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DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED-2020-OSERS-0014]

Final priorities, requirements, and selection criteria--
Technical Assistance and Dissemination to Improve Services
and Results for Children with Disabilities--The Individuals
with Disabilities Education Act (IDEA) Paperwork Reduction
Planning and Implementation Program.

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

ACTION: Final priorities, requirements, and selection
criteria.

SUMMARY: The Department of Education (Department)
announces priorities, requirements, and selection criteria
for the IDEA Paperwork Reduction Planning and
Implementation Program, Catalog of Federal Domestic
Assistance (CFDA) number 84.326F. The Department may
select as many as 15 States to receive support in planning
for and implementing waivers of statutory requirements of,
or regulatory requirements relating to, IDEA Part B to
reduce excessive paperwork and noninstructional time
burdens that do not assist in improving educational and
functional results for children with disabilities. The

Department may use these priorities, requirements, and selection criteria for competitions in fiscal year (FY) 2020 and later years. We take this action to focus attention on an identified national need to reduce paperwork burden associated with the requirements of IDEA Part B while preserving the rights of children with disabilities and promoting academic achievement.

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

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SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program is to promote academic achievement and to improve results for children with disabilities by providing technical assistance (TA), supporting model demonstration projects,

disseminating useful information, and implementing activities that are supported by scientifically-based research.

Program Authority: 20 U.S.C. 1408 and 1463.

We published a notice of proposed priorities, requirements, and selection criteria (NPP) for this program in the *Federal Register* on May 29, 2020 (85 FR 32317). The NPP contained background information and our reasons for proposing these particular priorities, requirements, and selection criteria.

There are minor substantive differences between the NPP and this notice. As discussed in the Analysis of Comments and Changes section of this document, these changes relate to instances where we believed further clarification regarding stakeholder participation was appropriate.

Public Comment: In response to our invitation to comment in the NPP, six parties submitted comments on the proposed priorities, requirements, and selection criteria.

Generally, we do not address technical and other minor changes. In addition, we do not address comments that raised concerns not directly related to the proposed priorities, requirements, and selection criteria.

Analysis of Comments and Changes: An analysis of the

comments and of any changes in the priorities, requirements, and selection criteria since publication of the NPP follows.

The Department received comments on several specific topics, including whether the Department had established-- (1) an identified national need to reduce the paperwork burden associated with the requirements of IDEA Part B while preserving the rights of children with disabilities and promoting academic achievement; (2) the appropriateness of using funds for the stated purposes; and (3) recommendations to address perceived limitations in proposed requirements regarding stakeholder engagement, data collection, and other matters. Each topic is addressed below.

Whether there is an identified national need to reduce the paperwork burden associated with the requirements of IDEA Part B.

Comment: Several commenters raised questions regarding the needs for the IDEA Paperwork Reduction Planning and Implementation Program, noting that no States had received awards as a result of two similar prior competitions in 2007 and 2019, which they argued signified that special education paperwork reduction was no longer a significant issue in the field. The same commenters also cited recent

survey results indicating that special education teachers and administrators no longer identified special education paperwork burden as a major concern as it was perceived prior to the 2004 amendments to the Individuals with Disabilities Education Act (IDEA). They also noted that, since 2004, advancements in various technologies, such as computer-based individualized education programs (IEPs), have significantly reduced the amount of time that educators spend on completing special education paperwork.

Two commenters expressed general support for seeking ways to reduce special education paperwork but cautioned that certain administrative requirements that may seem unnecessary for educators or administrators may be vital to protecting the interests of children with disabilities.

Another commenter noted that IDEA paperwork and other administrative burdens interfered with the ability of related services providers, including members of their professional association, to provide high-quality services to children with disabilities.

Discussion: We appreciate commenters' concerns about the extent to which they anticipate the proposed priorities would generate value for States. We acknowledge that, across States, the degree of administrative burdens may vary. As such, we do not anticipate every State will apply

for funding under these priorities. However, we believe it would be shortsighted to deprive every State of the opportunity to seek out ways to meaningfully, and responsibly, reduce administrative burdens so that special education teachers and related services providers can devote more time and resources to supporting the needs of children with disabilities.

We also acknowledge that the Department received no applications under other paperwork reduction initiatives in 2007, and only one application in 2019 that was not of sufficient quality to be funded. However, as noted in a 2016 GAO report, many States chose not to apply under the 2007 competition because they saw the application requirements as too burdensome and the funding level as too low to support the necessary additional staff to implement the projects.¹ We had similar concerns regarding the 2019 competition and, as a result, solicited public comment on these requirements, and the most appropriate funding level for these projects, to ensure that we strike an appropriate balance that provides States with the opportunity to address this ongoing issue while ensuring appropriate supports and safeguards.

¹ GAO-16-25 (Washington, DC: January 2016), available at: www.gao.gov/products/GAO-16-25.

Regarding the advent and effectiveness of technology in reducing administrative burdens, we acknowledge that such tools hold great promise for streamlining the paperwork process. However, as noted in the same GAO study, technology tools have helped ease burdens, but they have limitations. Our goal in these efforts is to help special education teachers, related services providers, and administrators complete the same forms more quickly, and to support States in strategically and purposefully considering whether the specific forms or all of the information they ask for are necessary in the first place.

We agree with the commenters that noted that unnecessary paperwork continues to interfere with the ability of educators to provide high-quality services to children with disabilities and that the Department should continue to offer opportunities for States to address the stated purposes of the program.

We agree with the commenters that certain administrative requirements that may seem unnecessary for educators or administrators may be vital to protecting the interests of children with disabilities. Within the notice, we clearly state that any waiver under section 609 of IDEA may not affect the right of a child with a disability to receive a free appropriate public education

(FAPE) or waive procedural safeguards under section 615 of IDEA or applicable civil rights requirements, and we require State applicants to describe how they will continue to guarantee these protections.

Changes: None.

Alignment between the proposed activities and requirements and the intended purposes.

Comment: In response to our directed question about the extent to which the proposed activities and requirements were appropriate for States and whether alternatives existed that would accomplish the same purposes with less burden for States, the majority of commenters provided feedback about the proposed activities and proposed alternatives. Some commenters expressed concern that the proposed activities and requirements would undermine the rights and needs of children with disabilities and their families. One commenter noted that the proposed activities and requirements would help alleviate unmanageable caseloads and excessive paperwork among related services providers represented by the commenter's professional association.

Discussion: In 2004, Congress amended IDEA to provide an opportunity for States to identify ways to reduce paperwork burdens and other administrative duties that are directly

associated with the requirements of IDEA Part B, in order to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities. We agree with the commenter that reducing unnecessary paperwork burden will increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities.

We agree with the commenters that we must ensure that the rights and needs of children with disabilities and their families are not undermined. We clearly state that the Secretary will not waive any statutory or regulatory provisions relating to procedural safeguards under section 615 of IDEA or applicable civil rights requirements and that waivers may not affect the right of a child with a disability to receive FAPE, consistent with section 609. We further propose, in the notice of proposed requirements and definition (NPR) for this program published in the *Federal Register* on June 5, 2020 (85 FR 34554), that the term "applicable civil rights requirements" includes, but is not limited to, the civil rights protections in the United States Constitution and the requirements of Section 504 of the Rehabilitation Act of 1973, as amended; Title VI

of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Title II of the Americans with Disabilities Act of 1990; and Age Discrimination Act of 1975. We also propose within the NPR that parents have the right to understand and consent to changes that affect their children's education and that they may withdraw their consent at any time and for any reason. In short, we believe we have proposed sufficient protections to ensure States' waiver proposals preserve the fundamental rights of children with disabilities and their families under IDEA.

Changes: None.

Comments regarding award sizes.

Comment: None.

Discussion: The Department did not receive any comments responding to our directed question regarding the appropriate size of awards for the proposed priorities. We intend to propose different ranges of award sizes under Priority 1 and Priority 2, and we do not intend to establish a maximum award size for the 2020 competition to ensure appropriate flexibility for States to develop meaningful and effective proposals.

Changes: None.

Priority 1: The Individuals with Disabilities Education Act (IDEA) Paperwork Reduction Planning and Implementation

Program--Planning Grants.

Comment: Most commenters expressed concern that the programmatic requirements did not include a specific requirement for applicants to provide quantitative data on the anticipated benefits of any potential reforms. The commenters recommended requiring that applicants submit data documenting anticipated benefits drawing from the performance of children with disabilities on the annual State assessments required by the Every Student Succeeds Act (ESSA) or the performance of children with disabilities on the National Assessment of Educational Progress (NAEP), or both. The commenters also noted that improvement in performance on State assessments should be linked to the goals for children with disabilities articulated on the State's approved ESSA State plan.

Two commenters recommended that the final priority specify that States must continue to meet the data collection requirements of Part B of IDEA. In addition, one commenter recommended revising the final notice to specify that school districts or States shall not reduce important required data collection activities related to racial inequities in identification, eligibility, behavioral interventions, and school suspensions or expulsions.

Further, most commenters recommended that the group of stakeholders involved in identifying target areas to reduce administrative burden should be expanded to include the State's Parent Training and Information Center (PTI) and Community Parent Resource Centers (CPRC) funded under IDEA Part D, the State's Protection and Advocacy agency, and disability advocacy organizations within each State. Similarly, two commenters recommended that the impact of administrative burdens should be identified through a consultative process with all affected stakeholder groups.

Finally, one commenter recommended that the Department take steps to encourage States to apply for the planning grants under Priority 1 but cautioned that while the grant application process should be comprehensive, it should not be burdensome.

Discussion: In Priority 1, we seek to provide the opportunity for States to identify ways to reduce paperwork burdens and other administrative duties that are directly associated with the requirements of IDEA Part B, in order to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities. Regarding applicants providing quantitative data on the anticipated benefits of any potential reforms,

under paragraph (c)(3) of the application requirements for Priority 2, we require applicants to describe strategies they will use for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the implementation project and evaluation plan, including subsequent data collection. Rather than being prescriptive regarding data sources, we believe it is preferable for applicants to propose a comprehensive evaluation plan under Priority 2, which would include a description of the data to be collected. The applicant's proposed evaluation plans under Priority 2, including data sources, will be evaluated by a panel of subject-matter experts as part of the discretionary grant peer review process. We believe that peer reviewers, who will have expertise in program evaluation, are in the best position to evaluate the extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

We agree with the commenter who recommended that the Department take steps to encourage States to apply for the planning grants under Priority 1, as well as the commenter's caution that while the grant application process should be comprehensive, it should not be

burdensome. The Department seeks to minimize burden in its grant competitions to the extent possible, and we will take appropriate measures to ensure that States are aware of the funding opportunity.

We appreciate commenters' concerns about whether States that receive grants under the proposed priorities will be required to continue to meet the data collection and reporting requirements under sections 616 and 618 of the IDEA. We intend to address this comment in the analysis of comments for the Final Requirements-Individuals With Disabilities Education Act (IDEA) Paperwork Reduction Waivers. To ensure that this issue is considered in planning grants under Priority 1, we are adding language to Priority 1 to ensure that the plan for a waiver proposal be consistent with the Final Requirements.

Last, we agree with the commenters who recommended that the group of stakeholders involved in identifying target areas to reduce administrative burden should be expanded to include the State's PTIs and CPRCs funded under IDEA Part D. However, while we acknowledge that a State may seek to involve the State's Protection and Advocacy agency and disability advocacy organizations within the State, we believe it is more appropriate to leave their participation up to the State applicant. We believe that

it is appropriate to add PTIs and CPRCs to the list of required stakeholders to involve, as PTIs and CPRCs are critical entities supported by IDEA Part D discretionary grant resources.

Changes: Under the Programmatic Requirements for Priority 1, we have amended paragraph (b) (v) to reference the Final Requirements--The IDEA Paperwork Reduction Waiver and (a) (iv) by adding PTI and CPRC, if appropriate, representation to the list of parent stakeholders.

Comments regarding Priority 2: The Individuals with Disabilities Education Act (IDEA) Paperwork Reduction Planning and Implementation Program--Implementation Grants.

Comment: Most commenters stated that the evaluation plan for States receiving a waiver was insufficient to ensure that approved waivers would improve positive outcomes including educational and functional results for children with disabilities. Similar to comments they provided in response to Priority 1, the commenters recommended that applicants be required to provide quantitative data drawn from the performance of children with disabilities to demonstrate whether student achievement improved as a result of receiving a waiver. They also recommended that such data be based on data gathered through annual State assessments required by ESSA, the performance of children

with disabilities on the NAEP, or both, and that improvement in performance on State assessments should be linked to the goals for children with disabilities articulated on the State's approved ESSA State plan, if applicable.

In addition, most commenters recommended limiting eligible applicants for paperwork reduction waivers to States that have received a "Meets Requirements" rating in their latest annual determination regarding their implementation of IDEA.

Discussion: We seek, consistent with section 609 of IDEA, to provide an opportunity for States to identify ways to reduce paperwork burdens and other administrative duties that are directly associated with the requirements of IDEA Part B in order to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities. Regarding applicants providing quantitative data relying on the data sources identified by the commenters, under paragraph (c)(3) of the application requirements for Priority 2, we require applicants to describe strategies they will use for analyzing data and how data collected as part of the evaluation plan will be used to inform and improve service delivery over the course

of the project and to refine the implementation project and evaluation plan, including subsequent data collection. Rather than being prescriptive regarding data sources, we believe it is preferable for applicants to propose a comprehensive evaluation plan. An applicant's proposed evaluation plan under Priority 2, including data sources, will be evaluated by a panel of subject-matter experts with experience in program evaluation as part of the discretionary grant peer review process for Priority 2. We believe that peer reviewers with expertise in program evaluation are in the best position to evaluate the extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

Because section 609 of IDEA does not address eligibility for planning grants and because a State's annual determination under section 616(d)(2)(A) of IDEA that it "meets requirements" could change from the period of application for a planning grant to the period when a waiver is sought, we do not believe that eligibility for planning grants should be limited to those States that are in "meets requirements." Regarding eligibility standards for seeking waivers, these will be established in Final Requirements—The Individuals With Disabilities Education

Act (IDEA) Paperwork Reduction Waivers. We encourage States applying under Priority 1 that believe they may ultimately seek a waiver under section 609 to review and be mindful of those requirements.

Changes: None.

Comment: One commenter recommended revising Priority 2 to align with the requirement in Priority 1 that the implementation plan identify State and local statutory and regulatory requirements or policies, procedures, and practices that exceed IDEA Part B statutory and regulatory requirements and were considered for revision.

Discussion: We agree with the commenter regarding the importance of identifying State and local requirements, policies, procedures, and practices that exceed IDEA statutory and regulatory requirements. However, this matter is already addressed in Priority 1 and in the NPR, which remains open for public comment. Those proposed requirements provide detailed information regarding what States are required to submit as part of their waiver request, including any State and local requirements they plan to waive that exceed IDEA requirements.

Changes: None.

Comment: One commenter recommended amending Priority 2 paragraph (c)(1)(v) to add language that includes the

parent of the child to emphasize the importance of family engagement in the IEP Team process.

Discussion: We agree with the commenter regarding the importance of parent and family engagement. The final notice has been revised to include the recommended language.

Changes: We have revised paragraph (c)(1)(v) of the Programmatic Requirements for Priority 2 to include language that specifies the parent of the child.

Other Comments.

Comment: One commenter recommended that the final priority should specifically exclude any changes to a child's IEP, triennial evaluations and reporting, and written communication to parents on student progress.

Discussion: We understand the commenter's concern. However, this comment is more germane to the NPR, which remains open for public comment. We will consider this recommendation as part of that rulemaking. In addition, we note that section 609 clearly states that waivers may not affect the right of a child with a disability to receive FAPE and that procedural safeguards under section 615 of IDEA and applicable civil rights requirements cannot be waived. The NPP also states that States are required to describe how they will continue to guarantee these

protections. Further, the NPP requires applicants to describe how their application promotes collaboration between IEP Team members, which includes communicating with parents on their child's progress.

Changes: None.

Comment: One commenter recommended that the Department widely disseminate information on the benefits and outcomes of all State waivers that are granted.

Discussion: We agree with the commenter and will make this information available. Section 609 of IDEA requires that the Secretary include in the annual report to Congress information related to the effectiveness of waivers granted, including any specific recommendations for broader implementation of such waivers in reducing the paperwork burden on teachers, principals, administrators, and related service providers and noninstructional time spent by teachers in complying with IDEA Part B requirements; enhancing longer-term educational planning; improving positive outcomes for children with disabilities; promoting collaboration between IEP Team members; and ensuring satisfaction of family members.

Changes: None.

Comment: One commenter recommended that the Department coordinate with the Centers for Medicaid & Medicaid

Services and the Children's Health Insurance Program within the U.S. Department of Health and Human Services (HHS) to reduce administrative burden of duplicative paperwork for school-based providers who utilize IDEA funds and bill Medicaid. In addition, the commenter recommended that the Department and HHS co-develop trainings and provide technical assistance for billing and payment administration of Medicaid services in schools to reduce paperwork burden with utilizing IDEA funds and billing Medicaid.

Discussion: We understand the commenter's concern, but this recommendation is beyond the scope of this notice. Further, the waiver program is intended to be specific to paperwork and administrative burdens resulting from IDEA requirements, not for those resulting from other Federal programs.

Changes: None.

Comments: None.

Discussion: Upon further review, the Department recognized that the specific language included in the "Funding Eligibility Requirements" section of the NPP may unnecessarily limit the Department's flexibility in using the priorities. Specifically, the proposed language did not contemplate a scenario in which the Department would, to reduce burdens for applicants and the Department,

encourage applicants to propose projects that would address both Priority 1 and Priority 2. We have therefore revised the language in that section to: (1) clarify that the requirement to obtain a waiver under section 609 applies to the receipt of funding, not eligibility; (2) add a new subparagraph (b) (2) (ii) (A) to clarify that grantees who have received funding under both priorities would, in the event they proposed a project to address both priorities, immediately be able to begin activities under Priority 2 upon receipt of a waiver from the Secretary; and (3) redesignate a portion of proposed paragraph (b) (2) (ii) as new subparagraph (b) (2) (ii) (B) and clarify that it applies to grantees who only received awards to address Priority 1.

Changes: We have revised paragraph (1) under Funding Eligibility Requirement to clarify the requirement pertains to the receipt of funding, not eligibility. We have also revised paragraph (b) (2) (ii) to more specifically address applicants that received funding under only Priority 1 and those who received funding under Priorities 1 and 2.

Comments regarding selection criteria.

Comment: One commenter recommended multiple edits to the proposed selection criteria, deleting certain terms or phrases and inserting others. For example, the commenter recommended deleting references to "consumers" and

referring instead to "educators, related service providers, teachers, principals and administrators."

Discussion: We agree with the commenter that we should replace the term "consumer" with the recommended text to clarify the relevant stakeholders.

Changes: We have revised paragraph (b)(2)(ii) of the selection criteria to consider the extent to which the proposed project encourages and is responsive to the involvement of parents, educators, related service providers, teachers, principals and administrators.

FINAL PRIORITY:

Priority 1: The Individuals with Disabilities Education Act (IDEA) Paperwork Reduction Planning and Implementation Program--Planning Grants.

The Department seeks to make awards to State educational agencies (SEAs) to assist them in identifying excessive paperwork and noninstructional time burdens on special education teachers, related services providers, and State and local administrators that do not assist in improving educational and functional results for children with disabilities (hereafter in the priority, "administrative burdens") and developing comprehensive plans to reduce them. These activities include conducting a comprehensive review of local, State, and Federal IDEA

Part B requirements that lead to administrative burdens, as well as, at the discretion of the State, preparing IDEA Paperwork Reduction Waivers for submission to the Department.

Planning projects funded by the Department must achieve, at a minimum, the following expected outcomes--

- Identification of the particular sources and effects of administrative burdens on special education and other teachers, related services providers, and State and local administrators under IDEA Part B; and

- A plan to reduce these administrative burdens.

Under this priority, applicants must propose projects that meet the following programmatic requirements:

(a) The project must meaningfully consult a diverse group of stakeholders on an ongoing basis to support the goals and objectives of the project. Such a group must include, at a minimum, representatives of the following groups:

(i) Special education teachers and related services providers.

(ii) Local special education administrators.

(iii) Individuals with disabilities.

(iv) Parents of children with disabilities, as defined in IDEA section 602(23), including representation

of Parent Training and Information Centers (PTIs) and (if applicable) Community Parent Resource Centers (CPRCs).

(v) The State Advisory Panel.

(b) The project must prepare a plan that--

(i) Identifies the State and local statutory and regulatory requirements or policies, procedures, and practices that exceed IDEA Part B statutory and regulatory requirements and were considered for revision;

(ii) Describes the range of options available to the State in reducing administrative burdens, including any limitations on those options (e.g., statutory or regulatory requirements, judicial precedent);

(iii) Establishes clear and achievable timelines for reducing administrative burdens;

(iv) Identifies the anticipated benefits of any potential reforms, including likely beneficiaries, and the magnitude and scope of anticipated benefits, such as reductions in administrative burden hours and potential increases in the time and resources available for instruction and other activities intended to improve educational and functional results for children with disabilities;

(v) Identifies any Federal IDEA Part B statutory or regulatory requirements for which a waiver may be sought

under section 609 of IDEA, consistent with the requirements established in the Final Requirements--The IDEA Paperwork Reduction Waivers; and

(vi) Describes the procedures the State will use to ensure that any waiver that may be sought in accordance with section 609 of IDEA will not--

(A) Waive any statutory requirements of, or regulatory requirements relating to, applicable civil rights requirements or procedural safeguards under section 615 of IDEA; or

(B) Affect the right of a child with a disability to receive FAPE under IDEA Part B.

To be considered for funding under this priority, applicants must also meet the following application requirements. Each applicant must--

(a) Demonstrate, in the narrative portion of the application under "Need for the project," how the proposed project will identify administrative burdens. To meet this requirement, the applicant must describe what it believes to be--

(1) The approximate current magnitude and scope of the administrative burdens to be addressed;

(2) The approximate current number of special education teachers, related services providers, and State

and local administrators affected by those burdens and the number of children with disabilities that they serve; and

(3) The approximate current costs and benefits of those burdens on special education teachers, related services providers, State and local administrators, and children with disabilities (e.g., teacher retention, planning time, transparency for families);

(b) Demonstrate, in the narrative portion of the application under "Significance" how the proposed planning project will--

(1) Develop a plan to reduce administrative burdens and produce meaningful and sustained change at the State or local level; and

(2) Develop proposals for changes to, or waivers of, specific requirements, policies, procedures, or practices that will reduce administrative burdens in order to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities;

(c) Demonstrate, in the narrative section of the application under "Quality of the project design," how the proposed project will--

(1) Meet the consultation requirements in paragraph (a) of the programmatic requirements of this priority,

including, but not limited to, a proposed timeline for the consultation process, including a description of the methods of consultation (e.g., in-person meetings, conference calls, emails);

(2) Identify local, State, or Federal IDEA Part B requirements, policies, procedures, or practices that may generate administrative burdens and may be reviewed by the project, including any proposed criteria for that review (e.g., frequency, complexity, number of staff affected, number of families affected);

(3) Assess the extent to which specific sources of administrative burdens may affect educational and functional results for children with disabilities; and

(4) Produce and make publicly available a plan that meets the requirements in paragraph (b) under the programmatic requirements of this priority and providing an opportunity for stakeholders enumerated in paragraph (a) of the programmatic requirements of this priority to comment on the plan; and

(d) Demonstrate, in the narrative section of the application under "Quality of the management plan," how--

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant

must describe--

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks, including the publication of the final plan on the State's website within three months of the close of the project period;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes; and

(3) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policymakers, among others, in its development and operation.

Priority 2: The Individuals with Disabilities Education Act (IDEA) Paperwork Reduction Planning and Implementation Program--Implementation Grants.

Implementation grants provide funds for States to implement comprehensive plans to reduce administrative burdens submitted by the State and approved by the Secretary under section 609 of IDEA. This includes costs associated with developing products or materials that are

part of comprehensive plans, such as creating information technology systems to automate paperwork, or creating new, streamlined paperwork to replace more time-consuming paperwork.

To be considered for funding under this priority, an applicant must meet the following application requirements.²

Each applicant must--

(a) Demonstrate, in the narrative section of the application under "Quality of the project design," how the proposed project will--

(1) Disseminate information about changes in processes, practices, and procedures necessary to reduce administrative burdens to all special education teachers, related services providers, and State and local administrators affected by the State's waiver under section 609 of IDEA (hereafter "affected staff"), including--

- (i) The modes of communication the project will use;
- (ii) The frequency of communication; and
- (iii) The content of such communications;

² For any State that receives a waiver of Federal IDEA Part B requirements, the Secretary will terminate the waiver if the Secretary determines that the State failed to appropriately implement its waiver, or the Secretary determines the State needs assistance in implementing IDEA requirements and the waiver has contributed to or caused such need for assistance. The Secretary will also terminate the waiver if the Secretary determines the State needs intervention in implementing IDEA requirements, or needs substantial intervention in implementing IDEA requirements.

(2) Support the training of all affected staff regarding changes in processes, practices, and procedures necessary to reduce administrative burdens, including a description of the project's intended means of providing this training;

(b) Demonstrate, in the narrative section of the application under "Quality of the management plan," how--

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe--

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes; and

(3) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policymakers, among others, in its development and operation; and

(c) Include, in the narrative section of the application under "Quality of the project evaluation," an evaluation plan for the implementation project. The evaluation plan must--

(1) Articulate formative and summative evaluation questions for evaluating important processes and outcomes, including whether, and how effectively, the waiver--

(i) Reduces paperwork burden on teachers, principals, administrators, and related services providers;

(ii) Reduces non-instructional time spent by teachers in complying with IDEA Part B;

(iii) Enhances longer-term educational planning;

(iv) Improves positive outcomes, including educational and functional results, for children with disabilities;

(v) Promotes collaboration between individualized education program (IEP) Team members, including the parents of the child; and

(vi) Ensures satisfaction of family members of children with disabilities and teachers, principals, administrators, and related service providers;

(2) Describe how progress in, and fidelity of, implementation, as well as project outcomes, will be measured to answer the evaluation questions; specify the

measures and associated instruments or sources for data appropriate to the evaluation questions; and include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed implementation project and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the evaluation; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing, refining, and implementing the evaluation plan.

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 REQUIREMENTS: The Department establishes the following requirements for these priorities. We may apply one or more of these requirements in any year in which the program is in effect.

Funding Eligibility Requirements:

(a) In order to receive funding for an implementation grant an applicant must already have a waiver under section 609 of IDEA approved by the Secretary.

(b) For an applicant that receives a grant under Priority 1--

(1) That does not submit a waiver proposal to the Secretary under section 609 of IDEA within 12 months of the

start of the project period, the grant will end after 12 months without opportunity for extension;

(2) That submits a waiver proposal to the Secretary under section 609 of IDEA within 12 months of the start of the project period, the project period will, if applicable, be automatically extended for a period, not to exceed six months, during which the Secretary will consider the proposal.

(i) While a State's waiver proposal is under review, grantees may continue to access available remaining funds to conduct one or more of the following planning grant activities:

(A) Responding to possible questions from the Department regarding the State's proposal to obtain a waiver under section 609 of IDEA and the IDEA Paperwork Reduction Waivers.

(B) Continuing to develop, or implement, planned activities to reduce administrative burdens.

(ii) If the Secretary approves the State's IDEA paperwork reduction waiver under section 609 of IDEA and

(A) and The grantee received a grant under Priorities 1 2, the grantee may use remaining funds and additional funding obligated by the Department under this program to carry out activities under Priority 2.

(B) The grantee only received a grant under Priority 1, the grantee may continue to access available remaining funds to ensure continuity of the project while applying for an implementation award under Priority 2. The project period for the grant under Priority 2 must end no later than 45 days after an award is made under Priority 2 without opportunity for extension.

(iii) If the Secretary denies the State an IDEA paperwork reduction waiver under section 609 of IDEA, the project period will end no more than 30 days after the State's receipt of the Secretary's decision, without opportunity for extension.

FINAL SELECTION CRITERIA:

The Department establishes the following selection criteria for evaluating applications under this program. We may apply one or more of these criteria in any year in which this program is in effect.

(a) Significance.

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the likelihood that the proposed project will reduce administrative burdens and increase the time and resources available for instruction

and other activities aimed at improving educational and functional results for children with disabilities.

(b) Quality of the project design.

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the design of the proposed project will successfully reduce administrative burdens and increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities.

(ii) The extent to which the proposed project encourages and is responsive to the involvement of parents, educators, related service providers, teachers, principals and administrators.

(iii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(iv) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the

effectiveness of the approach or strategies employed by the project.

(c) Quality of the management plan.

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers how the applicant will ensure that a diversity of perspectives is brought to bear in the operation of the proposed project, including those of parents, teachers, related services providers, school administrators, and others, as appropriate.

This document 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 these priorities, requirements, and selection criteria, we invite applications through a notice in the *Federal Register*.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action

is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by 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.

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 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because the final 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, requirements and selection criteria 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.

Discussion of Potential Costs and Benefits

The Department believes that the costs associated with this final priority and requirements will be minimal, while the benefits are significant. The Department believes that this regulatory action does not impose significant costs on eligible entities. Participation in this program is voluntary, federal funds to support project activities are provided to successful applicants, and the costs imposed on applicants by this regulatory action will be limited to

paperwork burden related to preparing an application. The benefits of implementing the program will outweigh the costs incurred by applicants, and the costs of carrying out activities associated with the application will be paid for with program funds. For these reasons, we have determined that the costs of implementation will not be excessively burdensome for eligible applicants.

Regulatory Alternatives Considered

The Department believes that these final priorities, requirements and selection criteria are needed to administer the program effectively.

Paperwork Reduction Act of 1995

These final priorities, requirements and selection criteria contain collection requirements that are approved by OMB under OMB control number 1820-0028; the final priorities, requirements and selection criteria do not affect the currently approved data collection.

Regulatory Flexibility Act Certification: The Secretary certifies that this final regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and

have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this final regulatory action will affect are SEAs. We believe that the costs imposed on an applicant by these final priorities, requirements and selection criteria will be limited to paperwork burden related to preparing an application and that the benefits of these final priorities, requirements and selection criteria will outweigh any costs incurred by the applicant.

Participation in the IDEA Paperwork Reduction Planning and Implementation Program is voluntary. For this reason, these final priorities, requirements and selection criteria will impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program funds, an eligible entity will evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving an IDEA Paperwork

Reduction Planning and Implementation Program grant. An eligible entity will most likely apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that these final priorities, requirements and selection criteria will not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the final action. That is, the length of the applications those entities would submit in the absence of the final regulatory action and the time needed to prepare an application will likely be the same.

This final regulatory action will not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program.

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.

Mark Schultz,
*Commissioner, Rehabilitation
Services Administration.
Delegated the authority to perform
the functions and duties of the
Assistant Secretary for the Office
of Special Education and
Rehabilitative Services.*

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