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DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED-2016-OESE-0015]

Final priority and requirement--Equity Assistance Centers

[CFDA Number: 84.004D.]

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

ACTION: Final priority and requirement.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) announces 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 support responsible governmental agencies as they seek 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, religious, and racial backgrounds.

DATES: This priority and requirement is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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:

Purpose of Program: The EAC 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.

Note: We published a notice of final regulations elsewhere in this issue of the Federal Register.

We published a notice of proposed priority and requirement for this program in the Federal Register on April 1, 2016 (81 FR 18818). That notice contained background information and our reasons for proposing the particular priority and requirement.

There are no differences between the proposed priority and requirement and this final priority and requirement.

Public Comment: In response to our invitation in the notice of proposed priority and requirement, one party submitted a substantive comment on the proposed priority and requirement. Generally, we do not discuss technical and other minor changes.

Analysis of Comment: An analysis of the comment follows.

Comment: One commenter stated that expertise in socioeconomic integration strategies is valuable, but recommended that we eliminate the proposed priority on the basis that expertise in areas of sex, race, and national origin desegregation is more important. The commenter was particularly opposed to the proposed priority being used as an absolute priority. The commenter asserted that it is more important to include a priority for staff

qualifications, including expertise in Federal, State, and local laws related to sex, race, and national origin discrimination and expertise in related research on what works to increase all types of integration and avoid discrimination.

Discussion: While we agree that staff qualifications should include expertise in Federal, State, and local laws related to sex, race, and national origin desegregation and related research, we believe that a priority for expertise in providing technical assistance to increase socioeconomic diversity will strengthen EAC programs without detracting from the existing issue areas.

As noted in the notice of proposed priority and requirement, more than one-third of all American Indian/Alaska Native students and nearly half of all African-American and Latino students attend high-poverty schools.¹ Students attending high-poverty schools continue to have unequal access to: (1) advanced coursework; (2) the most effective teachers; and (3) necessary funding and supports.² Moreover, research shows that States with less

¹National 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., 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.

socioeconomically diverse schools tend to have larger achievement gaps between low- and higher-income students.³

We believe that socioeconomic integration strategies can be vital tools for EAC technical assistance centers in their work to support all four areas of desegregation assistance: race, sex, national origin, and religion. The addition of this priority does not alter the civil rights of students, but rather seeks to ensure that EAC technical assistance centers will have the tools to use socioeconomic integration strategies in supporting students' existing rights. We further note that title IV of the Civil Rights Act of 1964 and our implementing regulations limit the centers to providing services upon request. The demand-driven nature of the program precludes the regional centers from choosing to focus on any desegregation assistance area

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>.

³ 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.

at the expense of another. Instead, all EAC technical assistance centers will be expected to provide assistance across all of the desegregation assistance areas, upon request.

We also note that the establishment of this priority does not identify it as an absolute priority. Instead, we will designate the type of priority, whether absolute, competitive preference, or invitational, through a notice in the Federal Register for each competition.

Changes: None.

FINAL PRIORITY:

This notice contains one final 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.

Final 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)).

FINAL 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.

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 regulatory action is "significant"

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

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

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

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

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

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

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

We also have determined that this regulatory action does 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.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at:

www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the Federal Register, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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Dated: July 12, 2016

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

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