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DEPARTMENT OF EDUCATION

2 CFR Part 3474

RIN 1894-AA07

Docket ID ED-2015-OS-0105

Open Licensing Requirement for Direct Grant Programs

AGENCY: Office of the Secretary, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations in 2 CFR part 3474 of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in order to require that all Department grantees awarded direct competitive grant funds openly license to the public all copyrightable intellectual property created with Department grant funds.

These proposed changes would increase the Department's ability to be more strategic with limited resources, broadening the impact of its investments by allowing stakeholders, such as local educational agencies (LEAs), State educational agencies (SEAs), institutions of higher

education (IHEs), and other entities, to benefit from these investments, even if they are not themselves recipients of Department funds. An open licensing requirement would also allow the Department to sustain innovations beyond the grant period by encouraging subject matter experts and users to adapt, update, and build upon grant products, stimulating quality and innovation in the development of educational resources. Finally, the proposed requirement would promote equity and access to Department-funded technology and materials and increase transparency and accountability for the Department and its grantees.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including

instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the help tab at "How To Use Regulations.gov."

- Postal Mail, Commercial Delivery, or Hand Delivery:

If you mail or deliver your comments about the proposed regulations, address them to Sharon Leu, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6W252, Washington, DC 20202-5900.

Privacy Note: The Department's policy for comments received from members of the public is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Sharon Leu, U.S. Department of Education, 400 Maryland Avenue, SW., room 6W252, Washington, DC 20202. Telephone: (202) 453-5646 or by email: tech@ed.gov.

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments

regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

Specific Issues Open for Comment:

In addition to your general comments, we are particularly interested in your feedback on the following questions:

- Should the Department require that copyrightable works be openly licensed prior to the end of the grant period as opposed to after the grant period is over? If yes, what impact would this have on the quality of the final product?
- Should the Department include a requirement that

grantees distribute copyrightable works created under a direct competitive grant program? If yes, what suggestions do you have on how the Department should implement such a requirement?

- What further activities would increase public knowledge about the materials and resources that are created using the Department's grant funds and broaden their dissemination?
- What technical assistance should the Department provide to grantees to promote broad dissemination of their grant-funded intellectual property?
- What experiences do you have implementing requirements of open licensing policy with other Federal agencies? Please share your experiences with these different approaches, including lessons learned and recommendations that might be related to this notice.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 6W100, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the

person listed under FOR FURTHER INFORMATION CONTACT.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Background

The Department's regulations and policies related to copyrightable works created by Department grant funds have continually evolved with the goal of maximizing the dissemination of these works to the public.

In regulations published in the Federal Register on April 3, 1980 (45 FR 22494, 22550), the Department implemented a new policy that allowed grantees to retain unlimited rights to copyright and royalty income. Simultaneously, the Department retained a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use without cost, works created with Department grant funds for Federal Government purposes (45 FR 22593). The purpose of this

regulation was to create a policy that was conducive to disseminating grant-funded works to the public that was consistent with provisions in OMB Circular A-110.

After this final rule was promulgated, the Department thereafter amended part 80 on March 11, 1988 (53 FR 8034, 8071), and part 74 on July 6, 1994 (59 FR 34722, 34733-34), to incorporate this copyright policy. These provisions remained in effect until 2014, when the Department removed parts 74 and 80 from title 34 and adopted 2 CFR part 200 (79 FR 75871), including 200.315(b) which reflects the current policy. The 1988, 1994, and 2014 rulemakings did not substantively alter the policy.

We believe that the wide variety of educational materials created through the Department's discretionary competitive grants should be shared more broadly with the public. Even though current policy allows the public to access grant-funded resources for use for Federal Government purposes by seeking permission from the Department, the public rarely requested access to these copyrighted materials, possibly due to administrative barriers, lack of clarity regarding the scope of Federal Government purposes, or lack of information about available products. We believe that removing barriers and clarifying usage rights to these products, including lesson plans,

instructional plans, professional development tools, and other teaching and learning resources will benefit the Department's diverse stakeholders and will benefit - teaching and learning. These include LEAs, SEAs, IHEs, students, nonprofit educational organizations, and others beyond direct grant recipients. The Department's goal remains to institute a policy that results in broadest and most effective dissemination of grant-funded works to the public, and therefore the Department is proposing to modify this policy to require, with minimal exceptions, that all copyrightable works created under a direct competitive grant program be openly licensed.

Proposed Regulatory Changes

2 CFR Part 3474

Section 3474.20 Open Licensing Requirement for Direct Competitive Grant Programs

Current Regulations: None.

Proposed Regulations: Proposed §3474.20 would establish an open licensing requirement for copyrightable works created using funds from direct competitive grant programs.

Section 3474.20 would require that all Department grantees awarded direct competitive grant funds openly license to the public all copyrightable intellectual property created with Department grant funds. This requirement would apply

to only new copyrightable materials created with Department grant funds and copyrightable modifications made to pre-existing content using Department grant funds awarded after the effective date of the final regulations.

Accordingly, the proposed open licensing requirement would not apply to existing grants or existing copyrightable intellectual property. Additionally, the proposed regulations would not apply to grants that provide funding for general operating expenses, grants that provide support to individuals (e.g., scholarships, fellowships), or peer-reviewed research publications that arise from scientific research funded, either fully or partially, from grants awarded by the Institute of Education Sciences (Institute) that are already covered by the Institute's existing public access policy, found at <http://ies.ed.gov/funding/researchaccess.asp>. Moreover, the Secretary would retain authority pursuant to 2 CFR 3474.5 and 2 CFR 200.102 to authorize exceptions to the open licensing requirement.

These proposed regulations would allow the public to access and use copyrightable intellectual property created with direct competitive grant funds for any purpose, provided that the user gives attribution to the designated authors or copyright holders of the intellectual property.

Reasons: We believe that the wide variety of educational materials created through the Department's direct competitive grants should be shared broadly with the public. These products, including lesson plans, instructional plans, professional development tools, and other teaching and learning resources provide benefit to LEAs, SEAs, IHEs, nonprofit educational organizations, and others beyond direct competitive grant recipients. Current Department practice, in combination with Federal grant regulations and copyright law, may present unnecessary barriers for the public to access these materials. Under current practice, Department grantees retain an "all rights reserved copyright," allowing them to restrict reuse and redistribution of these materials, sometimes resulting in significant cost or administrative burden to the general public for their access. In addition, in general, the Department currently exercises its Federal purpose license in §200.315(b) only in rare cases where a grantee fails to implement its copyright or prices its product at an unacceptably high cost that educators cannot afford to pay. While the current practice helps make copyrightable work created by grantees more available to educators, we are concerned that the policy fails to make the materials more widely available to all educators, regardless of their

resources. For example, in certain instances, grant-funded materials may only be commercially available, requiring the public to incur additional costs for their use. While the Department recognizes that commercial incentives can often encourage the development of high-quality materials, we believe that the public should have access to works created under a Department direct competitive grant with public funds at the lowest cost possible.

To this end, the proposed regulation under §3474.20, requires all Department grantees awarded direct competitive grant funds to openly license to the public all copyrightable intellectual property created with these funds. Open licensing would broaden the impact of ED investments, allowing LEAs, SEAs, IHEs, students, and others beyond direct grant recipients to benefit from the Department's investment. These stakeholders would have free access to and use of all materials produced by grantees, without needing to seek permission from the copyright holder to access such resource for each instance of use or to create derivative works. We believe this access would accelerate innovation and improve quality in education by enabling others to test and build upon Department-funded work, and by stimulating a market of derivative works. In addition, access to technology and

high-quality materials would promote equity and especially benefit resource-poor stakeholders.

This requirement would also increase the Department's ability to be more strategic with limited resources. For example, in some cases, dissemination of openly licensed materials could reduce the need to fund multiple duplicate projects. In other cases, it could encourage diversity and non-duplication in the types of projects receiving similar funding.

We believe that an open licensing requirement would improve the quality of educational resources and sustain innovations beyond the grant period by encouraging subject matter experts and other users to build upon the grant products and enriching the grant-funded content. We also expect that an open licensing requirement would stimulate innovation in the development of educational resources by encouraging commercial adaptation and derivatives and supporting large-scale adoption of grant products, even after the grant period.

We note that nothing in the proposed regulations would require a grantee to distribute work that a grantee would be required to openly license under proposed §3474.20. In the Invitation to Comment section, we include specific questions to help inform us whether such a distribution

requirement should be included in the final §3474.20; or, alternatively, whether we should use non-regulatory approaches such as technical assistance and guidance to help facilitate distribution.

Section 3474.1 Adoption of 2 CFR part 200

Current Regulations: Current §3474.1 adopts 2 CFR part 200 but specifically excludes certain provisions from 2 CFR part 200 as being applicable under the Department's regulations.

Proposed Regulations: Proposed §3474.1 would include, among these exceptions, 2 CFR 200.315(b). However, in proposed §3474.20(d), we have retained the Federal government's royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so, provided through §200.315(b).

Reasons: We propose to except §200.315(b) from the Department's regulations because §200.315(b) allows a non-Federal entity to copyright certain work developed under a Federal award, which is inconsistent with our proposed open licensing requirement. In order to have a consistent rule for how intellectual property developed with the Department's direct competitive grant funds is licensed, we need to add §200.315(b) to the provisions within 2 CFR part

200 that are inapplicable under the Department's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards regulations.

We propose to retain the Federal government's royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so, in order to reserve the right to disseminate certain copyrightable intellectual property created with Department funds, if we determine that such action is the best way to make this content readily available. In the case of State administered or direct formula grant programs not covered by this proposed rule, the Department is exploring additional opportunities to expand dissemination of educational materials produced under those programs and to broaden dissemination of those materials to the public.

Under some direct competitive grants, the Department funds the costs of general operating expenses or the costs to provide support to individuals such as through scholarships or fellowship programs. In these cases, the Department's funding covers expenditures incurred to engage in activities not directly associated with the production of products, even though products are sometimes created. The open licensing requirement would not apply to these

grantees, though they are encouraged to consider whether an open license would be appropriate or useful.

This open licensing requirement also does not apply to peer-reviewed research publications that arise from scientific research funded, either fully or partially, from grants awarded by the Institute of Education Sciences, since they are already covered by the Institute's existing public access policy.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise

interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the

extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify

their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

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

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those we have determined as necessary for administering the Department's programs and activities.

Summary of Potential Costs and Benefits

The open licensing requirement will not impose significant costs on entities that receive assistance through the Department's direct competitive grant programs. Application, submission, and participation in a competitive discretionary grant program are voluntary. The costs of meeting the requirements will be paid for with program funds and therefore will not be a burden for grantees, including small entities. While there are no significant

costs, in some limited circumstances, there may be some instances of lost revenue or added costs related to the loss of commercial benefit derived from exclusive copyrights.

Under current regulations, grantees that create copyrightable works as part of a grant program retain unlimited rights to copyright and royalty income while the Department also retains a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use without cost, works created with Department grant funds for Federal Government purposes. These rights are assigned to the grantee at the time of the grant award and no further action is necessary to designate these rights. Grantees may establish terms and conditions that permit use and re-use of their works to any member of the public, for each instance of use or for each created work.

Proposed changes to the regulation would require that grantees openly license copyrightable works to enable the public to use the work without restriction, so long as they provide attribution to the grantee as the author of the works or the holder of the copyright and author, if different. While the type of license will differ depending on the type of work created, applying an open license to a

grant product typically involves the addition of a brief license identification statement or insertion of a license icon. This could occur following the development of the product, at the same time that the disclaimer currently required under 34 CFR 75.620 is applied.

In this context, the proposed regulations could reduce commercial incentives for an eligible entity to apply to participate in a discretionary grant program. For example, under some competitive grant programs, grant recipients have produced materials that were subsequently sold or licensed to third parties, such as publishing companies or others in the field. Although an open license does not preclude the grantee or any individual from developing commercial products and derivatives from the grant funded material, it does remove the competitive advantage that these grantees currently possess as the exclusive copyright holder. In addition, publishers and other third parties may incur loss of revenue since their commercial product will potentially compete with freely available versions of a similar product. We note, however, that based on the Department's program offices' past grantmaking experiences, relatively few grantees develop and market copyrighted content paid for with Department funds.

However, the proposed regulations would result in

significant benefits. The proposed policy would increase the Department's ability to be strategic with limited resources, encouraging diversity and non-duplication in the types of projects that receive funding. By encouraging subject matter experts and other users to build upon the grant products and enrich and update the content, this proposed regulation would ensure the quality and long-term sustainability of innovations created through grant funds.

The proposed regulations would also broaden the impact of the Department's investments, enabling broader and more effective dissemination of grant-funded works to the public. Department stakeholders, such as LEAs, SEAs, IHEs, students, and others beyond direct grant recipients would be able to freely use and access the technology and high-quality materials, promoting equity and especially benefiting resource-poor stakeholders.

For example, the Department's First in the World grant program currently requires grantees to openly license intellectual property. The online remediation tool being created by the Southern New Hampshire University under this grant program will help underprepared, underrepresented, and low-income working adults obtain a postsecondary credential and reduce the time to degree completion. Under the terms of the grant, the open license will allow any

other IHE or adult education provider to use this tool to serve the working adults in its service areas, without incurring costs or duplicating efforts of development.

Under the proposed open licensing requirement, stakeholders will be able to more easily access resources that are created by the many other competitive discretionary grant programs at the Department. For example, the Department grantees have created educational materials, assessments, and technical assistance that support the needs of various special populations. These include grants by the Department's Office of Special Education Programs (OSEP) to create resources that support children, youth, and adults with disabilities. An open license would give broad permission for any member of the public to use, adapt, and widely redistribute the assistive technologies, resources for building inclusive communities, and training materials for specialized service personnel to the address particular needs of their own school or community, without the additional administrative burden of seeking permission from the grantee or copyright holder. Similarly, some grants by the Department's Office of Elementary and Secondary Education (OESE) support innovative approaches to literacy to promote reading skills. An open license on those professional development

tools and reading resources would allow stakeholders and other members of the public to access and share resources to address the needs of the public beyond those known to the grantee or copyright holder.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with its clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, \$3474.20 Open Licensing

Requirement for Direct Competitive Grant Programs.)

- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the ADDRESSES section.

Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Analysis presents an estimate of the effect on small entities of the proposed regulations. The U.S. Small Business Administration Size Standards define "for-profit institutions" as "small businesses" if they are independently owned and operated and not dominant in their field of operation with total annual revenue below \$7,000,000, and defines "non-profit institutions" as small organizations if they are independently owned and operated and not dominant in their field of operation, or as small entities if they are institutions controlled by governmental entities with populations below 50,000. The Secretary certifies that these proposed regulations would not have a significant

economic impact on a substantial number of small entities. We recognize that the proposed rule would eliminate the ability for a grantee to sell copyrighted content developed using the Department's funds. However, we do not believe many grantees would experience this potential loss of income, in part because relatively few grantees develop and market copyrighted content paid for with Department funds and in part because a grantee could still sell its openly licensed content under the proposed regulation. Additionally, there are other avenues of funding outside of the Department that can be pursued if a small entity is focused on profiting from the educational tools and resources it develops. Lastly, we believe that small entities as a whole may realize significant benefits from access to a vast array of openly licensed educational tools and resources under the proposed open-licensing rule. However, the Department acknowledges that it is difficult to quantify the impact of this proposed regulation on small entities and, therefore, the Secretary invites comments from such entities as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any

information collection requirements.

Intergovernmental Review

These proposed regulations affect direct grant programs of the Department that are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e-4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the Federal Register, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the Federal Register by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects in 2 CFR Part 3474

Accounting, Administrative practice and procedure, Adult education, Aged, Agriculture, American Samoa, Bilingual education, Blind, Business and industry, Civil rights, Colleges and universities, Communications, Community development, Community facilities, Copyright, Credit, Cultural exchange programs, Educational facilities, Educational research, Education, Education of disadvantaged, Education of individuals with disabilities,

Educational study programs, Electric power, Electric power rates, Electric utilities, Elementary and secondary education, Energy conservation, Equal educational opportunity, Federally affected areas, Government contracts, Grant programs, Grant programs-agriculture, Grant programs-business and industry, Grant programs-communications, Grant programs-education, Grant programs-energy, Grant programs-health, Grant programs-housing and community development, Grant programs-social programs, Grant administration, Guam, Home improvement, Homeless, Hospitals, Housing, Human research subjects, Indians, Indians-education, Infants and children, Insurance, Intergovernmental relations, International organizations, Inventions and patents, Loan programs, Loan programs social programs, Loan programs-agriculture, Loan programs-business and industry, Loan programs-communications, Loan programs-energy, Loan programs-health, Loan programs-housing and community development, Manpower training programs, Migrant labor, Mortgage insurance, Nonprofit organizations, Northern Mariana Islands, Pacific Islands Trust Territories, Privacy, Renewable Energy, Reporting and recordkeeping requirements, Rural areas, Scholarships and fellowships, School construction, Schools, Science and technology, Securities, Small businesses, State and local

governments, Student aid, Teachers, Telecommunications,
Telephone, Urban areas, Veterans, Virgin Islands,
Vocational education, Vocational rehabilitation, Waste
treatment and disposal, Water pollution control, Water
resources, Water supply, Watersheds, Women.

Dated:

Arne Duncan,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 3474 of title 2 of the Code of Federal Regulations as follows:

2 CFR PART 3474--UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.

1. The authority citation for part 3474 continues to read as follows:

AUTHORITY: 20 U.S.C. 1221e-3, 3474, and 2 CFR 200 unless otherwise noted.

2. Section 3474.1(a) is amended by removing the words "2 CFR 200.102(a) and 2 CFR 200.207(a)" and adding, in their place, the words "2 CFR 200.102(a), 2 CFR 200.207(a), and 2 CFR 200.315(b)".

3. Add §3474.20 to part 3474.

The amendment and addition read as follows:

§3474.20 Open Licensing Requirement for Direct Competitive Grant Programs.

For direct competitive grants awarded after **[insert effective date]**:

(a) A grantee that is awarded direct competitive grant funds must openly license to the public new copyrightable materials created in whole, or in part, with Department grant funds and copyrightable modifications made to pre-existing content using Department grant funds, except as

provided in paragraph (c) of this section. The license must be worldwide, non-exclusive, royalty-free, perpetual, and irrevocable, and must grant the public permission to access, reproduce, publicly perform, publicly display, adapt, distribute, and otherwise use, for any purposes, copyrightable intellectual property created with direct competitive grant funds, provided that the licensee gives attribution to the designated authors of the intellectual property. The licensee must also include the statement of attribution and disclaimer in 34 CFR 75.620(b).

(b) Except as provided in paragraph (c) of this section, a grantee that is awarded direct competitive grant funds must openly license all computer software source code developed or created with these grant funds under an intellectual property license that allows the public to freely use and build upon computer source code created or developed with these grant funds.

(c) The requirements of paragraphs (a) and (b) of this section do not apply to--

(1) Grants that provide funding for general operating expenses;

(2) Grants that provide support to individuals (e.g., scholarships, fellowships); or

(3) Peer-reviewed research publications that arise

from scientific research funded, either fully or partially,
from grants awarded by the Institute of Education Sciences
that are already covered by the Institute's public access
policy found at

<http://ies.ed.gov/funding/researchaccess.asp>.

(d) The Department reserves a royalty-free,
nonexclusive and irrevocable right to reproduce, publish,
or otherwise use the work for Federal purposes, and to
authorize others to do so.