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DEPARTMENT OF EDUCATION

[Docket ED-2019-OESE-0147]

Final Priorities--Competitive Grants for State Assessments Program

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

ACTION: Final priorities.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education announces priorities under the Competitive Grants for State Assessments (CGSA) program, Catalog of Federal Domestic Assistance (CFDA) number 84.368A. The Assistant Secretary may use these priorities for a competition in fiscal year (FY) 2020 and in later years. We take this action to focus Federal financial assistance related to student assessments on innovative assessments. We intend the priorities to increase the number of States requesting and, then, using flexibility under the Innovative Assessment Demonstration Authority (IADA) and to support high-quality work among those States that do so. Given the national emergency related to the novel coronavirus (COVID-19), flexible approaches to

education, including innovative, formative, and competency-based assessments such as those that these priorities will support, are essential for students, parents, and educators.

DATES: These priorities are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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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:

Catalog of Federal Domestic Assistance (CFDA) number 84.368A

Purpose of Program: The purpose of the CGSA program is to support States' efforts to improve the technical quality of their assessment systems--both the quality of individual State assessments and the overall field of State assessments.

Program Authority: Section 1203 of the Elementary and

Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (Pub. L. 114-95) (ESEA). We published a notice of proposed priorities for this program in the *Federal Register* on January 8, 2020 (85 FR 853) (the NPP). That document contained background information and our reasons for proposing two priorities for the CGSA program.

There are two minor technical differences between the proposed priorities and these final priorities, as explained below.

These priorities are for use in addition to those published in the 2016 NFP, the 2011 notice of final priorities, requirements, definitions, and selection criteria (76 FR 21985) (2011 NFP), and the 2013 notice of final priorities, requirement, definitions, and selection criteria for this program (78 FR 31343) (2013 NFP).

Public Comment: In response to our invitation in the NPP, ten parties submitted comments on the proposed priorities. We group major issues according to subject. Generally, we do not address comments that are outside the scope of the proposed priorities (e.g., we do not address proposed changes to the IADA regulations).

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities since publication of the NPP follows.

General Comments: Among the ten comments received, five commenters indicated overall support for the focus on IADA planning and implementation projects, while two expressed opposition to the use of the proposed priorities as further described later. Two additional commenters expressed concerns regarding the CGSA program but did not explicitly address the proposed priorities. One commenter did not address the CGSA program at all.

Discussion: We appreciate the support for these proposed priorities.

Changes: None.

Comments: Two commenters opposed focusing future CGSA competitions on supporting IADA planning and implementation. The commenters reasoned that, because the ESEA does not directly authorize funding for IADA, CGSA funds should not be used to fund IADA projects. These commenters also contended that CGSA funds should not be used to support States implementing IADA because a

published report regarding one State's implementation of its IADA raised concerns that the assessment was not providing valid and reliable data for students with disabilities.

These same commenters also encouraged the Department to focus future CGSA competitions instead on other priorities, such as improving alternate assessments for students with the most significant cognitive disabilities; making assessments more accessible for all students through the use of Universal Design for Learning (UDL); and producing culturally responsive assessments for English learners (ELs).

Discussion: We appreciate these commenters' perspective and agree that the assessment needs of students with disabilities and ELs represent important topic areas for assessment development. The majority of grants funded by the CGSA and its predecessor, the Enhanced Assessments Grants (EAG) program, supported projects that addressed students with disabilities and ELs. Specifically, since 2002, the Department has made a total of 63 awards to States through the EAG and CGSA programs. Thirty-eight of those awards (60 percent) have had at least one primary

goal of researching, developing, or validating assessments for students with disabilities. Thirty (48 percent) of those awards have had at least one primary goal of researching, developing, or validating assessments for ELs. In addition, the Department provides substantial annual support through formula grants to support State assessments. Three of the allowed uses of those formula grant funds specifically apply to improving valid and reliable assessments for students with disabilities or ELs (section 1201 (a) (2) (A), (C), and (I) of the ESEA), and we expect States that receive IADA-related CGSA awards to appropriately include ELs and students with disabilities in the innovative assessments.

The Department agrees that it is critical for assessments to be accessible for all students, including, to the extent practicable, using the principles of UDL. The Department notes this is a requirement for all State assessments under section 1111(b) (2) (B) (vii) and (xiii) of the ESEA. All State assessments (including any proposed under the IADA) must meet this requirement, which is evaluated by the Department through the assessment peer review process.

The Department does not agree with the two commenters that IADA-related projects are not authorized to receive funding from the CGSA. Nothing in the statute precludes a State from receiving CGSA funds while it plans for or implements an IADA-focused project, as long as the proposed projects align with one or more of the CGSA statutory uses of funds in section 1201(a)(2)(C), (H), (I), (J), (K), and (L) of the ESEA, which are summarized below=:

- Developing or improving assessments for English learners;
- Developing or improving models to measure and assess student progress or student growth;
- Developing or improving assessments for students with disabilities;
- Collaborating with institutions of higher education or other research institutions to improve the quality, validity, and reliability of assessments;
- Measuring student academic achievement using multiple measures from multiple sources; and
- Evaluating student academic achievement through

comprehensive academic assessments that leverage a competency-based model.

We anticipate that any IADA project would address one or more of these uses of funds. Furthermore, the Department believes that the use of IADA flexibility may further innovative CGSA projects aligned with the statutory uses of funds.

Finally, these two commenters raised a concern about the validity and reliability of the data for students with disabilities from one State currently approved for the IADA. Although this comment is outside the scope of these proposed priorities, the Department notes that it monitors State implementation of the IADA. The Department hopes that supporting States during the IADA planning and implementation periods will promote high-quality assessments that meet all IADA requirements.

Changes: None.

Comment: One commenter suggested adding a third priority to emphasize two of the allowable uses of CGSA funds defined in ESEA section 1201(a)(2):

(K) Measuring student academic achievement using multiple measures of student academic achievement from

multiple sources.

(L) Evaluating student academic achievement through the development of comprehensive academic assessment instruments (such as performance and technology-based academic assessments, computer adaptive assessments, projects, or extended performance task assessments) that emphasize the mastery of standards and aligned competencies in a competency-based education model.

The commenter believed that while the proposed priorities incentivizing the IADA were a worthy goal, the ultimate outcome for the CGSA program should be the improvement of State assessment systems through the use of new assessment approaches that are consistent with the ESEA requirement for multiple measures that assess higher-order thinking skills. The commenter argued that including a third priority focused on the uses of funds defined in ESEA sections 1201(a)(2)(K) and (L) could support that outcome. A second commenter encouraged modifying the allowable uses of funds regarding improving assessment of student growth by including measurement models that incorporate multiple measures.

Discussion: The Department agrees that one of the broad

purposes of the CGSA program is the development and administration of higher-quality assessments, which could include better assessing higher-order thinking skills. In any future competition, the Department may rely on the uses of funds in ESEA sections 1201(a)(2)(C), (H), (I), (J), (K), and (L) (summarized above), the previously established priorities, or these final priorities in selecting specific priorities for a competition. This document establishes priorities that can be used in any future competition but does not establish how those priorities are designated in any particular competition. In a notice published separately in this issue of the *Federal Register*, the Department invites applications and specifies the applicable priorities for the FY 2020 CGSA competition. The Department also notes that for any project funded under the CGSA program, including IADA-related projects, a grantee must address one or more of the uses of funds and, therefore, may use their funds to support activities directly aligned with ESEA sections 1201(a)(2)(K) or (L). With regards to the second commenter, the Department further adds that sections 1201(a)(2)(H) and (K) of the ESEA allow an SEA to use CGSA funds for improving growth

models and using multiple measures of student academic achievement, respectively. Therefore, no changes to the proposed priorities are necessary.

Changes: None.

Comments: One commenter encouraged the Department to evaluate CGSA proposals to ensure they include assessment audits that reduce redundant assessments.

Discussion: Assessment audits can be a useful tool in ensuring that schools utilize assessments appropriately and avoid assessments that are redundant, of low quality, or unnecessary. However, the focus of the CGSA program is the statewide assessments that are required under ESEA section 1111(b)(2).

Changes: None.

Comments: One commenter advocated that the Department encourage and incentivize projects that include formative assessment in development of balanced assessment systems.

Discussion: The Department agrees that formative assessments can be a vital part of a balanced assessment system and supports States, districts, and schools that choose to use them. Formative assessments that provide rapid, instructionally relevant results can be a powerful

tool to aid educators in serving students. Nothing in these priorities precludes a State from including formative assessments as part of an application for CGSA. For example, activities aligned with ESEA sections 1201(a)(2)(K) or (L) may include formative assessments as part of a project's theory of action. Activities related to other allowable uses of funds or to these priorities might also support development of formative assessments.

Changes: None.

Comments: One commenter encouraged the coordination of CGSA reporting requirements with IADA reporting requirements if an ongoing IADA project received CGSA funding in order to reduce burden on States.

Discussion: The Department appreciates the concern regarding the coordination of various reporting requirements upon States for the IADA and the CGSA. We anticipate coordination to the greatest extent practicable (e.g., aligning reporting of certain milestones) in the event that a State that is implementing the IADA receives a CGSA award. However, there are distinct requirements for each program that are defined in statute and regulations,

and there could be reporting aspects that must continue separately. The Department will work with any State approved for a CGSA grant to implement its IADA plan to individually assess where these efficiencies might be attained.

Changes: None.

Comments: One commenter shared a general concern that the rush to develop innovative State assessments that provide an annual proficiency determination might cause education officials to lose sight of important principles of assessment and establish systems that do not serve the best interest of student learning, for example, by undermining the validity and reliability of State accountability; dramatically constraining school and district approaches to curriculum and instruction; and compromising the value of interim assessments to support teaching and learning in that subject area.

Discussion: The ESEA requires every State to have an annual assessment of the State's challenging academic standards. The Department acknowledges that validity and reliability are a key component of any assessment system. Validity and reliability requirements are clearly defined

in 34 CFR 200.104-108 for the IADA. In addition, the purpose of the IADA is to pilot and scale up the use of innovative assessment items and designs; at the end of the IADA period, if successful, the innovative assessment would be administered statewide and subject to all requirements for statewide assessment systems, including the Department's assessment peer review. All decisions related to curriculum and instruction are at the discretion of the State or district. Consistent with section 8527(b) of the ESEA, the Department does not endorse any curriculum approach. A State, at its discretion, may align State assessments with other State and local assessments, including any formative or interim assessments, to avoid redundant or unnecessary testing while providing useful and timely information to parents and teachers. The Department does not require interim assessments and defers to State and local discretion on their use.

Changes: None.

Priority 1--Implementing the Innovative Assessment Demonstration Authority (IADA).

Comments: One commenter requested that the Department better align the timing of the CGSA competition with the

three States that applied in January 2020 for IADA approval. The commenter expressed concern that these States may not receive the approval to begin implementing their IADA pilots in time to allow them to prepare a CGSA application during the 2020 CGSA competition period.

Discussion: The Department appreciates the commenter's concern but notes that these States may receive approval of IADA prior to the date that applications are due for the CGSA program in 2020. Alternatively, States could submit applications under multiple priorities, as outlined in the NIA published elsewhere in this issue of the *Federal Register*. Furthermore, once this priority has been finalized, the Department can elect to use this priority in the 2020 or any future CGSA competition. In addition, the Department notes that each State receives formula funds under the ESEA to develop and administer statewide assessments. A State approved for IADA would be able to use these formula assessment funds to implement its IADA plan.

Changes: None.

Comments: One commenter requested that the CGSA award period be increased from 48 months to 60 months, which

would align with the five-year IADA implementation window.

Discussion: While the Department understands the commenter's recommendation, we disagree that the award period for the CGSA should match that of the IADA implementation period for several reasons. First, there are already four States that have received the IADA that are already in the midst of their five-year IADA implementation period (two States are in year two and two other States are in their first year). For these States, such an alignment is not feasible. Second, through the CGSA program, the Department intends to provide some financial support for States implementing IADA, but the Department does not believe that CGSA awards will be sufficient to completely fund IADA implementation. The Department expects that a State will need additional dedicated funds for implementation of its innovative assessment to ensure sufficient buy-in and support within the State and for sustainability of the innovative assessment. The Department assumes that States have other sources of funding that will supplement any CGSA support and will correspondingly plan a budget to maximize the use of four years of CGSA support accordingly. The Department

notes that final Priority 1 does not contain any specific references regarding the timeframe for awards. Such timeframes are typically outlined in any notice inviting applications (NIA) for future competitions for CGSA.

Please see the NIA for the CGSA published elsewhere in this issue of the *Federal Register* for details regarding expected timeframes for the 2020 CGSA competition.

Changes: None.

Priority 2--Planning to Apply for the Innovative Assessment Demonstration Authority (IADA).

Comments: One commenter encouraged the Department to specify that planning proposals for the IADA be allowed up to 24 months of funding under this priority.

Discussion: The Department appreciates the commenter's perspective. However, the Department believes that States considering the IADA as an option for their assessment system will have already undergone some planning efforts if they apply for a planning grant under the CGSA. The Department believes that while CGSA funds can supplement a State's costs and support more substantive planning efforts, they should not be considered as the only financial support needed to sustain State planning for the

IADA. In the NPP, the Department communicated that it anticipates a shorter (12 to 18 months) funding period for Priority 2 than for Priority 1. The Department continues to believe that this is a reasonable timeframe for States to conduct IADA planning efforts with CGSA support. However, the Department notes that the final Priority 2 does not contain any specific references regarding the timeframe for awards. Such timeframes are typically outlined in any NIA for future competitions for CGSA. Please see the NIA for the CGSA published elsewhere in this issue of the *Federal Register* for details regarding expected timeframes for the 2020 CGSA competition.

Changes: None.

Comments: One commenter requested that we modify the priority to require the inclusion of assessment theories of actions. A key goal of the planning period would then be to fully flesh out this theory of action that would address, among many other processes and mechanisms, the detailed design information about the intended IADA pilot assessment. The commenter reasoned that, early in planning, development of the theory of action is critical to establishing the foundations for a State's IADA plan,

and requiring the more detailed definition of specific assessment designs or item prototypes might hinder or bias the most appropriate theory of action.

Discussion: The Department agrees with the commenter that a solid theory of action is critical to properly establishing a design for an innovative assessment system. However, as noted above, the Department does not envision that the CGSA award would cover the entirety of a State's IADA planning process. The Department is interested in supporting plans that appear to have a high probability of reaching the implementation stage. To that end, the Department believes that proposals that indicate sufficient maturity to outline an assessment design (or an array of possible design choices) merit the highest consideration for CGSA support.

Changes: None.

Technical Changes

Comment: None.

Discussion: Under section 1203(b)(1)(B) of the ESEA, SEAs that apply for CGSA must describe how they will use CGSA funds for one or more of the statutory uses of funds. In Proposed Priorities 1 and 2, the Department included a

requirement to provide such description as part of the priority. Since we are including this statutory requirement as an application requirement in the NIA published elsewhere in this issue of the *Federal Register*, and anticipate that we also would do so for future competitions, the Department is removing this duplicative language from Priority 1 and 2.

Change: The Department has removed the requirement in each priority that SEAs describe how the proposed projects align with one or more of the CGSA statutory uses of funds in section 1201(a)(2)(C), (H), (I), (J), (K), and (L) of the ESEA.

Comment: None.

Discussion: In Proposed Priority 1 and Proposed Priority 2, the Department phrased the priorities to acknowledge that an applicant may be either an SEA or a consortium of SEAs. In the 2016 NFP, the language of the priorities referred to SEAs generally. Because these priorities could be used in NIAs along with priorities from the 2016 NFP, the Department is revising the priority to generally refer to SEAs, for consistency with the other priorities.

Change: The Department is replacing the language in the

final priorities to refer to SEAs generally instead of referencing an SEA, and a consortium of SEAs.

FINAL PRIORITIES:

Priority 1--Implementing the Innovative Assessment Demonstration Authority (IADA).

Under this priority, SEAs must--

(a) Be approved for IADA as of the date of their CGSA application. If applying as part of a consortium (or in partnership with other SEAs), each SEA must be approved for IADA as of the date of its CGSA application;

(b) Be implementing IADA, consistent with all requirements of section 1204 of the ESEA and applicable regulations as of the date of their CGSA application. If applying for CGSA as part of a consortium (or in partnership with other SEAs), each SEA must individually meet this requirement; and

(c) Describe how the SEA will use CGSA funds to implement its approved IADA plan.

Note: Any competition that uses this priority must also include another priority under which any SEA may apply.

Priority 2--Planning to Apply for the Innovative Assessment Demonstration Authority (IADA).

Under this priority, SEAs must--

(a) Provide an assurance by an authorized representative that the SEA intends to apply for flexibility under the IADA, when made available by the Department. If applying for CGSA as part of a consortium (or in partnership with other SEAs), each SEA must provide an assurance that it intends to apply for flexibility under the IADA;

(b) If applying as a consortium of SEAs during the initial demonstration authority for IADA, not include more than four SEAs; and

(c) Describe their approach to innovative assessments in terms of the subjects and grades the SEA anticipates addressing, the proposed assessment design, proposed item types (e.g., item prototypes), and other relevant features.

Note: Any competition that uses this priority must also include another priority under which any SEA may apply.

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 document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use one or more of these

priorities, we invite applications through a notice in the *Federal Register*.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined 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. Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a "major rule," as defined by 5 U.S.C. 804(2).

Under Executive Order 13771, for each new rule 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 Fiscal Year 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because the proposed regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

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 these final priorities only on a reasoned determination that their benefits justify their 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 these 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.

Summary of Costs and Benefits: The Department believes that these final priorities will not impose significant costs on the SEAs eligible for CGSA funds under section 1203 of the ESEA. We also believe that the benefits of implementing the final priorities justify any associated costs.

The Department believes that the costs imposed on an applicant by the final priorities will be largely limited to the paperwork burden related to meeting the application requirements and that the benefits of preparing an application and receiving an award will justify any costs incurred by the applicant. SEAs selected for awards under section 1203 of the ESEA will be able to pay the costs associated with implementing the proposed projects related to State assessments with grant funds. Thus, the costs of

these final priorities will not be a significant burden for any eligible applicant.

Regulatory Flexibility Act Certification: The Secretary certifies that this final regulatory action will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define "small entities" as for-profit or nonprofit institutions with total annual revenue below \$7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

We believe that the costs imposed on an applicant by the final priorities will be limited to paperwork burden related to preparing an application and that the benefits of implementing these final priorities will outweigh any costs incurred by the applicant.

Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary and related mostly to an increase in the available support for meeting existing obligations to provide statewide student assessment.

Therefore, we do not believe that the final priorities will

significantly impact small entities beyond the potential for receiving additional support from their SEA should the SEA receive a competitive grant from the Department.

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*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at www.govinfo.gov. 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 Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Frank T. Brogan,
*Assistant Secretary for
Elementary and Secondary
Education.*

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