

tion of which causes such severe communication and other developmental and educational problems that he cannot properly be accommodated, in special education programs either for the hearing handicapped child or for the visually handicapped child. In recognition of the inherent and special difficulties attendant to the making of the determination of whether a child is deaf and blind within the meaning of the preceding sentence, that determination shall be made by the grantee or contractor on the basis of an extended period of evaluation, conducted in the center or elsewhere by a team consisting of specialists, at least in the fields of hearing, vision, and education of the handicapped, who shall make appropriate recommendations to the grantee or contractor as to whether a child is deaf and blind within the meaning of this definition. (20 U.S.C. 877b(h)).

§ 125.8 Further information.

Additional information concerning the program described in this part is provided in guidelines which may be obtained from the Project Centers Branch, Bureau of Education for the Handicapped, U.S. Office of Education, 400 Maryland Avenue SW., Washington, D.C. 20202.

PART 130—FINANCIAL ASSISTANCE FOR PUBLIC LIBRARY SERVICES, PUBLIC LIBRARY CONSTRUCTION, INTERLIBRARY COOPERATION, AND SPECIALIZED STATE LIBRARY SERVICES

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130.93 Termination of program.

AUTHORITY: The provisions of this Part 130 issued under sec. 8, 70 Stat. 295, as amended and renumbered sec. 302, 78 Stat. 14; as further amended and renumbered sec. 502, 80 Stat. 317; 20 U.S.C. 357.

SOURCE: The provisions of this Part 130 appear at 32 F.R. 2946, Feb. 16, 1967, unless otherwise noted.

Subpart A—Definitions

§ 130.1 Definitions.

As used in this part:

(a) "Act" means the Library Services Act, Public Law 84-597, as amended by Public Law 84-896; Public Law 86-679; Public Law 87-688; Public Law 88-269 (as renamed, the Library Services and Construction Act); and Public Law 89-511 (20 U.S.C. Chap. 16).

(b) "Commissioner" means the U.S. Commissioner of Education.

(c) "Department" means the U.S. Department of Health, Education, and Welfare.

(d) "Geographic area(s)," for the purpose of subpart C, means all or part of one or more political subdivisions of the State in which the public library services will be provided under the State plan.

(e) "Interlibrary cooperation," for the purpose of subpart E, means the establishment and operation of systems or networks of libraries, including State, school, college, and university, public, and special libraries, and special information centers working together to achieve maximum effective use of funds in providing services to all library users. Such systems may be designed to serve a community, metropolitan area, region within a State, or may serve a statewide or multistate area.

(f) "Library services to the physically handicapped," for the purpose of subpart G, means the provision of library services through public or other non-profit libraries, agencies, or organizations, to physically handicapped persons, including the blind and visually handicapped, certified by competent authority as unable to read or to use conventional printed material as a result of physical limitations.

(g) "Project" or "construction project," for the purpose of subpart D, means a construction project which is eligible for a grant under an approved State plan and which will result in a usable public library facility.

(h) "Public library" means a library that serves free all residents of a community, district, or region without discrimination and receives its financial support in whole or in part from public funds. The term does not include libraries such as law, medical, school, and academic libraries, which are organized to serve a special clientele or purpose.

(i) [Reserved].

(j) "Public library services," for the purpose of subpart C, means library services which are provided by or on behalf of a public library. The term does not include those library services that are properly the responsibility of the schools.

(k) "State" means a State of the Union, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust

Territory of the Pacific Islands, or the Virgin Islands.

(l) "State institutional library services," for the purpose of subpart F, means the providing of books and other library materials, and of library services to (1) inmates, patients, or residents of penal institutions, reformatories, residential training schools, orphanages, or general or special institutions or hospitals operated or substantially supported by the State, and (2) students in residential schools for the handicapped (including mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired persons who by reason thereof require special education) operated or substantially supported by the State.

(m) "State agency" means the "State library administrative agency" (Section 504(b) of the Act), the State library agency, or any other official State agency charged by State law with the extension and development of public library services, the construction of public libraries, the promotion of interlibrary cooperation, or the provision of specialized State library services.

[32 F.R. 2946, Feb. 16, 1967, as amended at 33 F.R. 8668, June 13, 1968]

Subpart B—State Plans

§ 130.2 State plan purposes.

The purposes of the State plan are to set forth the manner and procedures under which the State will carry out the State program(s) to promote the further extension of free public library services to areas without such services or with inadequate services, to provide for the construction of public libraries, to promote interlibrary cooperation, to assist the States in providing certain specialized State library services, and to provide the basis on which Federal payments are made. Therefore, in order to participate in one or more of the programs described in this part, a State must submit to the Commissioner a State plan which meets the requirements of this part applicable to such programs.

§ 130.3 State plan provisions.

(a) *State agency.* The State plan shall give the official name of the agency which will be the sole agency for administering or supervising the administration of the plan and shall indicate the pro-

grams under the Act to which the plan relates. The State plan shall state the title of the official who is authorized to submit the plan and amendments thereto. The State plan shall provide that the State agency shall be responsible for the administration or for the supervision of the administration of all activities to be carried out under the State plan and; if the latter, shall set forth the manner in which the State agency will exercise and make effective such supervision. The State plan shall also set forth the manner in which appropriate coordination will be undertaken at both State and local levels to assure that the best possible library services will be available.

(b) *Free library services.* The State plan shall provide that any library services furnished under the plan shall be made available free of charge to individual users under regulations prescribed by the State agency.

(c) *Organization.* The State plan shall describe, by chart or otherwise, the organization of the State agency, its unit functions, and the lines of authority between the State agency and entities participating in each of the programs covered by the plan in order to assure coordination of these and all other library programs within the State.

(d) *Personnel.* (1) The State plan shall contain a description of the minimum qualifications of all professional library personnel of the State agency engaged in activities for which funds are used under the State plan. Such minimum qualifications shall contain standards of education and experience and other requirements in relation to the duties to be performed. If a merit system exists in the State, the plan shall describe the requirements of such system for such personnel.

(2) If the State agency makes provision for salaries, tuition, or other payments for personnel of the State agency and/or personnel participating, or to participate, under the plan in specialized educational or training programs, the State plan shall state the terms and conditions the State agency will impose to assure that the result of such programs and payments therefor will contribute to the furtherance of the objective for which funds are made available. (See § 130.86(a) (1) and (2).) If there be failure by such personnel to comply with such terms and conditions, absent good cause therefor as reasonably determined by the

State agency, the Federal Government shall be credited with its proportionate share of such payments.

(e) *Custody of funds.* The State plan shall provide for the receipt by the State Treasurer (or, if there be no State Treasurer, the officer identified by title exercising similar functions for the State) and for the proper safeguarding of all Federal funds granted to the State under the Act. The State plan shall provide that all Federal funds so received shall be expended solely for the purposes for which granted and that any such funds not so expended, including funds lost or diverted to other purposes, shall be paid to the U.S. Office of Education.

(f) *Disbursement of funds.* The State plan shall state whether funds are paid to participating agencies under the plan on the basis of either (1) a reimbursement for actual expenditures already made, (2) an advance prior to the expenditure of funds, or (3) both.

(g) *State fiscal control and accounting procedures.* The State plan shall describe the fiscal control and fund accounting procedures which are in accordance with applicable State and local laws, rules, and regulations and which will assure proper disbursement of and accounting for Federal funds paid to the State under each program, funds paid by the State to participating entities, and all matching funds. In addition, the State plan shall specify the particular accounting basis (cash, accrual, or obligation) to be used and cite the authority under State and local laws, rules, and regulations for such basis. If the State or local agency utilizes other than a cash accounting basis, the State plan shall indicate the time period or other conditions governing the liquidation of obligations. The State plan shall contain an assurance that accounts and supporting documents of the State agency and local participating entities relating to program expenditures involving Federal financial participation will be adequate to permit an accurate and expeditious audit. The State plan shall provide that the State will require that the expenditures made under the State plan by the participating agencies will be audited in accordance with generally accepted auditing standards by an appropriate State audit agency or by an independent certified public accountant or independent licensed public accountant certified or licensed by a regulatory authority of a State or other subdivision of the United

States. The State plan shall set forth, in connection with construction projects approved under subpart D of this part, the fiscal control and accounting procedures applicable to such construction projects, and shall cite the authority under State and local laws, rules, and regulations.

(h) *Reports.* The State plan shall provide that the State agency will make and submit to the Commissioner the reports described in § 130.89 of this part; and that the State agency will maintain records in support thereof as required under § 130.85.

(l) *Amendment.* The State plan shall provide that it will be amended to reflect any material changes in the library program(s) provided for by such plan, any changes in pertinent State law, or any changes in the organization of, operations of, or policies and methods of administration to be followed by, the State agency; and that amendments will be submitted and certified in the same manner as the State plan.

(j) *Certification of the State plan—*

(1) *Certification by State agency.* The State plan and all amendments thereto shall include a certification by the officer of the State agency authorized to submit the State plan that the plan or amendment has been adopted by the State agency and that the plan, or plan as amended, will constitute the basis for operation and administration (including, where applicable, supervision of the administration) of the library programs in which there is Federal financial participation.

(2) *Certification by State Attorney General.* The State plan and all amendments thereto shall include a certification by the State's Attorney General, or other official designated in accordance with State law to advise the State agency on legal matters, that all plan provisions and amendments thereto are consistent with State law. He shall further certify the official title of the officer authorized to submit the State plan; that the State agency named in the plan has authority under State law to submit the State plan and to administer or supervise the administration of the plan, whichever is applicable; that the State Treasurer (or, if there be no State Treasurer, the officer identified by title exercising similar functions for the State) has authority under State law to receive, hold, and disburse Federal funds under the State plan.

There shall be included as part of the plan copies of, or citations to, all pertinent laws and interpretations of laws by appropriate State officials or courts relevant to the State plan provisions. All such copies or citations shall be certified to be correct by the Attorney General or other appropriate State official.

[32 F.R. 2946, Feb. 16, 1967, as amended at 33 F.R. 8669, June 13, 1968]

Subpart C—Public Library Services

§ 130.13 State plan requirements— Title I.

(a) *Policies, methods and purposes.* The State plan shall contain a statement describing the policies and methods of administration to be followed by the State agency in using funds made available under its allotment for expenditure under the State plan. The State agency shall certify that its policies and methods of administration will, in its judgment, assure use of such funds to maximum advantage in the further extension of public library services to geographic areas (1) without such services or (2) with inadequate services. This statement shall describe the immediate and longrange plans of the State agency in establishing or extending public library services.

(b) *Priorities and criteria for improving public library services.* The State plan shall set forth the criteria to be used by the State agency for determining, pursuant to section 103(c) of the Act, whether library services are unavailable or inadequate in any geographic area and the priorities which the State agency will apply in approving participation in the program.

Subpart D—Public Library Construction

§ 130.25 State plan requirements— Title II.

(a) *Criteria, priorities, and procedures.* (1) The State plan shall set forth criteria, priorities, and procedures for approval of construction projects which are designed to insure that public library facilities will be constructed to serve areas, as determined by the State agency, which are without library facilities necessary to develop library services.

(2) The State plan shall indicate whether the State will expend Federal funds (and State and local funds required for matching such Federal funds)

for acquisition of existing buildings to be used as a public library; and, if so, set forth the criteria to be followed by the State agency in determining the suitability of such buildings for library purposes and whether such buildings, after their conversion into public libraries, will meet the State's standards for providing library services.

(3) The State plan shall specify the period of time within which construction contracts will be entered into following the State agency's approval of projects.

(b) *State hearing.* The State plan shall contain the State agency's assurance that every local or other public agency whose application for funds under the plan with respect to a project for construction of public library facilities is denied will be given an opportunity for a fair hearing before the State agency.

(c) *Davis-Bacon Act and Contract Work Hours Standards Act.* The State plan shall contain the State agency's assurance as required by section 203(a) (4) of the Act.

[32 F.R. 2946, Feb. 16, 1967, as amended at 33 F.R. 8668, June 13, 1968]

Subpart E—Interlibrary Cooperation

§ 130.38 State plan requirements— Title III.

(a) *Policies and objectives.* The State plan shall contain a statement describing the policies and objectives for the systematic and effective coordination of the resources of school, public, academic, and special libraries and special information centers for improved services of a supplementary nature to the special clientele served by each type of library or center. This statement shall identify the kinds of libraries, if any, which are ineligible under State law to participate in local, regional, State or interstate cooperative systems or networks of libraries and shall include the kinds of activities to be undertaken by eligible participants.

(b) *Interstate library cooperation.* The State plan may provide that the State enter into a cooperative arrangement with one or more other States for the conduct and administration of interstate cooperative systems or networks of libraries. If such interstate arrangements are to be entered into, the State plan shall describe the policies and procedures of the State for approval of and participation in such arrangements. Copies of such cooperative arrangements

(including applicable fiscal arrangements) shall be forwarded by each participating State agency to the U.S. Office of Education for filing with the State plan.

(c) *Allocation of costs and accounting.* The State plan shall describe the methods which the State agency will follow in providing appropriate allocation by participating agencies of the total costs of the library system(s) or network(s). In addition, the State plan shall indicate whether the State agency will assume, on behalf of all participating agencies, responsibility for accounting for expenditures made or whether it will delegate under its supervision such fund accounting responsibility. If the responsibility is delegated, the State agency shall set forth in the State plan the name of the agency responsible to it for such accounting.

(d) *Criteria—participation.* The State plan shall include a statement of the criteria which the State agency shall use in evaluating applications for funds under this Title and in assigning priority to project proposals and shall describe the method(s) by which information, including the criteria, will be generally made known. The State plan shall provide an assurance that every appropriate local or other public agency in the State is accorded an opportunity to participate in cooperative library systems or networks.

(e) *Statewide council.* The State plan shall provide for the establishment of a statewide council which shall be broadly representative of professional library interests and of library users which shall act in an advisory capacity to the State agency.

Subpart F—State Institutional Library Services

§ 130.48 State plan requirements— Title IV, Part A.

(a) *Policies and objectives.* The State plan shall contain a statement describing the policies and objectives for the establishment or improvement of library services in residential training schools, reformatories, penal institutions, orphanages, or general or special institutions or hospitals operated or substantially supported by the State. This statement shall describe the immediate and long-range plans of the State agency in establishing or improving these services. The State agency shall set forth

its standard for determining whether an institution is "substantially supported by the State," as required by the Act.

(b) *Criteria—participation.* The State plan shall include a statement of the criteria which the State agency shall use in evaluating applications for funds and in assigning priority to project proposals and shall describe the method by which information, including the criteria, will be generally made known. The State plan shall provide assurance that all eligible State institutions will be accorded an opportunity to participate in the program pursuant to Part A of Title IV of the Act.

(c) *Maintenance of effort.* The State plan shall contain assurances satisfactory to the Commissioner that expenditures made by the State in any fiscal year for State institutional library services will not be less than such expenditures in the second preceding fiscal year. (See § 130.89 (b) and (f) of this part.)

(d) *Advisory council.* The State plan shall provide for the establishment of a council which is broadly representative of State institutions eligible for assistance under this subpart which shall act in an advisory capacity to the State agency.

[32 F.R. 2946, Feb. 16, 1967, as amended at 33 F.R. 8668, June 13, 1968]

Subpart G—Library Services to the Physically Handicapped

§ 130.58 State plan requirements—Title IV, Part B.

(a) *Policies and objectives.* The State plan shall contain a statement describing the policies and objectives for the establishment or improvement of library services to physically handicapped persons, including the blind and the visually handicapped, certified by competent authority (as determined by the State agency and set forth in the State plan) as unable to read or to use conventional printed materials as a result of physical limitations. This statement shall describe the immediate and long-range plans of the State agency in establishing and improving these services. The State plan shall set forth its policy for determining the types of public and other nonprofit libraries, agencies, or organizations, if any, which are ineligible to participate in the program under this subpart.

(b) *Criteria—participation.* The State plan shall include a statement of the criteria which the State agency shall

use in evaluating applications for funds under this subpart and in assigning priority to project proposals and shall describe the method by which information, including the criteria, will be generally made known. The State plan shall provide an assurance that all appropriate public or nonprofit libraries, agencies, or organizations for the physically handicapped will be accorded an opportunity to participate in the program under Part B of Title IV of the Act.

(c) *Maintenance of effort.* The State plan shall contain assurances satisfactory to the Commissioner that funds available from sources other than Federal sources in any fiscal year for expenditures for library services to the physically handicapped will not be less than actual expenditures from such sources in the second fiscal year preceding the year in which the State seeks a payment from the Federal allotment available under Part B of Title IV of the Act. (See § 130.89 (f) of this part.)

(d) *Council.* The State plan shall provide for the establishment of a council which is representative of eligible agencies and which shall act in an advisory capacity to the State agency.

[32 F.R. 2946, Feb. 16, 1967, as amended at 33 F.R. 8668, June 13, 1968]

Subpart H—Federal Financial Participation

§ 130.68 Federal payments to a State.

Payments to a State under this part will be made only after approval of the State plan and the submission of required estimates and reports. The Commissioner will from time to time estimate the amount to which a State is entitled under the Act and the regulations in this part, and such amount shall be paid to the State, in advance or by way of reimbursement, at such time or times and in such installments as the Commissioner may determine, after necessary adjustment on account of any previously made overpayment or underpayment.

§ 130.69 Approval of State plan.

The Commissioner shall approve a State plan which he determines meets the purposes and provisions of the Act and the regulations in this part, and shall notify the State agency of the granting or withholding of approval in each such case. However, the Commissioner shall not finally disapprove a

State plan or amendment thereto without first affording the State reasonable notice and opportunity for a hearing.

§ 130.70 Effective dates of State plan and amendments.

Federal financial participation is available only with respect to amounts expended under an approved State plan or amendments. Absent any contrary notification, the date on which the State plan or amendments thereto shall be considered to be in effect is the date of approval by the Commissioner. The State agency will be apprised of the effective date in the notice of approval sent to the State agency by the Commissioner.

§ 130.71 Allotment availability.

Federal allotments to a State under Title I, Title III, and Title IV, Parts A and B, are available except as herein-after stated with respect to approved expenditures during the Federal fiscal year for which funds are allotted. Federal allotments to a State under Titles III and IV, Parts A and B, are available during the Federal fiscal year 1967 only for expenditures incurred by the State for developing the State plan with respect to Titles III and IV, Parts A and B. Federal allotments to a State under Title II are available for expenditures for both administrative activities and construction projects approved during the Federal fiscal year in which the allotment is made and the next Federal fiscal year. A Federal fiscal year is one commencing on July 1 and ending the following June 30.

§ 130.72 Reallotments.

The amount of any State's allotment for any fiscal year under section 102, 202, 302, 402, or 412 of the Act which the Commissioner determines will not be required during the period for which such allotment is available for carrying out that State's plan shall be available for reallotment, on such dates during such year as the Commissioner may fix, to other States for carrying out their plans in the same proportion as the original allotments were made for such purposes to such other States in the manner provided for in section 503 of the Act. Any amounts reallotted shall be determined by the Commissioner on the basis of (a) reports filed by the States of the amounts required to carry out the State plan approved under sections 103, 203, 304, 404, and 414, respectively, of the

Act and (b) such other information as he may have available. Any amounts reallotted pursuant to section 503 of the Act shall be deemed part of the State's allotment for that fiscal year under section 102, 202, 302, 402, or 412 of the Act.

§ 130.73 Federal and State shares of eligible expenditures.

(a) *Federal share.* The Federal share for titles I, II, and IV shall be as promulgated by the Commissioner pursuant to section 104(d) of the Act in accordance with the provisions of section 104(c) of the Act, except that for title IV the Federal share for fiscal year 1968 shall be 100 percent. The Federal share for title III shall be 100 percent for fiscal year 1968 and 50 percent for each fiscal year thereafter, except that the Federal share for the Trust Territory of the Pacific Islands shall be 100 percent.

(b) *State share.* The State share (State percentage) shall be the difference between the cost of activities under the State plan and the applicable Federal share. In meeting such State share, the following will be accepted:

Title I: Expenditures by the State and its political subdivisions for administration and activities under the State plan.

Title II: Expenditures by the State and its political subdivisions for administration of the State plan and the administration and supervision of construction projects; and expenditures for carrying out construction projects under the State plan.

Title III: Expenditures for administration and activities under the State plan (applies after fiscal year 1967).

Title IV, Part A: Expenditures only by the State for administration and activities under the State plan (applies after fiscal year 1967).

Title IV, Part B: Expenditures from other than Federal sources for administration and activities under the State plan (applies after fiscal year 1967).

(c) *Limitation.* The expenditures which are to be considered in computing the amount of Federal financial participation under a State plan are only those which are made in furtherance of the purposes of the Act and which do not inure to the personal benefit of any donor.

[32 F.R. 2946, Feb. 16, 1967, as amended at 33 F.R. 8668, June 13, 1968]

§ 130.74 State laws governing expenditures.

Federal financial participation under the State plan shall be available only for those eligible costs for which State

or local funds are expended or authorized to be expended under applicable State and local laws, rules, regulations, and standards.

§ 130.75 Determination of fiscal year's allotment to which an expenditure is chargeable.

An expenditure made under Titles I, III, and IV of the Act will be charged to that Federal fiscal year in which the expenditure was incurred. State and local laws and regulations shall determine when an expenditure by the State agency or participating entity is incurred. An expenditure made under Title II of the Act will be charged to the State's allotment available during the Federal fiscal year in which the project was approved by the State agency.

§ 130.76 Construction contract provisions.

The State agency shall require that construction contracts for projects approved under the State plan shall include provision for:

(a) *Wage rates and overtime compensation.* The payment of wage rates and overtime compensation as required by section 203(a)(4) of the Act; and

(b) *Equal opportunity.* Equal opportunity in employment pursuant to Executive Order 11246 or any subsequent executive orders or statutes pertaining thereto and any regulations issued thereunder.

§ 130.77 Special construction considerations—Evaluation of flood hazards.

The State agency shall comply with Executive Order 11296 and with the requirements of Departmental regulations which may be issued from time to time pursuant thereto relating to the evaluation of flood hazards in locating federally financed construction projects.

§ 130.78 Special construction considerations—Physically handicapped persons.

The State agency shall insure that facilities constructed with the use of Federal funds under this Act shall, to the extent appropriate in view of the uses to be made of the facilities, be accessible to and usable by handicapped persons.

§ 130.79 Competitive bidding and equipment procurement.

All contracts for public library construction shall be awarded to the lowest qualified bidder on the basis of open com-

petitive bidding: *Provided, however,* That if one or more items of construction are covered by an established alternative procedure, consistent with State and local laws and regulations, which is approved by the State agency as designed to assure construction in an economical manner consistent with sound business practice, such alternative procedure may be followed.

[33 F.R. 8669, June 13, 1968]

§ 130.80 Disposition of facilities, equipment or land.

(a) Whenever public library facilities, or items of equipment, or land, each initially costing \$100 or more, in which cost the Federal Government has participated (with funds derived from Federal grants and State or local matching funds), are sold or no longer used for the purpose authorized by the applicable Title of the Act, the Federal Government shall be credited with its proportionate share of the value of such facilities, equipment, or land, the value being determined on the basis of the sale price in the case of a bona fide sale or on the fair market value in the case of discontinuance of use or diversion for other than State plan purposes.

(b) Inventories and records are required to be kept for all items of equipment referred to in paragraph (a) of this section. Although the title to such facilities or equipment may be vested in either the State agency or a local participating entity, the State agency is responsible for having available in the State agency's office information sufficient for a determination of whether such facilities or equipment continues to be used for a purpose provided for under the Act.

§ 130.81 Proration of costs.

Only costs attributable to the carrying out of the provisions of the State plan under each title of the Act are allowable costs. To cover situations where an expenditure is only partly attributable to an eligible purpose or activity under the State plan or where an expenditure is attributable to two or more eligible purposes or activities, such expenditures shall be prorated between the eligible and noneligible purposes or activities or among the various eligible and noneligible activities as the case may be. The State shall maintain records documented on an after-the-fact basis to substantiate the proration of expendi-

tures for applicable items such as salaries, travel, rental, supplies, and equipment.

§ 130.82 Adjustments.

The State agency shall adjust its accounts, records, and reports to reflect refunds, credits, underpayments, or overpayments, as well as any adjustments resulting from Federal or State administrative reviews and audits. Such adjustments shall be set forth in the State's financial reports filed with the Commissioner.

§ 130.83 Interest on Federal funds.

In the event that any interest is earned on Federal funds, it shall be credited to the United States. The State agency shall submit as a part of each annual financial report a statement showing the amount of interest earned on Federal funds by the State and participating entities during that fiscal year. Such interest earnings shall be refunded to the U.S. Office of Education.

§ 130.84 Fiscal audits.

Audit agencies representing the Department will audit the program records available at the State agency to determine whether the Federal program funds have been properly accounted for and administered. Audit reports of the participating organizations and State review and other control procedures will be evaluated to determine the adequacy of information upon which to base the audit findings. Only where the available information is deemed to be inadequate will the auditor arrange, through the State agency, to audit the records of the participating organizations or entities of the State.

§ 130.85 Retention of records.

(a) *General rule.* The State agency shall provide for keeping accessible and intact all records, identified as to individual program allotments to which they relate, supporting claims for Federal grants or relating to the accountability of the State agency or any other entity participating under the plan for the expenditure of such grants, expenditure of matching funds, and records supporting maintenance of effort. Such records shall be kept until the State agency is notified (1) that they are not needed for program administration review and (2) that the Department's fiscal audit is completed.

(b) *Questioned expenditures.* The records involved in any claim or expendi-

ture which has been questioned shall be maintained until necessary adjustments have been reviewed and cleared by the Department.

§ 130.86 Eligible costs.

(a) To the extent that they are attributable to administration or supervision of the administration of the State plan and to the carrying out of the separately identified programs under Titles I, II, and IV of the Act (see §§ 130.71 and 130.81), the eligible costs may at the discretion of the State agency include the following:

(1) Salaries of the professional and clerical staff engaged in activities under the State plan, including (i) fringe benefits regularly provided for such employees and (ii) that part of the salaries paid for time spent by nonclerical employees on educational leave to obtain additional education or training of benefit to the programs: *Provided*, That such leave is approved in advance by the State agency and is in conformity with the policy of the State. The fact that funds are used for the salary of an employee on such leave does not preclude Federal financial participation in the salary of the person employed to replace him, as long as the replacement is otherwise eligible.

(2) Fees or tuition charges or other payments in accordance with the State plan provisions described in § 130.3(d) for the education or training of nonclerical personnel, whether or not on educational leave, while attending courses, workshops, conferences, or seminars, approved in advance by the State agency for the benefit of the State plan programs.

(3) Fees and approved expenses of consultants, advisory councils, and other persons or groups acting in an advisory capacity;

(4) Expenses connected with committees, workshops, and conferences;

(5) Travel expenses of staff and consultants thereto, including advisory council members, in accordance with applicable State travel regulations;

(6) Communications costs;

(7) Supplies, printing, and printed materials;

(8) Rental of, or, where economically justified, purchase of office and program equipment;

(9) Rental of space (including the cost of utilities and custodial services) if: The cost does not exceed comparable rental on a square foot basis in the par-

ticular locality for the period of occupancy; the expenditures represent an actual cost; and, in the case of publicly owned buildings, like charges are made to other agencies occupying similar space for similar purposes.

(10) Minor remodeling of space in publicly owned buildings to the extent that such costs are not included in rental; and

(11) Utilities and custodial services to the extent not included in any other item of this section.

(b) *Titles I and IV, Part A.* In addition to the costs listed in § 130.86(a) of this part, the following are also eligible at the discretion of the State agency:

(1) "Library materials" including books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, video and magnetic tapes, printed, published, and audiovisual and other materials of a similar nature; and

(2) Necessary binding or rebinding of library materials.

(c) *Title II—Construction projects.* In addition to the costs listed in § 130.86(a) of this part, the following project costs are also eligible at the discretion of the State agency if incurred after the date of project approval or after such other date as is indicated in subparagraphs (3) and (5) of this paragraph:

(1) Construction of new buildings to be used for public library facilities;

(2) Expansion, remodeling, and alteration (as distinguished from maintenance and repair) of existing buildings to be used for public library purposes;

(3) Expenses (other than interest and the carrying charges on bonds) related to the acquisition of land on which there is to be construction of new buildings or expansion of existing buildings which are incurred within 3 fiscal years preceding the fiscal year in which the project was approved by the State agency, if such expenses constitute an actual cost or transfer of public funds in accordance with the usual procedures generally applicable to all State and local agencies and institutions pursuant to § 130.74;

(4) Site grading and improvement of land on which such facilities are located;

(5) Architectural, engineering, and inspection expenses incurred subsequent to site selection;

(6) Expenses (other than interest and the carrying charges on bonds) related to

the acquisition of an existing building to be used for public library facilities, if such expenses are authorized in the State plan pursuant to § 130.25(a)(2), and constitute an actual cost or transfer of public funds in accordance with the usual procedures generally applicable to all State and local agencies and institutions pursuant to § 130.74;

(7) Expenses related to the acquisition and installation of initial equipment to be located in a public library facility provided by a construction project, including all necessary building fixtures and utilities, office furniture, and public library equipment such as library shelving and filing equipment, card catalog cabinets, circulation desks, reading tables and study carrels, booklifts, elevators, and information retrieval devices (but not books or other library materials).

(d) *Title III.* (1) The costs listed in § 130.86(a) in the State agency's administration of the State plan and as they are related to the establishment, operation and administration of local, regional, State, or interstate cooperative networks of libraries, including the following at the discretion of the State agency:

(i) Cost of planning, establishing, and operating centralized purchasing, cataloging, processing, information, and other related service centers, including the acquisition, rental, installation, operation, and maintenance of specialized equipment to facilitate interlibrary use of library materials and services. Such equipment may include, but is not limited to, interconnecting communications equipment, information storage and retrieval equipment, specialized reproduction equipment, and microfilm readers.

(ii) Personnel services costs associated with the efficient operation of the cooperative networks of libraries.

(e) *Title IV, Part B.* In addition to the costs listed in § 130.86(a) of this part, the following are also eligible at the discretion of the State agency:

(1) Library materials, other than conventional printed materials, not available from Federal programs such as Library of Congress books for the blind and physically handicapped and Office of Education captioned films for the deaf, including commercially produced recordings, tapes, books in oversize print and microfilms.

(2) Specially designed program equipment for the use of library materials including sound reproduction devices,

projectors, magnifiers, page turners, and book holders.

[32 F.R. 2946, Feb. 16, 1967, as amended at 33 F.R. 8668, June 13, 1968]

§ 130.87 Condition precedent to receiving Federal funds.

Before a State may receive a payment from its allotment under Title I, the Commissioner must find, pursuant to section 104(a) of the Act, that

(a) There will be available for expenditure under the plan from State or local sources during the fiscal year for which the allotment is made

(1) Sums sufficient to enable the State to receive under section 104(a) of the Act payments in an amount not less than \$25,000 in the case of the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam and \$100,000 in the case of any other State, and

(2) Not less than the total amount actually expended, in the geographic and program service areas covered by the plan for such year, for public library services from State or local sources in the second preceding fiscal year, and

(b) There will be available for expenditure for all public library services from State sources during the fiscal year for which the allotment is made not less than the total amount actually expended for such public library services from State sources in the second preceding fiscal year.

Such findings need not be made with respect to the Trust Territory of the Pacific Islands.

§ 130.88 Special limitations on use of funds.

No portion of any funds allotted to a State under title I, title III, or title IV of the Act may be used, directly or indirectly, to purchase land or to purchase or erect any building.

[33 F.R. 8669, June 13, 1968]

§ 130.89 Submission of reports.

The State agency shall submit to the Commissioner the following described reports, and shall maintain such records, afford such access thereto, and comply with such other requirements as the Commissioner may find necessary. See paragraph (g) with regard to fiscal year 1967 exceptions.

(a) With respect to Title I, information regarding level of participation and maintenance of effort so that the Com-

missioner may make the findings referred to in § 130.87;

(b) With respect to Title IV, information regarding the maintenance of effort required by sections 404(a)(5) and 414(a)(5) of the Act;

(c) With respect to Titles I, II, III, and Parts A and B of Title IV, a detailed statement describing the proposed program;

(d) With respect to Titles I, II, III, and Parts A and B of Title IV, an estimated budget itemizing the amount of funds which will be required by the State agency for administering or supervising the administration of the State plan;

(e) With respect to Titles I, III, and Parts A and B of Title IV, an estimated budget, by area, activity, category of expenditure and sources of funds with respect to activities to be carried out under the State plan;

(f) With respect to Titles I, II, III, and Parts A and B of Title IV, reports of expenditures by categories;

(g) The reports referred to in paragraphs (b), (c), (d), (e), and (f) of this section will not be required for programs under Titles III and IV, Parts A and B, for fiscal year 1967 inasmuch as funds are available during that year only for developing State plans under those titles. However, the State agency shall submit to the Commissioner for fiscal year 1967 State planning grant estimates for developing State plans and reports of expenditures therefor with regard to programs under Titles III and IV, Parts A and B.

(h) Notification of construction project approval and completion: With respect to Title II, the State agency shall notify the Commissioner of its approval and of the completion of library construction projects under Subpart D. Such notification shall include the project name and number, location, population served, type of library, type of construction, size of facility, the funds budgeted by source and major category, construction schedule, and completion date. Information shall be forwarded by the State agency, within 30 days after such approval and again within 30 days after project completion. Forms for such purposes will be furnished by the Commissioner.

(i) Any other reports containing such information in such form as the Commissioner may, from time to time, require

in order to carry out his functions under the Act.

§ 130.90 Effect of Federal payments.

Neither the approval of the State plan, the issuance of a Letter of Credit, the approval of withdrawals thereunder, nor the making of any direct payments to the State shall be deemed to waive the right or duty of the Commissioner to withhold funds by reason of the failure of the State to observe any Federal requirements set out in the Act or regulations related thereto or any other relevant Federal Act or Order, either before or after such administrative action respecting payment.

§ 130.91 Noncompliance.

If the Commissioner finds, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of a State plan approved under the Act, that the State plan has been so changed that it no longer complies with the applicable requirements of the Act or that in the administration of the plan there is a failure to comply substantially with the provisions required to be included in the plan, he will notify such State agency that further payments will not be made to the State under the Act (or, in his discretion, that further payments will not be made with respect to portions of or projects under the State plan affected by such failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, no further payments shall be made to such State for carrying out such State plan (or further payments will be limited to parts of or projects under the plan not affected by such failure).

§ 130.92 Right to hearing and judicial review.

(a) *Hearing.* The Commissioner will not finally disapprove any State plan submitted under the Act, or any modification thereof, without first affording the State submitting the plan reasonable notice and opportunity for a hearing.

(b) *Judicial review.* If any State is dissatisfied with the Commissioner's final action with respect to the approval of its State plan submitted under any title or with respect to his final action under section 501 of the Act, such State shall have the rights of appeal set out in section 502(d) (2), (3), and (4) of the Act.

§ 130.93 Termination of program.

If a State desires at any time not to participate in one or more of the programs, or upon termination of the program(s), the State shall refund to the U.S. Office of Education any unexpended or unobligated funds which have been paid to the State agency for the specific program purposes.

PART 131—COLLEGE LIBRARY RESOURCES PROGRAM UNDER TITLE II—A, HIGHER EDUCATION ACT OF 1965, AS AMENDED

Sec.

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AUTHORITY: The provisions of this Part 131 issued under secs. 202, 203, 204, and 203 (a), 79 Stat. 1224, 1225, 1226, and 1270, as amended; 20 U.S.C. 1021-1026, 1142-1144.

SOURCE: The provisions of this Part 131 appear at 34 F.R. 8916, June 4, 1969, unless otherwise noted.

§ 131.1 Applicability.

The regulations in this part apply to grants made by the Commissioner pursuant to his authority under Title II—A of the Higher Education Act of 1965, as amended. Such grants are also subject to the requirements of Title VI of the Civil Rights Act of 1964, approved July 2, 1964 (Public Law 88-352, 78 Stat. 252, 42 U.S.C. 2000d et seq.). Section 601 of that Act provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Therefore, Federal financial assistance pursuant to this part is subject to the regulation in 45