DEPARTMENT OF EDUCATION

Promoting Postbaccalaureate Opportunities for Hispanic Americans (PPOHA) Program

Catalog of Federal Domestic Assistance (CFDA) Number: 84.031M.

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of final requirements.

SUMMARY: The Assistant Secretary for Postsecondary Education announces requirements under the PPOHA Program. The Assistant Secretary may use one or more of these requirements for competitions in fiscal year (FY) 2010 and later years. We take this action to establish appropriate requirements for the PPOHA Program. We have based these requirements on existing rules for the Hispanic-Serving Institutions (HSI) Program, authorized by title V of the Higher Education Act of 1965, as amended (HEA), because the PPOHA Program and the HSI Program are governed by some common provisions and support similar institutions.

DATES: *Effective Date:* These requirements are effective August 26, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Maria E. Carrington, U.S. Department of Education, 1990 K Street, NW., Room 6036, Washington, DC 20006–8513. *Telephone:* (202) 502–7548 or by *e-mail: maria.carrington@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: *Purpose of Program:* The purposes of the PPOHA Program are to: (1) Expand postbaccalaureate educational opportunities for, and improve the academic attainment of, Hispanic students; and (2) expand the postbaccalaureate academic offerings as well as enhance the program quality in the institutions of higher education that are educating the majority of Hispanic college students and helping large numbers of Hispanic and low-income students complete postsecondary degrees.

Program Authority: 20 U.S.C. 1102–1102c; 1161aa–1.

We published a notice of proposed requirements for this program in the **Federal Register** on June 3, 2010 (75 FR 31338). That notice contained background information and our reasons for proposing these particular requirements.

Except for minor revisions, there are no differences between the notice of proposed requirements and this notice of final requirements.

Public Comment: In response to our invitation in the notice of proposed requirements, we did not receive any comments on the proposed requirements. However, as a result of our further review of the proposed requirements since publication of the notice of proposed requirements, we have made two changes as follows:

Analysis of Comments and Changes:

Comment: None.

Discussion: In reviewing *Note 2* to proposed requirement 1 (*Eligibility Criteria (Use of 34 CFR 606.2(a) and (b), 606.3 through 606.5)*), we have determined that minor editorial changes are appropriate to clarify the discussion of the process that the Department will use to resolve a conflict between the enrollment data or documentation the applicant uses in its application to establish that it has an enrollment of undergraduate full-time equivalent (FTE) students that is at least 25 percent Hispanic students and data reported through the Department's Integrated Postsecondary Education Data System (IPEDS), the institution's State-reported enrollment data, and the institutional annual report.

Changes: We have revised this note to clarify that the data and documentation we are examining and comparing to the percentages or data reported through IPEDS, the IHE's State-reported enrollment data, and the institutional annual report are the data and documentation that the applicant submits as part of its 25 percent assurance verification.

Comment: None.

Discussion: Upon further review of *Requirement 2 (Use of Tie-Breaking Factors),* we determined that a clarification was appropriate. Specifically, in the final sentence of the first paragraph we stated that the Department will use 2008–2009 data for purposes of the funding considerations under this requirement. Because the Department will use 2008–2009 data for funding considerations in FY 2010 only, we have added language to make this clear.

Changes: We have revised the last sentence of the first paragraph of *Requirement 2 (Use of Tie-Breaking Factors* to clarify that, for purposes of making these funding considerations, we will use the most recent complete data available (*e.g.,* for FY 2010, we will use 2008–2009 data).

Final Requirements:

The Assistant Secretary establishes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Requirement 1—Eligibility Criteria (Use of 34 CFR 606.2(a) and (b), 606.3 through 606.5).

Hispanic-Serving Institution (HSI): To qualify as an eligible HSI for the Promoting Postbaccalaureate Opportunities for Hispanic Americans (PPOHA) Program under sections 502 and 512(b) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1101a and 1102a), an institution of higher education (IHE) must—

(a) Have an enrollment of needy students, as defined in section 502(b) of the HEA (section 502(a)(2)(A)(i) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(i));

(b) Have, except as provided in section 522(b) of the HEA, average educational and general expenditures that are low, per full-time equivalent (FTE) undergraduate student, in comparison with the average educational and general expenditures per FTE undergraduate student of institutions that offer similar instruction (section 502(a)(2)(A)(ii) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(ii));

Note: To demonstrate an enrollment of needy students and low average educational and general expenditures per FTE undergraduate student, an IHE must be designated as an "eligible institution" in accordance with 34 CFR 606.3 through 606.5 and the notice inviting applications for designation as an eligible institution for the fiscal year for which the grant competition is being conducted.

(c) Be accredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered, or making reasonable progress toward accreditation, according to such an agency or association (section 502(a)(2)(A)(iv) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(iv));

(d) Be legally authorized to provide, and provide within the State, an educational program for which the institution awards a bachelor's degree (section 502(a)(2)(A)(iii) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(iii)); and

(e) Have an enrollment of undergraduate FTE students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of application (section 502(a)(5)(B) of the HEA; 20 U.S.C. 1101a(a)(5)(B)).

Note 1: Funds for the PPOHA Program will be awarded each fiscal year; thus, for this program, the "end of the award year immediately preceding the date of application" refers to the end of the fiscal year prior to the application due date. The end of the fiscal year occurs on September 30 for any given year.

Note 2: In considering applications for grants under this program, the Department will compare the data and documentation the institution relied on in its application with data reported to the Department's Integrated Postsecondary Education Data System (IPEDS), the IHE's State-reported enrollment data, and the institutional annual report. If different percentages or data are reported in these various sources, the institution must, as part of the 25 percent assurance verification, explain the reason for the differences. If the IPEDS data show that less than 25 percent of the institution's undergraduate FTE students are Hispanic, the burden is on the institution to show that the IPEDS data are inaccurate. If the IPEDS data indicate that the institution has an undergraduate FTE less than 25 percent, and the institution fails to demonstrate that the IPEDS data are inaccurate, the institution will be considered ineligible.

Requirement 2—Use of Tie-Breaking Factors.

To resolve ties in the reader scores of applications for development grants, the Department will award one additional point to an application from an IHE that has an endowment fund for which the market value per FTE student is less than the comparable average current market value of the endowment funds per FTE student at similar type IHEs. In addition, to resolve ties in the reader scores of applications for PPHOA development grants, the Department will award one additional point to an application from an IHE that has expenditures for library materials per FTE student that are less than the comparable average expenditures for library materials per FTE student at similar type IHEs. (34 CFR 606.23(a)(1) and (2)). For the purpose of these funding considerations, we will use the most recent complete data available (*e.g.,* for FY 2010, we will use 2008–2009 data).

If a tie remains after applying the tie-breaker mechanism above, priority will be given for Individual Development Grants to applicants that have the lowest endowment values per FTE student. (34 CFR 606.23(b)(1))

Requirement 3—Limit on Applications From an Eligible Institution.

In any fiscal year, an eligible institution may submit only one application for a grant under the PPOHA Program. This restriction is intended to ensure that more Hispanic-serving institutions have an opportunity for assistance under Title V of the HEA.

Requirement 4—Limit on Use of Funds for Direct Student Assistance.

A PPOHA Program grantee may use no more than 20 percent of its total PPOHA Program grant award to provide financial support—in the form of scholarships, fellowships, and other student financial assistance—to low-income students.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these requirements, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits of the final requirements justify the costs.

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

Intergovernmental Review: This program is 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 this program.

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

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Dated: July 21, 2010.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

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