

PROPOSED CHANGES TO TRIO REGULATIONS

March 23, 2010

(Changes proposed due to the Higher Education Opportunity Act signed into law in August, 2008)

Comments due April 22, 2010

PART 643--TALENT SEARCH

31. The authority citation for part 643 continues to read as follows:

Authority: 20 U.S.C. 1070a-11 and 1070a-12, unless otherwise noted.

32. Section 643.1 is amended by:

A. In paragraph (b), adding the words `` , and facilitate the application for,' ' after the word ``of''.

B. Revising paragraph (c).

The revision reads as follows:

Sec. 643.1 What is the Talent Search program?

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(c) Encourage persons who have not completed education programs at the secondary or postsecondary level to enter or reenter and complete these programs.

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33. Section 643.2 is amended by:

A. In the introductory text, adding the word ``entities'' after the word ``following''.

B. In paragraph (b), adding the words `` , including a community-based organization with experience in serving disadvantaged youth'' after the word ``organization''.

C. Removing paragraph (d).

D. Redesignating paragraph (c) as paragraph (d).

E. Adding a new paragraph (c).

F. In newly redesignated paragraph (d), removing the words ``paragraphs (a) and (b)'' and adding, in their place, the words ``paragraphs (a), (b), and (c)''.

The addition reads as follows:

Sec. 643.2 Who is eligible for a grant?

* * * * *

(c) A secondary school.

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[[Page 13881]]

34. Section 643.3 is amended by:

A. In paragraph (a)(3)(i), removing the words ``', has potential for a program of postsecondary education, and needs one or more of the services provided by the project in order to undertake such a program''.

B. In paragraph (a)(3)(ii), removing the words ``', has the ability to complete such a program, and needs one or more of the services provided by the project to reenter such a program''.

C. Redesignating paragraph (b) as paragraph (c).

D. Adding a new paragraph (b).

E. In newly redesignated paragraph (c), removing the citation ``643.6(b)'' and adding, in its place, the citation ``643.7(b)''.

The addition reads as follows:

Sec. 643.3 Who is eligible to participate in a project?

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(b) An individual is eligible to receive support to complete a rigorous secondary school program of study if the individual meets the requirements of paragraph (a)(1) of this section, is accepted into the Talent Search project by the end of the first term of the tenth grade, is enrolled or is preparing to enroll in a rigorous secondary school program of study, as defined by his or her State of residence, and is designated as enrolled in a rigorous secondary school program of study on reports submitted by the grantee to the Secretary.

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35. Section 643.4 is revised to read as follows:

Sec. 643.4 What services does a project provide?

(a) A Talent Search project must provide the following services:

(1) Connections for participants to high quality academic tutoring services to enable the participants to complete secondary or postsecondary courses.

(2) Advice and assistance in secondary school course selection and, if applicable, initial postsecondary course selection.

(3) Assistance in preparing for college entrance examinations and completing college admission applications.

(4)(i) Information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and on resources for locating public and private scholarships; and

(ii) Assistance in completing financial aid applications, including the Free Application for Federal Student Aid (FAFSA).

(5) Guidance on and assistance in--

(i) Secondary school reentry;

- (ii) Alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma;
- (iii) Entry into general educational development (GED) programs; or
- (iv) Entry into postsecondary education.

(6) Connections for participants to education or counseling services designed to improve the financial literacy and economic literacy of the participants or the participants' parents, including financial planning for postsecondary education.

(b) A Talent Search project may provide services such as the following:

- (1) Academic tutoring, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects.
- (2) Personal and career counseling or activities.
- (3) Information and activities designed to acquaint youth with the range of career options available to the youth.
- (4) Exposure to the campuses of institutions of higher education, as well as to cultural events, academic programs, and other sites or activities not usually available to disadvantaged youth.
- (5) Workshops and counseling for families of participants served.
- (6) Mentoring programs involving elementary or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons.
- (7) Programs and activities as described in this section that are specially designed for participants who are limited English proficient, from groups that are traditionally underrepresented in postsecondary education, individuals with disabilities, homeless children and youths, foster care youth, or other disconnected participants.

(Authority: 20 U.S.C. 1070a-12)

36. Section 643.5 is revised to read as follows:

Sec. 643.5 How long is a project period?

A project period under the Talent Search program is five years.

(Authority: 20 U.S.C. 1070a-11)

37. Section 643.6 is amended by revising paragraph (a) to read as follows:

Sec. 643.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for Sec. Sec. 75.215-75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

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38. Section 643.7(b) is amended by:

- A. Revising the definition of ``Institution of higher education''.
- B. Revising the definition of ``Veteran''.

C. Adding, in alphabetical order, new definitions for ``Different population'', ``Financial and economic literacy'', ``Foster care

youth'', ``Homeless children and youth'', ``Individuals with disabilities'', ``Regular secondary school diploma'', and ``Rigorous secondary school diploma''.

The revisions and additions read as follows:

Sec. 643.7 What definitions apply?

* * * * *

(b) * * *

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Talent Search program and that--

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, including but not limited to knowledge about--

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (e.g., loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary education (e.g., spending, saving, personal budgeting);

(4) College cost of attendance (e.g., public vs. private, tuition vs. fees, personal costs);

(5) Scholarship, grant, and loan education (e.g., searches, application processes, and differences between private and government loans); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

Foster care youth means youth who are in foster care or are aging out of the foster care system. * * *

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434(a)).

Individual with disabilities means a person who has a diagnosed physical or mental impairment that substantially

[[Page 13882]]

limits that person's ability to participate in educational experiences and opportunities.

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA. * * *

Regular secondary school diploma means a level attained by individuals who meet or exceed the coursework and performance standards for high school completion established by the individual's State.

Rigorous secondary school program of study means a program of study that is--

(1) Established by a State educational agency (SEA) or local educational agency (LEA) and recognized as a rigorous secondary school program of study by the Secretary through the process described in 34 CFR Sec. 691.16(a) through Sec. 691.16(c) for the ACG Program;

(2) An advanced or honors secondary school program established by

States and in existence for the 2004-2005 school year or later school years;

(3) Any secondary school program in which a student successfully completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English;

(4) A secondary school program identified by a State-level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado;

(5) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of a ``4'' or higher on the examinations for at least two of those courses; or

(6) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of ``3'' or higher on the College Board's Advanced Placement Program Exams for at least two of those courses. * * *

Veteran means a person who--

(1) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(2) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(3) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(4) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

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Subpart B--How Does One Apply for an Award?

39. Subpart B of part 643 is amended by revising the subpart heading to read as set forth above.

Sec. 643.10 [Redesignated as Sec. 643.11]

39a. Redesignate Sec. 643.10 as Sec. 643.11.

40. A new Sec. 643.10 is added to read as follows:

Sec. 643.10 How many applications may an eligible applicant submit?

(a) An applicant may submit more than one application for Talent Search grants as long as each application describes a project that

serves a different target area or target schools, or another designated different population.

(b) For each grant competition, the Secretary designates, in the Federal Register notice inviting applications and the other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a-12; 1221e-3)

41. Newly redesignated Sec. 643.11 is amended by:

A. In the introductory text, removing the word ``shall'' and adding, in its place, the word ``must''.

B. In paragraph (a), adding the words ``, and at least two-thirds of the participants selected to receive support for a rigorous secondary school program of study,'' after the words ``Talent Search project''.

C. Revising paragraph (b). The revision reads as follows:

Sec. 643.11 What assurances must an applicant submit?

* * * * *

(b) Individuals who are receiving services from another Talent Search project; a Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) project under 34 CFR part 694; a Regular Upward Bound, Upward Bound Math and Science Centers, or Veterans Upward Bound project under 34 CFR part 645; an Educational Opportunity Centers project under 34 CFR part 644; or other programs serving similar populations will not receive the same services under the proposed project.

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42. Section 643.20 is amended by:

A. In paragraph (a)(2)(i), removing the words ``in delivering services'' and adding, in their place, the words ``of high quality service delivery (PE)''.

B. In paragraph (a)(2)(ii), adding the word ``total'' after the word ``maximum'' the first time it appears.

C. Adding paragraphs (a)(2)(iii) through (a)(2)(v).

D. Removing paragraph (a)(3).

E. In paragraph (b), removing the words ``through (3)'' and adding, in their place, the words ``and (a)(2)''.

F. Revising paragraph (d).

The additions and revision read as follows:

Sec. 643.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the Federal Register notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed. * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.
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43. Section 643.21 is amended by:

A. Revising paragraphs (a), (b), and (c).

B. Revising paragraph (d)(2).

C. In the OMB control number parenthetical following paragraph (g), removing the numbers ``1840-0549'' and adding, in their place, the numbers ``1840-0065''.

The revisions read as follows:

Sec. 643.21 What selection criteria does the Secretary use?

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(a) Need for the project (24 points). The Secretary evaluates the need for a Talent Search project in the proposed target area on the basis of the extent to

[[Page 13883]]

which the application contains clear evidence of the following:

(1) (6 points) A high number or high percentage of the following--

(i) Low-income families residing in the target area; or

(ii) Students attending the target schools who are eligible for free or reduced priced lunch as described in sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act.

(2) (2 points) Low rates of high school persistence among individuals in the target schools as evidenced by the annual student persistence rates in the proposed target schools for the most recent year for which data are available.

(3) (4 points) Low rates of students in the target school's graduating high school with a regular secondary school diploma in the standard number of years for the most recent year for which data are available.

(4) (6 points) Low postsecondary enrollment and completion rates among individuals in the target area and schools as evidenced by--

(i) Low rates of enrollment in programs of postsecondary education by graduates of the target schools in the most recent year for which data are available; and

(ii) A high number or high percentage of individuals residing in the target area with education completion levels below the baccalaureate degree level.

(5) (2 points) The extent to which the target secondary schools do not offer their students the courses or academic support to complete a rigorous secondary school program of study or have low participation by low-income or first generation students in such courses.

(6) (4 points) Other indicators of need for a Talent Search project, including a high ratio of students to school counselors in the target schools and the presence of unaddressed academic or socio-economic problems of eligible individuals, including foster care youth and homeless children and youth, in the target schools or the target area.

(b) Objectives (8 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the

following areas on the basis of the extent to which they are both ambitious, as related to the Need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) (2 points) Secondary school persistence.

(2) (2 points) Secondary school graduation (regular secondary school diploma).

(3) (1 point) Secondary school graduation (rigorous secondary school program of study).

(4) (2 points) Postsecondary education enrollment.

(5) (1 point) Postsecondary degree attainment.

(c) Plan of operation (30 points). The Secretary evaluates the quality of the applicant's plan of operation on the basis of the following:

(1) (3 points) The plan to inform the residents, schools, and community organizations in the target area of the purpose, objectives, and services of the project and the eligibility requirements for participation in the project.

(2) (3 points) The plan to identify and select eligible project participants, including the project's plan and criteria for selecting individuals who would receive support to complete a rigorous secondary school program of study.

(3) (10 points) The plan for providing the services delineated in Sec. 643.4 as appropriate based on the project's assessment of each participant's need for services.

(4) (6 points) For those students in need of services to complete a rigorous secondary school program of study, the project's plan to provide services sufficient to enable the participants to succeed.

(5) (6 points) The plan, including timelines, personnel, and other resources, to ensure the proper and efficient administration of the project, including the project's organizational structure; the time commitment of key project staff; financial, personnel, and records management; and, where appropriate, coordination with other programs for disadvantaged youth.

(6) (2 points) The plan to follow former participants as they enter, continue in, and complete postsecondary education.

(d) * * *

(2) (8 points) Resources secured through written commitments from institutions of higher education, secondary schools, community organizations, and others.

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44. Section 643.22 is revised to read as follows:

Sec. 643.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in Sec. 643.20(a)(2)(i), the Secretary--

(1) Evaluates the applicant's performance under its expiring Talent Search project;

(2) Uses the approved project objectives for the applicant's expiring Talent Search grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate

PE are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) For the criterion specified in paragraph (d)(1) of this section (Number of participants), the Secretary does not award any PE points if the applicant did not serve the approved number of participants.

(d) For purposes of the evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) Number of participants. Whether the applicant provided services to the approved number of participants.

(2) (3 points) Secondary school persistence. Whether the applicant met or exceeded its objective regarding the continued secondary school enrollment of participants.

(3) (3 points) Secondary school graduation (regular secondary school diploma). Whether the applicant met or exceeded its objective regarding the graduation of current and prior participants from secondary school with a regular secondary school diploma in the standard number of years.

(4) (1.5 points) Secondary school graduation (rigorous secondary school program of study). Whether the applicant met or exceeded its objective regarding the percentage of current and prior participants with an expected high school graduation date in the school year who were enrolled in and completed a rigorous secondary school program of study.

(5) (3 points) Postsecondary enrollment. Whether the applicant met or exceeded its objective regarding the percentage of current and prior participants with an expected high school graduation date in the school year who enrolled in an institution of higher education by the fall term immediately following the school year.

(6) (1.5 points) Postsecondary completion. Whether the applicant met or exceeded its objective regarding the completion of a program of postsecondary education within the

[[Page 13884]]

number of years specified in the approved objective. The applicant may determine success in meeting the objective by using a randomly selected sample of participants in accordance with the parameters established by the Secretary in the Federal Register notice inviting applications or other published application materials for the competition.

(Approved by the Office of Management and Budget under control number 1840-NEW7.)

(Authority: 20 U.S.C. 1070a-12)

Sec. 643.23 [Amended]

45. Section 643.23 is amended by:

A. In the introductory text of paragraph (b), removing the words ``beginning in fiscal year 1994''.

B. In paragraph (b)(1), removing the amount ``\$180,000'' and adding, in its place, the amount ``\$200,000''.

46. A new Sec. 643.24 is added to subpart C of part 643 to read as follows:

Sec. 643.24 What is the review process for unsuccessful applicants?

(a) Technical or administrative error for applications not reviewed. (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if--

(i) The applicant has met all application submission requirements included in the Federal Register notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes--

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the Federal Register notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to--

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) Administrative or scoring error for applications that were reviewed. (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if--

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned

PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points--

(A) Uses criteria not required by the applicable law or program regulations, the Federal Register notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term ``scoring error'' does not include--

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the Federal Register notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) Procedures for the second review. (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in Sec. 643.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as discussed in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE

points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) Process for establishing a funding band. (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications--

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) Final decision. (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840-NEW2.)

(Authority: 20 U.S.C. 1070a-11)

47. Section 643.30 is amended by:

A. In the introductory text, removing the words ``34 CFR part 74, subpart Q'' and adding, in their place, the words ``34 CFR 74.27, 75.530, and 80.22, as applicable''.

B. In the introductory text of paragraph (a), adding the word ``project'' before the word ``staff''.

C. In paragraph (a)(1), removing the words ``to obtain information relating to the admission of participants to those institutions''.

D. In paragraph (a)(2), removing the word ``and''.

E. In paragraph (a)(3) by adding the words ``for participants'' after the word ``trips''; removing the words ``in the target area''; and removing the punctuation ``.''' at the end of the paragraph and adding, in its place, the words ``; and''.

F. Adding a new paragraph (a)(4).

G. In paragraph (b), adding the words ``and test preparation programs for participants'' after the word ``materials''.

H. Revising paragraph (f).

I. Adding new paragraphs (g) and (h).

The revision and additions read as follows:

Sec. 643.30 What are allowable costs?

* * * * *

(a) * * *

(4) Transportation to institutions of higher education, secondary schools not attended by the participants, or other locations at which the participant receives instruction that is part of a rigorous secondary school program of study.

* * * * *

(f) Purchase, lease, or rental of computer hardware, software, and other equipment and supplies that support the delivery of services to participants, including technology used by participants in a rigorous secondary school program of study.

(g) Purchase, lease, or rental of computer equipment and software needed for project administration and recordkeeping.

(h) Tuition costs for a course that is part of a rigorous secondary school program of study if--

(1) The course or a similar course is not offered at the secondary school that the participant attends or at another school within the school district;

(2) The grantee demonstrates to the Secretary's satisfaction that using grant funds is the most cost-effective way to deliver the course or courses necessary for the completion of a rigorous secondary school program of study for program participants;

(3) The course is taken at an institution of higher education;

(4) The course is comparable in content and rigor to courses that are part of a rigorous secondary school program of study as defined in Sec. 643.7(b);

(5) The secondary school accepts the course as meeting one or more of the course requirements for obtaining a high school diploma;

(6) A waiver of the tuition costs is unavailable;

(7) The tuition is paid with Talent Search grant funds to an institution of higher education on behalf of a participant; and

(8) The Talent Search project pays for no more than the equivalent of two courses for a participant each school year.

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48. Section 643.31 is amended in paragraph (a) by removing the

phrase ``Tuition, stipends,'' and by adding ``Stipends'' in its place.

49. Section 643.32 is amended by:

A. Removing paragraph (b).

B. Redesignating paragraph (c) as paragraph (b).

C. In newly redesignated paragraph (b) introductory text, removing the word ``shall'' and adding, in its place, the word ``must''.

D. In newly redesignated paragraph (b)(3), removing the word ``and''.

E. In newly redesignated paragraph (b)(4), removing the punctuation ``.'' and adding, in its place, the words ``; and''.

F. Adding a new paragraph (b)(5).

G. Adding a new paragraph (c).

H. Removing paragraph (d).

I. In the OMB control number parenthetical following newly added paragraph (c), removing the numbers ``1840-0549'' and adding, in their place, the numbers ``1840-NEW2''.

The additions read as follows:

Sec. 643.32 What other requirements must a grantee meet?

* * * * *

(b) * * *

(5) A list of courses taken by participants receiving support to complete a rigorous secondary school

[[Page 13886]]

program of study as defined in Sec. 643.7(b).

(c) Project director. (1) A grantee must employ a full-time project director unless--

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (c)(1) of this section if the applicant demonstrates that the requirement to administer no more than three programs will hinder effective coordination between the Talent Search program and--

(i) One or more Federal TRIO programs (sections 402A through 402F of the HEA); or

(ii) One or more similar programs funded through other sources.

● * * * * *

PART 644--EDUCATIONAL OPPORTUNITY CENTERS

50. The authority citation for part 644 continues to read as follows:

Authority: 20 U.S.C. 1070a-11 and 1070a-16, unless otherwise noted.

51. Section 644.1 is amended by:

A. In the introductory text, removing the words ``to provide''.

B. In paragraph (a), removing the word ``Information'' and adding, in its place, the words ``To provide information''; removing the word ``for'' and adding, in its place, the word ``to''; and removing the word ``and'' that appears after the punctuation ``;''.

C. In paragraph (b), removing the word ``Assistance'' and adding, in its place, the words ``To provide assistance''; and removing the punctuation ``.''' at the end of the sentence and adding, in its place, the word ``; and''.

D. Adding a new paragraph (c).

The addition reads as follows:

Sec. 644.1 What is the Educational Opportunity Centers program?

* * * * *

(c) To improve the financial literacy and economic literacy of participants on topics such as--

(1) Basic personal income, household money management, and financial planning skills; and

(2) Basic economic decision-making skills.

* * * * *

52. Section 644.2 is amended by:

A. In the introductory text of the section, adding the word ``entities'' after the word ``following''.

B. In paragraph (b), adding the words ``, including a community-based organization with experience in serving disadvantaged youth'' after the word ``organization''.

- C. Removing paragraph (d).
 - D. Redesignating paragraph (c) as paragraph (d).
 - E. Adding a new paragraph (c).
 - F. In newly redesignated paragraph (d), removing the word ``and'' before the citation ``(b)'' and adding, in its place, the punctuation ``,''; and adding the words ``, and (c)'' after the citation ``(b)''.
- The addition reads as follows:
- * * * * *

Sec. 644.2 Who is eligible for a grant?

- * * * * *
- (c) A secondary school.
- * * * * *
53. Section 644.4 is amended by:
- A. Redesignating paragraphs (e), (f), (g), (h), (i), (j), and (k) as paragraphs (f), (g), (h), (i), (j), (k), and (l), respectively.
 - B. Adding a new paragraph (e).
 - C. In newly redesignated paragraph (g), removing the word ``Personal'' and adding, in its place, the words ``Individualized personal, career, and academic''.
 - D. Revising newly redesignated paragraph (k).
- The addition and revision read as follows:

Sec. 644.4 What services may a project provide?

- * * * * *
- (e) Education or counseling services designed to improve the financial literacy and economic literacy of participants.
- * * * * *
- (k) Programs and activities described in this section that are specially designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary education, participants who are individuals with disabilities, participants who are homeless children and youth, participants who are foster care youth, or other disconnected participants.
- * * * * *
54. Section 644.5 is revised to read as follows:

Sec. 644.5 How long is a project period?

A project period under the Educational Opportunity Centers program is five years.

(Authority: 20 U.S.C. 1070a-11)

55. Section 644.6 is amended by revising paragraph (a) to read as follows:

Sec. 644.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for Sec. Sec. 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

56. Section 644.7(b) is amended by:

A. Adding, in alphabetical order, new definitions for Different population, Financial and economic literacy, Foster care youth, Homeless children and youth, and Individual with disabilities.

B. Revising the definition of Institution of higher education.

C. Revising the definition of Veteran.

The additions and revisions read as follows:

Sec. 644.7 What definitions apply?

* * * * *

(b) * * *

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Educational Opportunity Centers program and that--

(i) Is separate and distinct from any other population that the entity has applied for a grant under this chapter to serve; or

(ii) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, including but not limited to knowledge about--

(i) Personal and family budget planning;

(ii) Understanding credit building principles to meet long-term and short-term goals (e.g., loan to debt ratio, credit scoring, negative impacts on credit scores);

(iii) Cost planning for postsecondary education (e.g., spending, saving, personal budgeting);

(iv) College cost of attendance (e.g., public vs. private, tuition vs. fees, personal costs);

(v) Scholarship, grant, and loan education (e.g., searches, application processes, and differences between private and government loans); and

(vi) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

Foster care youth means youth who are in foster care or are aging out of the foster care system.

* * * * *

Homeless children and youth means those persons defined in section 725 of

[[Page 13887]]

the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434(a)).

Individual with disabilities means a person who has a diagnosed physical or mental impairment that substantially limits that person's ability to participate in educational experiences and opportunities.

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

* * * * *

Veteran means a person who--

(i) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(ii) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(iii) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(iv) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

* * * * *

Subpart B--How Does One Apply for an Award?

57. The heading for subpart B of part 644 is revised to read as set forth above.

Sec. 644.10 [Redesignated as Sec. 644.11]

58. In subpart B of part 644, Sec. 644.10 is redesignated as Sec. 644.11.

59. A new Sec. 644.10 is added to subpart B of part 644 to read as follows:

Sec. 644.10 How many applications may an eligible applicant submit?

(a) An applicant may submit more than one application for Educational Opportunity Centers grants as long as each application describes a project that serves a different target area or another designated different population.

(b) For each grant competition, the Secretary designates, in the Federal Register notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a-11, 1221e-3)

60. Newly redesignated Sec. 644.11 is amended by:

A. In the introductory text, removing the word ``shall'' and adding, in its place, the word ``must''.

B. Revising paragraph (b).

The revision reads as follows:

Sec. 644.11 What assurances must an applicant submit?

* * * * *

(b) Individuals who are receiving services from another Educational Opportunity Center project under this part, a Veterans Upward Bound project under 34 CFR part 645, a Talent Search project under 34 CFR

part 643, or other programs serving similar populations will not receive the same services under the proposed project.

* * * * *

61. Section 644.20 is amended by:

A. In paragraph (a)(2)(i), removing the words ``in delivering services'' and adding, in their place, the words ``of high quality service delivery (PE)''.

B. In paragraph (a)(2)(ii), adding the word ``total'' after the word ``maximum'' the first time it appears.

C. Adding new paragraphs (a)(2)(iii) through (a)(2)(v).

D. Removing paragraph (a)(3).

E. In paragraph (b), removing the words ``paragraphs (a)(1) through (3)'' and adding, in their place, the words ``paragraph (a)''.

F. Revising paragraph (d).

The revision and additions read as follows:

Sec. 644.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the Federal Register notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

62. Section 644.21 is amended by:

A. Revising paragraph (b).

B. In paragraph (d)(2), adding the words ``of support'' after the word ``commitments''; and adding the words ``institutions of higher education, secondary'' before the word ``schools''.

C. In the OMB control number parenthetical following paragraph (g), removing the numbers ``1840-0065'' and adding, in their place, the numbers ``1840-NEW3''.

The revision reads as follows:

Sec. 644.21 What selection criteria does the Secretary use?

* * * * *

(b) Objectives (8 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) (2 points) Enrollment of participants who do not have a secondary school diploma or its recognized equivalent in programs leading to a secondary school diploma or its equivalent.

- (2) (4 points) Postsecondary enrollment.
- (3) (1 point) Student financial aid assistance.
- (4) (1 point) Student college admission assistance.

* * * * *

63. Section 644.22 is revised to read as follows:

Sec. 644.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in Sec. 644.20(a)(2)(i), the Secretary--

- (1) Evaluates the applicant's performance under its expiring Educational Opportunity Centers project;
- (2) Uses the approved project objectives for the applicant's expiring Educational Opportunity Centers grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and
- (3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE points are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) For the criterion specified in paragraph (d)(1) of this section (Number

[[Page 13888]]

of participants), the Secretary does not award PE points if the applicant did not serve the approved number of participants.

(d) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

- (1) (3 points) Number of participants. Whether the applicant provided services to the approved number of participants.
- (2) (3 points) Secondary school diploma. Whether the applicant met or exceeded its approved objective with regard to participants who do not have a secondary school diploma or its equivalent who enroll in programs leading to a secondary school diploma or its equivalent.
- (3) (6 points) Postsecondary enrollment. Whether the applicant met or exceeded its approved objective with regard to the secondary school graduates who enroll in programs of postsecondary education during the project year by the fall term immediately following the school year.
- (4) (1.5 points) Financial aid assistance. Whether the applicant met or exceeded its objective regarding assistance to individuals in completing financial aid applications.
- (5) (1.5 points) College admission assistance. Whether the applicant met or exceeded its objective regarding assistance to individuals in completing applications for college admission.

(Approved by the Office of Management and Budget under control number 1840-NEW8.)

(Authority: 20 U.S.C. 1070a-16)

64. Section 644.23 is amended by:

A. In the introductory text of paragraph (b), removing the words ``beginning in fiscal year 1994''.

B. Revising paragraph (b)(1).

The revision reads as follows:

Sec. 644.23 How does the Secretary set the amount of a grant?

* * * * *

(b) * * *

(1) \$200,000; or

* * * * *

65. Section 644.24 is added to subpart C of part 644 to read as follows:

Sec. 644.24 What is the review process for unsuccessful applicants?

(a) Technical or administrative error for applications not reviewed. (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if--

(i) The applicant has met all of the application submission requirements included in the Federal Register notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes--

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the Federal Register notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to--

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior

to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) Administrative or scoring error for applications that were reviewed. (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if--

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points--

(A) Uses criteria not required by the applicable law or program regulations, the Federal Register notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term ``scoring error'' does not include--

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the Federal Register notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) Procedures for the second review. (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in Sec. 644.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as

[[Page 13889]]

described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's

agent, or a peer reviewer made an administrative or scoring error as discussed in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) Process for establishing a funding band. (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications--

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the

funds that were set aside for the second review of applications for the competition.

(e) Final decision. (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840-NEW3)

(Authority: 20 U.S.C. 1070a-11)

66. Section 644.30 is amended by:

A. In the introductory text, removing the words ``34 CFR part 74, subpart Q'' and adding, in their place, the words ``34 CFR 74.27, 75.530, and 80.22, as applicable''.

B. In the introductory text of paragraph (a), adding the word ``project'' before the word ``staff''.

C. In paragraph (a)(1), removing the words ``to obtain information relating to the admission of participants to those institutions''.

D. Revising paragraph (a)(3).

E. In paragraph (b), adding the words ``and test preparation programs for participants'' after the word ``materials''.

F. Revising paragraph (f).

The revisions read as follows:

Sec. 644.30 What are allowable costs?

* * * * *

(a) * * *

(3) Field trips for participants to observe and meet with persons who are employed in various career fields and can act as role models for participants.

* * * * *

(f) Purchase, lease, or rental of computer hardware, computer software, or other equipment for participant development, project administration, or project recordkeeping.

* * * * *

67. Section 644.32 is amended by:

A. Removing paragraphs (b) and (d).

B. Redesignating paragraph (c) as paragraph (b).

C. Adding a new paragraph (c).

D. In the OMB control number parenthetical following paragraph (b), removing the numbers ``1840-0065'' and adding, in their place, the numbers ``1840-NEW8''.

The addition reads as follows:

Sec. 644.32 What other requirements must a grantee meet?

* * * * *

(c) Project director. (1) A grantee must employ a full-time project director unless--

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (c)(1) of this section if the applicant demonstrates that the requirement to administer no more than three programs will hinder effective coordination between the Educational Opportunity Centers program and--

(i) One or more Federal TRIO programs (sections 402A through 402F of the HEA); or

(ii) One or more similar programs funded through other sources.

• * * * *

PART 645--UPWARD BOUND PROGRAM

68. The authority citation for part 645 is revised to read as follows:

Authority: 20 U.S.C. 1070a-11 and 1070a-13, unless otherwise noted.

69. Section 645.2 is amended by:

A. In paragraph (a), removing the word ``Institutions'' and adding, in its place, the words ``An institution''.

B. Revising paragraphs (b), (c), and (d).

The revisions read as follows:

[[Page 13890]]

Sec. 645.2 Who is eligible for a grant?

* * * * *

(b) A public or private agency or organization, including a community-based organization with experience in serving disadvantaged youth.

(c) A secondary school.

(d) A combination of the types of institutions, agencies, and organizations described in paragraphs (a), (b), and (c) of this section.

* * * * *

70. Section 645.4 is amended by:

A. Revising the section heading.

B. Removing paragraph (a).

C. Redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c), respectively.

The revision reads as follows:

Sec. 645.4 What are the grantee requirements for documenting the low-income and first-generation status of participants?

* * * * *

71. Section 645.5 is amended by revising paragraph (a) to read as follows:

Sec. 645.5 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for Sec. Sec. 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

72. Section 645.6(b) is amended by:

A. Revising the definition of Institution of higher education.

B. Revising the definition of Veteran.

C. Adding, in alphabetical order, new definitions for Different population, Financial and economic literacy, Foster care youth, Homeless children and youth, Individual who has a high risk for academic failure, Individual with disabilities, Regular secondary school diploma, Rigorous secondary school program of study, and Veteran who has a high risk for academic failure.

The revisions and additions read as follows:

Sec. 645.6 What definitions apply to the Upward Bound Program?

* * * * *

(b) * * *

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Upward Bound program and that--

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

* * * * *

Financial and economic literacy means knowledge about personal financial decision-making, including but not limited to knowledge about--

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (e.g., loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary education (e.g., spending, saving, personal budgeting);

(4) College cost of attendance (e.g., public vs. private, tuition vs. fees, personal costs);

(5) Scholarship, grant, and loan education (e.g., searches, application processes, and differences between private and government loans); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

Foster care youth means youth who are in foster care or are aging out of the foster care system.

* * * * *

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434(a)).

Individual who has a high risk for academic failure (regular Upward Bound participant) means an individual who--

(1) Has not achieved at the proficient level on State assessments in reading or language arts;

(2) Has not achieved at the proficient level on State assessments in math;

(3) Has not completed pre-algebra, algebra, or geometry; or

(4) Has a grade point average of 2.5 or less (on a 4.0 scale) for the most recent school year for which grade point averages are available.

Individual with disabilities means a person who has a diagnosed physical or mental impairment that substantially limits that person's ability to participate in educational experiences and opportunities.

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

* * * * *

Regular secondary school diploma means a diploma attained by individuals who meet or exceed the coursework and performance standards for high school completion established by the individual's State.

Rigorous secondary school program of study means a program of study that is--

(1) Established by a State educational agency (SEA) or local educational agency (LEA) and recognized as a rigorous secondary school program of study by the Secretary through the process described in 34 CFR 691.16(a) through (c) for the ACG Program;

(2) An advanced or honors secondary school program established by States and in existence for the 2004-2005 school year or later school years;

(3) Any secondary school program in which a student successfully completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English;

(4) A secondary school program identified by a State-level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado;

(5) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of a ``4'' or higher on the examinations for at least two of those courses; or

(6) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of ``3'' or higher on the College Board's Advanced Placement Program Exams for at least two of those courses.

* * * * *

Veteran means a person who--

(1) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or

released under conditions other than dishonorable;

(2) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(3) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(4) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

[[Page 13891]]

Veteran who has a high risk for academic failure means a veteran who--

(1) Has been out of high school or dropped out of a program of postsecondary education for five or more years;

(2) Has scored on standardized tests below the level that demonstrates a likelihood of success in a program of postsecondary education; or

(3) Meets the definition of an individual with disabilities as defined in Sec. 645.6(b).

* * * * *

73. Section 645.11 is revised to read as follows:

Sec. 645.11 What services do all Upward Bound projects provide?

(a) Any project assisted under this part must provide--

(1) Academic tutoring to enable students to complete secondary or postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects;

(2) Advice and assistance in secondary and postsecondary course selection;

(3) Assistance in preparing for college entrance examinations and completing college admission applications;

(4)(i) Information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and

(ii) Assistance in completing financial aid applications, including the Free Application for Federal Student Aid;

(5) Guidance on and assistance in--

(i) Secondary school reentry;

(ii) Alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma;

(iii) Entry into general educational development (GED) programs; or

(iv) Entry into postsecondary education; and

(6) Education or counseling services designed to improve the financial literacy and economic literacy of students or the students' parents, including financial planning for postsecondary education.

(b) Any project that has received funds under this part for at least two years must include as part of its core curriculum in the next and succeeding years, instruction in--

(1) Mathematics through pre-calculus;

(2) Laboratory science;

- (3) Foreign language;
- (4) Composition; and
- (5) Literature.

(Authority: 20 U.S.C. 1070a-13)

Sec. 645.12, 645.13, and 645.14 [Redesignated as Sec. 645.13, 645.14, and 645.15]

74. Sections 645.12, 645.13, and 645.14 of subpart B of part 645 are redesignated as Sec. 645.13, 645.14, and 645.15 of subpart B of part 645, respectively.

75. A new Sec. 645.12 is added to subpart B of part 645 to read as follows:

Sec. 645.12 What services may regular Upward Bound and Upward Bound Math-Science projects provide?

Any project assisted under this part may provide such services as--

- (a) Exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth;
- (b) Information, activities, and instruction designed to acquaint youth participating in the project with the range of career options available to the youth;
- (c) On-campus residential programs;
- (d) Mentoring programs involving elementary school or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons;
- (e) Work-study positions where youth participating in the project are exposed to careers requiring a postsecondary degree; and
- (f) Programs and activities as described in Sec. 645.11 or paragraphs (a)(1) through (a)(6) of this section that are specially designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary education, participants who are individuals with disabilities, participants who are homeless children and youths, participants in or who are aging out of foster care, or other disconnected participants.

(Authority: 20 U.S.C. 1070a-13)

76. Newly redesignated Sec. 645.15 is amended by--

- A. In the introductory text, removing the words ``Sec. 645.11(a) and may be provided under Sec. 645.11(b)'' and adding, in their place, the citation ``Sec. 645.11'';
- B. In paragraph (b), removing the word ``and'';
- C. In paragraph (c), removing the punctuation ``.''' and adding, in its place, the word ``; and''; and
- D. Adding a new paragraph (d).
The addition reads as follows:

Sec. 645.15 What additional services do Veterans Upward Bound projects provide?

* * * * *

(d) Provide special services, including mathematics and science preparation, to enable veterans to make the transition to postsecondary education.

* * * * *

77. Section 645.20 is revised to read as follows:

Sec. 645.20 How many applications for an Upward Bound award may an eligible applicant submit?

(a) An applicant may submit more than one application as long as each application describes a project that serves a different target area or target school, or another designated different population.

(b) For each grant competition, the Secretary designates, in the Federal Register notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a-13, 1221e-3)

78. Section 645.21 is revised to read as follows:

Sec. 645.21 What assurances must an applicant include in an application?

(a) An applicant for a Regular Upward Bound award must assure the Secretary that--

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be low-income individuals, potential first-generation college students, or individuals who have a high risk for academic failure;

(3) No student will be denied participation in a project because the student would enter the project after the 9th grade; and

(4) Individuals who are receiving services from Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) project under 34 CFR part 694, another regular Upward Bound or Upward Bound Math and Science Centers project under this part, a Talent Search project under 34 CFR part 643, an Educational Opportunity Centers project under 34 CFR part 644, or other programs serving similar populations will not receive the same services under the proposed project.

(b) An applicant for an Upward Bound Math and Science Centers award must assure the Secretary that--

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be either low-income individuals or potential first-generation college students;

[[Page 13892]]

(3) No student will be denied participation in a project because

the student would enter the project after the 9th grade; and

(4) Individuals who are receiving services from GEAR UP under 34 CFR part 694, a regular Upward Bound or another Upward Bound Math-Science Centers project under this part, a Talent Search project under 34 CFR part 643, an Educational Opportunity Centers project under 34 CFR part 644, or other programs serving similar populations will not receive the same services under the proposed project.

(c) An applicant for a Veterans Upward Bound award must assure the Secretary that--

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be low-income individuals, potential first-generation college students, or veterans who have a high risk for academic failure; and

(3) Individuals who are receiving services from another Veterans Upward Bound project under this part, a Talent Search project under 34 CFR part 643, an Educational Opportunity Centers project under 34 CFR part 644, or other programs serving similar populations will not receive the same services under the proposed project.

(Authority: 20 U.S.C. 1070a-13)

79. Section 645.30 is amended by:

A. In paragraph (a)(2)(i), removing the words ``in delivering services'' and adding, in their place, the words ``of high quality service delivery (PE)''.

B. In paragraph (a)(2)(ii), adding the word ``total'' after the word ``maximum'' the first time it appears.

C. Adding new paragraphs (a)(2)(iii) through (a)(2)(v).

D. Revising paragraph (d).

The additions and revision read as follows:

Sec. 645.30 How does the Secretary decide which grants to make?

(a) * * *

(2) * * *

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the Federal Register notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

80. Section 645.31 is amended by:

A. Revising paragraph (b).

B. In paragraph (d)(2), adding the word ``secondary'' after the word ``from''; and adding the words ``institutions of higher

education,' after the word ``schools,'.

The revision reads as follows:

Sec. 645.31 What selection criteria does the Secretary use?

* * * * *

(b) Objectives (9 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) For Regular Upward Bound and Upward Bound Math and Science Centers--

(i) (1 point) Academic performance (GPA);

(ii) (1 point) Academic performance (standardized test scores);

(iii) (2 points) Secondary school graduation (with regular secondary school diploma);

(iv) (1 point) Completion of rigorous secondary school program of study;

(v) (3 points) Postsecondary enrollment; and

(vi) (1 point) Postsecondary completion.

(2) For Veterans Upward Bound--

(i) (2 points) Academic performance (standardized test scores);

(ii) (3 points) Education program retention and completion;

(iii) (3 points) Postsecondary enrollment; and

(iv) (1 point) Postsecondary completion.

* * * * *

81. Section 645.32 is revised to read as follows:

Sec. 645.32 How does the Secretary evaluate prior experience?

(a) In the case of an application described in Sec. 645.30(a)(2)(i), the Secretary--

(1) Evaluates the applicant's performance under its expiring Upward Bound project;

(2) Uses the approved project objectives for the applicant's expiring Upward Bound grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award any PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE points are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) For the criteria specified in paragraphs (e)(1)(i) and (e)(2)(i) of this section (Number of participants), the Secretary does not award PE points if the applicant did not serve the approved number of participants.

(d) The Secretary uses the approved number of participants, or the actual number of participants served in a given year if greater than

the approved number of participants, as the denominator for calculating whether the applicant has met its approved objectives related to the following PE criteria:

(1) Regular Upward Bound and Upward Bound Math and Science Centers PE criteria in paragraph (e)(1)(ii) of this section (Academic performance) and paragraph (e)(1)(iii) of this section (Secondary school retention and graduation).

(2) Veterans Upward Bound PE criteria in paragraph (e)(2)(ii) of this section (Academic improvement on standardized test) and paragraph (e)(2)(iii) of this section (Education program retention and completion).

(e) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) Regular Upward Bound and Upward Bound Math and Science Centers.

(i) (3 points) Number of participants. Whether the applicant provided services to the approved number of participants.

(ii) Academic Performance. (A) (1.5 points) Whether the applicant met or exceeded its approved objective with regard to the percentage of project participants that received a 2.5 grade point average or better on a 4.0 scale or its equivalent at the end of each school year.

(B) (1.5 points) Whether the applicant met or exceeded its approved objective

[[Page 13893]]

with regard to the percentage of project participants that performed at the proficient level on State assessments in reading/language arts and math.

(iii) (3 points) Secondary school retention and graduation. Whether the applicant met or exceeded its approved objective with regard to the percentage of participants who returned the next school year or graduated from secondary school with a regular secondary school diploma.

(iv) (1.5 points) Rigorous secondary school program of study. Whether the applicant met or exceeded its approved objective with regard to the percentage of current and prior participants with an expected high school graduation date in the school year who were enrolled in and completed a rigorous secondary school program of study.

(v) (3 points) Postsecondary enrollment. Whether the applicant met or exceeded its approved objective with regard to the percentage of current and prior participants with an expected high school graduation date in the school year who enrolled in a program of postsecondary education by the fall term immediately following the school year.

(vi) (1.5 points) Postsecondary completion. Whether the applicant met or exceeded its approved objective with regard to the percentage of postsecondary enrollees who attained a postsecondary degree within the number of years specified in the approved objective.

(2) Veterans Upward Bound.

(i) (3 points) Number of participants. Whether the applicant provided services to the approved number of participants.

(ii) (3 points) Academic improvement on standardized test. Whether the applicant met or exceeded its approved objective with regard to the percentage of participants who improved their academic performance during the project year as measured by a standardized test taken by participants before and after receiving services from the project.

(iii) (3 points) Education program retention and completion.

Whether the applicant met or exceeded its approved objective with regard to the percentage of participants who remain enrolled in or completed their Veterans Upward Bound educational program during the project year.

(iv) (3 points) Postsecondary enrollment. Whether the applicant met or exceeded its approved objective with regard to the percentage of participants who enrolled in an institution of higher education during the project year or by the fall term immediately following the project year.

(v) (3 points) Postsecondary completion. Whether the applicant met or exceeded its approved objective with regard to the percentage of postsecondary enrollees who attained a postsecondary degree within the number of years specified in the approved objective.

(Approved by the Office of Management and Budget under control number 1840-NEW9)

(Authority: 20 U.S.C. 1070a-11 and 1070a-13)

Sec. 645.33 [Amended]

82. Section 645.33 is amended by, in paragraph (b)(1), removing the amount ``\$190,000'' and adding, in its place, the amount ``\$200,000''.

83. Section 645.34 is revised to read as follows:

Sec. 645.34 How long is a project period?

A project period under the Upward Bound program is five years.

(Authority: 20 U.S.C. 1070a-11)

84. A new Sec. 645.35 is added to subpart D of part 645 to read as follows:

Sec. 645.35 What is the review process for unsuccessful applicants?

(a) Technical or administrative error for applications not reviewed. (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if--

(i) The applicant has met all of the application submission requirements included in the Federal Register notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes--

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the Federal Register notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding

consideration, which may include, but is not limited to--

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) Administrative or scoring error for applications that were reviewed. (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if--

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points--

(A) Uses criteria not required by the applicable law or program regulations, the Federal Register notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term ``scoring error'' does not include--

[[Page 13894]]

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the Federal Register notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) Procedures for the second review. (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in Sec. 645.30 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as discussed in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average

score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) Process for establishing a funding band. (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications--

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) Final decision. (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840-NEW4.)

(Authority: 20 U.S.C. 1070a-11)

85. Section 645.40 is amended by:

A. In the introductory text, removing the words ``34 CFR part 74, subpart Q'' and adding, in their place, the words ``34 CFR 74.27, 75.530, and 80.22, as applicable''.

B. Revising paragraph (n).

C. Redesignating paragraph (o) as paragraph (p).

D. Adding new paragraph (o).

The revision and addition read as follows:

Sec. 645.40 What are allowable costs?

* * * * *

(n) Purchase, lease, or rental of computer hardware, software, and other equipment and supplies that support the delivery of services to participants, including technology used by participants in a rigorous secondary school program of study.

(o) Purchase, lease, or rental of computer equipment and software needed for project administration and recordkeeping.

* * * * *

86. Section 645.42 is amended by revising paragraph (d)(1)(ii) to read as follows:

Sec. 645.42 What are Upward Bound stipends?

* * * * *

(d) * * *

(1) * * *

(ii) The stipend may not exceed \$60 per month for the summer school recess for a period not to exceed three months, except that youth participating in a work-study position may be paid \$300 per month during the summer school recess.

* * * * *

87. Section 645.43 is amended by:

A. Removing paragraphs (a) and (b).

B. Adding a new paragraph (a).

C. Redesignating paragraph (c) as paragraph (b).

D. Adding an OMB control number parenthetical following paragraph (b).

[[Page 13895]]

The additions read as follows:

Sec. 645.43 What other requirements must a grantee meet?

(a) Project director. (1) A grantee must employ a full-time project director unless--

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (a)(1) of this section if the applicant demonstrates that the requirement to administer no more than three programs will hinder effective coordination between the Regular Upward Bound, Upward Bound Math and Science or Veterans Upward Bound program and--

(i) One or more Federal TRIO programs (sections 402A through 402F of the HEA); or

(ii) One or more similar programs funded through other sources.

* * * * *

(Approved by the Office of Management and Budget under control number 1840-NEW9.)

● * * * * *

PART 646--STUDENT SUPPORT SERVICES

88. The authority citation for part 646 continues to read as follows:

Authority: 20 U.S.C. 1070a-11 and 1070a-14, unless otherwise noted.

89. Section 646.1 is amended by:

A. In paragraph (a), adding the word ``college'' before the word ``retention''.

B. Revising paragraph (c).

C. Adding new paragraph (d).

The revision and addition read as follows:

Sec. 646.1 What is the Student Support Services program?

* * * * *

(c) Foster an institutional climate supportive of the success of students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, individuals with disabilities, homeless children and youth, foster care youth, or other disconnected students; and

(d) Improve the financial literacy and economic literacy of students in areas such as--

(1) Basic personal income, household money management, and financial planning skills; and

(2) Basic economic decision-making skills.

* * * * *

90. Section 646.4 is revised to read as follows:

Sec. 646.4 What activities and services does a project provide?

(a) A Student Support Services project must provide the following services:

(1) Academic tutoring, directly or through other services provided by the institution, to enable students to complete postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects.

(2) Advice and assistance in postsecondary course selection.

(3)(i) Information on both the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and

(ii) Assistance in completing financial aid applications, including the Free Application for Federal Student Aid.

(4) Education or counseling services designed to improve the financial literacy and economic literacy of students, including financial planning for postsecondary education.

(5) Activities designed to assist students participating in the project in applying for admission to, and obtaining financial assistance for enrollment in, graduate and professional programs.

(6) Activities designed to assist students enrolled in two-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, a four-year program of postsecondary education.

(b) A Student Support Services project may provide the following services:

(1) Individualized counseling for personal, career, and academic matters provided by assigned counselors.

(2) Information, activities, and instruction designed to acquaint students participating in the project with the range of career options available to the students.

(3) Exposure to cultural events and academic programs not usually available to disadvantaged students.

(4) Mentoring programs involving faculty or upper class students, or a combination thereof.

(5) Securing temporary housing during breaks in the academic year for--

(i) Students who are homeless children and youths or were formerly homeless children and youths; and

(ii) Foster care youths.

(6) Programs and activities as described in paragraph (a) of this section or paragraphs (b)(1) through (b)(4) of this section that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

(Authority: 20 U.S.C. 1070a-14)

91. Section 646.5 is revised to read as follows:

Sec. 646.5 How long is a project period?

A project period under the Student Support Services program is five years.

(Authority: 20 U.S.C. 1070a-11)

92. Section 646.6 is amended by revising paragraph (a) to read as follows:

Sec. 646.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for Sec. Sec. 75.215-75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

93. Section 646.7 is amended by:

A. Removing paragraph (a).

B. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

C. In newly redesignated paragraph (b), revising the definition of Different campus; removing the definition of Different population of participants; revising the definition of Individual with disabilities; and adding, in alphabetical order, new definitions for Different population, Financial and economic literacy, First generation college student, Foster care youth, Homeless children and youth, Institution of higher education, and Low-income individual.

The revisions and additions read as follows:

Sec. 646.7 What definitions apply?

* * * * *

(b) * * *

Different campus means a site of an institution of higher education that--

(1) Is geographically apart from the main campus of the institution;

(2) Is permanent in nature; and

(3) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential.

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Student Support Services program and that--

[[Page 13896]]

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, including but not limited to knowledge about--

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (e.g., loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for secondary education (e.g., spending, saving,

personal budgeting);

(4) College cost of attendance (e.g., public vs. private, tuition vs. fees, personal costs);

(5) Scholarship, grant and loan education (e.g., searches, application processes, differences between private and government loans); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

First generation college student means--

(1) A student neither of whose natural or adoptive parents received a baccalaureate degree; or

(2) A student who, prior to the age of 18, regularly resided with and received support from only one parent and whose supporting parent did not receive a baccalaureate degree.

(3) An individual who, prior to the age of 18, did not regularly reside with or receive support from a natural or an adoptive parent.

Foster care youth means youth who are in foster care or are aging out of the foster care system.

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 1143a).

Individual with disabilities means a person who has a diagnosed physical or mental impairment that substantially limits that person's ability to participate in educational experiences and opportunities.

Institution of higher education means an educational institution as defined in sections 101 and 102 of the Act.

* * * * *

Low-income individual means an individual whose family's taxable income did not exceed 150 percent of the poverty level amount in the calendar year preceding the year in which the individual initially participated in the project. The poverty level amount is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

* * * * *

94. Subpart B of part 646 is revised to read as follows:

Subpart B--How Does One Apply for an Award?

Sec. 646.10 How many applications may an eligible applicant submit and for what different populations may an eligible application be submitted?

(a) An eligible applicant may submit more than one application as long as each application describes a project that serves a different campus or a designated different population.

(b) For each grant competition, the Secretary designates, in the Federal Register notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a-11 and 1070a-14; 20 U.S.C. 1221e-3)

Sec. 646.11 What assurances and other information must an applicant include in an application?

(a) An applicant must assure the Secretary in the application that--

- (1) Not less than two-thirds of the project participants will be--
- (i) Low-income individuals who are first generation college students; or
 - (ii) Individuals with disabilities;
- (2) The remaining project participants will be low-income individuals, first generation college students, or individuals with disabilities; and
- (3) Not less than one-third of the individuals with disabilities served also will be low-income individuals.
- (b) The applicant must describe in the application its efforts, and where applicable, past history, in--
 - (1) Providing sufficient financial assistance to meet the full financial need of each student in the project; and
 - (2) Maintaining the loan burden of each student in the project at a manageable level.

(Approved by the Office of Management and Budget under control number 1840-1840-NEW5)

(Authority: 20 U.S.C. 1070a-14)

95. Section 646.20 is amended by:

A. In paragraph (a)(2)(i), removing the words ``in delivering services'' and adding, in their place, the words ``of high quality service delivery (PE)''.

B. Revising paragraph (a)(2)(ii).

C. Adding new paragraphs (a)(2)(iii) through (a)(2)(v).

D. Revising paragraph (d).

The revisions and additions read as follows:

Sec. 646.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(ii) The maximum total score for all the criteria in Sec. 646.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the Federal Register notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

96. Section 646.21 is amended by:

A. Revising paragraph (b).

B. Revising the OMB control number at the end of the section.

The revision reads as follows:

Sec. 646.21 What selection criteria does the Secretary use to evaluate an application?

* * * * *

(b) Objectives (8 points). The Secretary evaluates the quality of the applicant's proposed objectives in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources.

(1) (3 points) Retention in postsecondary education.

(2) (2 points) In good academic standing at grantee institution.

(3) Two-year institutions only. (i) (1 point) Certificate or degree completion; and

(ii) (2 points) Certificate or degree completion and transfer to a four-year institution.

(4) Four-year institutions only. (3 points) Completion of a baccalaureate degree.

* * * * *

(Approved by the Office of Management and Budget under control number 1840-NEW5.)

* * * * *

[[Page 13897]]

97. Section 646.22 is revised to read as follows:

Sec. 646.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in Sec. 646.20(a)(2)(i), the Secretary--

(1) Evaluates the applicant's performance under its expiring Student Support Services project;

(2) Uses the approved project objectives for the applicant's expiring Student Support Services grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of prior PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE points are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) For the criterion specified in paragraph (e)(1) of this section (Number of participants), the Secretary does not award PE points if the applicant did not serve the approved number of participants.

(d) The Secretary uses the approved number of participants, or the actual number of participants served in a given year if greater than the approved number of participants, as the denominator for calculating whether the applicant has met its approved objectives related to paragraph (e)(2) of this section (Postsecondary retention) and paragraph (e)(3) of this section (Good academic standing).

(e) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) Number of participants. Whether the applicant provided services to the approved number of participants.

(2) (4 points) Postsecondary retention. Whether the applicant met or exceeded its objective regarding the percentage of all participants served who continue to be enrolled in a program of postsecondary education from one academic year to the beginning of the next academic year or who complete a program of postsecondary education at the grantee institution during the academic year or transfer from a two-year institution to a four-year institution during the academic year.

(3) (4 points) Good academic standing. Whether the applicant met or exceeded its objective regarding the percentage of all participants served who are in good academic standing at the grantee institution.

(4) (4 points) Degree completion (for an applicant institution of higher education offering primarily a baccalaureate or higher degree). Whether the applicant met or exceeded its objective regarding the percentage of participants receiving a baccalaureate degree at the grantee institution within the specified number of years.

(5) Degree completion and transfer (for an applicant institution of higher education offering primarily an associate degree). Whether the applicant met or exceeded its objectives regarding the percentage of participants who--

(i) (2 points) Complete a degree or certificate within the number of years specified in the approved objective; and

(ii) (2 points) Transfer within the number of years specified in the approved objective to institutions of higher education that offer baccalaureate degrees.

(Approved by the Office of Management and Budget under control number 1840-NEW10)

(Authority: 20 U.S.C. 1070a-11; 1070a-14)

Sec. 646.23 [Amended]

98. Section 646.23(b)(1) is amended by removing the amount ``\$170,000'' and adding, in its place, the amount ``\$200,000''.

99. A new Sec. 646.24 is added to subpart C of part 646 to read as follows:

Sec. 646.24 What is the review process for unsuccessful applicants?

(a) Technical or administrative error for applications not reviewed. (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if--

(i) The applicant has met all of the application submission requirements included in the Federal Register notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an

application includes--

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the Federal Register notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to--

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) Administrative or scoring error for applications that were reviewed. (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if--

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes

[[Page 13898]]

errors caused by a reviewer who, in assigning points--

(A) Uses criteria not required by the applicable law or program regulations, the Federal Register notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term ``scoring error'' does not include--

(A) A peer reviewer's appropriate use of his or her professional

judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the Federal Register notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) Procedures for the second review. (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in Sec. 646.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as discussed in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described

in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) Process for establishing a funding band. (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications--

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) Final decision. (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840-NEW5.)

(Authority: 20 U.S.C. 1070a-11)

100. Section 646.30 is amended by:

A. In the introductory text, removing the words ``34 CFR part 74, subpart Q'' and adding, in their place, the words ``34 CFR 74.27, 75.530, and 80.22, as applicable''.

B. Revising paragraph (f).

C. Adding new paragraphs (i) and (j).

The revision and additions read as follows:

Sec. 646.30 What are allowable costs?

* * * * *

(f) Purchase, lease, or rental of computer hardware, computer software, or other equipment for participant development, project administration, or project recordkeeping.

* * * * *

(i) Grant Aid to eligible students who--

(1) Are in their first two years of postsecondary education and who are receiving Federal Pell Grants under subpart 1 of part A of title IV of the Act; or

(2) Have completed their first two years of postsecondary education and who are receiving Federal Pell Grants under subpart 1 of part A of title IV of the Act if the institution demonstrates to the satisfaction of the Secretary that--

(i) These students are at high risk of dropping out; and

(ii) It will first meet the needs of all its eligible first- and second-year

[[Page 13899]]

students for services under this paragraph.

(j) Temporary housing during breaks in the academic year for--

(1) Students who are homeless children and youths or were formerly homeless children and youths; and

(2) Students who are foster care youth.

* * * * *

Sec. 646.31 [Amended]

101. Section 646.31(b) is amended by adding the words `` , except for Grant aid under Sec. 646.30(i)'' after the word ``support''.

Sec. 646.32 [Amended]

102. Section 646.32 is amended by:

A. In paragraph (a)(2), removing the words ``Higher Education''.

B. Revising paragraph (c).

C. In the OMB control number parenthetical following paragraph (d), removing the numbers ``1840-0017'' and adding, in its place, the numbers ``1840-NEW5''.

The revisions read as follows:

Sec. 646.32 What other requirements must a grantee meet?

* * * * *

(c) Project director. (1) A grantee must employ a full-time project director unless--

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (c)(1) of this section if the applicant demonstrates that the requirement to administer no more than three programs will hinder effective coordination between the Student Support Services program and--

(i) One or more Federal TRIO programs (sections 402A through 402F of the HEA); or

(ii) One or more similar programs funded through other sources.

* * * * *

103. Section 646.33 is added to subpart D of part 646 to read as follows:

Sec. 646.33 What are the matching requirements for a grantee that uses Student Support Services program funds for student Grant aid?

(a) Except for grantees described in paragraph (b) of this section, a grantee that uses Student Support Services program funds for Grant aid to eligible students described in Sec. 646.30(i) must--

(1) Match the Federal funds used for Grant aid, in cash, from non-Federal funds, in an amount that is not less than 33 percent of the total amount of Federal grant funds used for Grant aid; and

(2) Use no more than 20 percent of the Federal program funds awarded the grantee each year for Grant aid.

(b) A grant recipient that is an institution of higher education eligible to receive funds under part A or B of title III or title V of the HEA, as amended, is not required to match the Federal funds used for Grant aid.

(Approved by the Office of Management and Budget under control number 1840-NEW10.)

(Authority: 20 U.S.C. 1070a-11)

PART 647--RONALD E. MCNAIR POSTBACCALAUREATE ACHIEVEMENT PROGRAM

104. The authority citation for part 647 continues to read as follows:

Authority: 20 U.S.C. 1070a-11 and 1070a-15, unless otherwise noted.

105. Section 647.4 is revised to read as follows:

Sec. 647.4 What activities and services does a project provide?

(a) A McNair project must provide the following services and activities:

(1) Opportunities for research or other scholarly activities at the grantee institution or at graduate centers that are designed to provide students with effective preparation for doctoral study.

(2) Summer internships.

(3) Seminars and other educational activities designed to prepare students for doctoral study.

(4) Tutoring.

(5) Academic counseling.

(6) Assistance to students in securing admission to, and financial assistance for, enrollment in graduate programs.

(b) A McNair project may provide the following services and activities:

(1) Education or counseling services designed to improve the financial literacy and economic literacy of students, including financial planning for postsecondary education.

(2) Mentoring programs involving faculty members at institutions of higher education, students, or a combination of faculty members and students.

(3) Exposure to cultural events and academic programs not usually available to disadvantaged students.

(Authority: 20 U.S.C. 1070a-15)

106. Section 647.5 is revised to read as follows:

Sec. 647.5 How long is a project period?

A project period under the McNair program is five years.

(Authority: 20 U.S.C. 1070a-11)

107. Section 647.6 is amended by revising paragraph (a) to read as follows:

Sec. 647.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for Sec. Sec. 75.215-75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

108. Section 647.7(b) is amended by:

A. Removing the definition of Summer internship.

B. In the definition of Graduate center, revising the introductory text.

C. Revising the definition of Groups underrepresented in graduate education.

D. Revising the definition of Institution of higher education.

E. Adding, in alphabetical order, new definitions for Different campus, Different population, Financial and economic literacy, and Research or scholarly activity.

The revisions and additions read as follows:

Sec. 647.7 What definitions apply?

* * * * *

(b) * * *

Different campus means a site of an institution of higher education that--

(1) Is geographically apart from the main campus of the institution;

(2) Is permanent in nature; and

(3) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential.

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the McNair TRIO program and that--

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, including but not limited to knowledge

about--

- (1) Personal and family budget planning;
- (2) Understanding credit building principles to meet long-term and short-term goals (e.g., loan to debt ratio, credit scoring, negative impacts on credit scores);
- (3) Cost planning for postsecondary education (e.g., spending, saving, personal budgeting);

[[Page 13900]]

(4) College cost of attendance (e.g., public vs. private, tuition vs. fees, personal costs);

(5) Scholarship, grant and loan education (e.g., searches, application processes, and differences between private and government loans); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

* * * * *

Graduate center means an institution of higher education as defined in sections 101 and 102 of the HEA; and that--

* * * * *

Groups underrepresented in graduate education. The following ethnic and racial groups are considered underrepresented in graduate education: Black (non-Hispanic), Hispanic, American Indian, Alaskan Native (as defined in section 7306 of the Elementary and Secondary Education Act of 1965, as amended (ESEA)), Native Hawaiians (as defined in section 7207 of the ESEA), and Native American Pacific Islanders (as defined in section 320 of the HEA).

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

* * * * *

Research or scholarly activity means an educational activity that is more rigorous than is typically available to undergraduates in a classroom setting, that is definitive in its start and end dates, contains appropriate benchmarks for completion of various components, and is conducted under the guidance of an appropriate faculty member with experience in the relevant discipline.

* * * * *

Subpart B--How Does One Apply for an Award?

109. Subpart B of part 647 is amended by revising the subpart heading to read as set forth above.

Sec. 647.10 [Redesignated as Sec. 647.11]

109a. Redesignate Sec. 647.10 as Sec. 647.11.

110. Section 647.10 is added to subpart B of part 647 to read as follows:

Sec. 647.10 How many applications may an eligible applicant submit?

(a) An applicant may submit more than one application for McNair grants as long as each application describes a project that serves a different campus or a designated different population.

(b) For each grant competition, the Secretary designates, in the Federal Register notice inviting applications and the other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a-15; 20 U.S.C. 1221e-3)

111. Section 647.20 is amended by:

A. In paragraph (a)(2)(i), adding the words ``of high quality service delivery (PE)'' after the words ``prior experience''.

B. Revising paragraph (a)(2)(ii).

C. Adding new paragraphs (a)(2)(iv), (a)(2)(v), and (a)(2)(vi).

D. Revising paragraph (d).

The revisions and addition read as follows:

Sec. 647.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(ii) The maximum total score for all the criteria in Sec. 647.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

* * * * *

(iv) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the Federal Register notice inviting applications and the other published application materials for the competition.

(v) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(vi) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

112. Section 647.21 is amended by:

A. Revising paragraph (b).

B. Adding an OMB control number parenthetical following paragraph

(d).

The revision and addition read as follows:

Sec. 647.21 What selection criteria does the Secretary use?

* * * * *

(b) Objectives (9 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) (2 points) Research.

(2) (3 points) Enrollment in a graduate program.

(3) (2 points) Continued enrollment in graduate study.

(4) (2 points) Doctoral degree attainment.

* * * * *

(Approved by the Office of Management and Budget under control number 1840-NEW6)

* * * * *

113. Section 647.22 is revised to read as follows:

Sec. 647.22 How does the Secretary evaluate prior experience?

(a) In the case of an applicant described in Sec. 647.20(a)(2)(i), the Secretary--

(1) Evaluates an applicant's performance under its expiring McNair project;

(2) Uses the approved project objectives for the applicant's expiring McNair grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) For the criteria specified in paragraph (e)(1) of this section (Number of participants), the Secretary does not award any PE points if the applicant did not serve the approved number of participants.

(d) The Secretary uses the approved number of participants, or the actual number of participants served in a given year if greater than the approved number of participants, as the denominator for calculating whether the applicant has met its approved objective related to paragraph (e)(2) of this section (Research and scholarly activities).

(e) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) Number of participants. Whether the applicant provided services to the approved number of participants.

(2) (3 points) Research and scholarly activities. Whether the applicant met or exceeded its objective for providing

[[Page 13901]]

participants with appropriate research and scholarly activities each academic year.

(3) (3 points) Graduate school enrollment. Whether the applicant met or exceeded its objective with regard to the acceptance and enrollment in graduate programs of participants who complete the baccalaureate program during the academic year.

(4) (4 points) Continued enrollment in graduate school. Whether the applicant met or exceeded its objective with regard to the continued enrollment in graduate school of prior participants.

(5) (2 points) Doctoral degree attainment. Whether the applicant

met or exceeded its objective with regard to the attainment of doctoral level degrees of prior participants in the specified number of years.

(Approved by the Office of Management and Budget under control number 1840-NEW11.)

(Authority: 20 U.S.C. 1070a-11 and 1070a-15)

Sec. 647.23 [Amended]

114. Section 647.23 is amended by:

A. In paragraph (b), introductory text, removing the words ``beginning in fiscal year 1995''.

B. In paragraph (b)(1), removing the amount ``\$190,000'' and adding, in its place, the amount ``\$200,000''.

115. Section 647.24 is added to subpart C of part 647 to read as follows:

Sec. 647.24 What is the review process for unsuccessful applicants?

(a) Technical or administrative error for applications not reviewed. (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if--

(i) The applicant has met all of the application submission requirements included in the Federal Register notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes--

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the Federal Register notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to--

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior

to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) Administrative or scoring error for applications that were reviewed. (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if--

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points--

(A) Uses criteria not required by the applicable law or program regulations, the Federal Register notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term ``scoring error'' does not include--

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the Federal Register notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) Procedures for the second review. (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in Sec. 647.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as discussed in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first

review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

[[Page 13902]]

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to a designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) Process for establishing a funding band. (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications--

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the

funds that were set aside for the second review of applications for the competition.

(e) Final decision. (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840-NEW6.)

(Authority: 20 U.S.C. 1070a-11)

116. Section 647.30 amended by:

A. In paragraph (b), removing the amount ``\$2,400'' and, adding, in its place, the amount ``\$2,800''.

B. Revising paragraph (d).

The revision reads as follows:

Sec. 647.30 What are allowable costs?

* * * * *

(d) Purchase, lease, or rental of computer hardware, computer software, or other equipment for participant development, project administration, or project recordkeeping.

117. Section 647.32 is amended by adding an OMB control number parenthetical following paragraph (d) to read as follows:

Sec. 647.32 What other requirements must a grantee meet?

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(Approved by the Office of Management and Budget under control number 1840-NEW11.)