

DEPARTMENT OF EDUCATION

34 CFR Part 692

RIN 1845-AA18

Special Leveraging Educational Assistance Partnership Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: These final regulations govern the new Special Leveraging Educational Assistance Partnership (SLEAP) Program. These regulations implement changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998, Public Law 105-481 (1998 Amendments).

DATES: *Effective Date:* These regulations are effective July 1, 2001.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA (20 U.S.C. 1089(c)(2)(A)), that States may, at their discretion, choose to implement the provisions of these final regulations on or after November 1, 2000. For further information see "Implementation Date of These Regulations" under the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Butler, U.S. Department of Education, 400 Maryland Avenue, SW., room 3045, ROB-3, Washington, DC 20202-5447. Telephone: (202) 708-8242.

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SUPPLEMENTARY INFORMATION: These regulations implement a new program, the SLEAP Program, added by the 1998 Amendments. On July 27, 2000, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (65 FR 46324). In the NPRM, we proposed to amend the Leveraging Educational Assistance Partnership (LEAP) Program regulations (part 692) to incorporate the newly created SLEAP Program.

In the preamble to the NPRM, we discussed the proposed regulatory provisions that were not of a minor or technical nature, and we will not repeat that discussion here. Therefore, to fully

understand the SLEAP Program regulations, we strongly encourage a review of the NPRM preamble. The following list summarizes those major provisions and identifies the pages of the preamble to the NPRM on which the discussion can be found:

Section 692.53—What Requirements Must a State Satisfy To Receive SLEAP Program Funds?

This section specifies the requirements that a State must meet to receive funds under the SLEAP Program. (page 46325)

Section 692.54—What Eligibility Requirements Must a Student Satisfy To Participate in the SLEAP Program?

This section specifies the eligibility requirements that postsecondary students must meet to receive SLEAP financial assistance and non-postsecondary students must meet to receive services under the SLEAP Program. (page 46325)

Section 692.60—What Must a State Do To Receive an Allotment Under the SLEAP Program?

This section specifies the procedures that a State must follow to receive a SLEAP allotment. (pages 46325-46326)

Section 692.70—How Does the Secretary Allot Funds to the States?

This section specifies the formula used to allocate SLEAP funds to the participating States. (page 46326)

Section 692.71—What Activities May Be Funded Under the SLEAP Program?

This section specifies the authorized SLEAP activities. (pages 46326-46327)

Substantive Changes to the NPRM

There are no differences between the proposed regulations contained in the NPRM and these final regulations.

Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under Title IV of the HEA be published in final form by November 1 prior to the start of the award year (which begins July 1) in which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier. If the Secretary designates a regulation for early implementation, he may specify when and under what conditions the entity may implement it. Under this authority, the Secretary designates §§ 692.50 through 692.80 of the SLEAP Program regulations for early

implementation. Upon publication, these regulations may be implemented by the States at their discretion.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations.

These regulations were published in the **Federal Register** in proposed form on July 27, 2000, following the completion of the negotiated rulemaking process. The Secretary invited comments on the proposed regulations by September 11, and two comments were received. An analysis of the comments follows.

We discuss issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

Section 692.53—What Requirements Must a State Satisfy To Receive SLEAP Program Funds?

Comments: One commenter believed that a problem exists with the proposed SLEAP regulations in § 692.53(c)(3)(i). The referenced regulatory provision requires the States to comply with the provisions of § 692.21(e), (f), (g), and (j). The commenter questioned the reference to § 692.21(f).

The commenter indicated that some of the postsecondary authorized SLEAP activities target students at four-year institutions. For example, the commenter indicated that few community colleges have a teacher preparation program, yet one of the allowable activities is a scholarship program for eligible students who wish to become teachers. The commenter further pointed out that the referenced § 692.21(f) requires that, with a limited exception, all public and private nonprofit institutions of higher education, including two-year institutions shall be eligible to participate in the SLEAP Program. The commenter indicated that these two provisions may be inconsistent. The commenter suggested that if an institution, such as a two-year institution, does not have a program that fits into one of the SLEAP activities, the State should not have to ensure that

students at that institution receive SLEAP funds.

Discussion: We disagree with the commenter that some of the postsecondary authorized SLEAP activities are targeted to four-year institutions. Neither the statute nor the regulations for the SLEAP Program require that the student be enrolled in a four-year institution. The commenter used as an example a teacher preparation program. However, the statute and regulations refer to a scholarship program for eligible needy students who wish to enter teaching. This SLEAP activity does not require that the student be enrolled in a four-year institution or program for the State to determine that the student wishes to enter teaching. This is also true for all other allowable postsecondary authorized SLEAP activities.

Changes: None.

Comments: The same commenter also had a problem with the requirement in § 692.53(c)(3)(i) that States comply with the requirement in § 692.21(g). Section 692.21(g) provides that "if a State awards grants to independent students * * *, a reasonable portion of the State's allocation must be awarded to those [independent] students." The commenter believed that it is impractical for a State to ensure that a reasonable portion of the State's SLEAP allocation is awarded to independent students as required by § 692.21(g), because of the unique and specific authorized SLEAP activities and the limited funds available for those activities. The commenter suggested that a State only should ensure that independent students were not systematically excluded or that the students were included in the pool of students considered for SLEAP funding.

Discussion: We disagree. We do not believe that either the type of authorized activities under the SLEAP Program or the amount of funds appropriated for that program preclude the implementation of this provision. Moreover, the requirement of § 692.21(g) flows from the statutory requirement in section 415C(b)(7) of the HEA.

Changes: None.

Section 692.54—What Eligibility Requirements Must a Student Satisfy To Participate in the SLEAP Program?

Comments: On commenter believed that the eligibility requirements for non-postsecondary students in § 692.54(b) of the proposed SLEAP regulations exceeds the Secretary's regulatory authority. The commenter stated that a student receiving early intervention, mentoring, career education, or transition program services should not

have to meet the applicable citizenship and residency requirements set forth in § 668.33 of the Student Assistance General Provisions regulations. The commenter believed that this eligibility requirement is not required or written in the statute. The commenter noted that States typically do not collect this information and this provision could serve as a disincentive for States to use the SLEAP funds for early intervention activities. The commenter recommended that the Department not regulate in this area and allow the States to define student eligibility for the non-postsecondary activities.

Discussion: We disagree. The SLEAP Program is authorized under Title IV, Part A, Subpart 4 of the HEA. Under section 415E(c)(1) through (c)(8) of the HEA, only "eligible students" may benefit from the activities authorized under the SLEAP Program, regardless of whether those activities are scholarships, grants, work assistance, or services, and regardless of whether the students are postsecondary or non-postsecondary students. Section 484 of the HEA sets forth the student eligibility requirements for the financial assistance provided under programs authorized under Title IV of the HEA, including LEAP and SLEAP. Accordingly, there can be no doubt that "eligible students" receiving scholarships, grants, or work assistance under the SLEAP Program must satisfy the applicable provisions of section 484 of the HEA. We see no logical basis for defining an "eligible student" differently for recipients of non-aid SLEAP activities. Thus, such a student must also satisfy the applicable provisions of section 484 of the HEA, and the citizenship and eligible non-citizenship requirement in section 484 is the one requirement in that section that is applicable to all recipients of SLEAP activities.

This position mirrors the one we adopted for the former National Early Intervention Scholarship and Partnership (NEISP) Program. The NEISP statute also referred to eligible students for purposes of being a participant in the early intervention component. The NEISP regulations required that the States select only students for the early intervention component who were citizens or eligible noncitizens. Moreover, this position is consistent with the student eligibility requirements for the Talent Search and Upward Bound Programs, each of which serve students before they enroll in postsecondary institutions.

Changes: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined are necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits, both quantitative and qualitative, of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We discussed the potential costs and benefits of these final regulations in the preamble to the NPRM on page 46327.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. There are no collections of information in these final regulations that require the display of an OMB control number.

Intergovernmental Review

The SLEAP Program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number: 84.069 Special Leveraging Educational Assistance Partnership Program)

List of Subjects in 34 CFR Part 692

Grant programs—education, Postsecondary education, State administered—education, Student aid—education, Reporting and recordkeeping requirements.

Dated: October 24, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons stated in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by amending part 692 as follows:

PART 692—LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

1. The authority citation for part 692 continues to read as follows:

Authority: 20 U.S.C. 1070c through c-4, unless otherwise noted.

2. Subpart B is revised to read as follows:

Subpart B—Special Leveraging Educational Assistance Partnership Program**General**

Sec.

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How Does a State Apply To Participate in the SLEAP Program?

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692.80 How does a State administer its community service work-study program?

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Subpart B—Special Leveraging Educational Assistance Partnership Program**General****§ 692.50 What is the Special Leveraging Educational Assistance Partnership Program?**

The Special Leveraging Educational Assistance Partnership (SLEAP) Program assists States in providing—

(a) Grants, scholarships, and community service work-study assistance to eligible postsecondary education students who demonstrate financial need;

(b) Assistance to fund early intervention, mentoring, and career education programs for eligible students enrolled in preschool, elementary school, or secondary school who demonstrate financial need; and

(c) Assistance to fund transition programs for eligible students enrolled in secondary school who demonstrate financial need.

(Authority: 20 U.S.C. 1070c-3a)

§ 692.51 What other regulations apply to the SLEAP Program?

The regulations listed in § 692.3 also apply to the SLEAP Program.

(Authority: 20 U.S.C. 1070c-3a)

§ 692.52 What definitions apply to the SLEAP Program?

The following definitions apply to the SLEAP Program:

(a) The definitions listed in § 692.4.

(b) The definitions of the following terms in 34 CFR 77.1 (EDGAR):

Elementary school.

Preschool.

Secondary school.

(Authority: 20 U.S.C. 1070c-3a)

§ 692.53 What requirements must a State satisfy to receive SLEAP Program funds?

To receive SLEAP Program funds for any fiscal year, a State must—

(a) Participate in the LEAP Program;

(b) Meet the requirements in § 692.60; and

(c) Have a program that—

(1) Provides assistance only to students who meet the eligibility requirements in § 692.54;

(2) Satisfies the requirements in §§ 692.21(a) and (k); and

(3)(i) Satisfies the requirements in §§ 692.21(e), (f), (g), and (j), if that

program provides students with postsecondary education assistance; or (ii) Provides that no student or parent may be charged a fee that is payable to an organization other than the State for the purpose of collecting data to make a determination of financial need for preschool, elementary, or secondary school students.

(Authority: 20 U.S.C. 1070c-3a)

§ 692.54 What eligibility requirements must a student satisfy to participate in the SLEAP Program?

(a) To receive postsecondary financial assistance under the SLEAP Program, a student must meet the eligibility requirements contained in § 692.40.

(b) To receive early intervention, mentoring, career education or transition program services under the SLEAP Program, a preschool, elementary, or secondary school student must—

(1) Meet the applicable citizenship and residency requirements in 34 CFR 668.33; and

(2) Demonstrate financial need as determined by the State.

(Authority: 20 U.S.C. 1070c-3a)

How Does a State Apply To Participate in the SLEAP Program?

§ 692.60 What must a State do to receive an allotment under the SLEAP Program?

To receive an allotment under the SLEAP Program, a State must—

(a) Submit an application in accordance with the provisions in § 692.20;

(b) Identify the activities in § 692.71 that it plans to carry out;

(c) Provide an assurance that for the fiscal year prior to the fiscal year for which the State is requesting Federal funds, the amount the State expended from non-Federal sources per student, or the aggregate amount the State expended, for all the authorized activities in § 692.71 will be no less than the amount the State expended from non-Federal sources per student, or in the aggregate, for those activities for the second fiscal year prior to the fiscal year for which the State is requesting Federal funds; and

(d) Ensure that the Federal share will not exceed one-third of the total funds expended under the SLEAP Program.

(Authority: 20 U.S.C. 1070c-3a)

What Is the Amount of Assistance and How May It Be Used?

§ 692.70 How does the Secretary allot funds to the States?

For each fiscal year, the Secretary allots to each eligible State that applies for SLEAP funds an amount in accordance with the provisions in § 692.10.

(Authority: 20 U.S.C. 1070c-3a)

§ 692.71 What activities may be funded under the SLEAP Program?

A State may use the funds it receives under the SLEAP Program to implement one or more of the following:

(a) Increase the dollar amount of grants awarded under the LEAP Program to eligible students who demonstrate financial need as determined in § 692.41.

(b) Carry out transition programs from secondary school to postsecondary education for eligible students who

demonstrate financial need as determined by the State.

(c) Carry out a financial aid program for eligible students who demonstrate financial need as determined in § 692.41 and who wish to enter careers in information technology or other fields of study determined by the State to be critical to the State's workforce needs.

(d) Make funds available for community service work-study activities for eligible students who demonstrate financial need as determined in § 692.41.

(e) Create a postsecondary scholarship program for eligible students who demonstrate financial need as determined in § 692.41 and who wish to enter teaching.

(f) Create a scholarship program for eligible students who demonstrate financial need as determined in § 692.41 and who wish to enter a program of study leading to a degree in mathematics, computer science, or engineering.

(g) Carry out early intervention programs, mentoring programs, and career education programs for eligible students who demonstrate financial need as determined by the State.

(h) Award merit or academic scholarships to eligible students who demonstrate financial need as determined in § 692.41.

(Authority: 20 U.S.C. 1070c-3a)

How Does a State Administer Its Community Service Work-Study Program?

§ 692.80 How does a State administer its community service work-study program?

When administering its community service work-study program, a State must follow the provisions in § 692.30, other than the provisions of paragraph (a)(1) of that section.

(Authority: 20 U.S.C. 1070c-3a)

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