

# Fact Sheet: Department of Education Proposed Open Licensing Rule for Direct Grant Programs

In November 2015, the U.S. Department of Education issued a Notice of Proposed Rulemaking (NPRM) on adopting an open licensing requirement for the Department's direct competitive grant programs. This proposed rule would ensure that educational materials developed through these grants will be released as Open Educational Resources (OER) that the public can freely use, share and build upon. Open licensing is a common practice to increase the usability and affordability of textbooks and other educational resources in the digital environment.

## What does the proposed rule say?

- Recipients of direct competitive grants must openly license any copyrightable intellectual property (including educational materials, testing tools and software) produced in whole or part with grant funds.
- Open licensing means to grant the public the right to freely use, share and build upon the material with attribution to the creator.
- General operating grants and grants to individuals are exempt, as are peer reviewed research publications covered by the Institute of Education Sciences public access policy.

## What will the proposed rule do?

- Broaden the impact of the Department's investments by enabling stakeholders, such as local educational agencies, teachers, and the general public to benefit from the product of grants, even if they are not themselves recipients of the funds.
- Sustain innovation beyond the grant period by encouraging subject matter experts and users to adapt, update and build upon grant products.
- Promote equity and access to Department-funded technology and materials for the taxpayers who fund it.
- Increase efficiency, transparency and accountability for the Department and its grantees.

## Why is the proposed rule important?

- Education and workforce training are at the foundation of America's future. Department grants produce valuable educational resources that could support these efforts and should be made available to the widest possible audience.
- Today it is possible to share educational resources with the entire nation at virtually no cost over the Internet. The government has a duty to use this new technology to give taxpayers access to resources they have paid for.
- Education is not one size fits all. Open licensing ensures that educational materials can be updated and localized to fit the needs of all students, not just those originally intended.

### **How can the Department improve the rule and its implementation?**

- Resources openly licensed under the rule should also be freely distributed on the internet so that the public can easily find and make use of them.
- The Department should specify the use of a standard, widely-used open license, such as the Creative Commons Attribution License, to reduce administrative burden and increase usability for the public.
- Exemptions and limitations should be made on a case-by-case basis under the Secretary's authority, rather than written into the rule itself.
- The Department should promote dialogue with stakeholders and provide support to grantees, to ensure the rule is effectively implemented.

### **What are other Federal agencies doing?**

- Federal agencies have been implementing open licensing policies at the grant program level for more than five years, impacting more than \$2 billion in grant funds.
- In December 2015, the Department of Labor adopted an open licensing policy similar to the ED proposed rule as part of its uniform grantmaking rules for competitive awards.
- Last year, a broad coalition of more than 100 organizations sent a letter to the White House calling for an Executive action that would ensure the open licensing of all educational materials created through Federal grants and contracts.
- The U.S. 3<sup>rd</sup> Open Government National Action Plan includes a commitment to “openly license more Federal grant-supported education materials and resources”

### **Myths and Facts**

*Myth: The rule lets the government take away rights from grantees.*

Fact: Copyright for materials will be retained by grantees. It has been longstanding practice for the Department other grantmaking agencies to reserve a Federal purpose license, which allows the government to use – and grant others permission to use – intellectual property arising from grants and contracts. Open licensing policies are consistent with this principle, and increase the usability of these works for the public.

*Myth: The rule would stop grantees from commercializing works.*

Fact: The rule would still allow grantees to build commercial business models around materials developed through grants, while allowing other entrepreneurs, small businesses, and members of the public to do the same. This encourages the market to add value to create innovative, competitive products on top of grant-funded works, while ensuring public access to the publicly funded parts of those works.

*Myth: The rule conflicts with the patent rights under the Bayh-Dole Act.*

Fact: The rule only applies to copyrightable intellectual property, and the rights covered by patents are different from those covered by copyright. Grantees will still be able to apply for patents on applicable works covered by this rule.