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DEPARTMENT OF EDUCATION

34 CFR Chapter I

RIN 1875-AA11

[Docket ID ED-2016-OS-0002]

Secretary's Final Supplemental Priority for Discretionary Grant Programs

AGENCY: Department of Education.

ACTION: Final priority.

SUMMARY: To further support a comprehensive education agenda and to address concentrated poverty and related segregation in our Nation's schools, the Secretary of Education establishes an additional priority primarily for use in any discretionary grant program focused on elementary and secondary education, as appropriate, for fiscal year (FY) 2016 and future years. The Secretary adds this priority to the existing supplemental priorities and definitions for discretionary grant programs that were published in the Federal Register on December 10, 2014 (2014 Supplemental Priorities). This priority reflects our efforts to address emerging needs in education.

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

FOR FURTHER INFORMATION CONTACT: Ramin Taheri, U.S. Department of Education, 400 Maryland Avenue, SW., room 5E343, Washington, DC 20202-5930. Telephone: (202) 453-5961 or by email: [ramin.taheri@ed.gov](mailto:ramin.taheri@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:

Program Authority: 20 U.S.C. 1221e-3, 3474.

We published a notice of proposed priority (NPP) in the Federal Register on June 8, 2016 (81 FR 36833). That document contained background information and our reasons for proposing the additional priority.

Public Comment: In response to our invitation in the NPP, 13 parties submitted comments on the proposed priority.

Analysis of Comments and Changes: An analysis of the comments follows. We group our discussion according to the general issues raised. We do not address technical and other minor changes.

Comment: Several commenters expressed concern that the proposed priority would adversely affect rural communities and students who reside within them, where the geographic isolation of students from one particular racial, ethnic, or socioeconomic group would render efforts to diversify

schools difficult or impossible. Many of these commenters expressed support for the priority and the importance of addressing the growing segregation and inequality in our Nation's schools, but suggested that the Department use the priority as an invitational priority, as opposed to a competitive preference or absolute priority, to ensure that rural applicants are not unfairly disadvantaged in grant competitions.

Discussion: We appreciate the commenters' concern that the priority may not be appropriate or beneficial for rural communities whose geographical constraints make increasing socioeconomic diversity infeasible. First, we note that increasing educational equity for rural students and communities is a focus area for the Department of Education (the Department); for example, Priority 4--Supporting High-Need Students from the 2014 Supplemental Priorities includes language that allows the Department to prioritize projects designed to improve outcomes for students served by rural local educational agencies (LEAs).

Second, we acknowledge that solutions to educational challenges are often different in rural, urban, and suburban communities. We note, however, that the Department has discretion in how and when it will use this priority (including whether to use it as an invitational or

other type of priority), and does not intend to use this priority in a way that would disadvantage rural applicants. Rather, it is our intention to use this priority strategically to encourage diversity only in those situations where we believe such efforts are most appropriate and best support the possibility of increasing socioeconomic diversity in schools.

Changes: None.

Comment: In addition to concerns related to geographically isolated, rural communities, many commenters raised questions regarding the utility of the priority in Indian country. Specifically, these commenters expressed concerns about how the priority would affect American Indian or Alaska Native students who attend schools in rural areas, on tribal lands that are geographically isolated, or in villages or communities that are not accessible, legally or physically, to students who are not members of a particular American Indian or Alaska Native tribe. One commenter suggested the Department can protect against unintended negative impacts on Native students by including a race-based preference whenever using the priority for socioeconomic diversity.

Discussion: We understand and appreciate the concerns raised with respect to Native students and their

communities. As with rural LEAs, however, the Department believes that the 2014 Supplemental Priorities include a priority to help address these concerns; specifically, Priority 4--Serving High-Need Students, which allows the Department to prioritize projects designed to serve students who are members of federally recognized Indian tribes, provides a sufficient basis for the Department to channel Federal resources toward improved outcomes for Native students. With respect to the comment suggesting that the Department include a race-based preference in tandem with the priority, we note that Priority 12--Promoting Diversity from the 2014 Supplemental Priorities includes language that allows the Department to focus on projects designed to increase racial and ethnic diversity. Finally, as mentioned in the discussion of the comments regarding rural communities, while the Department declines to make any changes to the priority based on these comments, we reiterate our intention to use this priority strategically to encourage diversity only in those situations where we believe such efforts are most appropriate and we do not intend to use it in a way that would adversely affect Native students.

Changes: None.

Comment: Several commenters expressed support for increasing diversity in our Nation's public schools. One commenter suggested that a focus on diversity must be accompanied by concerted efforts to foster and maintain positive and supportive school climates. The commenter further urged the Department to issue guidance or other technical assistance documents related to school diversity. Finally, the commenter suggested that the Department ensure that potential grant applicants wishing to focus on diversity initiate and maintain communications with their local communities.

Discussion: We appreciate the comments in support of the priority and the Department's focus on increasing diversity. The Department agrees that a focus on positive school climate is an important part of improving outcomes for all students. Moreover, a positive, supportive school climate may be essential to ensuring that a diverse student body achieves true cohesiveness. While we decline to make any changes to the priority based on this comment, the Department remains committed to exploring avenues to encourage safe, supportive, and positive school climates. For example, Priority 13--Improving School Climate, Behavioral Supports, and Correctional Education from the 2014 Supplemental Priorities offers opportunities to direct

Federal resources toward projects designed to improve school climate.

We appreciate the comment suggesting that the Department issue guidance or technical assistance documents about school diversity. We agree that additional resources may be helpful in assisting LEAs and communities in undertaking efforts to diversify their schools. We note that there are existing resources, such as the Department's Equity Assistance Centers, that stand ready to offer technical assistance related to school climate issues based on race, national origin, sex, and religion. Moreover, the Department continues to explore all opportunities to develop and issue guidance materials in this and other important policy areas.

Finally, the Department agrees with the recommendation that grant applicants collaborate and communicate with their local communities. Public engagement is an integral part of any comprehensive, successful school diversity strategy. In that regard, the priority includes language that contemplates community input, robust family and community involvement, and other forms of public engagement.

Changes: None.

Comment: None.

Discussion: We are revising paragraph (d) to allow the Department more flexibility to tailor the priority for each competition in which the priority is used in order to narrow the focus on the strategies proving most effective in a specific context or on where the greatest needs are from year to year. We note that revisions to paragraph (d) would still allow the Department to use the paragraph in its entirety, as appropriate.

Changes: In the introductory language, subparagraph (ii), and subparagraph (vi) of paragraph (d), we have revised the priority to provide the Department the flexibility described above. In addition, we have revised the wording in subparagraphs (ii), (v), and (vi) so that each will stand better on its own should it be used in isolation in a grant competition.

FINAL PRIORITY:

The Secretary establishes the following priority for use primarily in any discretionary grant competition focused on elementary and secondary education, as appropriate, in FY 2016 and future years. This priority is in addition to the 2014 Supplemental Priorities.

Priority--Increasing Socioeconomic Diversity in Schools.

Projects that are designed to increase socioeconomic diversity in educational settings by addressing one or more of the following:

(a) Using established survey or data-collection methods to identify socioeconomic stratification and related barriers to socioeconomic diversity at the classroom, school, district, community, or regional level.

(b) Developing, evaluating, or providing technical assistance on evidence-based policies or strategies designed to increase socioeconomic diversity in schools.

(c) Designing or implementing, with community input, education funding strategies, such as the use of weighted per-pupil allocations of local, State, and eligible Federal funds, to provide incentives for schools and districts to increase socioeconomic diversity.

(d) Developing or implementing policies or strategies to increase socioeconomic diversity in schools that are evidence-based; demonstrate ongoing, robust family and community involvement, including a process for intensive public engagement and consultation; and meet one or more of the following factors--

(i) Are carried out on one or more of an intra-district, inter-district, community, or regional basis;

(ii) Reflect coordination with other relevant government entities, including housing or transportation authorities, to the extent practicable;

(iii) Are based on an existing, public diversity plan or diversity needs assessment; and

(iv) Include one or both of the following strategies-

(A) Establishing school assignment or admissions policies that are designed to give preference to low-income students, students from low-performing schools, or students residing in neighborhoods experiencing concentrated poverty to attend higher-performing schools; or

(B) Establishing or expanding schools that are designed to attract substantial numbers of students from different socioeconomic backgrounds, such as magnet or theme schools, charter schools, or other schools of choice.

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)).

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 one or more of these priorities and definitions, 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 only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected the approach 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 associated with this regulatory action are those resulting from regulatory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Costs and Benefits:

The final priority will not impose significant costs on entities that would receive assistance through the Department's discretionary grant programs. Additionally, the benefits of implementing the final priority outweigh any associated costs because it will allow the Department to focus discretionary grant competitions on this important area.

Application submission and participation in a discretionary grant program are voluntary. The Secretary believes that the costs imposed on applicants by the final priority will be limited to paperwork burden related to preparing an application for a discretionary grant program

that is using the priority in its competition. Because the costs of carrying out activities would be paid for with program funds, the costs of implementation would not be a burden for any eligible applicants, including small entities.

Regulatory Flexibility Act Certification: For these reasons as well, the Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities.

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

This document provides early notification of our specific plans and actions for these programs.

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

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Dated: September 9, 2016.

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John B. King, Jr.,  
Secretary of Education.

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