

**Subpart B—Pre-Award Requirements**

**§ 74.10 Purpose.**

Sections 74.11 through 74.17 prescribes forms and instructions and other pre-award matters to be used in applying for awards.

(Authority: 20 U.S.C. 1221e-3, 3474; OMB Circular A-110)

**§ 74.11 Pre-award policies.**

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, the Secretary decides on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08) governs the use of grants, cooperative agreements, and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, substantial involvement is expected between ED and the recipient when carrying out the activity contemplated in the agreement. Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public notice and priority setting.* The Secretary notifies the public of intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

(Authority: 20 U.S.C. 1221e-3, 3474; OMB Circular A-110)

**§ 74.12 Forms for applying for Federal assistance.**

(a) The Secretary complies with the applicable report clearance requirements of 5 CFR Part 1320—Controlling Paperwork Burdens on the Public—with regard to all forms used by ED in place of or as a supplement to the Standard Form 424 (SF-424) series.

(b) Applicants shall use the SF-424 series or those forms and instructions prescribed by the Secretary.

(c) For Federal programs covered by E.O. 12372—Intergovernmental Review of Federal Programs (implemented by the Secretary in 34 CFR Part 79—Intergovernmental Review of Department of Education Programs and Activities)—the applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Secretary or the *Catalog of Federal Domestic Assistance* (available from the Superintendent of Documents, Government Printing Office). The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) If ED does not use the SF-424 form, the Secretary may indicate whether the application is subject to review by the State under E.O. 12372.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 20 U.S.C. 1221e-3, 3474; OMB Circular A-110)

[59 FR 34724, July 6, 1994, as amended at 60 FR 6660, Feb. 3, 1995]

**§ 74.13 Debarment and suspension.**

The Secretary and recipients shall comply with the nonprocurement debarment and suspension common rule (implemented by the Secretary in 34 CFR part 85). This common rule restricts subawards and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

(Authority: 20 U.S.C. 1221e-3, 3474; OMB Circular A-110)

**§ 74.14 Special award conditions.**

(a) The Secretary may impose special award conditions, if an applicant or recipient—

- (1) Has a history of poor performance;
- (2) Is not financially stable;
- (3) Has a management system that does not meet the standards prescribed in this part;
- (4) Has not conformed to the terms and conditions of a previous award; or
- (5) Is not otherwise responsible.