

February 12, 2013

Submitted at: <http://www.regulations.gov>

Margo Anderson
U.S. Department of Education
400 Maryland Avenue, S.W., Room 4W313
Washington, DC 20202-5900

RE: Direct Grant Programs and Definitions That Apply to Department Regulations
[Docket ID ED-2012-OII-0026]

Dear Ms. Anderson:

On behalf of the Software & Information Industry Association (SIIA) and our more than 700 high-tech companies, I write in response to the U.S. Department of Education's notice of proposed rules under the notice, Direct Grant Programs and Definitions That Apply to Department Regulations [Docket ID ED-2012-OII-0026; December 14, 2012 Federal Register (Vol. 77, No. 241, page 74392)].

According to the federal notice, the rules are proposed in order to improve the Department's ability to promote projects supported by evidence; evaluate the performance of discretionary grant programs and grantee projects; review grant applications using selection factors that promote reform objectives related to project evaluation, sustainability, productivity, and capacity to scale; and reduce burden on grantees in selecting implementation sites, implementation partners, or evaluation service providers for their proposed projects.

SIIA is the principal trade group of the software and digital content industry, representing more than 700 high-tech companies. All SIIA member companies look to the nation's schools to provide a skilled high-tech workforce, while many SIIA members partner with schools to provide educational software, digital curriculum, online services and related technologies.

SIIA appreciates this opportunity to comment on these important proposed changes. In general, SIIA is supportive of these proposed rules and the goals driving these changes. SIIA makes several recommendations aimed at supporting educational agencies and other grantees in accessing technology-based and other products and services, in partnering with the for-profit sector, and in developing and implementing innovative products and services.

Following are SIIA's specific recommendations:

§ 75.110 Information regarding performance measurement and §77.1 Definitions

SIIA recognizes the critical importance of educational efficacy, including for federal grant funds. SIIA recommends that the definitions and implementation of "performance measures" and related measures be modified to explicitly recognize the appropriateness of varied goals, outcomes and measures such that neither student test scores, student achievement, nor any other measure are assumed to be the single appropriate performance measure.

SIIA recommends modifying the proposed § 75.110(b)(1) to read:

“(1) *Performance measures.* How each proposed performance measure would accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition [including that such measures may be other than of student performance and may be intermediary measures that are likely to affect other performance measures of interest].”

SIIA also recommends modifying the “performance measure” definition under §77.1(c) to read:

“*Performance measure* means any quantitative indicator, statistic, or metric used to gauge program or project performance [including that measures other than of student performance and intermediary measures that are likely to affect other performance measures of interest].”

SIIA notes that grant program resources could appropriately address a range of purposes from instructional to administrative, from assessment to professional development, and from data warehousing to systems productivity. The measures could therefore include such outcomes as student test scores, teacher retention rates, changes in classroom practice or efficiency, availability and use of data, cost effectiveness and efficiency, or other student/teacher/school outcomes that can be observed and measured.

Many of these outcome measures can also be viewed as intermediate outcomes – changes in practice that, as demonstrated by other research, are likely to affect other outcomes such as student achievement. For example, an evaluation of a certain data system may find its positive impact on the use of data to inform instruction, and we know from other research that this outcome can help drive improvement in student learning. For purposes of the data system, the enhanced access to and use of data by teachers may be an appropriate evaluation outcome measure. This performance measure should therefore be valued by education decision makers – and by federal grant performance measure requirements – as an intermediary to the ultimate goal of improved test scores and student achievement.

In addition, in some cases, an outcome measure that may be important for school accountability (e.g., state tests) may constitute too blunt an instrument to measure the impact of a narrowly targeted product or service designed to address only certain learning standards. In addition, (current) standardized tests for accountability, for example, are not necessarily valid for some kinds of learning constructs such as arts, creativity, critical thinking, and emerging 21st Century competencies such as information literacy and collaboration.

§ 75.135 Competition exception for proposed implementation sites, implementation partners, or evaluation service providers.

SIIA generally supports the proposed changes to exempt applicants from complying with competition requirements under certain conditions described in the proposed rules. SIIA recommends further changes to the proposed rules to ensure applicants are exempt from competition under two additional conditions.

First, in many cases, an educational program or grant may be designed around a specific product or service, in which case, requiring a grantee to engage in a competitive process can create an unnecessary hurdle to, or could actually undermine, the effective implementation of that product/service, program or grant. In many such cases, such a product or service provider may be critical to providing a site or sites for conducting related grant activities. Also in many such cases, the product or service may be unique such that there is no other product or service that meets the grantee needs or requirements. Second, there may be cases where a product or service does not necessarily meet the above conditions, but where a competition may be excessive relative to the risk-reward such as for products or services (e.g., certain

technology platforms) where variance in quality, price, etc. may be minimal relative to the grant's purpose and size.

SIIA therefore recommends modifying the proposed §75.135(a) by adding (4) to read:

["(4) The product or service is identified in the application for the grant, core to the program or grant, and is unique such that use of an alternative product or service would be detrimental to grant implementation and efficacy."]

SIIA also therefore recommends modifying the proposed §75.135(b) to read:

"(b) When entering into a contract for data collection, data analysis, or evaluation services, [or for other products and services that are not core to the grant but are necessary to its implementation,] an applicant may select a provider using the informal, small-purchase procurement procedures in [34 CFR 80.36](#)(d)(1), regardless of whether that applicant would otherwise be subject to that part or whether the evaluation contract would meet the standards for a small purchase order, if—

(1) The contract is with the data collection, data analysis, or evaluation service provider that would conduct the project services;

(2) The evaluation service provider that the applicant proposes to use is identified in the application for the grant; and (3) The evaluation service provider is included in the application [such as] in order to meet a statutory, regulatory, or priority requirement related to the competition; [or]

[(3) the contract is with the provider of other products and services that are not core to the grant, are necessary to its implementation, and constitute a relatively small percentage of grant funds]."

SIIA notes that in all these situations, local and state procurement requirements would still govern, and so the recommended changes would simply eliminate the additional federal requirement while leaving those existing protections in place.

§ 75.210 General selection criteria.

1. Resources to Operate.

SIIA supports proposed subsection (c)(2)(xxiv) that the applicant "demonstrates that it has the resources to operate the project beyond the length of the grant . . ." SIIA members have significant experience in developing and implementing multi-year financial models and operating plans, in collaboration with partners and customers such as educational agencies, necessary to the long-term success of their products and services. Neither SIIA members, nor their partners and customers, can or should rely on one-time grant funds to have long-term impact of any scale or scope. Instead, sustainability requires ongoing investments and collaborations needed to support users, evaluate implementation, and make continuous improvements. This requirement will ensure that grant funds are not used to undertake activities that may be best left to those with a long-term model.

2. Increased Efficiency.

SIIA supports proposed subsection (c)(2)(xxvi) that "the proposed project will increase efficiency in the use of time, staff, money, or other resources in order to improve results and increase productivity." SIIA agrees that productivity is an increasingly important measure at this time when

resources are limited and expectations are raised. Such efficiency should include achieving the same results for fewer resources, as well as achieving greater results for relatively greater resources.

3. Strategy to Scale

SIIA supports adding a new paragraph (i) Strategy to Scale. SIIA notes, per the points made above, that scale is not necessarily an expertise of educational agencies, especially when reaching outside their jurisdiction, and that third-party providers of products and services, including for-profit providers, may often be in best position to provide this support. SIIA also notes that effectively scaling a project does not always mean scope, such as in cases where a project is designed for use in a carefully tailored, narrow set of conditions such as for a specific student population.

SIIA recommends modifying §75.210(i)(2)(i) to read:

“(i) The applicant's capacity (e.g., in terms of qualified personnel, financial resources, or management capacity) to bring the proposed project to scale on a national or regional level (as defined in [34 CFR 77.1\(c\)](#)) working directly, or through partners [including for-profit partners], during the grant period.”

SIIA recommends modifying §75.210(i)(2)(iii) to read:

“(iii) The feasibility of successful replication of the proposed project, if favorable results are obtained, [including] in a variety of settings and with a variety of populations [only in such cases where the proposed project is designed for and intended to be used in such varied settings and with such varied populations].”

§ 75.708 Subgrants.

SIIA supports the proposed change to allow the “Secretary may, through an announcement in the Federal Register, authorize subgrants when necessary to meet the purposes of a program.”

SIIA notes that subsection (b)(1) provides examples of the types of entities that could be included, but does not include for-profit organizations.

SIIA recommends modifying the proposed § 75.708(b)(1) to read:

“(1) Designate the types of entities, e.g., State educational agencies, local educational agencies, institutions of higher education, [for-profit organizations,] and non-profit organizations, to which subgrants can be awarded; and”

For-profit organizations provide many critical roles in addressing educational needs as well as federal grant goals and requirements. In general, educational agencies and institutions do not discriminate based on the tax status of an organization, but instead identify the partner that best meets their needs. For-profit organizations provide products and services that are core to the education mission (e.g., curricular materials, assessments, teacher professional development, and data systems), as well as services to support, evaluate and help scale educational practices.

In many cases, an educational program or grant may be designed around a product or service provided by a for-profit organization, in which case not allowing a subgrant to that entity can create an unnecessary hurdle to the effective implementation of that product/service, program or grant.

§ 77.1 Definitions that apply to all Department programs.

SIIA has concerns about several of the definitions and related requirements related to research methodologies and evidence of effectiveness. Many SIIA members have responded to the need for evidence by enhancing the scale, scope and rigor of their existing research investments, including further documenting the scientific basis of their products and services and commissioning additional evaluation research. Yet, SIIA notes several challenges to the randomized control trial design methodology emphasized by the What Works Clearinghouse and other federally-supported initiatives, as well as more generally to efficacy studies of educational technologies.

SIIA urges the Department to adjust these rules based on the views put forth in the Department's own draft report, *"Expanding Evidence Approaches for Learning in A Digital World"* (December, 2012), which recognizes that "Realizing the full potential of digital learning requires evolved thinking about education research and development (R&D) and evaluation" and recommends that "(9) The federal government should encourage innovative approaches to the design, development, evaluation, and implementation of digital learning systems and other resources."

While SIIA makes no specific recommendations at this time, SIIA urges the Department to recognize and consider the following factors in both finalizing these proposed rules, as well as in applying the final rules to various federal grants:

First, there are challenges with randomized control trials (RCTs) where some students are randomly assigned to the "experimental" group using the intervention in question and other students are assigned to the control group and "denied" the intervention. "Experimental" and "denied" are placed in quotations to emphasize that these stigmas cause significant challenges in K-12 education where educators and parents are often reluctant to place students (and teachers) in one or the other of these groups. This challenge is especially pronounced in the case of evaluations of third-party products and services where education decision makers are often less willing and less able to overcome the experimental stigmas.

Second, SIIA notes that in education there is seldom a pure control condition such as can be achieved in a medical trial with a placebo or sugar pill. Evaluations of education products and services resemble comparative effectiveness trials in which a new medication is tested against a currently approved one to determine whether it is significantly better. The same product may therefore prove effective in one district that currently has a weak program but relatively less effective in another where a strong program is in place. As a result, significant effects can often be difficult to discern.

Third, SIIA notes that research results are heavily influenced by the extent and quality of a product's or service's implementation, especially in the case of educational technologies. Insufficient hardware access, too little time on task, and lack of educator ability to implement can all negatively affect the impact. In short, simply providing technology without efforts to measure its fidelity of may not be an experimental condition that can be expected to succeed. The condition in the research study is therefore ideally composed not only of the product or service itself, but also of its actual use relative to the recommended implementation model. In other words, the question is not simply whether the intervention works, but how well it works under particular conditions. However, the cost of such studies is significant, requiring significant observations and metrics to determine the fidelity of implementation.

Fourth, technology products and services are constantly changing and improving. By contrast, in evaluation studies, several years may pass between the initial stage of identifying participants and the final stage of reporting results. In many cases, by the time research is completed, the technology products

and services may have been significantly updated and no longer be available in the format or version studied.

In short, SIIA supports the Department's efforts to both fund evaluation research and to fund programs with evidence of efficacy. However, SIIA cautions that flexibility is needed in both research methodology and in evidence requirements to ensure that innovative programs are funded. SIIA certainly does not object to the use of randomized control trials if it is the best feasible design, but the challenges noted above often limit the availability and results of experimental studies. SIIA recommends equal consideration of alternative study designs such as regression discontinuity designs that have been demonstrated to be equally robust in practice. Quasi-experiments should be encouraged, because they are more readily and more rapidly produced. Other methods may also be appropriate and more feasible.

Basing evidence of effectiveness on an assessment of the research literature that only considers certain design factors – and thus holds the RCT alone as the gold-standard – may effectively preclude consideration of evidence for many interventions. The result may be the rejection of many innovative and effective technologies in their early stages, thus potentially limiting the use of important federal dollars for their development, implementation and evaluation. Therefore, SIIA recommends that evaluation research, especially random control trials, must be only one of many factors used for decision making. Waiting for comprehensive and definitive research literature on a given intervention may force our education system to miss out on innovations and dramatically limit options while it waits for evaluation research cycles that may never catch up.

On behalf of SIIA and our member organizations, thank you for the opportunity to comment on these important proposed rules. Please do not hesitate to contact me with any questions at marks@siia.net or 202-789-4444.

Sincerely,

A handwritten signature in black ink, reading "Mark Schneiderman". The signature is fluid and cursive, with the first name "Mark" and last name "Schneiderman" clearly legible.

Mark Schneiderman
Senior Director, Education Policy