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Title 38, Parts 10,11,76 & 77

Compensation

Veterans Benefits Administration

Supplement No. 3

Covering period of *Federal Register* issues
through Junu 5, 2015

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Supplemental Materials for *Book E*

Code of Federal Regulations

Title 38, Parts 10, 11, 76 & 77

Compensation

Veterans Benefits Administration

Supplement No. 3

5 June 2015

Covering the period of Federal Register issues
through June 1, 2015

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3. After filing, enter the relevant information on the Supplement Filing Record sheet (page E-8)—the date filed, name/initials of filer, and date through which the *Federal Register* is covered.
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FILING INSTRUCTIONS

**Book E, Supplement No. 3
June 5, 2015**

*Remove these
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| | | |
|--------------------------|--------------------------|--|
| 77.INDEX-1 to 77.INDEX-2 | 77.INDEX-1 to 77.INDEX-2 | Part 77 Index |
| 77.3-1 to 77.19-1 | 77.3-1 to 77.19-1 | §§77.4, 77.6, 77.8, 77.9, 77.13, 77.16 and 77.19 |

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HIGHLIGHTS

Book E, Supplement No. 3 June 5, 2015

Supplement Highlights references: Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §10.2, you will see a note at the end of that section which reads: “Supplement *Highlights* references—37(1).” This means that paragraph 1 of the *Highlights* section in Supplement No. 37 contains information about the changes made in §10.2. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

Supplement frequency: Beginning 1 January 2000, supplements for this Book E will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

Modifications in this supplement include the following:

1. On 4 May 2015, the VA published a final rule, effective that same day, to implement a law that authorizes VA to make grants to entities other than the United States Olympic Committee for adaptive sports programs. Changes:
 - Changed authority and OMB parenthetical entries in §§77.4, 77.6, 77.8, 77.9, 77.13, 77.16 and 77.19.



Part 77

**Grants for Adaptive Sports Programs for Disabled Veterans
and Disabled Members of the Armed Forces**

Authority: 38 U.S.C. 501, 521A, and as stated in specific sections.

Source: 79 FR 37211, July 1, 2011, unless otherwise noted.

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Reserved

§77.3 Grants—general.

(a) *Grants.* VA may award adaptive sports grants to eligible entities.

(b) *Maximum amount.* The maximum grant amounts to be awarded will be specified in the NOFA.

(c) *No matching requirement.* A grantee will not be required to provide matching funds as a condition of receiving such grant.

(d) *Participants will not be charged.* A grantee may not charge participants a fee for providing adaptive sports activities that were outlined in their adaptive sports grant application.

(e) *Grant is not veteran's benefit.* The grant offered by this chapter is not a veteran's benefit. As such, the decisions of the Secretary are final and not subject to the same appeal rights as decisions related to veterans benefits.

(Authority: 38 U.S.C. 521A)

[79 FR 37218, July 1, 2014]

Supplement *Highlights* references: 2(1)

§77.4 Applications

(a) *Initial application.* To apply for an initial grant, an applicant must submit to VA a complete grant application package, as described in the NOFA.

(b) *Renewal application.* After receiving an initial grant, grantees may apply for a renewal grant if the grantee's program will remain substantially the same. The grantee must submit to VA a complete renewal application as described in the NOFA. Because evaluations of renewal applications rely on performance data related to the initial grant, the application and supporting documentation may vary from the initial application; however, renewal applications are competitive grants and will be evaluated under competitive grant selection processes.

(c) *Noncompetitive application.* When a condition exists for a noncompetitive grant as outlined in §77.15, the adaptive sports entity may submit a noncompetitive application that meets the same format as outlined for competitive grants set forth in the NOFA.

(Authority: 38 U.S.C. 521A) (OMB has approved the information collection requirements in this section under control numbers 2900-0820, 4040-0004 for Standard Form 424, and 4040-0008 for Standard Form 424C.)

[79 FR 37219, July 1, 2014; as amended at 80 FR 25235, May 4, 2015]

Supplement *Highlights* references: 2(1), 3(1).

§77.5 Selection criteria

(a) VA will review all applications for adaptive sports grants using the following selection criteria:

- (1) The adaptive sports activities to be provided by the program are clearly stated;
- (2) The objectives of the proposed program are clearly defined;
- (3) The program design is based on facts, good reasoning, sound judgment, and logic, and contains program elements directly linked to the achievement of program objectives;
- (4) The program management structure is adequate to the successful conduct of the program;
- (5) The applicant's capability (including support provided by any partnership or partnerships) is demonstrated at a level sufficient to successfully support the program;
- (6) Budgeted costs are reasonable, allowable and produce good value for the amount of funds paid for the activities proposed to be undertaken;
- (7) The proposed program provides adaptive sports opportunities in geographic regions where VA has identified limited sports opportunities for disabled veterans and disabled members of the Armed Forces;
- (8) The proposed program provides an adaptive sports activity or adaptive sports activities that meet the current needs and priorities for disabled veterans and disabled members of the Armed Forces; and
- (9) Inclusion of all required information in the grant application as specified by 38 U.S.C. 521A(c).

(b) NOFA announcements may also clarify the selection criteria in paragraph (a) of this section. The relative weight (point value) for each selection criterion will be specified in the NOFA.

[79 FR 37219, July 1, 2014]

Supplement *Highlights* references: 2(1)

§77.6 Amendments to grant applications

An applicant seeking to amend its grant application must submit a revised Standard Forms 424 (Application for Federal Assistance) and 424C (Budget Information) with a narrative description of, and justification for, the amendment. An applicant may submit an amendment after the deadline for submission of applications and prior to grant award if the amendment does not change the scope of the application. In addition, amendments submitted after the deadline and prior to grant award cannot increase the amount of the grant requested by more than a total of 10 percent.

(OMB has approved the information collection requirements in this section under control number 4040-0004 for Standard Form 424 and 4040-0008 for Standard Form 424C.)

[79 FR 37219, July 1, 2014; as amended at 80 FR 25235, May 4, 2015]

Supplement *Highlights* references: 2(1), 3(1)

§77.7 Withdrawal of grant application

An applicant may withdraw its application by submitting to VA a written document that withdraws the application.

[79 FR 37219, July 1, 2014]

Supplement *Highlights* references: 2(1)

§77.8 Additional requirements and procedures for applications

(a) *Application for grants.* An applicant may submit, on or before the submission deadline date established in a NOFA, an application in accordance with the instructions in the NOFA and including the forms specified in the NOFA. Such application must be signed by the applicant or an official or representative of the applicant duly authorized to make such application and to assume on behalf of the applicant the obligations imposed by law, applicable regulations, and any additional terms and conditions of the grant. VA may require in the NOFA for applicants to submit a pre-application for review and approval prior to the submission of an application.

(b) *Partnerships.*

(1) Eligible entities may enter into partnerships with other eligible entities, including those in other States, and submit joint applications for adaptive sports grants.

(2) A joint application made by two or more applicants may have separate budgets corresponding to the programs, services and activities performed by each of the joint applicants or may have a combined budget. If a joint application presents separate budgets, VA may make separate awards, or may award a single award authorizing separate amounts for each joint applicant.

(c) *Evaluation of applications submitted.* All applications submitted shall be evaluated. After the initial internal or peer review, additional internal evaluations and/or peer reviews may be used.

(d) *Applicant's performance on prior award.* When the applicant has previously received an award from VA or another Federal agency, the applicant's noncompliance with requirements applicable to such prior award as reflected in past written evaluation reports and memoranda on performance, and the completeness of required prior submissions, may be considered by VA. In any case where VA proposes to deny a grant based upon the applicant's noncompliance with requirements applicable to the prior award, VA shall do so only after affording the applicant notice and a reasonable opportunity to rebut the proposed basis for denial of a grant.

(e) *Applicant's fiscal integrity.* Applicants must meet and maintain standards of fiscal integrity for participation in Federal grant programs as reflected in 2 CFR part 200.

(f) *Disposition of applications.* Upon review of an application and dependent on availability of funds, VA will:

(1) Approve the application for funding, in whole or in part, for such amount of funds, and subject to such conditions that VA deems necessary or desirable;

(2) Determine that the application is of acceptable quality for funding, in that it meets minimum criteria, but disapprove the application for funding because it did not rank sufficiently high in relation to other applications to qualify for an award based on the level of funding available;

(3) Disapprove the application for failure to meet the applicable selection criteria at a sufficiently high level in comparison to other applications to justify an award of funds, or for another reason as provided in the documentation of the decision; or

(4) Defer action on the application for such reasons as lack of funds or a need for further review.

(g) *Notification of disposition.* VA will notify the applicant in writing of the disposition of the application. A signed grant agreement form will be issued to the applicant of an approved application.

(h) *Availability of grant funds.* Federal financial assistance is normally available only with respect to obligations incurred subsequent to the effective date of the grant. The effective date of grant will be set forth in the grant agreement. Recipients may be reimbursed for costs resulting from obligations incurred before the effective date of the grant, if such costs are authorized by VA in the NOFA, the grant agreement or subsequently by VA in writing, and otherwise would be allowable as costs of the grant under applicable guidelines, regulations, and terms and conditions of the grant agreement.

(OMB has approved the information collection requirements in this section under control number 2900-0820.)

[79 FR 37219, July 1, 2014; as amended at 80 FR 25235, May 4, 2015]

Supplement *Highlights* references: 2(1), 3(1)

§77.9 Use of pre-applications

VA may request pre-applications for competitive and noncompetitive grant applications. Such request would be made in a NOFA.

(OMB has approved the information collection requirements in this section under control numbers 2900-0820, 4040-0004 for Standard Form 424, and 4040-0008 for Standard Form 424C.)

[79 FR 37219, July 1, 2014; as amended at 80 FR 25235, May 4, 2015]

Supplement *Highlights* references: 2(1), 3(1)

§77.10 Peer review methods

(a) VA may subject both pre-applications and formal applications to a peer review process. For both competitive and noncompetitive applications, peer review will normally consist of written comments based on the selection criteria established in §77.5 and any weighting factors identified in the NOFA or conveyed in writing to the noncompetitive applicant, together with the assignment of numerical values. Peer review may occur at meetings of peer reviewers that are held under VA oversight, through mail reviews, or a combination of both. When advisable, site visits may also be employed. The method of peer review anticipated for each announced competitive program, including the weighting factors to be used by peer reviewers, will be specified in each NOFA.

(b) When formal applications are required in response to a NOFA, an initial review will be conducted by qualified VA staff, in order to eliminate from peer review consideration applications which do not meet minimum program requirements. Such requirements as listed in §77.5 and weighting factors will be specified in the NOFA. Applications determined to be qualified and eligible for further consideration may then be considered under the peer review process.

[79 FR 37220, July 1, 2014]

Supplement *Highlights* references: 2(1)

§77.11 Outreach required

(a) As a condition of receiving a grant under this part, an eligible entity must agree to conduct a joint outreach campaign with VA to inform all eligible veterans and separating members of the Armed Forces with physical disabilities about the existence of the adaptive sports activities funded by the grant, as appropriate, and shall provide for, facilitate, and encourage participation of such veterans and separating members of the Armed Forces in programs under this part to the extent possible.

(b) For grantees conducting adaptive sports activities at the community level, outreach must include active liaison with local VA and DoD facilities; State, local, and tribal governments; and VSOs, private agencies, and organizations providing adaptive sport activities to disabled veterans and disabled members of the Armed Forces to be served by the grantee.

(c) For grantees conducting adaptive sports activities occurring at the national and regional levels, outreach must include active liaison with VA and DoD, State governments, VSOs, and private agencies and organizations providing adaptive sport services to disabled veterans and disabled members of the Armed Forces to be served by the grantee and tailored as appropriate to the deliverables of the grant.

(Authority: 38 USC 521A(e))

[79 FR 37220, July 1, 2014]

Supplement *Highlights* references: 2(1)

§77.12 Notice of funding availability

When funds are available for grants, VA will publish a NOFA in the OMB-designated government-wide Web site. The notice will identify:

- (a) The information required to be in notices of funding opportunities in 2 CFR Part 200;
- (b) The location for obtaining grant applications;
- (c) The date, time, and place for submitting completed grant applications;
- (d) The estimated amount and type of grant funding available;
- (e) The length of term for the grant award, covering the amount of time the award remains in effect through date of completion;
- (f) The minimum scores and scores per mandatory evaluation criteria area in §77.5 that an applicant must receive in order for a grant to be considered for funding; and
- (g) The timeframe and manner for payments under the grant.

(Authority: 38 U.S.C. 521A)

[79 FR 37220, July 1, 2014]

Supplement *Highlights* references: 2(1)

§77.13 Applications for noncompetitive adaptive sports grants

(a) When VA identifies that an eligible entity is the only entity capable of providing an adaptive sports activity for disabled veterans and disabled members of the Armed Forces, and VA determines that the award of a grant to this entity is warranted to enable adaptive sports activities for disabled veterans and disabled members of the Armed Forces, VA may request that entity to submit a grant application. To verify that only one entity is capable of providing an adaptive sports activity:

(1) VA must determine that the adaptive sports activity is available only from one eligible entity;

(2) VA must receive a written statement from an entity which verifies that a particular adaptive sports activity is only available from a named non-Federal entity; or

(3) After VA attempts to find competition for a grant by issuing a NOFA, VA receives only one application to provide the adaptive sports activity sought under the NOFA or having received no applications, engages a qualified adaptive sport entity to negotiate provision of the adaptive sports activity sought.

(b) To submit an application for a noncompetitive adaptive sports grant, an applicant must obtain from VA an adaptive sports grant application package and submit to VA the information called for in the adaptive sports grant application package within the time period established in the NOFA.

(c) The noncompetitive adaptive sports grant application must include:

(1) Information regarding the program design and supporting evidence directly linking the program to the achievement of the program's objectives;

(2) Documentation on the eligibility of the applicant to receive an adaptive sports grant and on why the award of a noncompetitive grant is warranted;

(3) Description of the type of adaptive sports activities that would be provided;

(4) Documentation concerning the estimated operating costs and operating budget for the adaptive sports activities for which a grant is sought;

(5) Documentation that the applicant has the technical expertise needed; and

(6) Reasonable assurances that if the applicant receives an adaptive sports grant under this part:

(i) It will provide adequate financial and administrative support for providing the services set forth in the adaptive sports grant application and will actually provide such services; and

(ii) It will keep records and submit reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based.

(OMB has approved the information collection requirements in this section under control number 2900-0820.)

[79 FR 37219, July 1, 2014; as amended at 80 FR 25235, May 4, 2015]

Supplement *Highlights* references: 2(1), 3(1)

§77.14 Grant agreements

(a) *General.* After a grant is approved for award, VA will draft a grant agreement to be executed by VA and the grantee. Upon execution of the grant agreement, VA will obligate the grant amount. The grant agreement will include a provision requiring that the grantee will operate the program in accordance with the provisions of this part, 2 CFR Part 200, and the grant application.

(b) *Equipment.* If grant funds will be used to procure or operate adaptive sports equipment to directly provide adaptive sports activities, the grant agreement must provide that:

(1) Title to the adaptive sports equipment vests solely in the grantee, or, for leased equipment, in an identified lessor;

(2) The grantee will at a minimum, provide liability insurance for the adaptive sports equipment to the same extent they would insure adaptive sports equipment procured with their own funds; and

(3) Adaptive sports equipment will be safe to use and maintained in accordance with the manufacturer's recommendations.

(c) *Use of funds for administrative and personnel expenses.*

(1) An eligible entity that receives a grant under this part may use a portion of the grant for administrative expenses and personnel expenses of the eligible entity. The amount that may be used for such expenses may not exceed:

(i) In the case of a grant made for adaptive sports activities taking place during fiscal year 2014, 10 percent of the total amount of the grant;

(ii) In the case of a grant made for adaptive sports activities taking place during fiscal year 2015, 7.5 percent of the total amount of the grant; and

(iii) In the case of a grant made for adaptive sports activities taking place during any subsequent fiscal year, 5 percent of the total amount of the grant.

(2) For purposes of §77.14(c), personnel expenses include any costs associated with an employee of the eligible entity other than reimbursement for time spent by such an employee directly providing coaching or training for participants.

(d) *Use of grant funds for individuals who are not veterans or members of the Armed Forces.* The grant agreement may authorize grantees to support or provide services (including adaptive sports activities) to individuals with disabilities who are not veterans or members of the Armed Forces, or both, but will prohibit grant funds from being used to support or provide services (including adaptive sports activities) to those individuals.

(e) *Restrictions on the participation of certain veterans and former servicemembers.* The grant agreement will prohibit grant funds from being used to support or provide services (including adaptive sports activities) to veterans or former servicemembers who are barred from receiving VA benefits based on their service (see 38 U.S.C. 5303-5303A) and to veterans or former servicemembers who, if otherwise eligible, would be barred from receiving VA pension, compensation or dependency and indemnity compensation based on the character of their discharge from military service (see 38 CFR 3.12).

(Authority: 38 U.S.C. 521A(d)(4))

[79 FR 37221, July 1, 2014]

Supplement *Highlights* references: 2(1)

§77.15 Payments under the grant

(a) *Payments to grantees.* Grantees are to be paid in accordance with the timeframes and manner set forth in the NOFA.

(b) *Payments to subgrantees.* Payments of grant funds by grantees to subgrantees (including entities with which the grantee has entered into a partnership) for instruction, participation, and competition in sports may only be made for instruction, participation, and competition in Paralympic sports.

(Authority: 38 U.S.C. 521A)

[79 FR 37221, July 1, 2014]

Supplement *Highlights* references: 2(1)

§77.16 Grantee reporting requirements

(a) *Annual report.* All grantees must submit to VA, not later than 60 days after the last day of the Federal fiscal year for which a grant is provided under this part, an annual report which sets forth the following information for that fiscal year:

(1) A detailed record of the time involved in providing adaptive sports activities through direct personal interaction with participants and time expended in adaptive sports activities that do not involve direct personal interaction with participants;

(2) A detailed record of the individual adaptive sports activities conducted;

(3) A detailed record of the adaptive sports programs carried out at the national and local levels through partnerships with VA, DoD, VSOs, and other adaptive sports entities;

(4) The number of veterans and the number of participants in the adapted sports activities funded by the grant including those who participated in any programs carried out through a partnership under this part;

(5) The locations where adaptive sports activities were conducted; and

(6) A detailed accounting of how the grant funds were used including the administrative and personnel expenses incurred by the grantee in carrying out the program and such expenses paid for using grant funds.

(b) *Quarterly report.* All grantees must submit to VA a quarterly report 30 days after the close of each Federal fiscal quarter of the grant period which includes the same information required for annual reports, as well as projected change requests if applicable.

(c) *Program variations.* Any changes in a grantee's program activities which result in deviations from the grant agreement must be reported to VA.

(d) *Additional reporting.* Additional reporting requirements may be requested by VA to allow VA to fully assess program effectiveness.

(e) *Annual report compliance.* If a grantee does not submit the annual report required under this section for any fiscal year, the grantee shall not be eligible to receive a grant under this part for the subsequent fiscal year.

(Authority: 38 U.S.C. 521A(j)) (OMB has approved the information collection requirements in this section under control number 2900-0820.)

[79 FR 37219, July 1, 2014; as amended at 80 FR 25235, May 4, 2015]

Supplement *Highlights* references: 2(1), 3(1)

§77.17 Recovery of funds by VA

(a) *Recovery of funds.* VA may recover from the grantee any funds that are not used in accordance with a grant agreement. If VA decides to recover funds, VA will issue to the grantee a notice of intent to recover grant funds, and grantee will then have 30 days to submit documentation demonstrating why the grant funds should not be recovered. After review of all submitted documentation, VA will determine whether action will be taken to recover the grant funds.

(b) *Prohibition of additional adaptive sports grant payments.* When VA makes a final decision that action will be taken to recover grant funds from the grantee, VA must stop further payments of grant funds under this part until the grant funds are recovered and the condition that led to the decision to recover grant funds has been resolved.

(Authority: 38 U.S.C. 521A)

[79 FR 37221, July 1, 2014]

Supplement *Highlights* references: 2(1)

§77.18 Visits to monitor operations and compliance

VA has the right, at all reasonable times, to make visits to all grantee locations where a grantee is using adaptive sports grant funds in order to review grantee accomplishments and management control systems and to provide such technical assistance as may be required. VA may conduct inspections of all program locations and records of a grantee at such times as are deemed necessary to determine compliance with the provisions of this part. In the event that a grantee delivers services at a location away from the grantee's place of business, VA may accompany the grantee. If any visit is made by VA on the premises of the grantee or a subcontractor under the adaptive sports grant, the grantee must provide, and must require its subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of the VA representatives in the performance of their duties. All visits and evaluations will be performed in such a manner as will not unduly delay services.

[79 FR 37222, July 1, 2014]

Supplement *Highlights* references: 2(1)

§77.19 Financial management

(a) All recipients will comply with applicable requirements of the Single Audit Act Amendments of 1996, as implemented by 2 CFR part 200.

(b) All grantees must use a financial management system that complies with 2 CFR Part 200. Grantees must meet the applicable requirements of OMB's regulations on Cost Principles at 2 CFR part 200.

(OMB has approved the information collection requirements in this section under control number 2900-0820.)

[79 FR 37219, July 1, 2014; as amended at 80 FR 25235, May 4, 2015]

Supplement *Highlights* references: 2(1), 3(1)