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DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED-2016-OESE-0015]

Proposed priority and requirement--Equity Assistance Centers (Formerly Desegregation Assistance Centers (DAC))

[CFDA Number: 84.004D.]

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priority and requirement.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) proposes a priority and a requirement under the Equity Assistance Centers (EAC) Program. The Assistant Secretary may use this priority and this requirement for competitions in fiscal year 2016 and later years. We take this action to encourage applicants with a track record of success or demonstrated expertise in socioeconomic integration strategies that are effective for addressing problems occasioned by the desegregation of schools based on race, national origin, sex, or religion. We intend for the priority and the requirement to help ensure that grant recipients have the capacity to increase socioeconomic diversity to create successful plans for desegregation and

to address special educational problems occasioned by bringing together students from different social, economic, and racial backgrounds.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How to use regulations.gov."

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about the proposed priority and requirement, address them to Britt Jung, U.S. Department of Education, 400 Maryland Avenue, SW., room

3E206, Washington, DC 20202-6135. Telephone: (202) 205-4513.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Britt Jung, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E206, Washington, DC 20202-6135. Telephone: (202) 205-4513 or by email: britt.jung@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority and requirement, we urge you to identify clearly the specific issues that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden

that might result from this proposed priority and requirement. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about this notice by accessing Regulations.gov. You may also inspect the comments in person in room 3E206, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: This program awards grants through cooperative agreements to operate regional EACs that

provide technical assistance (including training) at the request of school boards and other responsible governmental agencies in the preparation, adoption, and implementation of plans for the desegregation of public schools and in the development of effective methods of addressing special educational problems occasioned by desegregation.

Program Authority: 20 U.S.C. 1221e-3; 42 U.S.C. 2000c-2000c-2 and 2000c-5.

Applicable Program Regulations: 34 CFR part 270 and 272.

Note: We published a notice of proposed rulemaking elsewhere in the Federal Register on March 24, 2016 (81 FR 15665) for the EAC program regulations in 34 CFR parts 270 and 272, which proposes to condense the regulations in 34 CFR parts 270 and 272 into one part, located at part 270.

PROPOSED PRIORITY:

This notice contains one proposed priority.

A track record of success or demonstrated expertise in developing or providing technical assistance to increase socioeconomic diversity in schools or school districts as a means to further desegregation by race, sex, national origin, and religion.

Background:

Under section 403 of title IV of the Civil Rights Act of 1964 (42 U.S.C. 2000c-2), the Secretary is authorized,

upon request, to render technical assistance in the preparation, adoption, and implementation of plans for the desegregation of public schools. We propose to add a priority to further the work of the EACs in the desegregation of public schools and, specifically, to promote socioeconomic diversity.

Sixty years after Brown v. Board of Education, data show that many schools and communities continue to suffer the effects of racial segregation, and that many of our Nation's largest school districts remain starkly segregated along racial and economic lines.¹ The widening gap between rich and poor has further concentrated areas of poverty that are in many cases also segregated communities of color.

Children living in concentrated poverty face overwhelming barriers to learning, placing a burden on high-poverty schools and contributing to poor academic and life outcomes for students.² In 2012, one-quarter of our

¹ See, e.g., National Center for Education Statistics. (2014). Digest of Education Statistics, Table 216.6. Retrieved from http://nces.ed.gov/programs/digest/d14/tables/dt14_216.60.asp

² See, e.g., Coleman, James S., Ernest Q. Campbell, Carol J. Hobson, James McPartland, Alexander M. Mood, Frederic D. Weinfeld, and Robert L. York. (1966). "Equality of Educational Opportunity." National Center for Education Statistics, U.S. Department of Education. Washington, DC. Retrieved from: <http://files.eric.ed.gov/fulltext/ED012275.pdf>

Rumberger, Russell W., and Gregory J. Palardy. (September 2005). "Does Segregation Still Matter? The Impact of Student Composition on Academic Achievement in High School." Teachers College Record, Columbia

Nation's students attended schools where more than 75 percent of the student body was eligible for free- or reduced-price lunch; in cities, almost half of all public school students attend high-poverty schools.³ Moreover, more than one third of all American Indian/Alaska Native students and nearly half of all African-American and Latino students attend these high-poverty schools, highlighting the often inextricable link between racially and socioeconomically isolated schools and communities.

Students attending high-poverty schools continue to have unequal access to - (1) advanced coursework; (2) the

University. Volume 107, Number 9, pp 1999-2045. Retrieved from: <http://www.learningace.com/doc/2775808/4a5b8639fd56f24cb076d144853d6b5f/rumberger-palardy-does-segregation-still-matter-tcr-2005>

Aud, S., W. Hussar, M. Planty, T. Snyder, K. Bianco, M. Fox, L. Frohlich, J. Kemp, and L. Drake. (2010). "The Condition of Education 2010" (NCES 2010-028). National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Washington, DC: Government Printing Office. Retrieved from: <http://nces.ed.gov/pubs2010/2010028.pdf>

Mulligan, G.M., S. Hastedt, and J.C. McCarroll. (2012). "First-Time Kindergartners in 2010-11: First Findings From the Kindergarten Rounds of the Early Childhood Longitudinal Study, Kindergarten Class of 2010-11" (ECLS-K:2011) (NCES 2012-049). National Center for Education Statistics, U.S. Department of Education. Washington, DC: Government Printing Office. Retrieved from: <https://nces.ed.gov/pubs2012/2012049.pdf>

Ross, T., G. Kena, A. Rathbun, A. KewalRamani, J. Zhang, P. Kristapovich, and E. Manning. (2012). "Higher Education: Gaps in Access and Persistence Study" (NCES 2012-046). U.S. Department of Education, National Center for Education Statistics. Washington, DC: Government Printing Office. Retrieved from: <http://files.eric.ed.gov/fulltext/ED534691.pdf>

³ National Center for Education Statistics. (2014). Digest of Education Statistics, Table 216.6. Retrieved from http://nces.ed.gov/programs/digest/d14/tables/dt14_216.60.asp

most effective teachers; and (3) necessary funding and supports.⁴

Moreover, research shows that States with less socioeconomically diverse schools tend to have larger achievement gaps between low- and higher-income students.⁵

The Department intends to continue our efforts to reduce racial isolation in public schools. However, given the growing body of research showing that socioeconomically diverse schools can lead to improved outcomes for disadvantaged students,⁶ the Department plans to focus on increasing socioeconomic diversity in our Nation's schools.

⁴ See, e.g., National Center for Education Statistics. (2013). Digest of Education Statistics, Table 225.40. Retrieved from: http://nces.ed.gov/programs/digest/d13/tables/dt13_225.40.asp

Max, Jeffrey and Steven Glazerman (2014). "Do Disadvantaged Students Get Less Effective Teaching?" U.S. Department of Education, National Center for Education Evaluation and Regional Assistance. Washington, DC: Government Printing Office. Retrieved from: <http://ies.ed.gov/ncee/pubs/20144010/pdf/20144010.pdf>

Gray, Lucinda, et al. Educational Technology in U.S. Public Schools: Fall 2008 (Apr. 2010) (NCES 2010-034). U.S. Department of Education, National Center for Education Statistics, available at: <http://nces.ed.gov/pubs2010/2010034.pdf>

Wells, John, and Laurie Lewis. Internet Access in U.S. Public Schools and Classrooms: 1994-2005 (November 2006). U.S. Department of Education, National Center for Education Statistics, available at: <http://nces.ed.gov/pubs2007/2007020.pdf>.

⁵ Mantil, Ann, Anne G. Perkins, and Stephanie Aberger. (February 27, 2012). "The Challenge of High Poverty Schools: How Feasible Is Socioeconomic School Integration?" In "The Future of School Integration," Kahlenberg, Richard D., ed. The Century Foundation. pp 155-222.

⁶ Chetty, Raj, Nathaniel Hendren, and Lawrence F. Katz. (2015). *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*. No. w21156. National Bureau of Economic Research; and Schwartz, Heather. (2012). "Housing Policy is School Policy: Economically Integrative Housing Promotes Academic Success in Montgomery County, Maryland." In *The Future of School Integration: Socioeconomic Diversity as an Education Reform Strategy*, edited by Richard D. Kahlenberg, 27-65. Century Foundation.

In addition, we believe the successful implementation of strategies to attract middle- and high-income students into high-poverty schools will create greater incentives for States and districts to provide better resources, opportunities, and supports in those schools.

Proposed Priority:

Eligible applicants that have a track record of success or demonstrated expertise in both of the following:

(a) Providing effective and comprehensive technical assistance on strategies or interventions supported by evidence and designed to increase socioeconomic diversity within or across schools, districts, or communities; and

(b) Researching, evaluating, or developing strategies or interventions supported by evidence and designed to increase socioeconomic diversity within or across schools, districts, or communities.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the Federal Register. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

PROPOSED REQUIREMENT:

Background:

To ensure the effective implementation of the proposed priority described in this notice, we propose to establish a program requirement to ensure that funded grantees conduct critical outreach with appropriate stakeholders.

The Assistant Secretary proposes the following requirement for this program. We may apply this requirement in any year in which this program is in effect.

Proposed Requirement:

Conducting Outreach and Engagement: When providing technical assistance on socioeconomic diversity in response to requests from responsible governmental agencies as a means to further desegregation by race, sex, national origin, and religion, a grantee under this program must assist in conducting outreach and engagement on strategies or interventions designed to increase socioeconomic diversity with appropriate stakeholders, including community members, parents and teachers.

Final Priority and Requirement:

We will announce the final priority and requirement in a notice in the Federal Register. We will determine the final priority and requirement after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority or requirement, we invite applications through a notice in the Federal Register.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this proposed regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this proposed priority and requirement only on a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

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

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on

request to the program contact person listed under FOR
FURTHER INFORMATION CONTACT.

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through the advanced search feature at this site, you can
limit your search to documents published by the Department.

Dated: March 29, 2016.

Ann Whalen,
Senior Advisor to the Secretary
Delegated the Duties of Assistant
Secretary for Elementary and Secondary
Education.

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