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DEPARTMENT OF EDUCATION

34 CFR Parts 75 and 77

RIN 1855-AA10

Docket ID ED-2014-OII-0116

Direct Grant Programs and Definitions that Apply to  
Department Regulations

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: On August 13, 2013, the Department of Education (the Department) published final regulations in the Federal Register to amend the Education Department General Administrative Regulations (EDGAR). On October 22, 2014, the Department published a notice of proposed rulemaking to make additional amendments to EDGAR. In this document, the Department amends EDGAR to add a definition of "What Works Clearinghouse Evidence Standards" (WWC Evidence Standards) in our regulations to standardize references to this term. In addition, the Department amends the definition of "large sample" in our regulation. We also make technical edits to our regulations to improve the consistency and clarity of the regulations. Finally, we redesignate a section of our regulations and include in that redesignated section an additional provision that allows the Secretary to give

special consideration to projects supported by evidence of promise.

DATES: These regulations are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

In this document, we amend EDGAR to standardize a term and improve the consistency and clarity of our regulations.

Summary of the Major Provisions of This Regulatory Action: The Department revises EDGAR to include a definition for "What Works Clearinghouse Evidence Standards," provide the Secretary the flexibility to establish a separate competition for or award competitive preference to discretionary grant applications supported by evidence of promise, and revise certain definitions to improve clarity.

References to the WWC Handbook

The Department adds a definition of "What Works

Clearinghouse Evidence Standards" to 34 CFR part 77. This definition incorporates the most recent version of the What Works Clearinghouse (WWC) Procedures and Standards Handbook (WWC Handbook), Version 3.0, which was made public in March 2014. Instead of continuing to separately cite the WWC Handbook in various provisions of parts 75 and 77, we add, to part 77, a single definition of the WWC Evidence Standards that incorporates the current version of the WWC Handbook, and then include that defined term, as applicable, throughout parts 75 and 77.

The WWC Handbook, first published in 2008, documents the systematic review process and the standards by which the WWC reviews studies. Version 3.0 of the WWC Handbook significantly expands the examples used to illustrate how the WWC Evidence Standards are applied in various contexts. Although previous versions of the WWC Handbook focused on only one WWC product--the intervention report--Version 3.0 includes information on several additional WWC products, including practice guides, single-study reviews, and quick reviews.

By adding a definition of "WWC Evidence Standards" and updating the applicable references throughout 34 CFR parts 75 and 77 to incorporate the most recent version of the WWC Handbook, the Department will provide more effective

guidance to applicants and grantees as they design and implement rigorous evaluations of their projects.

Special Consideration for Discretionary Grant Applications Demonstrating "Evidence of Promise"

These final regulations amend §75.266 and redesignate it as §75.226. Previously, this section provided that the Secretary may give special consideration, through establishing a separate competition or awarding competitive preference, to discretionary grant applications supported by strong evidence of effectiveness or moderate evidence of effectiveness. In our experience using evidence in discretionary grant competitions, we have learned it is beneficial to also include in 34 CFR 75.266 (which we have redesignated as 34 CFR 75.226) a provision for giving special consideration to applications supported by evidence of promise, which is a less rigorous standard, because evidence of effectiveness in the education field continues to develop. By including evidence of promise in newly redesignated 34 CFR 75.226, we allow more flexibility to discretionary grant programs oriented towards supporting evidence-based projects.

Definition of "Evidence of promise"

We amend the definition of "evidence of promise" to replace the reference to "quasi-experimental study" with

"quasi-experimental design study," to clarify that the term used in the definition of "evidence of promise" is "quasi-experimental design study," which is defined later in 34 CFR 77.1(c). We also change the paragraph designations in this definition for internal consistency. We make these changes in order to align the definition of "evidence of promise" so it is consistent with the other defined terms to which it makes reference and to ensure that applicants and grantees receive consistent and clear information when referencing that definition

#### Definition of "Large Sample"

The Department modifies the definition of "large sample" in 34 CFR part 77 to remove the requirement that analysis units be randomly assigned to treatment or control groups. In implementing our discretionary grant programs, we discovered a discrepancy between the existing definition, specifically its references to random assignment of students, teachers, classrooms, schools, or other single analysis units to treatment or control groups, and the definition of "moderate evidence of effectiveness" in 34 CFR 77.1. Under the definition of "moderate evidence of effectiveness," a quasi-experimental design study (as defined in 34 CFR 77.1) that includes a large sample could meet the standard, but many such studies do not randomly

assign units of analysis to treatment or control groups. We revise the definition of "large sample" to eliminate the random assignment of analysis units into treatment or control groups as a mandatory element. Therefore, for instance, a quasi-experimental design study with a sample of 350 or more students (or other single analysis units), or 50 or more groups (such as classrooms or schools) that contains 10 or more students, could meet the definition of "moderate evidence of effectiveness" in 34 CFR 77.1.

There are no differences between the NPRM and these final regulations.

Public Comment: In response to our invitation in the NPRM, we did not receive any comments on the proposed regulations.

#### 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 final regulatory action is not 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 on 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 final regulations only on a reasoned determination that their benefits 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 final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, or 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 resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Paperwork Reduction Act of 1995

These regulations do not contain any information

collection requirements.

#### Intergovernmental Review

These regulations affect direct grant programs of the Department, some of which 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 the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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[www.gpo.gov/fdsys](http://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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department. (Catalog of Federal Domestic Assistance Number does not apply.)

#### List of Subjects

##### 34 CFR Part 75

Accounting, Copyright, Education, Grant programs-education, Inventions and patents, Private schools, Reporting and

recordkeeping requirements.

34 CFR Part 77

Education, Grant programs-education.

Dated: January 9, 2015

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Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 75 and 77 of title 34 of the Code of Federal Regulations as follows:

PART 75--DIRECT GRANT PROGRAMS

1. The authority citation for part 75 continues to read as follows:

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

2. Section 75.210 is amended by revising paragraphs (h)(2)(viii) and (ix), and removing footnotes 1 and 2, to read as follows.

§75.210 General selection criteria.

\* \* \* \* \*

(h) \* \* \*

(2) \* \* \*

(viii) The extent to which the methods of evaluation will, if well-implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse Evidence Standards without reservations.

(ix) The extent to which the methods of evaluation will, if well-implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse Evidence Standards with reservations.

\* \* \* \* \*

3. Section 75.266 is redesignated as §75.226 and newly redesignated §75.226 is revised to read as follows:  
§75.226 What procedures does the Secretary use if the Secretary decides to give special consideration to applications supported by strong evidence of effectiveness, moderate evidence of effectiveness, or evidence of promise?

(a) As used in this section, "strong evidence of effectiveness" is defined in 34 CFR 77.1(c);

(b) As used in this section, "moderate evidence of effectiveness" is defined in 34 CFR 77.1(c);

(c) As used in this section, "evidence of promise" is defined in 34 CFR 77.1(c); and

(d) If the Secretary determines that special consideration of applications supported by strong evidence of effectiveness, moderate evidence of effectiveness, or evidence of promise is appropriate, the Secretary may establish a separate competition under the procedures in 34 CFR 75.105(c)(3), or provide competitive preference under the procedures in 34 CFR 75.105(c)(2), for applications supported by:

(1) Evidence of effectiveness that meets the conditions set out in paragraph (a) of the definition of "strong evidence of effectiveness" in 34 CFR 77.1(c);

(2) Evidence of effectiveness that meets the

conditions set out in either paragraph (a) or (b) of the definition of "strong evidence of effectiveness" in 34 CFR 77.1(c);

(3) Evidence of effectiveness that meets the conditions set out in the definition of "moderate evidence of effectiveness;" or

(4) Evidence of effectiveness that meets the conditions set out in the definition of "evidence of promise."

(Authority: 20 U.S.C. 1221e-3 and 3474.)

#### PART 77--DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

4. The authority citation for part 77 continues to read as follows:

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

5. In § 77.1 paragraph (c) is amended by:

A. Revising the definitions of Evidence of promise, Large sample, Moderate evidence of effectiveness, Quasi-experimental design study, Randomized controlled trial, and Strong evidence of effectiveness.

B. Adding, in alphabetical order, the definition of What Works Clearinghouse Evidence Standards.

C. Removing footnotes 1 through 8.

The revisions and addition read as follows:

§77.1 Definitions that apply to all Department programs.

\* \* \* \* \*

(c) \* \* \*

\* \* \* \* \*

Evidence of promise means there is empirical evidence to support the theoretical linkage(s) between at least one critical component and at least one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice. Specifically, evidence of promise means the conditions in both paragraphs (i) and (ii) of this definition are met:

(i) There is at least one study that is a--

(A) Correlational study with statistical controls for selection bias;

(B) Quasi-experimental design study that meets the What Works Clearinghouse Evidence Standards with reservations; or

(C) Randomized controlled trial that meets the What Works Clearinghouse Evidence Standards with or without reservations.

(ii) The study referenced in paragraph (i) of this definition found a statistically significant or substantively important (defined as a difference of 0.25 standard deviations or larger) favorable association

between at least one critical component and one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice.

\* \* \* \* \*

Large sample means an analytic sample of 350 or more students (or other single analysis units), or 50 or more groups (such as classrooms or schools) that contain 10 or more students (or other single analysis units).

\* \* \* \* \*

Moderate evidence of effectiveness means one of the following conditions is met:

(i) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards without reservations, found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), and includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice.

(ii) There is at least one study of the effectiveness

of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards with reservations, found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample. (Note: multiple studies can cumulatively meet the large and multi-site sample requirements as long as each study meets the other requirements in this paragraph.)

\* \* \* \* \*

Quasi-experimental design study means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards with reservations (but not What Works Clearinghouse Evidence Standards without reservations).

\* \* \* \* \*

Randomized controlled trial means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to receive the intervention being evaluated (the treatment group) or not to receive the intervention (the control group). The estimated effectiveness of the intervention is the difference between the average outcomes for the treatment group and for the control group. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards without reservations.

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Strong evidence of effectiveness means one of the following conditions is met:

(i) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards without reservations, found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations and settings proposed to receive the process, product, strategy, or

practice, and includes a large sample and a multi-site sample. (Note: multiple studies can cumulatively meet the large and multi-site sample requirements as long as each study meets the other requirements in this paragraph.)

(ii) There are at least two studies of the effectiveness of the process, product, strategy, or practice being proposed, each of which: meets the What Works Clearinghouse Evidence Standards with reservations, found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the studies or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations and settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample.

\* \* \* \* \*

What Works Clearinghouse Evidence Standards means the standards set forth in the What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), which can be found at the following link:  
<http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19>.

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