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DEPARTMENT OF EDUCATION

34 CFR Parts 350, 356, 359

RIN 1820-AB75

34 CFR Parts 364, 365, and 366

RIN 1820-AB76

National Institute on Disability and Rehabilitation Research (NIDRR) and Independent Living Programs, Outdated, Superseded Regulations

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary removes outdated, superseded regulations for five programs no longer administered by the Department: the Disability and Rehabilitation Research Projects and Centers Program, the Research Fellowships program, the Special Projects and Demonstrations for Spinal Cord Injuries program, the State Independent Living Services program, and the Centers for Independent Living program. In 2014, the Workforce Innovation and Opportunity Act transferred these programs to the Department of Health and Human Services, which has adopted regulations for them.

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

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(TDD) or a text telephone (TTY), call the Federal Relay
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SUPPLEMENTARY INFORMATION:

On February 24, 2017, President Trump signed Executive
Order 13777, "Enforcing the Regulatory Reform Agenda,"
which established a Federal policy "to alleviate
unnecessary regulatory burdens" on the American people.
Section 3(a) of the Executive Order directed each Federal
agency to establish a regulatory reform task force, the
duty of which is to evaluate existing regulations and "make
recommendations to the agency head regarding their repeal,
replacement, or modification." Accordingly, the Secretary
removes 34 CFR parts 350, 356, 359, 364, 365, and 366
because they have been superseded.

In 2014, the Workforce Innovation and Opportunity Act
(WIOA) (Pub. Law 113-128) made significant changes to many
programs administered by the Office of Special Education
and Rehabilitative Services (OSERS). WIOA transferred the
National Institute for Disability and Rehabilitation

Research (NIDRR), its functions, and its programs from OSERS to the Administration for Community Living (ACL) within the Department of Health and Human Services (HHS). In the process, WIOA renamed NIDRR the National Institute for Disability, Independent Living, and Rehabilitation Research (NIDILRR). (See, WIOA sections 433, 435, 491(n).) The programs transferred were the Disability and Rehabilitation Research Projects and Centers program, the Research Fellowships program, and the Special Projects and Demonstrations for Spinal Cord Injuries program.

WIOA also created within ACL the Independent Living Administration and transferred to it two programs from the Rehabilitation Services Administration (RSA) within OSERS, namely the State Independent Living Services program and the Centers for Independent Living program (WIOA sections 471-484, 491(b)).

To ensure that there would be no interruption in funding for, or services provided by, these five programs during their transfer, WIOA kept the regulations for those programs in effect until they were properly "modified, terminated, superseded, set aside, or revoked" (WIOA sections 491(i)(1), 491(n)(3)(A)). The regulations for the five transferred programs are:

Program	Regulations 34 CFR part(s)
Disability and Rehabilitation Research Projects and Centers Program.....	350
Research Fellowships.....	356
Special Projects and Demonstrations for Spinal Cord Injuries.....	359
State Independent Living Services.....	364, 365
Centers for Independent Living.....	364, 366

The Department and HHS completed all transfers from OSERS to ACL on March 30, 2015.

On May 11, 2016, HHS published final regulations for NIDILRR's three programs, superseding 34 CFR parts 350, 356, and 359, and combines them into a single part, now codified at 45 CFR Part 1330. Those three programs are now titled the Disability, Independent Living, and Rehabilitation Research Projects and Centers Program; the Disability, Independent Living, and Rehabilitation Research Fellowships program; and the Special Projects and Demonstrations for Spinal Cord Injuries program (81 FR 29156).

On October 27, 2016, HHS published final regulations for the two programs transferred from RSA, superseding 34 CFR parts 364, 365, and 366. HHS did not change the names

of the State Independent Living Services program or the Centers for Independent Living program, but combined all Independent Living program regulations and codified them at 45 CFR part 1329. (81 FR 74682).

Waiver of Proposed Rulemaking

Under the Administrative Procedures Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, this regulatory action merely removes regulations that are unnecessary because administration of the regulations and the affected programs has been transferred to another agency. This regulatory action adopts no new regulations and does not establish or affect substantive policy. Therefore, under 5 U.S.C. 553(b)(B), the Secretary has determined that proposed regulations are unnecessary, and, thus, waives notice and comment rulemaking.

The APA also requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). Again, because the final regulations merely remove regulations that are unnecessary because administration of the regulations and the affected programs has been transferred to another agency, the Secretary is also waiving the 30-day delay in the effective date of

these regulatory changes under 5 U.S.C. 553(d) (3).

Executive Orders 12866, 13563, and 13771

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

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2018, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because this final rule is not a significant regulatory action, the requirement to offset new regulations in Executive Order 13771 does not apply.

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

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

(2) Tailor their 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 specifying the behavior or manner of compliance that regulated entities must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing 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 regulatory action only upon a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected the approach that maximizes net benefits. Based on the analysis that follows, the Department believes that these regulations are 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.

Need for the Regulatory Action

This regulatory action is necessary to comply with Executive Order 13777 and to remove superseded regulations from the Code of Federal Regulations (CFR).

Analysis of Costs and Benefits

This regulatory action is a benefit to the public, grant recipients, and the Department as the action will

remove any confusion that might be caused by maintaining superseded regulations in the CFR.

The Department has also analyzed the costs of this regulatory action and has determined that it will impose no additional costs (\$0). As detailed earlier, this regulatory action removes superseded regulations for five programs that WIOA transferred from OSERS to HHS and adopts no new ones. In 2016, HHS adopted regulations for the Disability, Independent Living, and Rehabilitation Research Projects and Centers Program; the Disability, Independent Living, and Rehabilitation Research Fellowships program; the Special Projects and Demonstrations for Spinal Cord Injuries program; the State Independent Living Services program; and the Centers for Independent Living program. See, 81 FR 29156 (May 11, 2016); 81 FR 74682 (October 27, 2016).

Regulatory Flexibility Act Certification

The Secretary certifies that this regulatory action does not have a significant economic impact on a substantial number of small entities. As detailed above, this regulatory action merely removes superseded regulations from the CFR and imposes no costs.

Paperwork Reduction Act of 1995

This regulatory action does not contain any information collection requirements. The previously OMB-approved information collections that were contained in parts 350, 356, 364, and 366 are no longer active information collections with the Department of Education. These information collections were transferred to HHS under WIOA in May 2015 and March 2016, removing 1820-0027 and 1820-0527 from ED inventory and transferring part 366 from 1820-0018. The information collections under OMB 1820-0027 (parts 350 and 356), OMB 1820-0527 (part 364), and OMB 1820-0018 (part 366 only) are not contained in this regulatory action.

Intergovernmental Review

Some of these programs 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.

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List of Subjects

34 CFR Part 350

Grant programs-education; Reporting and recordkeeping requirements; Research; Vocational rehabilitation.

34 CFR Part 356

Grant programs-education; Human research subjects;
Reporting and recordkeeping requirements; Research;
Scholarships and fellowships; Vocational rehabilitation.

34 CFR Part 359

Grant programs-education; Research; Vocational
rehabilitation.

34 CFR Part 364

Grant programs-education; Grant programs-social programs;
Reporting and recordkeeping requirements; Vocational
rehabilitation.

34 CFR Part 365

Grant programs-education; Grant programs-social programs;
Reporting and recordkeeping requirements; Vocational
rehabilitation.

34 CFR Part 366

Grant programs-social programs; Reporting and recordkeeping
requirements; Vocational rehabilitation.

Dated: January 8, 2018.

Kimberly M. Richey,
Deputy Assistant Secretary,
delegated the authority to perform
the functions and duties of the
Assistant Secretary for Special
Education and Rehabilitative
Services.

For the reasons discussed in the preamble, and under the authority of section 414 of the Department of Education Organization Act, 20 U.S.C. 3474, the Secretary of Education amends chapter III of title 34 of the Code of Federal Regulations as follows:

PART 350 [Removed and Reserved]

1. Part 350 is removed and reserved.

PART 356 [Removed and Reserved]

2. Part 356 is removed and reserved.

PART 359 [Removed and Reserved]

3. Part 359 is removed and reserved.

PART 364 [Removed and Reserved]

4. Part 364 is removed and reserved.

PART 365 [Removed and Reserved]

5. Part 365 is removed and reserved.

PART 366 [Removed and Reserved]

6. Part 366 is removed and reserved.

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