regulation that duplicate the statute?

There are also sections of the regulations that interpret the statute or add requirements that are not explicitly required by statute and that were thought to be necessary to administer the program more effectively. Examples of these types of regulations include the following: § 460.4 which defines terms such as "adult basic education", "adult secondary education", and "State administrative costs"; § 461.41(c) which explains what constitutes the non-Federal share of expenditures under the State plan; and §§ 461.42–461.45 which provide maintenance of effort definitions and procedures, including provisions regarding obtaining a waiver of these requirements. What changes should the Secretary make to improve sections such as these?

Regulations Regarding Fees For Basic Adult Education

There are several regulations that impose requirements that are not explicitly required by the statute that the Secretary is reviewing and considering revising.

One example is § 461.10(b)(7), which requires an SEA to assure that adults enrolled in adult basic education and English as a second language (ESL) programs will not be charged tuition, fees, or be required to purchase any materials that are needed for participation in the program. The Adult Education Act does not specify any restrictions regarding charging tuition or fees to students in any adult education programs. The regulations reflect a longstanding Federal policy to make adult basic education and ESL programs available free of charge. Historically, the Department has regarded this type of regulation as necessary to provide access to education for the many adults who lack the funds to pay for a basic education.

The reason the Secretary has selected the prohibition on fees as an example of a regulation that will be reviewed is that some SEAs and local providers have asked the Secretary to reconsider the prohibition. Because these parties have suggested that some services might be reduced unless the prohibition is relaxed or eliminated from the regulations, the Secretary would particularly like input from the public

in deciding what changes, if any, should be made to this section. In considering whether to revise this section, the Secretary requests that commenters address the impact of their proposals on needy students.

Commenters should be aware that even if the prohibition were relaxed or eliminated, certain statutory and regulatory provisions would remain in place. For example, the statute would still afford a preference to programs that can recruit and serve educationally disadvantaged adults in areas in which these adults are highly concentrated; prohibit the supplanting of Federal funds by State and local funds; and require State maintenance of non-Federal effort. Section 76.534 of Title 34 of the CFR would also forbid States to count tuition and fees collected from students toward meeting matching, cost sharing, or maintenance of effort requirements.

In considering whether and how to revise the prohibition on charging fees for adult basic education and ESL programs, the Secretary is particularly interested in comments on one or more of the following questions:

- Have States investigated whether other non-Federal funds are available to pay for services that might be reduced?
- What fees or other costs would SEAs and local programs propose to charge students?

- Could and would States establish a policy to charge fees only to those adults who are able to pay?

- Would adults be denied access to educational opportunities if they could not pay the necessary fees?

- What effects would fees have on the relationship between programs funded under the Adult Education Act and those funded under other Federal Acts, such as the Job Training and Partnership Act?

- What effects would fees have on the relationship between programs funded under the Adult Education Act and the goals of recent welfare reform legislation—the Personal Responsibility and Work Opportunity Reconciliation Act of 1996?

- Will eliminating this prohibition reduce the number of economically and educationally disadvantaged adults participating in adult basic education programs?

- If eliminating this provision would create hardship for participants, should the Secretary take measures to lessen the impact? For example, the Secretary could establish a cap on the amount of fees that a State could charge, delay implementation of imposing fees, gradually permit the charging of fees, or link fees to the amount of a participant's income?

Invitation to Comment:

Interested persons are invited to submit comments on the Department's plans to revise the regulations governing the vocational and adult education programs. After considering the comments received in response to this advance notice, the Secretary intends to publish notices of proposed rulemaking with an opportunity for further public comment before eliminating or implementing any amendments to the regulations with one exception. For those amendments that the Secretary believes are non-controversial, such as the elimination of obsolete regulations, the Secretary intends to publish direct final rules, which would become effective unless the Department receives any negative public comment.

Comments will be available for public inspection, during and after the comment period, in Room 4090, Switzer Building, 330 C Street, S.W., Washington, D.C. between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Dated: October 10, 1996.

Patricia W. McNeil,

Assistant Secretary for Vocational and Adult Education.

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