



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

**[CG Docket No. 10-210; FCC 15-58]**

**Relay Services for Deaf-Blind Individuals**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission proposes to amend its rules to continue the National Deaf-Blind Equipment Distribution Program (NDBEDP) on a permanent basis. The NDBEDP is currently a pilot program that supports the distribution of communications devices to low-income individuals who are deaf-blind.

**DATES:** Comments are due **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments are due **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by CG Docket No. 10-210, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and **CG Docket No. 10-210**.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to

experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Rosaline Crawford, Consumer and Governmental Affairs Bureau, Disability Rights Office, at 202-418-2075 or e-mail [Rosaline.Crawford@fcc.gov](mailto:Rosaline.Crawford@fcc.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> Street, SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, DC 20554.

This is a summary of the Commission's document FCC 15-58, Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals, Notice of Proposed Rulemaking (NPRM), adopted on May 21, 2015 and released on May 27, 2015, in CG Docket No. 10-210. The full text of document FCC 15-58 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12<sup>th</sup> Street, SW, Room CY-A257, Washington, DC 20554. Document

FCC 15-58 can also be downloaded in Word or Portable Document Format (PDF) at

<http://www.fcc.gov/ndbedp>.

This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. 47 CFR 1.1200 et seq. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

## **INITIAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS**

Document FCC 15-58 seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another notice in the Federal Register inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Pub. L. 104-13, 109 Stat. 163; 44 U.S.C. 3501-3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Pub. L. 107-198, 116 Stat. 729; 44 U.S.C. 3506(c)(4).

## **SYNOPSIS:**

### **I. INTRODUCTION**

1. In the (NPRM), the Commission seeks comment on proposed rules to govern the NDBEDP on a permanent basis. The NDBEDP supports programs that distribute communications equipment to low-income individuals who are deaf-blind. The NDBEDP has operated as a pilot program since July 2012.

### **II. BACKGROUND**

2. Section 105 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) added section 719 to the Communications Act of 1934, as amended, which directed the Commission to establish rules to provide up to \$10 million annually from the Interstate Telecommunications Relay Service Fund (TRS Fund) to support programs that distribute communications equipment to low-income individuals who are deaf-blind. Pub. L. 111-260, 124 Stat. 2751 (2010); Pub. L. 111-265, 124 Stat. 2795 (2010); 47 U.S.C. 620. In 2011, the Commission established the NDBEDP as a two-year pilot program, with an option to extend it for an additional year. Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals, CG Docket No. 10-210, Report and Order, published at 76 FR 26641, May 9, 2011 (NDBEDP Pilot Program Order); 47 CFR 64.610 (NDBEDP pilot program rules). The Consumer and Governmental Affairs Bureau (CGB or Bureau) launched the pilot program on July 1, 2012. To implement the program, the Bureau certified 53 entities to participate in the NDBEDP – one entity to distribute equipment in each state, plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands,

hereinafter referred to as “state programs” or “certified programs” – and selected a national outreach coordinator to support the outreach and distribution efforts of these state programs. On February 7, 2014, the Bureau extended the pilot program for a third year, until June 30, 2015. Many individuals who received communications devices through the NDBEDP have reported that this program has vastly improved their daily lives, significantly enhancing their ability to live independently and expanding their educational and employment opportunities.

3. On August 1, 2014, the Bureau released a Public Notice inviting comment on which rules governing the NDBEDP pilot program should be retained and which should be modified to make the permanent NDBEDP more effective and more efficient. Consumer and Governmental Affairs Bureau Seeks Comment on the National Deaf-Blind Equipment Distribution Program, CG Docket No. 10-210, Public Notice, 29 FCC Rcd 9451 (CGB 2014). Comments filed in response to the Public Notice helped to inform the preparation of the NPRM. The Commission proposes to retain the NDBEDP pilot program rules for the permanent program, except as discussed in the NPRM.

4. On May 21, 2015, the Commission extended the pilot program for one additional year, until June 30, 2016. Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals, CG Docket No. 10-210, Order, FCC 15-57 (rel. May 27, 2015). The Commission commits to continue the pilot NDBEDP as long as necessary to ensure a seamless transition between the pilot and permanent programs to ensure the uninterrupted distribution of equipment to this target population. When the Commission adopts final rules for the permanent program it will consider the extent to which the pilot program needs to be extended further. The Commission invites comment on the need to extend the pilot program beyond June 30, 2016.

5. In establishing a permanent NDBEDP, the Commission also seeks comment on performance goals for all elements of the program along with performance measures that are clearly linked to each performance goal. Specifically, the Commission proposes the following goals: (1) ensuring that the program effectively increases access to covered services by the target population; (2) ensuring that the program is administered efficiently; and (3) ensuring that the program is cost-effective. Funds available

through the program come from contributions made by telecommunications service providers to the TRS Fund, and the Commission has a responsibility to ensure these funds are spent efficiently and effectively. Ensuring that certified programs use available funds in cost-effective ways maximizes the impact of program funds and helps ensure that as many eligible recipients as possible are able to receive the support they need. The Commission believes that clear performance goals and measures will enable it to determine whether the program is being used for its intended purpose and whether the funding for the program is accomplishing the intended results. To the extent that these proposed goals or other goals that commenters may propose may be in tension with each other, commenters should suggest how the Commission should prioritize or balance them. The Commission invites comment on what performance measures it should adopt to support these proposed goals, and whether it should adopt measures based on the information that certified programs are required to report to the Commission. The Commission also seeks comment on ways to manage and share data to track our progress in meeting these goals. Finally, the Commission proposes to periodically review whether it is making progress in addressing these goals by measuring the specific outcomes.

### III. PROGRAM STRUCTURE

#### A. Certified Programs

6. Under the NDBEDP pilot program, the Commission certifies one entity per state as the sole authorized entity to participate in the NDBEDP and receive support from the TRS Fund for the distribution of equipment and provision of related services to low-income individuals who are deaf-blind. Certified programs have primary oversight and responsibility for compliance with program requirements, but may fulfill their responsibilities directly or through collaboration, partnership, or contract with other individuals or entities within or outside of their states or territories. Services related to the distribution of equipment include outreach, assessment, installation, and training. Certified programs also perform administrative functions, including submitting reimbursement claims and reports, and conducting annual audits.

7. The Commission proposes to retain the current structure of the NDBEDP, certifying one entity to be responsible for the administration of the program, distribution of equipment, and provision of related services within each of the states and territories covered by the NDBEDP. The Commission believes that the localized approach that has been in place for almost three years has been successful in meeting the needs of eligible low-income individuals who are deaf-blind and that state entities are more likely to be familiar with their unique demographics and their available resources, and consequently are in a better position to respond to the localized needs of their residents. The Commission also believes that greater efficiencies and expanded capabilities can be achieved through a centralized database for reporting and reimbursement and through greater support for training, discussed further in the NPRM, without having to restructure the program from a state-based to a national system. The Commission seeks comment on this approach.

8. Thus far, 10 of the 53 state programs have relinquished their certifications, requiring the Commission to seek replacements in those states. The Commission recognizes that some adjustments have had to be made during the pilot program, a result that was not unexpected given that the NDBEDP is an entirely new program. However, on balance, the Commission believes that the success of NDBEDP, as evidenced by the delivery of equipment and services to thousands of deaf-blind individuals, shows that the system has been working well. To help reduce the incidence of program departures, as discussed further in the NPRM, the Commission proposes to establish a centralized database to facilitate the filing of reimbursement claims and semi-annual reports to the Commission. In addition, to minimize the risk of a lapse in service to deaf-blind individuals that might result during any future transitions from one certified state program to another, the Commission proposes that a certified program seeking to relinquish its certification provide written notice to the Commission at least 90 days in advance of its intent to do so. Further, the Commission proposes that such entities be required to transfer NDBEDP-purchased equipment, information, files, and other data to the newly-certified entity in its state within 30 days after the effective date of its certification to ensure a smooth transition and reduce any potential for a lapse in service. Finally, the Commission proposes requiring that all entities relinquishing their certifications

comply with NDBEDP requirements necessary for the ongoing functioning of the program that they are exiting, including the submission of final reimbursement claims and six-month reports. The Commission seeks comment on these proposals, as well as other steps that the Commission should take to reduce the number of entities that relinquish their certifications and measures the Commission should adopt to minimize the impact on consumers when this occurs.

9. For the pilot program, the Bureau selected entities to participate in the NDBEDP that were located within and outside of the states that they served. Currently, of the 53 certified programs, 33 are administered by entities located within the states they serve and 20 are administered by entities located outside those states. For all but three of these 20 programs, the out-of-state entity selected was the sole applicant. The Commission proposes to continue allowing qualified out-of-state entities, in addition to in-state entities, to apply for certification to administer the NDBEDP, in collaboration with individuals or entities within or outside of their states or territories. It believes that this flexible approach assists those states that may not have sufficient resources on their own to provide the services required by the NDBEDP. The Commission seeks comment on this proposal and any alternatives that would ensure that the NDBEDP is able to serve the residents of each state.

10. The Commission authorized the NDBEDP pilot program to operate in each of the 50 states, plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, noting that each of these jurisdictions administered an intrastate TRS program. The Commission reached this result because, like the TRS state programs, the NDBEDP certified programs are supported by the TRS Fund. Because residents of American Samoa, Guam, and the Northern Mariana Islands are also eligible to make and receive calls through one or more forms of relay services that are supported by the TRS Fund, the Commission proposes to expand the operation of the NDBEDP to these jurisdictions. The Commission seeks comment on this proposal, particularly from interested stakeholders who reside in these three territories, including entities that provide services to deaf-blind individuals.

#### B. Certification Criteria

11. Pursuant to the Commission's rules, the Bureau reviews applications and determines whether to grant NDBEDP certification based on the ability of a program to meet the following qualifications, either directly or in coordination with other programs or entities, as evidenced in the application and any supplemental materials, including letters of recommendation: (i) expertise in the field of deaf-blindness; (ii) the ability to communicate effectively with people who are deaf-blind; (iii) staffing and facilities sufficient to administer the program; (iv) experience with the distribution of specialized customer premises equipment; (v) experience in how to train users on how to set up and use the equipment; and (vi) familiarity with the telecommunications, Internet access, and advanced communications services that will be used with the distributed equipment. The Commission believes that these criteria have been effective in informing the Bureau's selection of qualified entities and proposes to retain these criteria to evaluate an entity's qualifications for certification as a state program. The Commission seeks comment on this proposal.

12. In addition, the Commission seeks comment on how it can supplement these criteria to better ensure that certain certified programs serve the full spectrum of people who are deaf-blind. Should the Commission establish minimum standards for the personnel providing services in these programs? For example, should individuals providing service have certain levels of linguistic competency? The Commission asks commenters to describe any difficulties they have experienced securing equipment or services from their state's certified program resulting from a lack of expertise in deaf-blindness or communications skills, and to be specific in recommending changes that may be necessary in the Commission's certification criteria to reduce these difficulties.

13. The Commission also seeks comment on the addition of certification criteria that address the ability of certified programs to administer a statewide program, the capacity to manage the financial requirements of a state program, expertise in assistive technology, and experience with equipment distribution capabilities. In particular, the Commission proposes to add administrative and financial management experience to the requirements for certification. The Commission seeks comment on this proposal. Should applicants also be required to demonstrate that they are capable of operating a statewide

program or that they follow standard financial principles? To what extent would such requirements strengthen the NDBEDP? For example, would these reduce the likelihood of selected entities relinquishing their certification before completion of their terms? Conversely, would requiring such skills exclude too many otherwise qualified applicants? Finally, the Commission seeks comment on any other criteria that should be added to ensure the selection of certified entities that will be both responsive to the deaf-blind community's needs and capable of achieving full compliance with the Commission's NDBEDP rules.

14. Under the NDBEDP pilot program, the Commission prohibited certified programs from accepting financial arrangements from a vendor that could incentivize the purchase of particular equipment. The Commission continues to believe that such incentives could impede a certified program's ability to provide equipment that fully meets the unique needs of the deaf-blind persons it is serving. In addition to this rule, the Commission also requested that applicants for NDBEDP certification disclose in their initial certification application and thereafter, as necessary, any actual or potential conflicts of interest with manufacturers or providers of equipment that may be distributed under the NDBEDP. The Commission proposes to require such disclosures in applications for initial and continued certification under the permanent NDBEDP. To the extent that financial arrangements in which the applicant is a part create the risk of impeding the applicant's objectivity in the distribution of equipment or compliance with NDBEDP requirements – such as when the applicant is partially or wholly owned by an equipment manufacturer or vendor – the Commission proposes that it reject such applicant for NDBEDP certification. The Commission seeks comment on this proposal.

#### C. Duration of Certification

15. At present, all NDBEDP programs are certified for the duration of the pilot program. Consistent with the TRS certification rules for state TRS providers, to improve program accountability, and avoid unnecessary administrative burdens that may result from a certification period of two or three years, the Commission proposes that NDBEDP programs be certified for a period of five years. The Commission seeks comment on alternative timeframes other than five years including shorter timeframes, and asks

about the pros and cons of opening the window up earlier than every five years. In the event that a certified program decides not to seek re-certification at the end of its five-year term, the Commission proposes requiring that such entities transfer NDBEDP-purchased equipment, information, files, and other data to the newly-certified entity in its state within 30 days after the effective date of certification of the new entity to ensure a smooth transition and reduce any potential for a lapse in service. This is consistent with the Commission's proposal to require the transfer of such materials when a certified program relinquishes its certification during its five-year term, discussed in the NPRM. The Commission seeks comment on this proposal.

#### D. Certification Renewals

16. Because the permanent NDBEDP may have some rule modifications, the Commission believes that it is appropriate to require each such entity to demonstrate its ability to meet all of the selection criteria anew, and to affirm its commitment to comply with all Commission rules governing the permanent program. Accordingly, the Commission proposes requiring that each entity certified under the pilot program re-apply for certification or notify the Commission of its intent not to participate under the permanent program within 30 days after the effective date of the permanent rules. The rules will be effective upon notice in the Federal Register announcing Office of Management and Budget (OMB) approval of the information collection requirements subject to the Paperwork Reduction Act. The Commission seeks comment on this proposal. Alternatively, should the Commission require each entity to certify that it continues to satisfy all current certification criteria that the Commission retains under the permanent NDBEDP, to demonstrate its ability to meet any new criteria the Commission may establish, and to affirm its commitment to comply with the permanent NDBEDP rules that the Commission adopts? In addition, the Commission proposes to permit other entities to apply for certification as the sole authorized entity for a state to distribute equipment under the NDBEDP during the 30-day time period following the effective date of the permanent rules. The Commission seeks comment on this proposal.

17. Consistent with the Commission's requirements for TRS providers, the Commission proposes to require each state program, once certified, to report any substantive change to its program within 60 days

of when such change occurs. The Commission proposes that substantive changes include those that might bear on the qualifications of the entity to meet the Commission's criteria for certification, such as changes in the entity's ability to distribute equipment across its state or significant changes in its staff and facilities. The Commission seeks comment on this proposal and the types of substantive changes that should trigger such notice to the Commission. The Commission also seeks comment on the extent to which this requirement would help to ensure that programs continue to meet the Commission's criteria for certification when substantial changes are made.

18. Finally, the Commission proposes that one year prior to the expiration of each five-year certification period, a certified program intending to stay in the NDBEDP be required to request renewal of its certification by submitting to the Commission an application with sufficient detail to demonstrate its continued ability to meet all criteria required for certification, either directly or in coordination with other programs or entities. This approach is consistent with the TRS certification rules for state TRS providers. The Commission seeks comment on this proposal. In addition, the Commission proposes to permit other entities to apply for certification as the sole authorized entity for a state to distribute equipment under the NDBEDP one year prior to the expiration of a certified entity's five-year certification period. The Commission seeks comment on this proposal.

#### E. Notifying Consumers about State Program Changes

19. Under the pilot program rules, the Commission may suspend or revoke a certification if it determines that such certification is no longer warranted after notice and opportunity for hearing. The Commission seeks comment on whether, in place of an opportunity for an administrative hearing, there are alternatives that would provide programs an opportunity to be heard, such as a reasonable time to present views or objections to the Commission in writing before suspension or decertification. The Commission's interest in finding an alternative stems from its concern that a requirement for a hearing could unintentionally result in eligible residents being denied equipment pending this administrative action. Would providing a program with reasonable time to present its views and objections to the

Commission in writing satisfy due process requirements and enable the Commission to take action without undue delay?

20. The Commission has not initiated any decertification proceedings under the pilot program. When state programs have voluntarily relinquished their certifications, the Bureau has released public notices to invite applications to replace these entities, selected replacements after careful review of the applications received, and released a second public notice announcing the newly-certified entities. In addition to releasing such public notices, should the Commission take other measures to notify consumers in the affected states when a certified entity exits the program and a replacement is selected? For example, should the Commission require the formerly certified entity to notify consumers in their states who received equipment or who have applied to receive equipment about the newly-certified entity? The Commission seeks comment on how best to ensure that consumers are aware when these changes are made to their state NDBEDP programs.

F. NDBEDP Centralized Database for Reporting and Reimbursement

21. Under the NDBEDP pilot program, state programs must submit reimbursement claims to the TRS Fund Administrator and reports to the Commission. Currently, reports from state programs are presented to the Commission with inconsistent formatting, making aggregation of data difficult and inefficient. The Commission proposes that a centralized national database be created to assist state programs in the generation of their reports to the Commission, to enable the submission of those reports electronically to the NDBEDP Administrator, and to allow for the aggregation and analysis of nationwide data on the NDBEDP. To ensure that all of the information collected can be aggregated and analyzed for the effective and efficient operation of the NDBEDP, the Commission further proposes that, if the Commission adopts this approach, all certified programs be required to use the centralized database for their reporting obligations. The Commission seeks comment on these proposals. Do NDBEDP stakeholders agree that these advantages would accrue from utilizing a centralized database? The Commission also seeks comment generally on the costs and any other benefits or disadvantages that would be associated with both the establishment and maintenance of such a database. Further, the

Commission seeks comment on any lessons learned from other experiences setting up databases and whether a centralized database could be used for other purposes or programs.

22. Much of the data needed to generate reimbursement claims is also required to generate the required reports. Because the data overlap, the Commission also proposes that the centralized database be available to assist state programs in generating their reimbursement claims for submission to the TRS Fund Administrator. The Commission seeks comment on this proposal. Would having the centralized database available to generate reimbursement claims lead to faster reimbursement and benefit state programs in other ways? The TRS Fund Administrator is currently able to aggregate reimbursement claim data, even in the absence of a centralized database. For this reason, the Commission proposes to enable and permit, but not require, certified programs to use the centralized database to generate reimbursement claims. Alternatively, would requiring all certified programs to use the centralized database for their claims make the process of aggregating reimbursement claim data more efficient? Could reimbursement claim data be transmitted electronically from the centralized database to the TRS Fund Administrator, along with the necessary supporting documentation? The Commission seeks comment on the costs and benefits of utilizing the centralized database to facilitate the creation of reimbursement claims, as well as the best approach for utilizing this database to ensure the effective and efficient oversight of the permanent NDBEDP.

23. The Commission also seeks comment about the type of data that state programs should be required to input into a centralized database. In order for state programs to generate reimbursement claims under the pilot NDBEDP, they must submit the costs of equipment and related expenses (including maintenance, repairs, warranties, refurbishing, upgrading, and replacing equipment distributed to consumers); assessments; equipment installation and consumer training; loaner equipment; state outreach efforts; and program administration. Should this same data be entered into the database? Are there other types of data that should be populated into the database for the purpose of generating reimbursement claims? Similarly, what data should be input by state programs to the database to effectively generate reports about state program activities? Under the Commission's current rules, state programs must report

to the Commission information about equipment recipients and the people attesting that those individuals are deaf-blind; the equipment distributed; the cost, time and other resources allocated to various activities; the amount of time between assessment and equipment delivery; the types of state outreach undertaken; the nature of equipment upgrades; a summary of equipment requests denied and complaints received; and the number of qualified applicants on waiting lists to receive equipment. To the extent that the Commission continues requiring that such data be reported in the permanent NDBEDP, should certified programs be required to input all of this data into the centralized database?

24. Should certain data be excluded from the centralized database, and if so, why? For example, even though the Commission complies with the requirements of the Privacy Act with respect to the protection of personally identifiable information that the Commission receives in connection with the NDBEDP, would it be more appropriate for state programs to maintain records of names and addresses of their equipment recipients, along with the identity of the people who attest that those recipients are deaf-blind, rather than put this information into a centralized location? Should individuals who receive equipment instead be given a unique identifying number, which could be entered into the database in lieu of their names and other personally identifiable information? Additionally, the Commission seeks comment on whether any certified program may be prohibited by state regulation from storing data out of state and whether these prohibitions would prevent the input of the types of data described above – or any other related types of data – into a centralized database. Are there any other reasons that any of the currently certified programs would not be able to comply with requirements for the submission of such data into a centralized system? What are the costs and benefits of gathering the categories of information listed above?

25. The Commission proposes to permit the NDBEDP Administrator and other appropriate FCC staff to search this database and generate reports to analyze nationwide data on the NDBEDP, and seeks comment on this proposal. To what extent should a certified program also be permitted access to the database to execute searches of data that it did not input into the database? For example, if the Commission permits entry of data on deaf-blind individuals receiving equipment, should a certified

program be permitted to conduct a search to determine whether the applicant is receiving equipment and services from another state? Similarly, should a certified program be permitted to access the database to determine the types of equipment being distributed by other states or the length of time typically used for assessments and training by other certified programs? The Commission proposes that access to the NDBEDP centralized database be limited to authorized entities, and be permitted only under tightly controlled conditions. To ensure the privacy and confidentiality of financial and other sensitive information about consumers that may be entered into the database, the Commission seeks comment on which entities and under what conditions those entities should be permitted access to the database. The Commission proposes that the database administrator be tasked with establishing procedures, protocols, and other safeguards, such as password protection and encryption, to ensure database access is in fact restricted according to the Commission's guidelines. The Commission seeks comment on this approach, and the extent to which the NDBEDP Administrator should be given some discretion to determine when entities other than the Administrator or FCC staff can access the database.

26. Decisions regarding information to be included in a centralized database used for administration of the program and the individuals who may be granted access to the database can raise questions regarding compliance with Government-wide statutory and regulatory guidance with respect to privacy issues and the use of information technology. Parties commenting on the centralized database should ensure that their recommendations are consistent with Government-wide privacy and information technology statutory and regulatory guidance.

27. The Perkins School for the Blind (Perkins), which provides database services for 32 certified programs, estimated that the cost of establishing and maintaining an NDBEDP centralized database will be between \$285,000 and \$380,000 annually. The Commission seeks comment on whether this amount of funding will be sufficient to perform the proposed functions of the database, and whether there will be start-up costs that result in higher costs during the first year of the database's operations. If the Commission does not develop its own database for the NDBEDP, the Commission proposes to authorize the Bureau to set aside up to \$380,000 per year from the NDBEDP's annual allocation for the

development of the database during the last year of the pilot program to enable the implementation of the database functions for the permanent NDBEDP in a timely manner. If this approach is adopted, certified programs now paying to use an existing database, the costs of which are currently assessed against their 15% cap on administrative costs, would no longer need to do so. At the same time, the Commission proposes that certified programs continue to be permitted to seek reimbursement for the time spent entering data into and generating reports and reimbursement claims from the database as part of their administrative costs, up to the 15% cap. The Commission seeks comment on these various proposals.

28. As an alternative to undertaking the development and maintenance of an NDBEDP database using existing staff and resources, the Commission will also consider a variety of approaches to satisfy the program requirements. For example, the Commission could engage another agency with information technology experience to provide administrative support for the program including database development and maintenance through an Interagency agreement. The Commission could also procure the database through a competitive procurement. In addition, the Commission may evaluate whether to modify a contract with an existing contractor to satisfy the program requirements – either through direct performance by the main contractor or a subcontractor. Or the Commission may wish to invite entities, via a public notice, to submit applications for the development and maintenance of a centralized database, from which the Commission would then select a database administrator. The Commission will consider using a combination of any of these in-house, regulatory, or procurement strategies where efficient and lawful to do so.

29. Regardless of the precise mechanism chosen for obtaining a centralized database for the program, the Commission seeks input on the performance goals along with performance measures that should be used for this project. Other issues on which the Commission seeks input include the implementation schedule for the work; budget for the first three years of work related to the development and maintenance of the database; prerequisite experience needed for staff employed in creating and managing a complex database capable of receiving large amounts of data. The Commission also seeks input regarding database query and data mining capabilities; and database design best practices to ensure that

certified programs can generate reimbursement claims and submit them electronically to the TRS Fund Administrator using the database. The Commission also seeks input on the report functionality required for the database; and best practices with respect to data management, security, privacy, confidentiality, backup, and accessibility, including compliance with section 508 of the Rehabilitation Act.

#### IV. CONSUMER ELIGIBILITY

##### A. Definition of Individuals who are Deaf-Blind

30. To participate in the NDBEDP, the CVAA requires that individuals must be “deaf-blind,” as that term is defined in the Helen Keller National Center Act (HKNC Act). 29 U.S.C. 1905(2). The Commission’s NDBEDP pilot program rules also direct NDBEDP certified programs to consider an individual’s functional abilities with respect to using telecommunications, advanced communications, and Internet access services in various environments when determining whether an individual is “deaf-blind.” The Commission proposes to retain this definition and seeks comment on this proposal.

##### B. Verification of Disability

31. The NDBEDP pilot program rules require that individuals seeking equipment under the NDBEDP must provide disability verification from a professional (e.g., community-based service provider, vision or hearing related professional, vocational rehabilitation counselor, educator, and medical or health professional) who has direct knowledge of and can attest to the individual’s disability. Such professionals must attest, either to the best of their knowledge or under penalty of perjury, that the applicant is an individual who is deaf-blind, as that term is defined in the Commission’s rules. A disability verification must include the attester’s name, title, and contact information, including address, phone number, and e-mail address. As verification of disability, certified programs may also accept documentation already in the applicant’s possession, such as individualized education programs and Social Security determination letters. The Commission tentatively concludes that the Commission should retain the current requirements for verification of disability from a professional with direct knowledge or through documentation already in the applicant’s possession, and seeks comment on this tentative conclusion. Nonetheless, the Commission seeks comment on whether a professional’s attestation that an individual is

deaf-blind should include the basis of the attesting professional's knowledge. The Commission also proposes that the disability verification must include the professional's full name, title, and contact information, including business address, phone number, and e-mail address. The Commission seeks comment on this proposal. Finally, the Commission asks whether certified programs should be required to re-verify an individual's disability eligibility each time the recipient applies for new equipment, or whether there is a period of time after an initial verification that such verification should be deemed sufficient to prove disability in the event that the recipient seeks additional equipment. For this purpose, the Commission proposes to require certified programs to re-verify an individual's disability eligibility when the individual applies for new equipment three years or more after the program last verified the individual's disability. The Commission seeks comment on this proposal.

#### C. Income Eligibility

32. To participate in the NDBEDP, the CVAA requires that individuals must be "low income." The NDBEDP pilot program rules define low-income individuals as having "an income that does not exceed 400% of the Federal Poverty Guidelines (FPG)." 47 CFR 64.610(d)(2). In addition, the Bureau has provided guidance to state programs that defines "income" as all income received by all members of a household, and defines a "household" as any individual or group of individuals who are living together at the same address as one economic unit.

33. The Commission seeks comment on how to define the "low income" threshold for purposes of eligibility in the permanent program. Should it, for example, continue to use a threshold of 400% of the FPG like it did in the pilot program? The Commission is sensitive to concerns about the high cost of medical and disability-related expenses for this population, as well as the high cost of the equipment that these consumers need. In the NDBEDP Pilot Program Order, the Commission concluded "that the unusually high medical and disability-related costs incurred by individuals who are deaf-blind . . . together with the extraordinarily high costs of specialized [customer premises equipment] typically needed by this population, support an income eligibility rule of 400 percent of the FPG for the NDBEDP pilot program. In order to give this program the meaning intended by Congress – 'to ensure that

individuals with disabilities are able to utilize fully the essential advanced technologies that have developed since the passage of the ADA and subsequent statutes addressing communications accessibility’ – we must adopt an income threshold that takes into account these unusually high medical and disability-related expenses, which significantly lower one’s disposable income.”

34. The Commission notes that, in 2013, the median household income in the United States was \$52,250. Can the Commission define a household as “low income” if its income exceeds the median? Should the Commission use the median as a cap on eligibility, or just adopt the median as a threshold? Alternatively, how do other federal programs define “low income” households? For example, the FCC’s low-income universal service program (known as Lifeline) defines a household as low income only if it is below 135% of the FPG (or the household qualifies for one of several federal low-income programs). Should the Commission adopt that threshold here? What effect would adjusting the income eligibility threshold have on otherwise-eligible deaf-blind individuals? As the program approaches the maximum funding level each year, what effect would adjusting the income eligibility threshold have on prioritizing scarce resources?

35. The Commission seeks comment on whether “taxable income” – rather than total, gross, or net income – be used to determine eligibility, while retaining the limitation that such income not be greater than 400% of the FPG. For these purposes, the Commission seeks comment on whether the term “taxable income” should be defined as gross income minus allowable deductions, as defined by the U.S. Tax Code. In other words, taxable income for the purposes of the NDBEDP would be the amount that is used to compute the amount of tax due. The amount of tax due may be offset further by tax credits, but tax credits do not alter the amount of your taxable income. The Commission seeks comment on how to address non-disability related exemptions or exclusions in the tax code. For example, should otherwise-non-taxable municipal-bond income be included in a household’s taxable income for purposes of eligibility? Should mortgage-interest deductions or state-income-tax deductions be included? The Commission asks whether this modification appropriately considers an applicant’s disability-related and medical expenses, given that taxable income includes allowable deductions for such expenses for

individuals who itemize their deductions. For those individuals who do not itemize deductions, in addition to the basic standard deduction, an additional standard deduction is permitted for individuals who are blind, which may help to ameliorate the burden of additional expenses incurred by such individuals and result in less taxable income. The Commission asks for comment as to whether this would address these cost concerns, without conflicting with statutory limitations and congressional intent, or if there are other proposals that might achieve this goal. The Commission also asks whether this approach will impose any additional administrative burdens on either the certified programs or consumers, and whether those burdens are justified by the benefits of adopting these financial eligibility criteria. The Commission also seeks comment on how other federal programs define income for determining whether a household is “low income” and whether any other federal program uses “taxable income” for that purpose.

36. The Commission also addresses concerns about its use of household income in lieu of personal income to determine income eligibility for the NDBEDP, because the former can result in disqualification of adult applicants who live in multi-person households and other adult applicants who are not dependent financially. The Commission proposes to clarify that multiple adults living together as roommates or in a multi-person home are not an “economic unit” and therefore not a “household” for purposes of determining income eligibility. An “economic unit” consists of all adult individuals contributing to and sharing in the income and expenses of a household. In situations where an adult applicant lives in a multi-person home but does not have access to the financial resources of others, he or she is not “contributing to and sharing in the income and expenses” of the group but instead maintaining financially distinct identities despite a shared living space. In contrast, where an adult applicant is financially dependent on another adult or their finances are intertwined (as with a spouse), the incomes of all members of that household must be considered. The Commission asks for comment on this approach or alternatives to this approach that would be consistent with the congressional mandate requiring the NDBEDP to serve only low-income individuals.

D. Verification of Income Eligibility

37. The NDBEDP pilot program rules allow automatic income eligibility for individuals enrolled in federal subsidy programs with income thresholds that do not exceed 400% of the FPG. When applicants are not already enrolled in a qualifying low-income program, low-income eligibility must be verified by the certified program using appropriate and reasonable means, for example, by reviewing the individual's most recent income tax return.

38. The Commission tentatively concludes that it should continue permitting individuals enrolled in federal subsidy programs with income thresholds lower than 400% of the FPG to be deemed income eligible for the NDBEDP. The Commission believes that this approach is reasonable and reliable, simplifies the income verification process for applicants and certified programs, and is consistent with the approach adopted for its Universal Service low-income program. Further, the Commission proposes to continue to require certified programs to verify low-income eligibility using appropriate and reasonable means, for example, by reviewing the individual's most recent income tax return, when applicants are not already enrolled in a qualifying low-income program. The Commission seeks comment on these proposals. The Commission seeks comment on whether a third-party should determine income eligibility just as the Commission proposes to retain the requirement for a third party to verify an individual's disability. If the Commission decides to use a third party to verify income, it seeks comment on whether this should be done by a state agency, such as during the time of enrollment in other programs, or through another mechanism. The Commission seeks comment on the potential impact on program applicants and the potential costs and benefits of doing so, including the potential administrative savings to the programs of relieving them of this responsibility. The Commission further notes that its Universal Service low-income program lists, as acceptable documentation to prove income eligibility, "the prior year's state, federal, or Tribal tax return; current income statement from an employer or paycheck stub; a Social Security statement of benefits; a Veterans Administration statement of benefits; a retirement/pension statement of benefits; an Unemployment/Workers' Compensation statement of benefit; federal or Tribal notice letter of participation in General Assistance; or a divorce decree, child support award, or other official document containing income information." 47 CFR 54.410(b)(1)(i)(B). Would these forms of

documentation be appropriate to prove income eligibility for NDBEDP equipment recipients?

Additionally, the Universal Service low-income program rules specify that, if the documentation presented “does not cover a full year, such as current pay stubs, the [applicant] must present the same type of documentation covering three consecutive months within the previous twelve months.” 47 CFR 54.410(b)(1)(i)(B). Should such eligibility criteria be applied across all certified programs nationwide? Finally, the Commission asks whether certified programs should be required to re-verify an equipment recipient’s income eligibility when that individual applies for new equipment. Is there a period of time following an initial verification that such income verification should be deemed sufficient if the recipient seeks additional equipment? For this purpose, the Commission proposes to require certified programs to re-verify an individual’s income eligibility when the individual applies for new equipment one year or more after the program last verified the individual’s income. The Commission seeks comment on this proposal.

#### E. Other Eligibility Criteria

39. To ensure that the equipment provided will be usable, the Commission proposes to continue, under the permanent NDBEDP, to permit certified programs to require that NDBEDP equipment recipients demonstrate that they have access to the telecommunications, advanced communications, or Internet access services (Internet or phone service) that the equipment is designed to use and make accessible. Considering the unemployment and underemployment challenges of the population sought to be served by the NDBEDP, the Commission also proposes, under the permanent NDBEDP, to prohibit certified programs from imposing employment-related eligibility requirements for individuals to participate in the program. The Commission seeks comment on these proposals.

40. In the pilot NDBEDP, the Commission granted states considerable flexibility in deciding how best to distribute equipment and provide related services to as many of their eligible residents as possible, given their jurisdiction’s demographics and the inherent constraints of NDBEDP funding allocations, qualified personnel, time, and other limited resources. The Commission proposes to continue following this approach because it believes it has been effective in allowing states to address the wide range of

variability that exists within and between state populations and resources, as well as the diversity within the population of individuals who are deaf-blind. The Commission seeks comment on this proposal. Should the Commission take measures to prioritize the use of funding in the event that demand for funding exceeds the \$10 million funding limitation? If so, for what purpose and when should priorities be set? For example, should priorities be designed to maximize the number of equipment recipients per year or the number of new equipment recipients per year or both? Should the Commission consider taking measures to target the lowest-income individuals? For example, should the Commission consider lowering the income eligibility threshold? Should the Commission consider establishing caps on the amount of equipment or related services an individual may receive to achieve that goal? The Commission seeks comment on these or other alternatives the Commission should consider to maximize the number of low-income consumers who can receive equipment under the permanent program.

41. At the same time, the Commission acknowledges a need for greater transparency with respect to any unique criteria or priorities used by state programs for the distribution of equipment and related services. The Commission, therefore, proposes that each certified program be required to make public on its website, if one is maintained by the certified program, or as part of its other local outreach efforts, a brief narrative description of any criteria or priorities that it uses to distribute equipment, as well as strategies established to ensure the fair distribution of equipment to eligible applicants within its jurisdiction. The Commission seeks comment on whether this proposal would assist consumers to better understand what benefits they may be able to secure from their state programs. The Commission also seeks comment on whether the administrative burdens of such an approach would be outweighed by its benefits.

42. The Commission cautions, however, that strategies to serve eligible applicants in a state must be consistent with the NDBEDP rules. For example, a certified program whose state education department provides deaf-blind students with all of the communications equipment and related services they need may determine that it should focus its NDBEDP resources to meet the needs of low-income deaf-blind adults. The Commission believes this would be consistent with the principle, adopted in the NDBEDP

Pilot Program Order, that the NDBEDP is supplementing rather than supplanting other resources.

However, a program restriction disallowing the distribution of equipment to any persons under the age of 18 could exclude otherwise eligible deaf-blind individuals in need of this equipment. The Commission tentatively concludes that state programs generally should not be permitted to adopt such sweeping limitations, and seeks comment on this tentative conclusion. In addition, the Commission proposes to require certified programs to serve eligible applicants of any age whose communications equipment needs are not being met through other available resources and the Commission seeks comment on this proposal. Finally, the Commission seeks comment on whether it should address in its rules for the permanent NDBEDP any other specific state program restrictions that currently exclude individuals who may otherwise qualify for NDBEDP equipment and related services.

## V. EQUIPMENT AND RELATED SERVICES

### A. Outreach

#### 1. National Outreach

43. During each year of the pilot program, the Commission has set aside \$500,000 of the \$10 million available annually for national outreach efforts to promote the NDBEDP. Significant initial funding for outreach was necessary to launch the pilot program, because eligible individuals needed to become informed about the availability of the program before distribution of equipment could take place.

Accordingly, in addition to permitting the state programs to use some of their funding for outreach to their communities, the Commission authorized national outreach efforts to supplement those local efforts. The Bureau selected Perkins to conduct this national outreach. This outreach effort by Perkins, in partnership with others, has resulted in an NDBEDP (“iCanConnect”) website that promotes the NDBEDP, provides information about and referral to state programs, shares news about the program and personal stories of equipment recipients, and includes an overview of the types of communications equipment the program can provide. The national outreach effort has also resulted in the establishment of an 800 number and a call center for program inquiries and referrals, marketing materials for and monthly conference calls with

state programs, social media presence, and public service announcements (PSAs), as well as advertisements on billboards and in magazines.

44. Based on both the extensive efforts of the national outreach program to alert and educate consumers about the availability of NDBEDP equipment through state programs, and the generally high praise for these efforts conveyed by others, the Commission proposes to continue funding for national outreach efforts as part of the permanent program and for the NDBEDP Administrator to oversee these efforts. The Commission will consider a variety of approaches to satisfy the national outreach requirements for the program including using existing Commission staff and resources, engaging another agency with expertise in this area through an Interagency agreement, acquiring these services through a competitive procurement, evaluating whether to modify a contract with an existing contractor to satisfy the program requirements – either through direct performance by the main contractor or a subcontractor. The Commission may also wish to invite entities, via a public notice, to submit applications for the role of national outreach coordinator. The Commission will consider using a combination of any of these in-house, regulatory, or procurement strategies where efficient and lawful to do so. Regardless of the precise approach used to obtain national outreach services, the Commission seeks input on the performance goals along with performance measures that would be helpful in facilitating oversight of national outreach efforts.

45. At the same time, the Commission believes that, because national outreach efforts, combined with state and local outreach efforts conducted by certified programs, have made significant progress in publicizing the NDBEDP, less national outreach may be needed going forward. The Commission therefore proposes to reduce the amount of money spent on national outreach to \$250,000 for each of the first three years of the permanent program, and seeks comment on this proposal. Do commenters agree that this reduction in the national outreach allocation is appropriate given the limited amount of annual funding available to the NDBEDP and, if so, would \$250,000 per year be an appropriate level of funding? What effect would such a reduction in funds have on the types of national outreach efforts that were made under the pilot program? For example, will this amount of money be sufficient to continue the outreach

activities that Perkins identifies as “critical,” including maintenance of the iCanConnect website; the 800 number and call center; marketing materials; monthly conference calls; and support to states to gather and promote success stories? How can the Commission ensure that these or other national outreach efforts undertaken under the permanent program are cost effective? Should the Commission conduct an assessment during the third year to determine whether and to what extent to continue such funding support beyond this period? Will two years be sufficient to gather the data necessary to make this determination during the third year? If the Commission takes this approach, it seeks comment on how it should, in the third year, evaluate the efficacy of national outreach efforts for this purpose.

46. The Commission seeks comment on whether national outreach efforts should target specific groups, such as American Sign Language users, non-English language users, and medical and elder service professionals and, if so, why. Would the proposed reduction in funding limit national outreach to these targeted groups? Should other populations be targeted? What specific methods of communication or activities should be used to reach these groups? How can the Commission ensure that outreach reaches eligible consumers who do not specifically identify as deaf-blind? The Commission also seeks comment on whether and to what national outreach should be coordinated with the state program efforts, including the costs and benefits of having to take such measures.

47. Finally, performance goals should be defined for the national outreach program along with performance measures that are clearly linked to each performance goal. Evaluating a program against quantifiable metrics is part of the Commission’s normal oversight functions. As such, the Commission seeks input on the data it should collect in order to effectively oversee the outreach efforts. Should the Commission collect data on factors such as increases in the number of program participants, inquiries through the 800 number/call center, referrals through the iCanConnect website, consumer applications to state programs, the proportion of consumers in specified groups, such as by age or language spoken, website traffic, growth in social channels, and media impressions? If so, at what intervals are reports on such data useful?? What are the costs and benefits of collecting and evaluating this data? Commenters

should explain the connection between performance measures proposed and clearly defined program goals.

2. Local Outreach

48. In addition to setting aside \$500,000 per year for national outreach during the pilot program, the Commission has required certified programs participating in the pilot program to conduct local outreach to inform state residents about the NDBEDP, and has provided reimbursement for the reasonable costs of this outreach. Given the overwhelming endorsement of such efforts in the record, the Commission tentatively concludes that it should continue to require certified programs participating in the permanent NDBEDP to conduct outreach to state residents, and to reimburse these programs for the reasonable costs of such outreach. The Commission seeks comment on this tentative conclusion.

49. The Commission also seeks comment on the level of funding for state and local outreach that should be considered reasonable for purposes of reimbursement under the permanent NDBEDP. Overall, certified programs spent a combined average of approximately 10% of their total fund allocations on state and local outreach during the second year of the pilot program. Given that outreach activities at the state level have made significant progress in publicizing the NDBEDP, the Commission proposes that such outreach expenditures be capped at 10% of each state's funding allocation during the first two years of the permanent program, after which the Commission proposes that the NDBEDP Administrator be required to reassess this level of funding authorization. The Commission seeks comment on these proposals, as well as the specific metrics and criteria that should be used to evaluate the success of these outreach efforts, such as the percentage of a state program's funding allocation actually used. How can the Commission ensure that local outreach efforts undertaken under the permanent program have met such metrics, and are cost effective? Are there other criteria, including the criteria proposed above for the assessment of national outreach activities, that can be applied to evaluating the success of state outreach efforts?

50. Finally, in the NDBEDP Pilot Program Order, the Commission explained that state and local outreach may include the development and maintenance of a program website that contains information

about the NDBEDP certified program, contact information and information about available equipment, as well as ways to apply for that equipment and related services provided by the program. The Commission believes such websites have been very helpful in both informing state residents about the existence of the NDBEDP and instructing them on how to apply for equipment and related services from their local programs. The Commission tentatively concludes that its rules should continue to allow reimbursement for the development and maintenance of a program website. The Commission also required that the outreach information and materials that a certified program disseminates to potential equipment recipients be provided in accessible formats and it tentatively concludes that its rules should continue to require accessible outreach materials. The Commission notes that certified programs already are required to ensure accessibility under the Americans with Disabilities Act. See 42 U.S.C. 12131-12134 (state and local government services), 12181-12189 (public accommodations and services operated by private entities). The Commission seeks comment on these proposals and any other matters regarding state and local outreach.

#### B. Assessments

51. Under the NDBEDP pilot program, the Commission's rules permit reimbursement for the reasonable costs of individualized assessments of a deaf-blind individual's communications needs by qualified assistive technology specialists. Reimbursable assessment costs under the pilot program include the reasonable travel costs of state program staff and contractors who conduct assessments and provide support services (such as qualified interpreters). Individual assessments are needed to ensure an appropriate match between the particular type of technology distributed and the unique accessibility needs of each consumer, given the wide range of abilities and hearing and vision disabilities across the deaf-blind population. Further, the Commission continues to believe that reimbursement of the reasonable costs of travel by program staff and contractors to conduct assessments of individuals located in rural or remote areas is necessary to achieve the goal of accessible communications under the CVAA. The Commission tentatively concludes that the permanent NDBEDP should continue to permit reimbursement for these assessment and related travel costs, and seeks comment on this tentative conclusion. The

Commission asks commenters who do not believe that such funding support should be continued to explain why it should be discontinued. Further, the Commission asks how it can ensure that conducting assessments under the permanent program is cost effective or how it can improve the cost effectiveness of such assessments. The Commission also seeks comment on any other matters related to conducting individualized assessments under the NDBEDP.

52. The Commission presently does not allow reimbursement for the costs of deaf-blind consumers traveling to the assessor's location. The record shows that, in some instances, it would be preferable for consumers to travel to a location away from their homes, such as to the state program's office, to have their needs assessed before receiving equipment. The Commission proposes to allow but not require certified programs to pay for and request reimbursement for the reasonable costs of in-state travel for consumers (and their support service providers, if needed) when doing so would be more efficient and effective than conducting the assessment in the consumer's home. Would allowing such coverage benefit consumers, for example, by making a wider array of communication devices available for such assessments? To what extent would allowing these costs provide consumers with access to more skilled assessors or support services? Should there be a cap on the amount a state program can spend on assessment-related consumer travel? To what extent should the Commission's rules define the permissible costs that would be considered reasonable for such travel, and what costs should be considered "reasonable"? Are there other federal programs that are instructive with respect to addressing similar travel costs? The Commission assumes that most travel could occur from the consumer's location to the NDBEDP center and back to the consumer's location within a single day, given that travel is within a single state, and seeks comment on whether this assumption is correct. For example, what is the average distance and duration for consumers to travel to the assessment location? How likely is it that a consumer would need overnight lodging for the purpose of completing such assessment, and if such lodging is necessary, should this be covered by NDBEDP funds? To what extent have consumers traveled to another location for the purpose of obtaining assessments at their own expense during the pilot program, and to what extent are they likely to need such travel in the future? Are certified programs

already paying for consumer travel, without seeking reimbursement for those costs? Are state programs able to estimate projected costs for future consumer travel if the Commission's proposal to permit these costs is adopted? Are any of these expenses able to be reimbursed by other federal programs?

53. Although the Commission believes that reimbursing programs for the reasonable costs of consumer travel and support service providers, when needed and appropriate, can benefit both consumers and certified programs, given the limited NDBEDP funding available to each certified program, the Commission is hesitant to allow such compensation without the careful review and prior approval of each program pursuant to clearly defined guidelines. The Commission therefore proposes that a consumer's travel costs be reimbursed only if those costs are first pre-approved by the certified program, which should occur only after a determination by the program that the reasonable costs of this travel would be more efficient and effective than having the assessor travel to the consumer. Moreover, the Commission seeks comment on specific guidelines certified programs should follow or factors they should consider to make such determinations. For example, how should certified programs weigh possible benefits to a consumer that travels to receive an assessment (e.g., to try out a variety of equipment or receive a more timely assessment), against a comparison of program personnel travel versus consumer travel costs? Finally, the Commission proposes that pre-approval for such travel costs by the NDBEDP Administrator not be required, but may be requested by state programs, particularly if they have questions as to whether the requested travel would comport with the established guidelines. The Commission suggests this approach because it believes that state programs are in the best position to know when consumer travel is either necessary or will achieve the best efficiencies for its program. The Commission seeks comment on these and any other matters related to the reimbursement for the cost of consumers' in-state travel for purposes of obtaining assessments.

54. The Commission seeks comment on the reasons that a consumer may need to travel out-of-state for an assessment, and the number of consumers who already do so or are likely to do so, if reimbursement were allowed. Because the costs of traveling greater distances are likely to be higher than for in-state travel, should certified programs be required to seek pre-approval from the NDBEDP

Administrator for out-of-state travel to ensure that the costs are reasonable? The Commission seeks comment on these and any other matters related to the need for and appropriateness of having the NDBEDP reimburse state programs for the out-of-state travel expenses of consumers relating to assessments.

### C. Equipment

55. The NDBEDP provides support for the distribution of specialized customer premises equipment needed to make telecommunications services, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services accessible to people who are deaf-blind. Under the NDBEDP pilot program, the Commission reimburses certified programs for the reasonable cost of equipment, which may be hardware, software, or applications, separate or in combination, mainstream or specialized, as long as it meets the needs of the deaf-blind individual to achieve access to NDBEDP covered services. Certified programs may not impose restrictions on the types of communications technology that a recipient may receive, disable features or functions needed to access covered services, or accept financial arrangements from a vendor that could incentivize the purchase of particular equipment. Certified programs may lend or transfer ownership of the distributed equipment to eligible recipients, but must prohibit recipients from transferring equipment received under the NDBEDP to another person through sale or otherwise. Certified programs are permitted to distribute multiple pieces of equipment to eligible consumers, as needed. Equipment-related expenses, including maintenance, repairs, warranties, returns, maintaining an inventory of loaner equipment, as well as refurbishing, upgrading, and replacing equipment distributed to consumers are also reimbursable. When a recipient relocates to another state, certified programs must permit the transfer of the recipient's account and any control of the distributed equipment to the new state's certified program. The Commission did not establish equipment or funding caps for individual recipients during the pilot program. Rather, certified programs may distribute more than one device to an individual, within the constraints of the state's annual funding allocation and the desire to make communications accessible for as many individuals who are deaf-blind as possible.

56. The Commission tentatively concludes that it should retain all of the equipment distribution provisions of the NDBEDP pilot program noted above. The Commission believes that placing restrictions on the number of devices that each recipient should be permitted to receive or the frequency with which they should be allowed to receive them at this time would be inconsistent with the goal of the program to ensure access to communications services to all eligible low-income individuals who are deaf-blind. The better approach, the Commission believes, is to continue allowing the flexibility inherent in the existing provisions, which permits each certified program to determine how many pieces of equipment to provide and with what frequency, to meet the varied needs of the individuals in their communities. The Commission seeks comment on this approach. The commission also seeks comment on how it can ensure that the purchase of equipment under the permanent program is cost effective or how it can improve the cost effectiveness of such equipment purchases. The Commission further invites comment on whether certified programs should be required to reassess the communications needs of an equipment recipient when new issues, such as developmental, medical, or other changes, result in equipment no longer meeting the recipient's needs. The Commission also seeks comment on alternatives that might address these concerns.

57. The record reflects a desire that the centralized database contain a functionality that lists and frequently updates types of compensable equipment, and that allows certified programs, consumers, and industry to post suggestions for new equipment for consideration and evaluation, as well as comments, information, instructions or suggestions regarding existing equipment. The Commission notes that the database proposed in the NPRM, if established, will be populated with information about equipment that has been distributed by certified programs across the country. If the Commission extends its pilot program reporting rules, this information will include the equipment's name, serial number, brand, function, and cost, the type of communications service with which it is used, and the type of relay service it can access. The Commission seeks comment on whether certified programs should be permitted to query the proposed database to generate a list of equipment that has been provided through the NDBEDP. In addition, the iCanConnect website, which is maintained as part of the NDBEDP national outreach

effort, provides general information about different kinds of equipment that may be provided under the NDBEDP. The iCanConnect website also provides consumers with examples of specific communication devices commonly used by people who are deaf-blind, and therefore are likely to be reimbursable through the NDBEDP. Given the speed with which technology evolves, the Commission proposes that this list be kept reasonably up to date, though it need not be exhaustive. The Commission seeks comment on this approach and whether the iCanConnect website should provide other functionalities for state programs and consumers to aid in their equipment selection, such as the ability to compare and contrast different communication devices used by people who are deaf-blind. Should consumers be able to comment on equipment and, if so, to what extent should the comments be moderated, and by whom? How can the information about specific devices be kept up to date? Should equipment updates be provided by the website administrator, certified programs, consumers, industry, or all of the above? What are the costs and benefits of such functionalities, and would they be achievable with the amount of national outreach funding proposed in the NPRM?

58. The Commission cautions, however, that the appearance of a specific piece of equipment in the centralized database or on the iCanConnect website will not automatically make it eligible for reimbursement for all applicants. Rather, because equipment distribution determinations must be made based on individual case-by-case assessments, it is difficult, if not impossible, to identify specific types of equipment that will be reimbursable for all eligible applicants. Indeed, the same piece of equipment may be suitable for one individual, yet inappropriate for another. Thus, the Commission proposes that equipment reports produced by the centralized database, as well as equipment listings on the iCanConnect website, include a clear and conspicuous notice that the selection of and reimbursement for any piece of equipment distributed under the NDBEDP must be based on an individual case-by-case assessment and consistent with the NDBEDP rules. Consistent with this principle, under the pilot program, when it is not obvious that the equipment can be or is commonly used by individuals who are deaf-blind to access covered services, certified programs have been required to support their reimbursement claims with documentation that describes how the equipment they distribute makes telecommunications, advanced

communications, or the Internet accessible to the individual who is deaf-blind. The Commission proposes that this requirement be carried into the permanent program. The Commission further proposes that certified programs be permitted to continue consulting with the NDBEDP Administrator about whether the NDBEDP will reimburse the cost of a particular piece of equipment for an eligible individual before purchasing the equipment. The Commission seeks comment on these proposals.

59. Finally, the Commission asks how certified programs can ensure that the individuals they serve do not sell or otherwise transfer the equipment they receive under the NDBEDP to another person. The Commission proposes that equipment recipients be required to execute a standard attestation that they will not sell, give, lend, or transfer their interest in any equipment they receive under this program. For this purpose, and to ensure the truthfulness and accuracy of each consumer's application for equipment, the Commission seeks comment on the following uniform attestation that it proposes to be included on all consumer application forms. Commenters who believe alternate attestation language is appropriate should explain why such alternatives are appropriate in lieu of this proposal:

I certify that all information provided on this application, including information about my disability and income eligibility to receive equipment, is true, complete, and accurate to the best of my knowledge. Program officials have my permission to verify the information provided. If I am eligible for services, I agree to use these services solely for the purposes intended. I further understand that I may not sell, give, lend, or transfer interest in any equipment provided to me. Falsification of any records or failure to comply with these provisions will result in immediate termination of service. In addition, I understand that if I purposely provide false information I may be subject to legal action. I certify that I have read, understand, and accept all conditions associated with iCanConnect, the National Deaf-Blind Equipment Distribution Program.

60. Should programs be required to verify on a regular basis that the equipment continues to reside in the recipient's possession? Would a requirement for such verification be burdensome or impractical,

given the rapid evolution of technology, which frequently requires equipment to be upgraded or replaced on a regular basis, such as every few years?

D. Installation and Training

61. The NDBEDP pilot program permits reimbursement for the reasonable costs of installing NDBEDP distributed equipment, individualized consumer training on how to use such equipment, and the reasonable travel costs of trainers and support services. Having equipment set-up and providing training in person are essential to ensuring that deaf-blind individuals effectively benefit from the NDBEDP and to prevent the underutilization or abandonment of equipment. Given its critical importance to the success of the NDBEDP and the recognition that the amount of time it takes to train individuals who are deaf-blind on new communications equipment depends on a variety of factors, including a wide range of capabilities and experiences with communications technologies, the Commission refrained from establishing caps on such training. For these same reasons, the Commission concluded that reimbursable installation and training costs under the pilot program would include the reasonable travel costs of trainers and individuals providing support services, such as qualified interpreters. The Commission proposes to continue to permit reimbursement for the reasonable costs of equipment installation, consumer training, and travel by trainers and support services, such as qualified interpreters. The Commission seeks comment on its proposal to continue providing compensation for these costs. The Commission also seeks comment on how it can ensure that installation and training conducted under the permanent program is cost effective or how it can improve the cost effectiveness of such installation and training.

62. The Commission did not permit reimbursement under the pilot program for the costs of having consumers travel to receive training. The record shows, however, that, in some instances, it is preferable for consumers to travel to a location away from their homes to get their equipment installed or to receive training. The Commission proposes that a consumer's travel costs be reimbursed only if those costs are first pre-approved by the consumer's certified program, which should occur only after a determination by the program that the reasonable costs of this travel would be more efficient and effective than in-home installation and training. The Commission seeks comment on this approach, as well as a proposal that

pre-approval by the NDBEDP Administrator not be required but may be requested. The Commission also seeks comment on specific guidelines certified programs should follow or factors they should consider to make such determinations. For example, how should certified programs weigh possible benefits to a consumer that travels to receive training, against a comparison of program personnel travel versus consumer travel costs? Would allowing reimbursement for consumer travel benefit consumers, for example, by increasing training opportunities for consumers? To what extent would allowing these costs provide consumers with access to more skilled trainers or support services? Should there be a cap on the amount a state program can spend on training-related consumer travel? To what extent should the Commission's rules define the permissible costs that would be considered reasonable for such travel, and what costs should be considered "reasonable"? Are there other federal programs that are instructive with respect to addressing similar travel costs? Would consumers need to travel on more than one day for training and, if so, why? What is the average distance and duration for consumers to travel to the training location? To the extent that training needs to occur over a series of days, or the travel distance is considerable (even within the same state), should the costs of lodging and or meals be covered, or just the costs of transportation? The Commission requests certified programs to share any information they may have on the extent to which consumers have traveled to another location at their own expense, the extent to which state programs presently reimburse consumers for these costs, and to what extent they expect consumers are likely to need such travel in the future. Are state programs able to estimate projected costs for future consumer travel if the Commission's proposal to permit these costs is adopted? Are any of these expenses able to be reimbursed by other federal programs? The Commission seeks comment on these and any other matters related to the need for and appropriateness of reimbursing state programs for consumers' travel expenses relating to installation and training.

63. The Commission seeks comment on the reasons that a consumer may need to travel out-of-state for training, and the number of consumers who already do so or would do so, if reimbursement were allowed. Because the costs of traveling greater distances are likely to be higher than for in-state travel, should certified programs be required to seek pre-approval from the NDBEDP Administrator for out-of-

state travel for training to ensure that the costs are reasonable? The Commission seeks comment on these and any other matters related to the need for and appropriateness of having the NDBEDP reimburse state programs for the out-of-state travel expenses of consumers relating to training.

E. Training Trainers

64. In the NDBEDP Pilot Program Order, the Commission declined to set aside NDBEDP pilot program funds to cover the cost of teaching NDBEDP personnel how to train NDBEDP equipment recipients on the use of their equipment – i.e., a “train-the-trainer” program – because of the limited funding available. At the time, the Commission understood that there was a shortage of qualified individuals who could carry out this training function, particularly with respect to training NDBEDP equipment recipients who communicate receptively and/or expressively in Braille or American Sign Language. The Commission continues to believe that training individuals who are deaf-blind how to use the equipment they receive under the NDBEDP promotes access to communication and furthers the purposes of the CVAA. The current record confirms the critical importance of having sufficient numbers of qualified trainers, but notes that the current number of qualified trainers is inadequate. To address these concerns, the Commission proposes to authorize up to 2.5% of the \$10 million annual funding allocation (\$250,000) for each of the first three years of the permanent program to support train-the-trainer programs, including the reasonable costs of travel for such training, and the Commission seeks comment on this proposal.

65. One of the purposes of the CVAA is to help ensure that individuals with disabilities are able to fully utilize communications services and equipment. To give full effect and meaning to this purpose, and in particular to the mandate contained in section 105 of the CVAA and section 719 of the Communications Act, directing the Commission to address the unmet communications access needs of persons who are deaf-blind through a national equipment distribution program, the Commission has allowed some of the funding support provided for this program to be used for assessments, equipment installation, and consumer training. The Commission found their financial support necessary because they are essential to the efficient and effective distribution of equipment for use by people who are deaf-

blind. Similarly, because equipment training cannot be achieved in the absence of qualified personnel to conduct such training, it would appear that the Commission can use its authority to financially support programs that distribute specialized customer premises equipment to low-income individuals who are deaf-blind by mitigating the current shortage of qualified training personnel through the allocation of funding for this purpose. The Commission seeks comment on the use of its authority under section 719 of the Communications Act for such purpose. Is such financial support necessary to give full effect and meaning to the CVAA's objectives and to achieve the purpose of section 719?

66. During the pilot program, the Helen Keller National Center for Deaf-Blind Youth and Adults (HKNC) established a train-the-trainer program using a grant from a private foundation, which some certified programs are using, but others cannot afford. Are additional funds available from public or private sources other than the NDBEDP for this purpose? Besides HKNC, are any other entities offering train-the-trainer programs to more than one certified program? Do such entities provide individual training, group training, and distance training through online resources, or other forms of training? Approximately how often do these programs provide training seminars or sessions? What is the cost to certified programs to attend training sessions or access training materials?

67. The Commission believes \$250,000 to be reasonable and sufficient for train-the-trainer programs, and seeks comment on whether this amount is appropriate as an initial step. The Commission proposes addressing concerns about funding train-the-trainer activities to the detriment of funding for the distribution of equipment and provision of related services by re-allocating a portion of funding previously used for national outreach, discussed above in the Notice, which is less needed now than it was at the start of the pilot program. The Commission seeks comment on whether increasing the total number of qualified trainers nationwide may result in a reduction in overall program costs because the small number of currently available trainers would no longer have to travel to multiple states to provide training. The Commission also seeks comment on whether capping the annual funding at 2.5% of NDBEDP funding is advisable to preserve remaining funds for other program activities related directly to

the distribution of consumer equipment. The Commission seeks comment on any other matters related to the amount of funding that should be set aside to train trainers under the permanent program.

68. The Commission seeks comment on whether providing funding support for the first three years of the permanent program will be sufficient to accomplish the desired objectives. If the Commission moves forward with this approach, should it conduct an assessment during the third year to determine whether and to what extent to continue such funding support beyond this period? Will two years be sufficient to gather the data necessary to make this determination during the third year? If the Commission takes this approach, it seeks comment on how it should, in the third year, evaluate the efficacy of train-the-trainer programs for this purpose.

69. State Allocations for Train-the-Trainer Programs. Next, the Commission seeks comment on how NDBEDP support can be used to teach individuals how to train NDBEDP equipment recipients on the use of their equipment. The Commission proposes to allow certified programs to use a portion of their NDBEDP funding allocations for train-the-trainer activities as they deem appropriate. For example, under this approach, each certified program could use approximately 2.5% of its annual allocation, or a maximum of \$250,000 annually for all certified programs, for train-the-trainer activities. The Commission seeks comment on this proposal. Should these train-the-trainer expenditures be treated as an administrative cost and, if so, should the Commission raise the cap on administrative costs from 15% by 2.5% to 17.5% for that purpose, rather than require separate accounting for train-the-trainer activities? Should the Commission permit such reimbursement for enrolling personnel in a train-the-trainer activity conducted by HKNC or another entity, as well as for train-the-trainer activities that the certified program may develop and conduct? If the \$250,000 is allocated solely to and used by certified programs for training purposes, would that influx of money to existing training programs, such as the one operated by HKNC, be sufficient to motivate the development of new training activities? Should the Commission prohibit reimbursement for training that is provided by equipment manufacturers or vendors because of the risk of having certified programs favor these manufacturers or vendors in their selection of equipment?

70. Nationally Coordinated Train-the-Trainer Program. Alternatively, the Commission seeks comment on whether to establish or coordinate a train-the-trainer program at the national level, including the costs and benefits of having one or more entities provide train-the-trainer activities similar to those offered by HKNC. If the Commission adopts this approach, it seeks comment generally on how to use such funding. Should the amount of training provided to each certified program be equal across every state, should it be proportional to the program's NDBEDP annual funding allocation, or should it depend on population size, the current number of trainers in a state or region, or some other criteria? Should the funding provided cover the cost of individual participation in the train-the-trainer programs, including the reasonable costs of travel? Approximately how many hours of training can be delivered to how many personnel with a set-aside of \$250,000?

71. If the Commission establishes or coordinates a train-the-trainer program at the national level, the Commission will consider a variety of approaches to satisfy the requirements for the program including using existing Commission staff and resources, engaging another agency with expertise in this area through an Interagency agreement, acquiring these services through a competitive procurement, evaluating whether to modify a contract with an existing contractor to satisfy the program requirements – either through direct performance by the main contractor or a subcontractor. The Commission may also wish to invite entities, via a public notice, to submit applications to establish or coordinate a train-the-trainer program. The Commission will consider using a combination of any of these in-house, regulatory, or procurement strategies where efficient and lawful to do.

72. If the Commission establishes or coordinates a train-the-trainer program, what are the essential criteria for the staff and/or entity selected to perform the role? HKNC recommends that the following criteria are essential: experience with the target population; familiarity with Braille and Braille devices; familiarity with emerging communications technologies and end user equipment; staff who are skilled in American Sign Language as well as other communication methodologies; and a track record of multi-modal training and ability to maintain pace with the technology? Are these criteria appropriate and sufficient to make such selection? If not, what other criteria should the Commission use?

73. Regardless of whether the Commission supports a nationally coordinated train-the-trainer program or allocates funds to certified programs for train-the-trainer activities, or some combination of both, should the Commission require or permit training in a variety of formats, such as individual training, group training, and distance training through online resources? Should NDBEDP funding be used for that purpose? Should national or state entities providing training be required to establish a system for evaluating the outcomes of the training? It appears that train-the-trainer activities could ultimately lead to the increased employment of individuals with disabilities. Are there actions that the Commission could take to promote such efforts? Should the Commission encourage either national or state entities to train individuals who are deaf-blind, including NDBEDP equipment recipients, as trainers? The Commission invites comments on how best to establish and support train-the-trainer activities for the permanent NDBEDP.

## VI. FUNDING

### A. Allocation of Funding

74. In the NDBEDP Pilot Program Order, the Commission set aside \$500,000 of the \$10 million available annually for the NDBEDP for national outreach efforts during each year of the pilot program. The remaining \$9.5 million of the \$10 million was divided among each of the NDBEDP certified programs by allocating a minimum base amount of \$50,000 for each jurisdiction plus an amount in proportion to each state's population. The Commission generally proposes to maintain the current mechanism for allocating NDBEDP funds – setting aside funds first for certain national efforts, allocating a minimum of \$50,000 for each certified program, and allocating the remaining funds to the certified programs in proportion to each state's population. National efforts may include a centralized database, national outreach, and train-the-trainer activities. The Commission invites comment on its proposal to maintain the current allocation mechanism.

75. In addition, the Commission takes this opportunity to remind program participants and commenters that TRS funds, are permanent and indefinite appropriations and, like other appropriated funds, come with certain restrictions. While some of these restrictions are longstanding and codified in

the United States Code, other restrictions on use of appropriated funds (including permanent indefinite appropriations) may be included in annual appropriation acts. Parties commenting on the proposals in this Notice should ensure that their recommendations are consistent with Government-wide statutory and regulatory restrictions on the use of appropriated funds.

B. Reallocation of Funding

76. Under the pilot program, the Commission delegated authority to the Bureau to reduce, raise, or reallocate funding allocations to any certified program as it deemed necessary and appropriate. During the first year of the pilot program, almost 70% of the \$10 million available to support the NDBEDP was used by certified programs and for national outreach. Approximately 90% of the \$10 million annual allocation was used during the second year of the pilot program. During each of the first two years of the pilot program, the NDBEDP Administrator reviewed funding data as it became available and worked with certified programs and the Bureau to reallocate funding between state programs when necessary to maximize the use of available funding.

77. During the first year of the pilot program, few entities reached or exceeded their annual allocation of funds. Only three entities requested and received additional funds. In the first half of the second year of the pilot program, the NDBEDP Administrator approved several requests for reallocations of funds from one certified entity to another (“voluntary” reallocations). During the third quarter of the second year, after notice, the NDBEDP Administrator reduced the allocations of certified programs that had not used at least half of their annual allocation and reallocated those funds to satisfy requests from certified programs that reached or exceeded their annual allocations (“involuntary” reallocations). Specifically, the formula currently used by the NDBEDP Administrator reduces by 50% the allocations of programs that have spent less than 25% during the first half of the year, and reduces by 25% the allocations of programs that have spent more than 25% but less than 50% during the first half of the year. Certified programs have an opportunity to request that the NDBEDP Administrator consider increasing or reducing the proposed change in allocation. The Commission seeks comment on this method and formula, or any alternative methods or formulas for making involuntary reallocations in the permanent NDBEDP.

Commenters that suggest alternatives should explain how these would lead to effective results for the intended community and how such standards would add to the efficiency of the program. The Commission tentatively concludes that these reallocations have helped requesting programs meet their needs and have not prevented programs with decreased funding from satisfying the needs of their constituents.

78. Approximately one month after the first half of the Fund year ends, the Bureau has the requisite data from all certified programs to determine whether and to what extent involuntary funding reallocations may be appropriate. This is because, as discussed further the Notice, state programs have the option of filing their reimbursement claims on a monthly, quarterly, or semi-annual basis. The Bureau needs full information on the amounts requested by every program through the first half of the Fund year to determine the amount of remaining funds available for involuntary reallocations. Accordingly, the Commission proposes to allow voluntary reallocations between certified programs at any time during the Fund year with the approval of the NDBEDP Administrator, in consultation with the TRS Fund Administrator, as needed. The Commission also proposes to continue making involuntary reallocations as necessary when individual program performance indicates that NDBEDP funds could be more fully utilized by other certified programs. Further, the Commission proposes to continue its current practice of notifying and coordinating with the potentially impacted certified programs prior to making involuntary reallocations of funding. The Commission seeks comment on these reallocation proposals.

#### C. Reimbursement Mechanism

79. When it established the NDBEDP pilot program, the Commission considered two funding mechanisms: (1) distributing funds to certified programs at the start of each Fund year and letting the programs use the funds as they saw fit; or (2) reimbursing programs up to each state's allocation for the equipment they distribute. The Commission concluded that the reimbursement approach was more appropriate both because it would provide incentives for certified programs to actively locate eligible participants and would achieve greater accountability and protection against fraud, waste, and abuse. Under the NDBEDP pilot program, the Commission reimburses programs for the costs incurred for

authorized equipment and related services, up to each certified program's initial or adjusted allocation. Each reimbursement claim must be accompanied by a declaration made under penalty of perjury attesting to the truth and accuracy of the submission. Certified programs may elect to seek reimbursement monthly, quarterly, or semi-annually.

80. The Commission proposes to continue using the present reimbursement mechanism to fund equipment distribution and related services under the permanent NDBEDP because a system that advances funds presents challenges relating to returning or reallocating unspent funds and would result in more complicated recordkeeping, and a reimbursement mechanism is more likely to keep certified programs accountable and deter fraud, waste, and abuse. The Commission further proposes that the current requirement for certified programs to support their reimbursement claims with documentation, a reasonably detailed explanation of incurred costs, and a declaration be carried into the permanent program. The Commission seeks comment on these proposals and other guidelines that may be needed with respect to the submission and processing of reimbursement claims to ensure that certified programs operate in a cost-efficient manner and maintain the financial integrity of the program. The record reflects that there was some frustration with delays in the processing of reimbursement claims at the start of the pilot program, but the timeliness of payments has since improved. The Commission does not propose a specific period by which reimbursement claims must be paid, but notes that, when a claim is submitted with sufficient documentation and does not require further clarification, it expects the Bureau and the TRS Fund Administrator to be able to process that claim within 30 days, and claims requiring additional documentation or clarification generally will be processed within 60 days. As discussed in the Notice, the Commission proposes to permit each certified program to populate a centralized database with claim-related data, from which it may generate its reimbursement claims. Timely reimbursement is more likely to occur for claims submitted in such a uniform manner.

81. To continue meeting the individualized needs of these programs, the Commission proposes to continue allowing certified entities to elect, upon certification and at the beginning of each Fund year, whether to submit claims on a monthly, quarterly, or semi-annual basis and to require submission within

30 days after each elected period. The TRS Fund Administrator recommends that certified programs be required to submit monthly claims and to request a waiver to submit claims less frequently. Only 10 programs have elected to submit claims monthly, with the other 43 programs opting for quarterly or semi-annual schedules. The Commission seeks comment on the reasons that these 43 programs have not elected to submit claims on a monthly basis and whether all programs should be required to begin filing monthly, for example, for the sake of program consistency. Alternatively, is each certified program best suited to determine the frequency with which it needs to be reimbursed? The Commission seeks comment on the advantages and disadvantages of maintaining the current practice or whether the Commission should revise its rules to require all programs to adhere to a single schedule for filing reimbursement claims. In particular the Commission asks parties to comment on the extent to which a requirement to follow a single filing schedule would be more efficient or impose difficulties on programs with limited resources.

#### D. Administrative Costs

82. Under the Commission's rules for the NDBEDP pilot program, certified programs may be compensated for administrative costs up to 15% of their total reimbursable costs (i.e., not their total allocation) for equipment and related services. The Commission has defined administrative costs to include reporting requirements, accounting, regular audits, oversight, and general administration. To track and ensure that appropriate administrative costs are reimbursed, the TRS Fund Administrator has procedures to "bank" reimbursement claims for administrative costs that exceed 15% of reimbursable costs and to pay those claims later if the amount of reimbursable costs increases with later submissions.

83. Given the general accomplishments of the 53 certified programs in distributing communications equipment to their deaf-blind residents, the Commission is no longer concerned that basing the cap of administrative costs on the full funding allocation for each certified program will eliminate the necessary incentives to carry out the NDBEDP's objectives. Accordingly, the Commission proposes to reimburse administrative costs as they are incurred and claimed, based on the annual allocation rather than the

amount of reimbursable costs, thereby eliminating the need for the TRS Fund Administrator to “bank” unearned administrative costs. The Commission seeks comment on that proposal.

84. The Commission further acknowledges that some programs have reported operating at a loss as a result of the 15% cap on administrative expenses, and recognizes that this could potentially act as a disincentive to participate in the NDBEDP. During the second year of the pilot program, certified programs that exceeded the 15% cap had about 3% more administrative costs than were allowed by the cap. To respond to these concerns, rather than raise the cap by the 3% needed to cover those overages, the Commission believes that its proposal to create a centralized database for certified programs to generate reports and reimbursement claims may alleviate the administrative burdens for certified programs operating in the permanent NDBEDP. If adopted, certified programs that have been incurring costs associated with the use of a database, such as the Perkins database discussed in the NPRM, would no longer need to do so, nor have those costs assessed against their 15% cap on administrative costs. Other programs that have expended funds to develop databases on their own to generate reports and reimbursement claims may also similarly experience a reduction in the costs associated with these tasks. The Commission seeks comment on this proposal and, in particular, asks whether it will help to meet the financial needs of certified programs, particularly programs that have found the 15% cap on administrative costs to be a barrier to their effective participation in the NDBEDP. The Commission also seeks comment on whether its proposal regarding administrative costs, including the types of costs included in this category of expenses (such as costs associated with reporting requirements, accounting, regular audits, oversight, and general administration) is consistent with other similar programs. Similarly, the Commission seeks comment on whether there are any best practices that should be employed in this area.

## VII. OVERSIGHT AND REPORTING

### A. Reporting

85. The NDBEDP pilot program rules require all certified programs to report certain information to the Commission in an electronic format every six months. The report must include, among other things,

information about NDBEDP equipment recipients; distributed equipment; the cost, time and other resources allocated to outreach activities, assessment, equipment installation and training, and for equipment maintenance, repair, refurbishment, and upgrades; equipment requests that have been rejected; complaints; and waiting lists. Each report must be accompanied by a declaration made under penalty of perjury attesting to the truth and accuracy of the submission. In the NDBEDP Pilot Program Order, the Commission concluded that such reporting is necessary for the effective administration of the NDBEDP pilot program, to assess the effectiveness of the program, to ensure the integrity of the TRS Fund, to ensure compliance with the NDBEDP pilot program rules, and to inform the Commission's rulemaking for the permanent NDBEDP.

86. The Commission proposes to retain the six-month reporting requirement. During the pilot program, it has been useful for the Commission to gather the required information to effectively evaluate NDBEDP operations. The Commission believes that continuing to receive this data will be useful to the permanent program as well, because this will allow the Commission to ensure that NDBEDP certified programs continue to operate efficiently and that they effectively meet consumer needs. As discussed in the NPRM, the Commission proposes to require certified programs to submit report-related data to and generate reports from a centralized database, which will enable the Commission to examine the data from all certified programs in the aggregate. With all program data bundled together in a uniform report generated by the database, the Commission believes that it will be better able to assess and manage the NDBEDP. The Commission invites comment on its proposal to retain the reporting requirement.

87. The Commission seeks comment on whether it should modify the information these reports should include. In particular, are there differences in the pilot and permanent programs that should cause the Commission to change the nature of the data required by these reporting obligations? The Commission also seeks comment on ways that the provision of data required for reimbursement claims and reporting requirements can be streamlined through the design of a centralized database or by other means. For example, should state programs be permitted to submit reports at the same frequency as reimbursement claims to streamline these requirements further? What are the advantages or

disadvantages of allowing certified programs to submit reimbursement claims and reports on a monthly, quarterly, or biannual basis? Should the reporting period be the same for all certified programs to ensure consistency of data? If so, what should that period be? Alternatively, now that the Commission is transitioning the NDBEDP to a permanent program, would it serve the program just as well if submission of the reports were required annually instead of every six months?

88. Under the NDBEDP pilot program, the Commission requires certified programs to submit a certification with each report executed by “the chief executive officer, chief financial officer, or other senior executive of the certified program, such as a director or manager, with first-hand knowledge of the accuracy and completeness of the information provided in the report,” as follows:

I swear under penalty of perjury that I am (name and title), an officer of the above-named reporting entity and that I have examined the foregoing reports and that all requested information has been provided and all statements of fact are true and an accurate statement of the affairs of the above-named certified program.

89. Consistent with the Commission’s Universal Service low-income program rules, and to clarify what “affairs” means in this context, the Commission propose to amend the certification as follows:

I swear under penalty of perjury that I am (name and title), an officer of the above-named reporting entity, and that the entity has policies and procedures in place to ensure that recipients satisfy the NDBEDP eligibility requirements, that the entity is in compliance with the Commission’s NDBEDP rules, that I have examined the foregoing reports and that all requested information has been provided, and all statements of fact are true and an accurate statement of the business activities conducted pursuant to the NDBEDP by the above-named certified program.

90. Similarly, the Commission proposes to amend the certification required with reimbursement claims to clarify that the “affairs” of the certified program means the “business activities conducted pursuant to the NDBEDP” by the certified program. The Commission seeks feedback on this and any other matters pertaining to the reporting obligations not discussed above, including the costs and benefits of retaining these requirements.

B. Audits

91. During the pilot program, certified programs have been required to engage an independent auditor to perform annual audits designed to detect and prevent fraud, waste, and abuse. Certified programs must also make their NDBEDP-related records available for review or audit by appropriate officials of the Commission. The Commission proposes to continue to require certified programs to engage an independent auditor to perform annual audits. As recommended by the TRS Fund Administrator, the Commission also proposes that each certified program submit a copy of its annual audit to the TRS Fund Administrator and the NDBEDP Administrator. The Commission seeks comment on these proposals.

92. Further, the Commission proposes to clarify that NDBEDP certified programs are not required to conduct their annual audits using a more rigorous audit standard, such as a forensic standard, specifically designed to prevent and detect fraud, waste, and abuse. The Commission seeks comment on its proposal to affirm the following guidance provided by the Bureau in November 2012 to certified programs regarding their annual audit requirement:

For purposes of complying with the NDBEDP audit rule, an independent auditor must conduct a program audit that includes a traditional financial statement audit, as well as an audit of compliance with the NDBEDP rules that have a direct and material impact on NDBEDP expenditures and a review of internal controls established to ensure compliance with the NDBEDP rules.

Compliance areas to be audited include, but are not limited to, allowable costs, participant eligibility, and reporting. The audit report must describe any exceptions found, such as unallowable costs, lack of participant eligibility documentation, and missing reports. The report also must include the certified program's view as to whether each compliance exception is material and whether any internal control deficiencies are material.

If the auditor finds evidence of fraud, waste, or abuse, the auditor must take appropriate steps to discuss it with the certified program management and the FCC and report the auditor's observations as required under professional auditing standards.

This program audit standard is comparable to that required for Office of Management and Budget (OMB) Circular A-133 audits. The Commission believes that such audits of NDBEDP certified programs, conducted annually by an independent auditor, will detect and prevent fraud, waste, and abuse, which will satisfy the NDBEDP audit rule.

93. Commenters note that the Commission should provide guidance with respect to whether certified programs must comply with OMB Circular A-133 audit requirements. Because the program audit criteria described above are similar to that of an OMB Circular A-133 audit, the Commission proposes to require that audits under the permanent NDBEDP be performed in accordance with OMB Circular A-133. The Commission invites comment on this proposal. Commenters that disagree with this proposal are asked to explain why.

94. In addition, the Commission proposes to continue to require each program to submit to an audit at any time deemed necessary by the Commission or its delegated authorities. This proposal is consistent with the Commission's TRS rules. This approach could also be implemented by performing audits either as needed or on a regular basis at intervals longer than one year. A full audit of an NDBEDP certified entity, as directed by the Commission or a delegated authority may be appropriate, for example, to obtain financial information needed for the FCC's consolidated annual financial audit, which also includes the financial results for the TRS Fund. As another example, a full audit may also be appropriate when the TRS Fund Administrator and the NDBEDP Administrator agree that reimbursement claims submitted by a certified program contain a pattern of errors or indicia reflecting a lack of accountability, fraud, waste, or abuse. The Commission further proposes that any program that fails to fully cooperate in such audits, for example, by failing to provide documentation necessary for verification upon reasonable request, be subject to an automatic suspension of NDBEDP payments until sufficient documentation is provided. The Commission believes that this automatic suspension policy, which is currently applied to the TRS program, would promote transparency and accountability in the compensation process. The Commission seeks comment on the costs and benefits of adopting this approach.

95. To further prevent and detect fraud, waste, and abuse, and ensure compliance with the NDBEDP rules, the Commission proposes to retain the provision in the pilot program rules requiring certified programs to submit documentation demonstrating ongoing compliance with the Commission's rules. Because the Commission may choose to initiate an investigation at its discretion and on its own motion, the Commission proposes to eliminate the example that appears in the pilot program rules from the permanent NDBEDP rules that suggests that "evidence that a state program may not be in compliance with those rules" is a prerequisite to such an investigation. 47 CFR 64.610(j)(3). The Commission seeks comment on these proposals.

96. Finally, to further prevent and detect fraud, waste, and abuse, the Commission proposes to retain the whistleblower protections in the NDBEDP rules. Those protections require certified programs to permit individuals to disclose to appropriate officials, without reprisal, known or suspected violations of the Commission's rules or any other activity the individual believes to be unlawful, wasteful, fraudulent, or abusive, or that could result in the improper distribution of equipment, provision of services, or billing to the TRS Fund. Certified programs must include these whistleblower protections with the information they provide about the program in any employee handbooks or manuals, on their websites, and in other appropriate publications. The Commission seeks comment on this proposal.

### C. Record Retention

97. As part of the pilot program, the Commission adopted a rule requiring all certified programs to retain all records associated with the distribution of equipment and provision of related services under the pilot program for two years following the termination of the pilot program, without specifying the format in which they must be retained, but with the goal of promoting greater transparency and accountability. Consistent with the Commission's TRS rules, the Commission proposes to require certified programs to retain all records associated with the distribution of equipment and provision of related services under the permanent program for a minimum of five years. The Commission seeks comment on this proposal and whether such records should be retained for a longer or shorter period of time. Certified programs need such records to support their reimbursement claims, to generate reports required to be filed with the

Commission, and to comply with audit requirements. The Commission has also found that such records are needed for responding to inquiries and complaints. As such, and consistent with the Commission's Universal Service low-income program rules and the NDBEDP pilot program rules, the Commission also proposes that certified programs document compliance with all Commission requirements governing the NDBEDP and provide this documentation to the Commission upon request. Record retention is also necessary in the event that questions arise about a program's compliance with NDBEDP rules or the propriety of requests for payment. The Commission seeks comment on this proposal.

98. The Commission believes that records also are needed to transfer information to another certified program when an eligible consumer moves to another state or to transfer information to a newly-certified program when a certified entity either relinquishes its certification or decides not to seek re-certification. Should the Commission's rules require NDBEDP applications to include a release that would permit disclosure of information about the applicant by the certified program, as needed, to minimize any interruption in service if such individual moves to another state or a new entity takes over certification for that individual's state? Alternatively, if the Commission adopts a centralized database for processing reimbursement claims or reporting purposes, the Commission seeks comment on whether it will continue to be necessary for certified programs to retain a copy of these records. If so, which records should be retained by certified programs and for what period of time? Should the Commission specify that records must be retained in paper or electronic format, or should it allow each certified program to decide the format in which to retain its records? The Commission seeks comment on these and any other matters related to the retention of records under the permanent program.

#### VIII. LOGISTICS AND RESPONSIBILITIES

99. The Bureau designated an NDBEDP Administrator, who has been responsible for, among other things, reviewing applications from entities for certification to receive NDBEDP funding, allocating NDBEDP funding, reviewing reimbursement claims, maintaining the NDBEDP website, resolving stakeholder issues, and serving as the Commission point of contact for the NDBEDP. The NDBEDP Administrator has worked with the current TRS Fund Administrator, who has been responsible for,

among other things, reviewing cost submissions and releasing funds under the NDBEDP for distributed equipment and related services, including outreach efforts.

100. The Commission seeks comment on whether the Bureau should continue to implement and administer the permanent NDBEDP, and to retain authority over NDBEDP policy matters and the functions of the NDBEDP Administrator. For example, the Bureau may task the NDBEDP Administrator with oversight of the development and maintenance of a centralized database, as well as the support for train-the-trainer programs that may be authorized under the Commission's final rules in this proceeding. The Commission also seeks comment on whether the administration of the NDBEDP should be consolidated with the administration of the other TRS programs in order to achieve greater efficiencies and cost savings. The Commission recognizes that after adoption of rules establishing the pilot program in 2011, in 2013, the Commission delegated financial oversight of the TRS Fund to the Office of Managing Director (OMD). Thus, the Commission also seeks comment on ensuring that administration of the permanent NDBEDP be conducted in a manner that ensures the Bureau's continued oversight over policy matters relating to the program while at the same time ensuring that the Commission satisfies its financial management responsibilities for the TRS program as a whole, complies with all Government-wide financial requirements, and achieves efficiencies and savings in the administrative costs of the NDBEDP.

101. For the permanent NDBEDP, like other TRS programs, financial oversight must be consistent with TRS orders, rules, and policies, and that OMD should consult with the Bureau on issues that potentially could impact the availability, provision, and continuity of services to consumers. Consistent with such direction, the Commission proposes that financial oversight of the NDBEDP be required to be consistent with NDBEDP orders, rules, and policies, and that OMD and the Bureau closely coordinate on any issues that could potentially impact the distribution of equipment or provision of related services to consumers under the NDBEDP. Finally, consistent with the current practice under the NDBEDP pilot program, the Commission proposes that the Bureau remain responsible for advising the TRS Fund Administrator on funding allocations and reallocations; payments; and any payment withholdings under

the permanent NDBEDP, to the extent that such actions can be made consistently with Government-wide financial requirements and existing contractual obligations and requirements. Currently, the TRS Fund Administrator conducts a quantitative review to determine if the requested dollar amount is accurate and recommends payment, and the NDBEDP Administrator conducts a qualitative review to ensure that the claimed costs are consistent with the NDBEDP rules and approves payment. The Commission seeks comment on these proposals. The Commission also seeks comment on whether it should establish a process for certified programs to appeal payment withholdings, denials, or suspensions by the NDBEDP Administrator. If so, what should that process be? For example, should a certified program be permitted to appeal such decisions to the Chief of the Consumer and Governmental Affairs Bureau? The Commission presently maintains a process for the handling of appeals in response to the suspension or withholding of TRS payments, and asks commenters whether a similar or alternative appeals process should be applied to compensation withheld, suspended, or denied under the NDBEDP.

## IX. OTHER CONSIDERATIONS

### A. Complaints

102. Under the NDBEDP pilot program, the NDBEDP Administrator is responsible for responding to consumer complaints filed directly with the Commission. Complaints might be filed for various reasons, such as complaints about unskilled trainers or interpreters, or to appeal a certified program's eligibility determination or denial of equipment. The Commission proposes to adopt rules for the permanent NDBEDP to facilitate the receipt and processing of such consumer complaints and appeals.

103. For this purpose, the Commission proposes to adopt informal and formal complaint procedures, modeled after the Commission's processes for the handling of complaints against telecommunications and TRS providers, as follows. First, the Commission proposes that an informal complaint filed with the Commission must include the name and contact information of the complainant; the name of the NDBEDP certified program; a statement describing how the NDBEDP certified program violated the Commission's rules; what the complainant wants the NDBEDP certified program to do to resolve the complaint; and the complainant's preferred format or method of response, such as by letter, fax,

telephone, TTY, or e-mail. The Commission will forward complete complaints to the NDBEDP certified program for a response. When it appears that an informal complaint has been resolved, the Commission may consider the matter closed. In all other cases, the Commission will inform the complainant and the NDBEDP certified program about its review and disposition of the complaint. If a complainant is not satisfied with the NDBEDP certified program's response and the Commission's disposition of the informal complaint, the complainant may file a formal complaint with the Commission in accordance with the Commission's rules for filing formal complaints. See 47 CFR 1.720-1.736. The Commission may also conduct inquiries and hold proceedings that it deems necessary to enforce the NDBEDP requirements. The Commission seeks comment on these proposed informal and formal complaint procedures.

B. Research and Development

104. In the NDBEDP Pilot Program Order, the Commission declined to allocate funds for research and development (R&D) efforts. Although the Commission recognized the need to stimulate innovation to fill existing equipment and technology gaps to meet the communications technology access needs of individuals who are deaf-blind, it concluded that R&D funding was not appropriate because of insufficient information about those gaps and the kinds of research and funding needed to fill them. Likewise, because the amount of NDBEDP funding available each year is very limited, and because the potential gaps between existing technology and technology needed to meet the communications needs of individuals who are deaf-blind are not apparent on the record at this time, the Commission tentatively concludes that funding is more appropriately allocated to the distribution of equipment to consumers and related services than to R&D and seeks comment on this tentative conclusion.

C. Advisory Group

105. The Commission recently announced the formation of a Disability Advisory Committee, which will provide advice and recommendations to the Commission on a wide array of disability matters, including the NDBEDP. In addition, the Commission's rulemaking proceedings are open to the public for comment, and feedback from administrators of certified programs is always welcome. For example,

during the NDBEDP pilot program, the sharing of expertise and ideas for the NDBEDP has been accomplished through informal monthly conference calls among certified programs that the Commission proposes to continue under the permanent program. For these reasons, the Commission does not see the need to establish a separate workgroup of state NDBEDP programs to advise the Commission at this time. The Commission seeks comment on this approach.

## **INITIAL REGULATORY FLEXIBILITY CERTIFICATION**

106. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” 5 U.S.C. 601(6). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 5 U.S.C. 601(3). A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

107. In the NPRM, the Commission seeks comment on its proposal to further implement section 105 of the CVAA that requires the Commission to take various measures to ensure that people with disabilities have access to emerging communications technologies in the 21st Century. Section 105 of the CVAA adds section 719 to the Communications Act of 1934, as amended, and is codified at 47 U.S.C. 620. Pursuant to section 105, in 2011, the Commission established the NDBEDP as a pilot program to provide up to \$10 million annually from the TRS Fund for the distribution of communications devices to low-income individuals who are deaf-blind. 47 CFR 64.610 (NDBEDP pilot program rules). A person who is “deaf-blind” has combined vision and hearing loss, as defined in the Helen Keller National Center Act. 47 U.S.C. 620(b); 29 U.S.C. 1905(2). The Commission authorized up to 53 certified programs to participate in the pilot program – one entity to distribute equipment in each state, plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands – and selected Perkins School for the Blind as the

national outreach coordinator to support the outreach and distribution efforts of these state programs. Through the pilot program, thousands of low-income individuals who are deaf-blind have received equipment used for distance communications or the Internet and training on how to operate this equipment.

108. On August 1, 2014, the Commission released a Public Notice inviting comment on which rules governing the NDBEDP pilot program should be retained and which should be modified to make the permanent NDBEDP more effective and more efficient. On May 21, 2015, the Commission extended the pilot program until June 30, 2016. Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals, CG Docket No. 10-210, Order, FCC 15-57 (rel. May 27, 2015). The Commission commits to continue the pilot NDBEDP as long as necessary to ensure a seamless transition between the pilot and permanent programs to ensure the uninterrupted distribution of equipment to this target population. When the Commission adopts final rules for the permanent program it will consider the extent to which the pilot program needs to be extended further.

109. Currently, programs are certified to distribute equipment in all the states and the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. The NPRM proposes to expand NDBEDP programs and funding to the U.S. territories of American Samoa, Guam, and the Northern Mariana Islands because residents of these territories are also eligible for services supported by the TRS Fund.

110. The NPRM proposes that current programs and other entities that want to apply for certification seek certification for a five-year period and every five years after that. The NPRM proposes that, if a current program seeks to renew its certification or another entity wants to apply for certification, it must, one year prior to the expiration of a certification, submit an application explaining why it is still eligible to participate in the NDBEDP.

111. The NPRM proposes that the Commission create, by itself or by engaging a third party, a centralized database that would assist the programs in performing two functions. First, all programs would be able to submit information into the database and use the database to generate the reports that

must be submitted to the Commission every six months. Second, all programs would be able to submit data regarding their expenses into the database and generate reimbursement claims that must be submitted to the TRS Fund Administrator. Submission of data into a central database in a uniform manner would diminish administrative costs for the programs. Collecting data in a uniform manner from the programs would enable the Commission to analyze aggregate data. The NPRM invites comment on the development and functions of the database, and estimates that the database will cost between \$285,000 and \$380,000 annually.

112. The NPRM proposes that each certified program be required to make public on its website, if one is maintained by the certified program, or as part of its other local outreach efforts a brief narrative description of any criteria, priorities, or strategies it uses to ensure the fair distribution of equipment to low-income residents who are deaf-blind. The NPRM invites comment on whether any burdens placed on the program by such a requirement would be outweighed by the benefits.

113. In the NDBEDP Pilot Program Order, the Commission concluded that without training recipients on how to use the communications equipment they receive, such as Braille readers, recipients will not be able to use the equipment, and the equipment will be underutilized or abandoned. The NDBEDP pilot program permits reimbursement for the reasonable costs of installing NDBEDP-distributed equipment and individualized consumer training on how to use such equipment. To help address a shortage of qualified trainers, the NPRM proposes to set aside 2.5% of the \$10 million annual funding allocation (\$250,000) for each of the first three years of the permanent program to support train-the-trainer activities, including the reasonable costs of travel for such training, and seeks comment on this proposal. The Notice invites comment on whether to support train-the-trainer programs provided by one or more entities, or to reimburse state programs for train-the-trainer activities they select.

114. Under the Commission's rules for the NDBEDP pilot program, certified programs are compensated for 100% of their expenses, up to each program's annual allocation set by the NDBEDP Administrator. Within this annual allocation amount, the Commission did not establish any caps for costs associated with outreach, assessments, equipment, installation, or training, but did establish a cap for

administrative costs. The NPRM proposes to limit local outreach conducted by certified programs to 10% of their annual allocations. The Commission, in a previous NDBEDP order, defined administrative costs to include reporting requirements, accounting, regular audits, oversight, and general administration. Programs may be compensated for administrative costs up to 15% of their total reimbursable costs (*i.e.*, not their total allocation) for equipment and related services actually provided. The 15% cap does not apply to, and there is no cap for, costs associated with outreach, assessments, equipment, installation, or training. The NPRM proposes to reimburse certified programs for administrative costs up to 15% of their annual allocation, regardless of the amount of equipment and related services they actually provide. The NPRM recognizes that during the first two years of the NDBEDP pilot, some programs' administrative costs exceeded the allowable 15% reimbursable amount. To respond to these concerns, the NPRM proposes the creation of a centralized database to be used by certified programs for generating reports and reimbursement claims, which may alleviate the administrative burdens for certified programs operating in the permanent NDBEDP by making it easier to operate without a loss within the 15% administrative cap. If adopted, certified programs would no longer have these costs and therefore would have more money under their 15% cap on administrative costs.

115. During each year of the pilot program, the Commission has set aside \$500,000 of the \$10 million available annually for Perkins School for the Blind, as the outreach coordinator selected by the Consumer and Governmental Affairs Bureau (CGB or Bureau), to perform national outreach to promote the NDBEDP. As the Commission explained in the NDBEDP Pilot Program Order, significant initial funding for outreach was necessary to inform eligible individuals about the availability of the program so that distribution of equipment could take place. Based on the successful efforts of the national outreach program, the NPRM proposes to continue funding for national outreach efforts at a reduced level. The NPRM therefore proposes to reduce the amount of money spent on national outreach to \$250,000 for each of the first three years of the permanent program, and seeks comment on this proposal.

116. The NDBEDP pilot program rules require all certified programs to report their status every six months. The NPRM finds that continuing to receive this data will be useful to the permanent program as

well because this will allow the Commission to ensure that NDBEDP certified programs continue to operate efficiently and that they effectively meet consumer needs. The NPRM finds that any current reporting burden on the certified programs will be diminished by the creation of a centralized database.

117. During the pilot program, certified programs have been required to engage an independent auditor to perform annual audits designed to detect and prevent fraud, waste, and abuse. The NPRM proposes to continue to require certified programs to engage an independent auditor to perform annual audits. It also proposes that each certified program submit a copy of its annual audit to the TRS Fund Administrator and the NDBEDP Administrator and to continue to require each program to submit to an audit at any time deemed necessary by the Commission or its delegated authorities. The NPRM invites comments on this proposal and any alternative proposals.

118. Under the current NDBEDP, 53 certified programs provide communications equipment to low-income individuals who are deaf-blind. Under the NPRM, this number may be expanded to 56 certified programs. One entity performs national outreach to promote the NDBEDP and serve as a resource to the certified programs. The NPRM proposes to create a centralized database and the Commission may engage a third-party for that purpose. The NPRM also proposes that the Commission may select an entity to train the certified programs' trainers. The Commission will pay all of these entities for their costs to perform these duties from the TRS Fund so that all their NDBEDP costs are reimbursed up to the annual funding allocations established for these purposes.

119. The Commission finds that the rules proposed in the NPRM will not have a significant economic impact on these entities because the Commission will reimburse them for all of their NDBEDP expenses from the TRS Fund, up to their annual funding allocations. The proposals in the NPRM are intended to reduce the administrative burden on certified programs. The changes the Commission proposes are of an administrative nature, and will not have a significant economic impact on small entities. If there is an economic impact on small entities as a result of these proposals, however, the Commission expects the impact to be a positive one.

120. The Commission therefore certifies, pursuant to the RFA, that the proposals in the NPRM, if adopted, will not have a significant economic impact on a substantial number of small entities.

121. The Commission will send a copy of the NPRM, including a copy of this initial certification, to the Chief Counsel for Advocacy of the SBA

#### **ORDERING CLAUSES**

Pursuant to the authority contained in sections 1, 4(i), 4(j), and 719 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 620, that document FCC 15-58 IS ADOPTED.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of document FCC 15-58, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

#### **List of Subjects in 47 CFR part 64**

Individuals with disabilities; Telecommunications.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,  
Secretary.

For the reasons stated in the preamble, the Federal Communications Commission proposes to amend Title 47 of the Code of Federal Regulations as follows:

**Part 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 continues to read as follows:

**Authority:** 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, unless otherwise noted.

2. Revise § 64.610 to read as follows:

**§ 64.610 National Deaf-Blind Equipment Distribution Program.**

(a) The National Deaf-Blind Equipment Distribution Program (NDBEDP) is established to distribute specialized customer premises equipment (CPE) used for telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, to low-income individuals who are deaf-blind.

(b) Certification to receive funding. For each state, including the District of Columbia and U.S. territories, the Commission will certify a single program as the sole authorized entity to participate in the NDBEDP and receive reimbursement for its program's activities from the Interstate Telecommunications Relay Service Fund (TRS Fund). Such entity will have full oversight and responsibility for distributing equipment and providing related services, such as outreach, assessments, installation, and training, in that state, either directly or through collaboration, partnership, or contract with other individuals or entities in-state or out-of-state, including other NDBEDP certified programs.

(1) Public programs, including, but not limited to, equipment distribution programs, vocational rehabilitation programs, assistive technology programs, or schools for the deaf, blind or deaf-blind; or private entities, including but not limited to, organizational affiliates, independent living centers, or private educational facilities, may apply to the Commission for certification as the sole authorized entity

for the state to participate in the NDBEDP and receive reimbursement for its activities from the TRS Fund.

(2) The Commission shall review applications and determine whether to grant certification based on the ability of a program to meet the following qualifications, either directly or in coordination with other programs or entities, as evidenced in the application and any supplemental materials, including letters of recommendation:

(i) Expertise in the field of deaf-blindness, including familiarity with the culture and etiquette of people who are deaf-blind, to ensure that equipment distribution and the provision of related services occurs in a manner that is relevant and useful to consumers who are deaf-blind;

(ii) The ability to communicate effectively with people who are deaf-blind (for training and other purposes), by among other things, using sign language, providing materials in Braille, ensuring that information made available online is accessible, and using other assistive technologies and methods to achieve effective communication;

(iii) Administrative and financial management experience;

(iv) Staffing and facilities sufficient to administer the program, including the ability to distribute equipment and provide related services to low-income individuals who are deaf-blind throughout the state, including those in remote areas;

(v) Experience with the distribution of specialized CPE, especially to people who are deaf-blind;

(vi) Experience in training consumers on how to use the equipment and how to set up the equipment for its effective use; and

(vii) Familiarity with the telecommunications, Internet access, and advanced communications services that will be used with the distributed equipment.

(3) Certification granted under this section shall remain in effect for five years. One year prior to the expiration of the certification, a program may apply for renewal of its certification as prescribed by paragraph (a)(2) of this section.

(4) A certified program must notify the Commission within 60 days of any substantive change that bears on its ability to meet the qualifications necessary for certification under paragraph (a)(2) of this section.

(5) A program may relinquish its certification by providing written notice to the Commission at least 90 days in advance of its intent to do so. This program must transfer NDBEDP-related data and equipment to the newly-certified state program within 30 days of its certification and comply with the reimbursement and reporting requirements prescribed by paragraphs (f) and (g) of this section.

(c) Definitions. For purposes of this section, the following definitions shall apply:

(1) Equipment. Hardware, software, and applications, whether separate or in combination, mainstream or specialized, needed by an individual who is deaf-blind to achieve access to telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, as these services have been defined by the Communications Act.

(2) Individual who is deaf-blind.

(i) Any person:

(A) Who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both these conditions;

(B) Who has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and

(C) For whom the combination of impairments described in paragraphs (c)(2)(i)(A) and (B) of this section cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation.

(ii) The definition in this paragraph also includes any individual who, despite the inability to be measured accurately for hearing and vision loss due to cognitive or behavioral constraints, or both, can be determined through functional and performance assessment to have severe hearing and visual disabilities that cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial

adjustment, or obtaining vocational objectives. An applicant's functional abilities with respect to using telecommunications, Internet access, and advanced communications services in various environments shall be considered when determining whether the individual is deaf-blind under paragraphs (c)(2)(i)(B) and (C) of this section.

(3) Specialized customer premises equipment (CPE). For purposes of this section, specialized CPE means equipment employed on the premises of a person, which is commonly used by individuals with disabilities to achieve access to telecommunications service, Internet access service, or advanced communications.

(d) Eligibility criteria.

(1) Verification of disability. Individuals claiming eligibility under the NDBEDP must provide verification of disability from a professional with direct knowledge of the individual's disability.

(i) Such professionals may include, but are not limited to, community-based service providers, vision or hearing related professionals, vocational rehabilitation counselors, educators, audiologists, speech pathologists, hearing instrument specialists, and medical or health professionals.

(ii) Such professionals must attest, either to the best of their knowledge or under penalty of perjury, that the applicant is an individual who is deaf-blind (as defined in paragraph (c)(2) of this section). Such professionals may also include, in the attestation, information about the individual's functional abilities to use telecommunications, Internet access, and advanced communications services in various settings.

(iii) Existing documentation that a person is deaf-blind, such as an individualized education program (IEP) or a statement from a public or private agency, such as a Social Security determination letter, may serve as verification of disability.

(iv) The verification of disability must include the attesting professional's full name, title, and contact information, including business name, address, phone number, and e-mail address.

(2) Verification of low income status. An individual claiming eligibility under the NDBEDP must provide verification that he or she has taxable income that does not exceed 400 percent of the Federal Poverty Guidelines or that he or she is enrolled in a federal program with an income eligibility

requirement that is less than 400 percent of the Federal Poverty Guidelines, such as the Federal Public Housing Assistance or Section 8; Supplemental Nutrition Assistance Program, formerly known as Food Stamps; Low Income Home Energy Assistance Program; Medicaid; National School Lunch Program's free lunch program; Supplemental Security Income; or Temporary Assistance for Needy Families. The NDBEDP Administrator may identify state or other federal programs with income eligibility thresholds that do not exceed 400 percent of the Federal Poverty Guidelines for determining income eligibility for participation in the NDBEDP. Where an applicant is not already enrolled in a qualifying low-income program, low-income eligibility may be verified by the certified program using appropriate and reasonable means.

(3) Prohibition against requiring employment. No program certified under the NDBEDP may impose a requirement for eligibility in this program that an applicant be employed or actively seeking employment.

(4) Access to communications services. A program certified under the NDBEDP may impose, as a program eligibility criterion, a requirement that telecommunications, Internet access, or advanced communications services are available for use by the applicant.

(5) Age. A program certified under the NDBEDP may not establish criteria that exclude low-income individuals who are deaf-blind of a certain age from applying for or receiving equipment when the needs of such individuals are not being met through other available resources.

(e) Equipment distribution and related services.

(1) Each program certified under the NDBEDP must:

(i) Distribute specialized CPE and provide related services needed to make telecommunications service, Internet access service, and advanced communications, including interexchange services or advanced telecommunications and information services, accessible to individuals who are deaf-blind;

(ii) Obtain verification that NDBEDP applicants meet the definition of an individual who is deaf-blind contained in paragraph (c)(2) of this section at least once every three years and the income eligibility requirements contained in paragraph (d)(2) of this section at least once each year;

- (iii) Permit the transfer of a recipient's account and any control of the distributed equipment to another state's certified program when a recipient relocates to that state;
- (iv) Permit the transfer of a recipient's account and any control of the distributed equipment from another state's NDBEDP certified program when a recipient relocates to its state;
- (v) Prohibit recipients from transferring equipment received under the NDBEDP to another person through sale or otherwise, and include the following attestation on all consumer application forms:

I certify that all information provided on this application, including information about my disability and income eligibility to receive equipment, is true, complete, and accurate to the best of my knowledge. Program officials have my permission to verify the information provided.

If I am eligible for services, I agree to use these services solely for the purposes intended. I further understand that I may not sell, give, lend, or transfer interest in any equipment provided to me. Falsification of any records or failure to comply with these provisions will result in immediate termination of service. In addition, I understand that if I purposely provide false information I may be subject to legal action. I certify that I have read, understand, and accept all conditions associated with iCanConnect, the National Deaf-Blind Equipment Distribution Program;

- (vi) Conduct outreach, in accessible formats, to inform their state residents about the NDBEDP, which may include the development and maintenance of a program website;
- (vii) Include a brief narrative description on its website of any criteria, priorities, or strategies to ensure the fair distribution of equipment to low-income residents who are deaf-blind;
- (viii) Engage an independent auditor to conduct an annual audit, submit a copy of the annual audit to the TRS Fund Administrator and the NDBEDP Administrator, and submit to audits as deemed appropriate by the Commission or its delegated authorities;
- (ix) Document compliance with all Commission requirements governing the NDBEDP, retain all records associated with the distribution of equipment and provision of related services under the NDBEDP, including records that support reimbursement claims as required under paragraph (f) of this section and

that are needed to generate the reports required under paragraph (g) of this section, for a minimum of five years, and provide such documentation to the Commission upon request; and

(ix) Comply with the reporting requirements contained in paragraph (g) of this section.

(2) Each program certified under the NDBEDP may not:

(i) Impose restrictions on specific brands, models or types of communications technology that recipients may receive to access the communications services covered in this section;

(ii) Disable or otherwise intentionally make it difficult for recipients to use certain capabilities, functions, or features on distributed equipment that are needed to access the communications services covered in this section, or direct manufacturers or vendors of specialized CPE to disable or make it difficult for recipients to use certain capabilities, functions, or features on distributed equipment that are needed to access the communications services covered in this section; or

(iii) Accept any type of financial arrangement from equipment vendors that could incentivize the purchase of particular equipment.

(f) Payments to NDBEDP certified programs.

(1) Programs certified under the NDBEDP shall be reimbursed for the cost of equipment that has been distributed to low-income individuals who are deaf blind and authorized related services, up to the state's funding allocation under this program as determined by the Commission or any entity authorized to act for the Commission on delegated authority.

(2) Upon certification and at the beginning of each Fund year, state programs may elect to submit reimbursement claims on a monthly, quarterly, or semi-annual basis;

(3) Within 30 days after the end of each reimbursement period during the Fund year, each certified program must submit documentation that supports its claim for reimbursement of the reasonable costs of the following:

(i) Equipment and related expenses, including maintenance, repairs, warranties, returns, refurbishing, upgrading, and replacing equipment distributed to consumers;

(ii) Individual needs assessments;

- (iii) Installation of equipment and individualized consumer training;
- (iv) Maintenance of an inventory of equipment that can be loaned to the consumer during periods of equipment repair;
- (v) Outreach efforts to inform state residents about the NDBEDP;
- (vi) Train-the-trainer activities, but not to exceed 2.5 percent of the certified program's funding allocation;
- (vii) Travel expenses; and
- (viii) Administration of the program, but not to exceed 15 percent of the certified program's funding allocation.

(4) With each request for payment, the chief executive officer, chief financial officer, or other senior executive of the certified program, such as a manager or director, with first-hand knowledge of the accuracy and completeness of the claim in the request, must certify as follows:

I swear under penalty of perjury that I am (name and title), an officer of the above-named reporting entity, and that I have examined all cost data associated with equipment and related services for the claims submitted herein, and that all such data are true and an accurate statement of the business activities conducted pursuant to the NDBEDP by the above-named certified program.

(g) Reporting requirements.

(1) Each program certified under the NDBEDP must submit the following data electronically to the Commission, as instructed by the NDBEDP Administrator, every six months:

- (i) For each piece of equipment distributed, the full name of the equipment recipient and contact information, including the recipient's residential street and e-mail addresses, and personal phone number;
- (ii) For each piece of equipment distributed, the full name of the professional attesting to the disability of the individual who is deaf-blind and business contact information, including street and e-mail addresses, and phone number;

- (iii) For each piece of equipment distributed, the model name, serial number, brand, function, and cost, the type of communications service with which it is used, and the type of relay service it can access;
- (iv) For each piece of equipment distributed, the amount of time, following any assessment conducted, that the requesting individual waited to receive that equipment;
- (v) The cost, time and any other resources allocated to assessing an individual's equipment needs;
- (vi) The cost, time and any other resources allocated to installing equipment and training deaf-blind individuals on using equipment;
- (vii) The cost, time and any other resources allocated to maintain, repair, cover under warranty, and refurbish equipment;
- (viii) The cost, time and any other resources allocated to outreach activities related to the NDBEDP, and the type of outreach efforts undertaken;
- (ix) The cost, time and any other resources allocated to upgrading the distributed equipment, along with the nature of such upgrades;
- (x) To the extent that the program has denied equipment requests made by their deaf-blind residents, a summary of the number and types of equipment requests denied and reasons for such denials;
- (xi) To the extent that the program has received complaints related to the program, a summary of the number and types of such complaints and their resolution; and
- (xii) The number of qualified applicants on waiting lists to receive equipment.

(2) With each report, the chief executive officer, chief financial officer, or other senior executive of the certified program, such as a director or manager, with first-hand knowledge of the accuracy and completeness of the information provided in the report, must certify as follows:

I swear under penalty of perjury that I am (name and title), an officer of the above-named reporting entity, and that the entity has policies and procedures in place to ensure that recipients satisfy the NDBEDP eligibility requirements, that the entity is in compliance with the Commission's NDBEDP rules, that I have examined the foregoing reports and that all requested information has been provided and all statements of fact are true and an accurate statement of

the business activities conducted pursuant to the NDBEDP by the above-named certified program.

(h) Administration of the program. The Consumer and Governmental Affairs Bureau shall designate a Commission official as the NDBEDP Administrator to ensure the effective, efficient, and consistent administration of the program, and shall advise the TRS Fund Administrator on funding allocations and reallocations, payments, and any payment withholdings under the NDBEDP.

(i) Complaints. Complaints against NDBEDP certified programs for alleged violations of this subpart may be either informal or formal.

(1) Informal complaints.

(i) An informal complaint may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as letter, fax, telephone, TTY, or e-mail.

(ii) Content. An informal complaint shall include the name and address of the complainant; the name of the NDBEDP certified program against whom the complaint is made; a statement of facts supporting the complainant's allegation that the NDBEDP certified program has violated or is violating section 719 of the Act and/or the Commission's rules; the specific relief or satisfaction sought by the complainant; and the complainant's preferred format or method of response to the complaint by the Commission and the NDBEDP certified program, such as by letter, fax, telephone, TTY, or e-mail.

(iii) Service. The Commission shall promptly forward any complaint meeting the requirements of this subsection to the NDBEDP certified program named in the complaint and call upon the program to satisfy or answer the complaint within the time specified by the Commission.

(iv) Review and disposition of informal complaints.

(A) Where it appears from the NDBEDP certified program's answer, or from other communications with the parties, that an informal complaint has been satisfied, the Commission may, in its discretion, consider the matter closed without response to the complainant or NDBEDP certified program. In all other cases, the Commission shall inform the parties of its review and disposition of a complaint filed under this

subpart. Where practicable, this information shall be transmitted to the complainant and NDBEDP certified program in the manner requested by the complainant.

(B) A complainant unsatisfied with the NDBEDP certified program's response to the informal complaint and the Commission's disposition of the informal complaint may file a formal complaint with the Commission pursuant to paragraph (i)(2) of this section.

(2) Formal complaints. Formal complaints against an NDBEDP certified program may be filed in the form and in the manner prescribed under §§ 1.720 through 1.736 of this chapter. Commission staff may grant waivers of, or exceptions to, particular requirements under §§ 1.720 through 1.736 of this chapter for good cause shown; provided, however, that such waiver authority may not be exercised in a manner that relieves, or has the effect of relieving, a complainant of the obligation under §§ 1.720 and 1.728 of this chapter to allege facts which, if true, are sufficient to constitute a violation or violations of section 719 of the Act or this subpart.

(3) Actions by the Commission on its own motion. The Commission may on its own motion conduct such inquiries and hold such proceedings as it may deem necessary to enforce the requirements of this subpart and section 719 of the Communications Act. The procedures to be followed by the Commission shall, unless specifically prescribed in the Act and the Commission's rules, be such as in the opinion of the Commission will best serve the purposes of such inquiries and proceedings.

(j) Whistleblower protections.

(1) NDBEDP certified programs shall permit, without reprisal in the form of an adverse personnel action, purchase or contract cancellation or discontinuance, eligibility disqualification, or otherwise, any current or former employee, agent, contractor, manufacturer, vendor, applicant, or recipient, to disclose to a designated official of the certified program, the NDBEDP Administrator, the TRS Fund Administrator, the Commission's Office of Inspector General and Enforcement Bureau, or to any federal or state law enforcement entity, any known or suspected violations of the Act or Commission rules, or any other activity that the reporting person reasonably believes to be unlawful, wasteful, fraudulent, or abusive, or

that otherwise could result in the improper distribution of equipment, provision of services, or billing to the TRS Fund.

(2) NDBEDP certified programs shall include these whistleblower protections with the information they provide about the program in any employee handbooks or manuals, on their websites, and in other appropriate publications.

(k) Suspension or revocation of certification.

(1) The Commission may suspend or revoke NDBEDP certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted.

(2) In the event of suspension or revocation, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of the NDBEDP for the state whose program has been suspended or revoked.

(3) The Commission may, at its discretion and on its own motion, require a certified program to submit documentation demonstrating ongoing compliance with the Commission's rules.

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