

## LEGAL AND REGULATORY REQUIREMENTS

### *Consolidated Grant for the Insular Areas - Statutory Authority*

#### **Public Law 95-134**

*An Act to authorize certain appropriations for the territories of the United States, to amend certain Acts relating thereto, and for other purposes. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### **TITLE V**

SEC. 501. In order to minimize the burden caused by existing application and reporting procedures for certain grant-in-aid programs available to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Government of the Northern Mariana Islands (hereafter referred to as "Insular Areas") it is hereby declared to be the policy of the Congress that:

(a) Notwithstanding any provision of law to the contrary, any department or agency of the Government of the United States which administers any Act of Congress which specifically provides for making grants to any Insular Area under which payments received may be used by such Insular Area only for certain specified purposes (other than direct payments to classes of individuals) may, acting through appropriate administrative authorities of such department or agency, consolidate any or all grants made to such area for any fiscal year or years.

(b) Any consolidated grant for any Insular Area shall not be less than the sum of all grants which such area would otherwise be entitled to receive for such year.

(c) The funds received under a consolidated grant shall be expended in furtherance of the programs and purposes authorized for any of the grants which are being consolidated, which are authorized under any of the Acts administered by the department or agency making the grant, and which would be applicable to grants for such programs and purposes in the absence of the consolidation, but the Insular Areas shall determine the proportion of the funds granted which shall be allocated to such programs and purposes.

(d) Each department or agency making grants-in-aid shall, by regulations published in the Federal Register, provide the method by which any Insular Area may submit (i) a single application for a consolidated grant for any fiscal year period, but not more than one such application for a consolidated grant shall be required by any department or agency unless notice of such requirement is transmitted to the appropriate committees of the United States Congress together with a complete explanation of the necessity for requiring such additional applications and (ii) a single report to such department or agency with respect to each such consolidated grant: Provided, That nothing in this paragraph shall preclude such department or agency from providing adequate procedures for accounting, auditing, evaluating, and reviewing any programs or activities receiving benefits from any consolidated grant. The administering authority of any department or agency, in its discretion, may (i) waive any requirement for matching funds otherwise required by law to be provided by the Insular Area involved and (ii) waive the requirement that any Insular Area submit an application or report in writing with respect to any Consolidated Grant.

(48 U.S.C. 1469a) Enacted Oct. 15, 1977. P.L. 95-134. Sec. 501. 91 Stat. 1164. 1165

## ***Consolidated Grant Application Regulations***

### **EDGAR Sections 76.125 – 76.137**

**Authority:** Title V, Pub. L. 95–134, 91 Stat. 1159 (48 U.S.C. 1469a).

#### **§ 76.125: What is the purpose of these regulations?**

(a) Sections 76.125 through 76.137 of this part contain requirements for the submission of an application by an Insular Area for the consolidation of two or more grants under the programs described in paragraph (c) of this section.

(b) For the purpose of §§76.125–76.137 of this part the term *Insular Area* means the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands.

(c) The Secretary may make an annual consolidated grant to assist an Insular Area in carrying out one or more State-administered formula grant programs of the Department.

(Authority: 20 U.S.C. 1221e–3 and 3474)

[47 FR 17421, Apr. 22, 1982, as amended at 54 FR 21776, May 19, 1989; 57 FR 30341, July 8, 1992]

#### **§ 76.126: What regulations apply to the consolidated grant applications for Insular Areas?**

The following regulations apply to those programs included in a consolidated grant:

(a) The regulations in §§76.125 through 76.137; and

(b) The regulations that apply to each specific program included in a consolidated grant for which funds are used.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

#### **§ 76.127: What is the purpose of a consolidated grant?**

An Insular Area may apply for a consolidated grant for two or more of the programs listed in §76.125(c).

This procedure is intended to:

(a) Simplify the application and reporting procedures that would otherwise apply for each of the programs included in the consolidated grant; and

(b) Provide the Insular Area with flexibility in allocating the funds under the consolidated grant to achieve any of the purposes to be served by the programs that are consolidated.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

### **§ 76.128: What is a consolidated grant?**

A consolidated grant is a grant to an Insular Area for any two or more of the programs listed in §76.125(c). The amount of the consolidated grant is the sum of the allocations the Insular Area receives under each of the programs included in the consolidated grant if there had been no consolidation.

*Example:* Assume the Virgin Islands applies for a consolidated grant that includes programs under the Adult Education Act, Vocational Education Act, and Chapter 1 of the Education Consolidation and Improvement Act. If the Virgin Islands' allocation under the formula for each of these three programs is \$150,000; the total consolidated grant to the Virgin Islands would be \$450,000.

(Authority: 48 U.S.C. 1469a)  
[47 FR 17421, Apr. 22, 1982]

### **§ 76.129: How does a consolidated grant work?**

(a) An Insular Area shall use the funds it receives under a consolidated grant to carry out, in its jurisdiction, one or more of the programs included in the grant.

*Example:* Assume that Guam applies for a consolidated grant under the Vocational Education Act, the Handicapped Preschool and School Programs-Incentive Grants, and the Adult Education Act and that the sum of the allocations under these programs is \$700,000. Guam may choose to allocate this \$700,000 among all of the programs authorized under the three programs. Alternatively, it may choose to allocate the entire \$700,000 to one or two of the programs; for example, the Adult Education Act Program.

(b) An Insular Area shall comply with the statutory and regulatory requirements that apply to each program under which funds from the consolidated grant are expended.

*Example:* Assume that American Samoa uses part of the funds under a consolidated grant for the State program under the Adult Education Act. American Samoa need not submit to the Secretary a State plan that requires policies and procedures to assure all students equal access to adult education programs. However, in carrying out the program, American Samoa must meet and be able to demonstrate compliance with this equal access requirement.

(Authority: 48 U.S.C. 1469a)  
[47 FR 17421, Apr. 22, 1982]

### **§ 76.130: How are consolidated grants made?**

(a) The Secretary annually makes a single consolidated grant to each Insular Area that meets the requirements of §§76.125 through 76.137 and each program under which the grant funds are to be used and administered.

(b) The Secretary may decide that one or more programs cannot be included in the consolidated grant if the Secretary determines that the Insular Area failed to meet the program objectives stated in its plan for the previous fiscal year in which it carried out the programs.

(c) Under a consolidated grant, an Insular Area may use a single advisory council for any or all of the programs that require an advisory council.

(d) Although Pub. L. 95–134 authorizes the Secretary to consolidate grant funds that the Department awards to an Insular Area, it does not confer eligibility for any grant funds. The eligibility of a particular Insular Area to receive grant funds under a Federal education program is determined under the statute and regulations for that program.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

### **§ 76.131: How does an Insular Area apply for a consolidated grant?**

(a) An Insular Area that desires to apply for a grant consolidating two or more programs listed in §76.125 (c) shall submit to the Secretary an application that:

(1) Contains the assurances in §76.132; and (2) Meets the application requirements in paragraph (c) of this section.

(b) The submission of an application that contains these requirements and assurances takes the place of a separate State plan or other similar document required by this part or by the authorizing statutes and regulations for programs included in the consolidated grant.

(c) An Insular Area shall include in its consolidated grant application a program plan that:

(1) Contains a list of the programs in §76.125(c) to be included in the consolidated grant;

(2) Describes the program or programs in §76.125(c) under which the consolidated grant funds will be used and administered;

(3) Describes the goals, objectives, activities, and the means of evaluating program outcomes for the programs for which the Insular Area will use the funds received under the consolidated grant during the fiscal year for which it submits the application, including needs of the population that will be met by the consolidation of funds; and

(4) Contains a budget that includes a description of the allocation of funds—including any anticipated carryover funds of the program in the consolidated grant from the preceding year—among the programs to be included in the consolidated grant.

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

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982, as amended at 53 FR 49143, Dec. 6, 1988]

### **§ 76.132: What assurances must be in a consolidated grant application?**

(a) An Insular Area shall include in its consolidated grant application assurances to the Secretary that it will:

(1) Follow policies and use administrative practices that will insure that non-Federal funds will not be supplanted by Federal funds made available under the authority of the programs in the consolidated grant;

(2) Comply with the requirements (except those relating to the submission of State plans or similar documents) in the authorizing statutes and implementing regulations for the programs under which funds are to be used and administered, (except requirements for matching funds);

(3) Provide for proper and efficient administration of funds in accordance with the authorizing statutes and implementing regulations for those programs under which funds are to be used and administered;

(4) Provide for fiscal control and fund accounting procedures to assure proper disbursement of, and accounting for, Federal funds received under the consolidated grant;

(5) Submit an annual report to the Secretary containing information covering the program or programs for which the grant is used and administered, including the financial and program performance information required under 2 CFR 200.327 and 200.328.

(6) Provide that funds received under the consolidated grant will be under control of, and that title to property acquired with these funds will be in, a public agency, institution, or organization. The public agency shall administer these funds and property;

(7) Keep records, including a copy of the State Plan or application document under which funds are to be spent, which show how the funds received under the consolidated grant have been spent.

(8) Adopt and use methods of monitoring and providing technical assistance to any agencies, organizations, or institutions that carry out the programs under the consolidated grant and enforce any obligations imposed on them under the applicable statutes and regulations.

(9) Evaluate the effectiveness of these programs in meeting the purposes and objectives in the authorizing statutes under which program funds are used and administered;

(10) Conduct evaluations of these programs at intervals and in accordance with procedures the Secretary may prescribe; and

(11) Provide appropriate opportunities for participation by local agencies, representatives of the groups affected by the programs, and other interested institutions, organizations, and individuals in planning and operating the programs.

(b) These assurances remain in effect for the duration of the programs they cover.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982, as amended at 64 FR 50392, Sept. 16, 1999]

### **§ 76.133: What is the reallocation authority?**

(a) After an Insular Area receives a consolidated grant, it may reallocate the funds in a manner different from the allocation described in its consolidated grant application. However, the funds cannot be used for purposes that are not authorized under the programs in the consolidated grant under which funds are to be used and administered.

(b) If an Insular Area decides to reallocate the funds it receives under a consolidated grant, it shall notify the Secretary by amending its original application to include an update of the information required under §76.131.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

**§ 76.134: What is the relationship between consolidated and non-consolidated grants?**

(a) An Insular Area may request that any number of programs in §76.125(c) be included in its consolidated grant and may apply separately for assistance under any other programs listed in §76.125(c) for which it is eligible.

(b) Those programs that an Insular Area decides to exclude from consolidation—for which it must submit separate plans or applications—are implemented in accordance with the applicable program statutes and regulations. The excluded programs are not subject to the provisions for allocation of funds among programs in a consolidated grant.

(Authority: 48 U.S.C. 1469a)  
[47 FR 17421, Apr. 22, 1982]

**§ 76.135: Are there any requirements for matching funds?**

The Secretary waives all requirements for matching funds for those programs that are consolidated by an Insular Area in a consolidated grant application.

(Authority: 48 U.S.C. 1469a)  
[47 FR 17421, Apr. 22, 1982]

**§ 76.136: Under what programs may consolidated grant funds be spent?**

Insular Areas may only use and administer funds under programs described in §76.125(c) during a fiscal year for which the Insular Area is entitled to receive funds under an appropriation for that program.

(Authority: 48 U.S.C. 1469a)  
[47 FR 17421, Apr. 22, 1982, as amended at 57 FR 30341, July 8, 1992]

**§ 76.137: How may carryover funds be used under the consolidated grant application?**

Any funds under any applicable program which are available for obligation and expenditure in the year succeeding the fiscal year for which they are appropriated must be obligated and expended in accordance with the consolidated grant application submitted by the Insular Area for that program for the succeeding fiscal year.

(Authority: 20 U.S.C. 1225(b); 48 U.S.C. 1469a)

***ESEA Uniform Provisions for Equitable Participation  
Section 8501 of the Elementary and Secondary Education Act, as Amended --  
Participation by Private School Children and Teachers***

(a) PRIVATE SCHOOL PARTICIPATION-

(1) IN GENERAL. - Except as otherwise provided in this Act, to the extent consistent with the number of eligible children in areas served by a State educational agency, local educational agency, educational service agency, consortium of those agencies, or another entity receiving financial assistance under a program specified in subsection (b), who are enrolled in private elementary schools and secondary schools in areas served by such agency, consortium, or entity, the agency, consortium, or entity shall, after timely and meaningful consultation with appropriate private school officials provide to those children and their teachers or other educational personnel, on an equitable basis, special educational services or other benefits that address their needs under the program.

(2) SECULAR, NEUTRAL, AND NONIDEOLOGICAL SERVICES OR BENEFITS.- Educational services or other benefits, including materials and equipment, provided under this section, shall be secular, neutral, and nonideological.

(3) SPECIAL RULE.-

(A) IN GENERAL.- Educational services and other benefits provided under this section for private school children, teachers, and other educational personnel shall be equitable in comparison to services and other benefits for public school children, teachers, and other educational personnel participating in the program and shall be provided in a timely manner.

(B) OMBUDSMAN.- To help ensure equitable services are provided to private school children, teachers, and other educational personnel under this section, the State educational agency involved shall direct the ombudsman designated by the agency under section 1117 to monitor and enforce the requirements of this section

(4) EXPENDITURES-

(A) IN GENERAL.- Expenditures for educational services and other benefits provided under this section for eligible private school children, their teachers, and other educational personnel serving those children shall be equal, taking into account the number and educational needs of the children to be served, to the expenditures for participating public school children.

(B) OBLIGATION OF FUNDS.- Funds allocated to a local educational agency for educational services and other benefits to eligible private school children shall be obligated in the fiscal year for which the funds are received by the agency.

(C) NOTICE OF ALLOCATION.- Each State educational agency shall provide notice in a timely manner to the appropriate private school officials in the State of the allocation of funds for educational services and other benefits under this subpart that the local educational agencies have determined are available for eligible private school children.

(5) PROVISION OF SERVICES.- An agency, consortium, or entity described in subsection (a)(1) of this section may provide those services directly or through contracts with public and private agencies, organizations, and institutions.

(b) APPLICABILITY.-

(1) IN GENERAL.- This section applies to programs under —

- (A) part C of title I;
- (B) part A of title II;
- (C) part A of title III;
- (D) part A of title IV; and
- (E) part B of title IV.

(2) DEFINITION.- For the purpose of this section, the term eligible children' means children eligible for services under a program described in paragraph (1).

(c) CONSULTATION.-

(1) IN GENERAL.- To ensure timely and meaningful consultation, a State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity shall consult with appropriate private school officials. Such agency and private school officials shall both have the goal of reaching agreement on how to provide equitable and effective programs for eligible private school children, on issues such as --

- (A) how the children's needs will be identified;
- (B) what services will be offered;
- (C) how, where, and by whom the services will be provided;
- (D) how the services will be assessed and how the results of the assessment will be used to improve those services;
- (E) the size and scope of the equitable services to be provided to the eligible private school children, teachers, and other educational personnel the amount of funds available for those services, and how that amount is determined;
- (F) how and when the agency, consortium, or entity will make decisions about the delivery of services, including a thorough consideration and analysis of the views of the private school officials on the provision of services through potential third-party providers; and
- (G) whether the agency, consortium, or entity shall provide services directly or through a separate government agency, consortium, or entity or through a third-party contractor; and

(H) whether to provide equitable services to eligible private school children-

(i) by creating a pool or pools of funds with all of the funds allocated under subsection (a)(4)(C) based on all the children from low-income families in a participating school attendance area who attend private schools; or

(ii) in the agency's participating school attendance area who attend private schools with the proportion of funds allocated under subsection (a)(4)(C) based on the number of children from low-income families who attend private schools.

(2) **DISAGREEMENT.**- If the agency, consortium, or entity disagrees with the views of the private school officials on the provision of services through a contract, the agency, consortium, or entity shall provide to the private school officials a written explanation of the reasons why the local educational agency has chosen not to use a contractor.

(3) **TIMING.**- The consultation required by paragraph (1) shall occur before the agency, consortium, or entity makes any decision that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate in programs under this Act, and shall continue throughout the implementation and assessment of activities under this section.

(4) **DISCUSSION REQUIRED.**- The consultation required by paragraph (1) shall include a discussion of service delivery mechanisms that the agency, consortium, or entity could use to provide equitable services to eligible private school children, teachers, administrators, and other staff.

(5) **DOCUMENTATION.**- Each local educational agency shall maintain in the agency's records, and provide to the State educational agency involved, a written affirmation signed by officials of each participating private school that the meaningful consultation required by this section has occurred. The written affirmation shall provide the option for private school officials to indicate such officials' belief that timely and meaningful consultation has not occurred or that the program design is not equitable with respect to eligible private school children. If such officials do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation that such consultation has, or attempts at such consultation have, taken place to the State educational agency.

(6) **COMPLIANCE.**-

(A) **IN GENERAL.**- If the consultation required under this section is with a local educational service agency, a private school official shall have the right to file a complaint with the State educational agency that the consultation required under this section was not meaningful and timely, did not give due consideration to the views of the private school official,

or did not make a decision that treats the private school or its students equitable as required by this section.

(B) PROCEDURE.- If the private school official wishes to file a complaint, the private school official shall provide the basis of the noncompliance and all parties shall provide the appropriate documentation to the appropriate officials.

(C) SERVICES.- A State educational agency shall provide services under this section directly through contracts with public and private agencies, organizations, and institutions, if the appropriate private school officials have-

(i) requested that the State educational agency provide such services directly; and

(ii) demonstrated that the local educational agency involved has not met the requirements of this section in accordance with the procedures for making such a request, as prescribed by the State educational agency.

(d) PUBLIC CONTROL OF FUNDS.-

(1) IN GENERAL.- The control of funds used to provide services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this Act, and a public agency shall administer the funds and property.

(2) PROVISION OF SERVICES.-

(A) IN GENERAL- The provision of services under this section shall be provided —

(i) by employees of a public agency; or

(ii) through contract by the public agency with an individual, association, agency, organization, or other entity.

(B) INDEPENDENCE; PUBLIC AGENCY.- In the provision of those services, the employee, person, association, agency, organization, or other entity shall be independent of the private school and of any religious organization, and the employment or contract shall be under the control and supervision of the public agency.

(C) COMMINGLING OF FUNDS PROHIBITED.- Funds used to provide services under this section shall not be commingled with non-Federal funds.