

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.

- 131.1 Applicability.
- 131.2 Definitions.
- 131.3 Program purposes.
- 131.4 Ineligible purposes.
- 131.5 Eligible applicants.
- 131.6 Application for grants.
- 131.7 Content of applications.
- 131.8 Criteria for review of applications for supplemental grants.
- 131.9 Criteria for review of applications for special purpose grants.
- 131.10 Disposition of applications.
- 131.11 Amount of grant.
- 131.12 Availability of grant funds.
- 131.13 Payment procedures.
- 131.14 Effect of Federal payments.
- 131.15 Fiscal accounting and auditing procedures.
- 131.16 Retention of records.
- 131.17 Reports.

**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

CFR Part 80. (20 U.S.C. 1021-8, 42 U.S.C. 2000d et seq.)

§ 131.2 Definitions.

As used in this part—

(a) "Act" means the Higher Education Act of 1965 (Public Law 89-329, as amended, 79 Stat. 1219, 20 U.S.C. 1001 et seq.).

(b) "Basic grant" means a grant made pursuant to section 202 of the Act.

(c) "Branch" means a campus of an institution of higher education which is located in a State but in a community different from that of the parent institution and beyond a reasonable commuting distance from the main campus and which has college level programs for which library facilities, services, and materials are necessary.

(d) "Combination of institutions" means a group of institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out a common objective on their behalf or a public or private nonprofit agency, organization, or institution designated or created by a group of institutions of higher education for the purpose of carrying out a common objective for the benefit of said institutions.

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

(f) "Fiscal year" means the period beginning on July 1 and ending on the following June 30 and is designated by the calendar year in which the fiscal year ends.

(g) "Full-time equivalent of the number of part-time students" is to be determined by dividing the total number of credit hours of part-time students by the student-hour load required by the institution for full-time student standing.

(h) "Full-time student" means a student who is carrying a sufficient number of credit hours or their equivalent (including research or special studies) to secure the degree or certificate toward which he is working in no more than the number of semesters or terms normally taken therefor at the institution in which he is enrolled.

(i) "Institution of higher education" means an educational institution in any State which meets all of the following criteria:

(1) It admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate.

(2) It is legally authorized within such State to provide a program of education beyond secondary education.

(3) It provides at least one of the following types of programs:

(i) An educational program for which it awards a bachelor's degree;

(ii) A program of not less than 2 years which is acceptable for full credit toward a bachelor's degree;

(iii) A program of not less than 1 year of training to prepare students for gainful employment in a recognized occupation.

(4) It is a public or other nonprofit institution.

(5) It is either accredited by a nationally recognized accrediting agency or association, or meets at least one of the following requirements:

(i) It is an institution with respect to which the Commissioner has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or organization within a reasonable period of time.

(ii) It is an institution with respect to which the Commissioner determines that there is satisfactory assurance that upon acquisition of the library resources with respect to which assistance under this part is sought, or upon acquisition of those resources and other library resources planned to be acquired within a reasonable time, the institution will meet the accreditation standards of such agency or association.

(iii) It is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

(j) "Joint-use library facilities" means those library facilities, services, or materials provided by and for the use of a combination of institutions of higher education.

(k) "Library materials" means books, periodicals, documents, magnetic tapes, phonograph records, audiovisual materials, cataloging materials, and other printed and published materials which are suitable for inclusion in the library resources of institutions of higher edu-

cation and which (with the exception of periodicals and newspapers) with reasonable care and use may be expected to last for more than 1 year. Such term also includes necessary first binding of such printed and published materials, but shall not include equipment or supplies.

(l) "Library purposes", as applied to expenditures, means expenditures for the maintenance and operation of libraries, such as salaries, wages, supplies, materials, and equipment. Such term does not include expenditures for construction, acquisition, expansion or improvement of buildings, initial equipment therefor, site acquisition, or other capital expenditures.

(m) "New institution of higher education" (in fiscal year 1970 and thereafter) means an educational institution in any State which meets all of the following criteria:

(1) It can demonstrate to the Commissioner that it has undertaken procedures preparatory to the enrollment of students in the fiscal year following the fiscal year for which a grant is requested.

(2) It proposes to enroll as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate.

(3) It is presently, or can demonstrate that it will by the time of the proposed enrollment, be legally authorized within such State to provide a program of education beyond secondary education.

(4) It proposes to provide in the year in which it intends to first enroll students at least one of the following types of programs:

(i) An educational program for which it awards a bachelor's degree;

(ii) A program of not less than 2 years which is acceptable for full credit toward a bachelor's degree;

(iii) A program of not less than 1 year of training to prepare students for gainful employment in a recognized occupation.

(5) It is organized as a public or other nonprofit institution.

(6) It is an institution with respect to which the Commissioner has determined that there is satisfactory assurance, considering the resources available to the institution (including assistance under this program), the length of time the institution has legally been in existence, the effort it is making to meet accreditation standards, and the purpose for which

this determination is being made, that the institution will meet the accreditation standards of a nationally recognized accrediting agency or association within a reasonable period of time.

(n) "Nonprofit institution" means an institution owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(o) "School or department of divinity" means an institution of higher education or a department or branch of such an institution whose program is specifically for the education of students to prepare them to become ministers of religion, to enter upon some other religious vocation, or to prepare them to teach theological subjects.

(p) "Special purpose grant" means a grant made pursuant to section 204 of the Act.

(q) "State" means, in addition to the several States of the Union, Puerto Rico, District of Columbia, Guam, American Samoa, and the Virgin Islands.

(r) "Supplemental grant" means a grant made pursuant to section 203 of the Act.

(s) "Total institutional expenditures" means expenditures for the maintenance and operation of institutions of higher education, including those for administration, instruction, research, extension and public services, libraries, operation and maintenance of physical plant. Such term shall not include expenditures for construction, acquisition, expansion, or improvement of buildings, initial equipment therefor, site acquisition, or other capital expenditures.

(t) "Volume" means any printed, typewritten, handwritten, mimeographed, or processed work contained in one binding or portfolio, hardbound or paperbound, which has been classified, cataloged, or otherwise prepared for library use, including bound periodical volumes and nonperiodical Government documents.

(20 U.S.C. 1027)

### § 131.3 Program purposes.

Funds appropriated under title II, part A of the Act may be used by the Commissioner to make grants to eligible applicants to assist them in the acquisition of books and other materials to be used for library purposes. Such grants may be made in the following manner:

(a) Not more than 75 percent of such appropriation may be used for basic grants;

(b) Not more than 15 percent of such appropriation may be used for special purpose grants for either:

(1) Meeting a special need for additional library resources which will make a substantial contribution to the quality of an institution's educational resources (hereinafter referred to as type A);

(2) Meeting special national or regional needs in the library and information sciences (hereinafter referred to as type B); or

(3) Establishing and strengthening joint-use facilities (hereinafter referred to as type C);

(c) The remainder of such appropriation not used for basic or special purpose grants may be used for supplemental grants.

[34 F.R. 8916, June 4, 1969; 34 F.R. 9390, June 14, 1969]

§ 131.4 Ineligible purposes.

No grants may be made under this part for library materials to be used—

(a) For sectarian instruction or religious worship;

(b) Primarily in connection with any part of a program of a school or department of divinity; and

(c) Primarily in connection with any medical library or related scientific communication instrumentality which is eligible for assistance under the Medical Library Assistance Act of 1965 (Public Law 89-291, 42 U.S.C. 280b et seq.).

(20 U.S.C. 1027, 42 U.S.C. 280(b) et seq.)

§ 131.5 Eligible applicants.

(a) *Basic grant.* The following are eligible to apply for a basic grant:

(1) An institution of higher education on its own behalf,

(2) An institution of higher education on behalf of a branch,

(3) A combination of institutions of higher education,

(4) For fiscal year 1970 and thereafter, a new institution of higher education, as defined in § 131.2(m); *Provided*, That such institution shall be eligible for only one basic grant as a new institution of higher education.

(b) *Supplemental grant.* The following are eligible to apply for a supplemental grant:

(1) An institution of higher education,

(2) A branch of an institution of higher education,

(3) A combination of institutions of higher education: *Provided*, That in the fiscal year for which the grant is requested the applicant institution or branch, either individually or as a member of a combination, has also applied for and is eligible to receive a basic grant in excess of \$1,500 for or on behalf of such institution or branch.

(c) *Special purpose grant.* The following are eligible to apply for a special purpose grant:

(1) Types A and B—

(i) An institution of higher education,

(ii) A branch of an institution of higher education; *Provided*, That in any fiscal year each institution of higher education or branch thereof may apply for either a special purpose type A or type B grant, but not for both.

(2) Type C—

(i) A combination of institutions of higher education.

§ 131.6 Application for grants.

An application for a basic, supplemental, or special purpose grant shall be submitted on forms prescribed by the Commissioner on or before the date announced by him for each fiscal year. The application shall be executed by an individual authorized to act for the applicant. Applications from branches of institutions shall be submitted to the Commissioner only through the parent institution. Applications and requests for information shall be sent to the Director, Division of Library Programs, Bureau of Adult, Vocational, and Library Programs, U.S. Office of Education, Washington, D.C. 20202.

§ 131.7 Content of applications.

(a) *Applications for a basic grant.* All applications for a basic grant shall contain information sufficient to enable the Commissioner to determine—

(1) The eligibility of the applicant pursuant to § 131.5 and the Civil Rights Regulation in Part 80 of this title;

(2) That the applicant will expend during the fiscal year for which the grant is requested (from funds other than funds received under this part) for all library purposes an amount not less than the average annual amount it expended for such library purposes during the fiscal years 1964 and 1965 or during the 2 fiscal years preceding the fiscal year for which the grant is requested, whichever is the lesser;

(3) That the applicant will expend for all library purposes an amount (from funds other than funds received under this part) equal to not less than the amount of such grant;

(4) That the applicant will expend during the fiscal year for which the grant is requested (from funds other than funds received under this part) for library materials an amount not less than the average amount it expended for such materials during fiscal years 1964 and 1965 or during the 2 fiscal years preceding the fiscal year for which the grant is requested, whichever is the lesser;

(5) That the applicant will comply with the requirements in §§ 131.15, 131.16, and 131.17 relating to fiscal accounting and auditing procedures, retention of records and reports.

(6) That, except for new institutions of higher education, the applicant will include in his application the information required in subparagraphs (4), (5), and (6) of paragraph (b) of this section.

(b) *Application for a supplemental grant.* All applications for a supplemental grant shall contain information sufficient to enable the Commissioner to determine—

(1) The eligibility of the applicant pursuant to § 131.5 of this part and the civil rights regulation in 45 CFR Part 80;

(2) That the applicant will expend during the fiscal year for which the grant is requested (from funds other than funds received under this part) for all library purposes an amount not less than the average annual amount it expended for such library purposes during the fiscal years 1964 and 1965 or during the 2 fiscal years preceding the fiscal year for which the grant is requested, whichever is the lesser;

(3) That the applicant will expend during the fiscal year for which the grant is requested (from funds other than funds received under this part) for library materials an amount not less than the average amount it expended for such materials during fiscal years 1964 and 1965 or during the 2 fiscal years preceding the fiscal year for which the grant is requested, whichever is the lesser;

(4) (i) The size and quality of the library resources of the applicant in relation to its present enrollment and any expected increase in its enrollment, (ii) any special circumstances which are impeding or will impede the proper develop-

ment of its library resources and (iii) how a supplemental grant would be used to improve the size or quality of its library resources;

(5) The relative priority of the application in light of the criteria established by him with the advice of the Advisory Council on College Library Resources and set forth in § 131.8;

(6) That the applicant will comply with the requirements in §§ 131.15, 131.16, and 131.17 relating to fiscal accounting and auditing procedures, retention of records, and reports.

(c) *Applications for a special purpose grant.* All applications for a special purpose grant shall contain information sufficient to enable the Commissioner to determine—

(1) The eligibility of the applicant pursuant to § 131.5 of this part and the Civil Rights Regulation in 45 CFR Part 80;

(2) Whether the purpose for which the grant is requested is one of the three purposes set forth in § 131.3;

(3) That the applicant will expend during the fiscal year for which the grant is requested (from funds other than funds received under this part) for all library purposes an amount not less than the average annual amount it expended for such library purposes during the fiscal years 1964 and 1965 or during the 2 fiscal years preceding the fiscal year for which the grant is requested, whichever is the lesser;

(4) That the applicant (or applicants jointly in the case of a combination of institutions) will expend during the fiscal year for which the grant is requested (from funds other than funds received under this part) for the same purpose as such grant an amount from such other sources equal to not less than 33⅓ percent of such grant;

(5) The relative priority of the application in light of the criteria, applicable to grants type A, type B, or type C, as appropriate, which the Commissioner has established with the advice of the Advisory Council on College Library Resources and set forth in § 131.9; and

(6) That the applicant will comply with the requirements in §§ 131.15, 131.16, and 131.17 relating to fiscal accounting and auditing procedures, retention of records, and reports.

[34 F.R. 8916, June 4, 1969, as amended at 35 F.R. 18875, Dec. 11, 1970]

NOTE: The amendment at 35 F.R. 18875 is effective 30 days after date of publication.

§ 131.8 Criteria for review of applications for supplemental grants.

Except for applications for basic grants to new institutions of higher education, the following criteria will be applied by the Commissioner in approving applications for basic and supplemental grants:

- (a) Degree of deficiency in the number of volumes of the applicant's library in relation to the present, and expected increase in; student enrollment and the type of institution or branch applying for a grant;
- (b) Participation in other Federal programs aiding disadvantaged students;
- (c) Degree of economic disadvantage-ment of students enrolled;
- (d) Recency of the establishment of the library collection.

(20 U.S.C. 1023) [35 F.R. 18875, Dec. 11, 1970]

NOTE: The revision at 35 F.R. 18875 is effective 30 days after date of publication.

§ 131.9 Criteria for review of applications for special purpose grants.

The following criteria will be applied by the Commissioner in approving applications for special purpose grants:

- (a) *Type A grant.* (1) Location in a community characterized by significant social and economic deprivation;
- (2) Location in a designated Model Cities area;
- (3) Number of economically disadvantaged students;
- (4) Other demonstrated special needs;
- (5) Use of Federal funds to meet special needs.
- (b) *Type B grant.* (1) Existence of a comprehensive collection which meets special needs of other institutions in communities characterized by social and economic deprivation;
- (2) Availability of a published catalog of, or other guide to, such collection;
- (3) Extent to which such collection will be made available;
- (4) Use of Federal funds to meet special needs.
- (c) *Type C grant.* (1) Number and type of member institutions in the combination;
- (2) Availability of a published catalog of, or other guide to, the special collection;
- (3) Adequacy of staff, equipment, and facilities;
- (4) Capability to continue the program of the combination;
- (5) Coordination with other Federal programs;

(6) Use of Federal funds to meet special needs.

(20 U.S.C. 1024) [35 F.R. 18875, Dec. 11, 1970]

NOTE: The revision at 35 F.R. 18875 is effective 30 days after date of publication.

§ 131.10 Disposition of applications.

On the basis of his review of an application, the Commissioner will either (a) approve the application either in whole or in part or (b) disapprove the application. Disapproval of an application will not preclude its resubmission in a subsequent fiscal year. The Commissioner will notify the applicant in writing of the disposition of the application. Where the Commissioner awards a grant, the grant award document shall be deemed to include the provisions of these regulations and shall, in addition, set forth the grant amount and any other terms and conditions upon which the grant is made.

§ 131.11 Amount of grant.

(a) *Basic grant.* The amount of a basic grant may not exceed \$5,000 for each eligible applicant. In the case of an application from a combination of institutions, the amount of the basic grant may not exceed \$5,000 for each member institution or branch on whose behalf the application is filed.

(b) *Supplemental grant.* The amount of a supplemental grant may not exceed \$10 for each full-time student (including the full-time equivalent of the number of part-time students) enrolled in the applicant institution or branch except that, where an application is made both by a parent institution and a branch thereof, the number of students enrolled in the branch may not be considered in computing the amount of the grant for the applicant parent institution. In the case of an application from a combination of institutions of higher education, the amount of the supplemental grant may not exceed \$10 for each full-time student (including the full-time equivalent of the number of part-time students) enrolled in each eligible member institution: *Provided, however,* That, where a member institution has also applied for and received in the same fiscal year a supplemental grant on its own behalf, the number of students so enrolled may not be counted in computing the amount of the grant for the combination.

(c) *Special purpose grant.* The special purpose grant will be in such amount or

amounts as the Commissioner may determine.

**§ 131.12 Availability of grant funds.**

Grant funds shall be available to the grantee for expenditure for a period of 1 year following the close of the fiscal year in which the grant was made. For purposes of this section, an expenditure shall be determined in accordance with the grantee's customary fiscal and accounting practices.

**§ 131.13 Payment procedures.**

Federal payment will be made in accordance with the regulations in this part and the grant award document.

**§ 131.14 Effect of Federal payments.**

Neither the approval of a grant nor any payment to a grantee shall be deemed to waive the right of the Commissioner to withhold or recover the grant funds by reason of the failure of the grantee to comply with any requirements of the Act, the regulations, or the terms and conditions set forth in the grant award document.

**§ 131.15 Fiscal accounting and auditing procedures.**

(a) *Fiscal accounting.* The grantee shall maintain clearly identifiable accounts, records, and other evidence referred to in § 131.16 in accordance with generally accepted accounting procedures used by the grantee.

(b) *Auditing records.* Each grantee shall make appropriate provision for an audit of program expenditure records. Such records and the reports of the audits thereof shall be made available for inspection and audit by the auditors or other authorized representatives of the Federal Government.

(c) *Adjustments.* Each grantee shall, in maintaining program expenditure accounts, records, and reports, make any necessary adjustments to reflect refunds, credits, underpayments, or overpayments, as well as any adjustments resulting from administrative reviews and audits by the Federal Government or by the grantee.

**§ 131.16 Retention of records.**

(a) Each grantee shall provide for keeping accessible and intact all records supporting claims for Federal funds and relating to the accountability of the grantee for expenditure of matching funds:

(1) For 5 years after the close of the fiscal year in which the expenditure was made by the grantee; or

(2) Until the grantee is notified of the completion of the Federal fiscal audit, whichever is earlier.

(b) The records involved in any claim or expenditure which has been questioned by the Federal fiscal audit shall be further maintained until necessary adjustments have been made and the adjustments have been approved by the Commissioner.

**§ 131.17 Reports.**

The grantee shall submit to the Commissioner such fiscal and program reports as he may require and in the quantity and at the time stated in the report schedule which will be set forth in the grant award document. The grantee shall also submit periodically to the State agency concerned with the educational activities of all institutions of higher education in the State, if any, reports of its activities under this program.

(20 U.S.C 1028)

**PART 140—FEDERAL ASSISTANCE FOR IMPROVEMENT OF STATISTICAL SERVICES OF STATE EDUCATIONAL AGENCIES**

**Subpart A—Definitions**

Sec.

140.1 Definitions.

**Subpart B—State Plans**

140.2 The State plan.

140.3 New programs and additions to or expansions of existing programs.

140.4 State agency for administration.

140.5 Authority of State agency.

140.6 Custody of funds.

140.7 Records.

140.8 Reports.

**Subpart C—Federal Financial Participation and Payment**

140.9 Federal participation.

140.10 Proration of costs.

140.11 Effective date of plan.

140.12 Use of State rule in determining the fiscal year's allotment to which an expenditure is chargeable.

140.13 Submission of annual estimates and reports.

140.14 Provisions for payment.

140.15 Effect of payments.

**AUTHORITY:** The provisions of this Part 140 issued under secs. 1001, 1009, 72 Stat. 1602, 1605, 20 U.S.C. 581, 589.