



4000-01-U

DEPARTMENT OF EDUCATION

Statewide Family Engagement Centers Program

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

ACTION: Final requirement.

SUMMARY: The Department of Education (Department) amends program requirement (a) in the Fiscal Year (FY) 2018 notice inviting applications (NIA) for the Statewide Family Engagement Centers (SFEC) program, Catalog of Federal Domestic Assistance (CFDA) number 84.310A. This final requirement provides current grantees the opportunity to request, on an annual basis, a reduction in their required 15 percent matching contribution in a project year due to economic circumstances related to the Novel Coronavirus Disease 2019 (COVID-19) pandemic.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Beth Yeh, U.S. Department of Education, 400 Maryland Avenue, SW, room 3E335, Washington, DC 20202. Telephone: (202)205-5798. Email: beth.yeh@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the SFEC program, authorized under title IV, part E of the Elementary and Secondary Education Act of 1965, as amended (ESEA), is to provide financial support to organizations that provide technical assistance and training to State educational agencies (SEAs) and local educational agencies (LEAs) in the implementation and enhancement of systemic and effective family engagement policies, programs, and activities that lead to improvements in student development and academic achievement.

Program Authority: Sections 4501-4506 of the ESEA (20 U.S.C. 7241-46).

Background: Section 4502(c) of the ESEA requires grantees to obtain non-Federal matching contributions after the first year of the grant. In the NIA published in the *Federal Register* on June 28, 2018 (83 FR 30430), we established the specific match percentage in program requirement (a) under section 437(d)(1) of the General Education Provisions Act (GEPA). Under that requirement, each grantee must secure a non-Federal matching contribution of a minimum of 15 percent of its SFEC grant award in each of years two through five of the grant, which may be in cash or in-kind. The Department understands that, due to the national emergency caused by COVID-19, it is now very difficult for grantees to meet their match requirements. Many nonprofit organizations have lost funding or have changed their priorities

to focus on the COVID-19 emergency. This could cause difficulties in meeting match requirements particularly in year two of the grant, possibly in subsequent years.

The Department is therefore providing flexibility for grantees to request, on an annual basis, a reduction of the matching requirement in a project year due to economic circumstances related to the COVID-19 pandemic. Recognizing that, in securing matching contributions, grantees might continue to experience the economic effects of the pandemic after it has subsided, the Department will consider requests for up to one fiscal year following the fiscal year in which the national emergency declaration concerning the pandemic, issued on March 13, 2020, under the National Emergencies Act, is lifted.

FINAL REQUIREMENT:

(a) Matching funds for grant renewal.

Each grantee must contribute non-Federal matching funds or in-kind donations equal to at least 15 percent of its SFEC grant award in project years two through five.

At its discretion, in response to a request from the grantee, the Department may reduce the percentage of the required non-Federal matching contribution for a grantee for the current project year (e.g., for project year two in FY 2020), if requested by the grantee due to circumstances related to the

COVID-19 pandemic. Grantees interested in requesting a reduction of the 15 percent match must submit a written request to the Department.

The request must be addressed to Beth Yeh at beth.yeh@ed.gov, identify the new match percentage proposed, and explain why the reduction is needed, including a discussion of how COVID-19 has affected the grantee's ability to meet the 15 percent match. In addition, the grantee must demonstrate that the change in match will not affect achievement of the scope and objectives in the approved grant application.

Note: All information in the NIA for this grant program remains the same, except for the flexibility to request a reduction in the 15 percent matching program requirement.

Waiver of Notice and Comment Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed requirements. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency for good cause finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b) (B). Here, there is good cause to waive notice and comment rulemaking, because going through the full rulemaking

process would delay the Department's ability to provide relief to grantees requesting a reduction of their matching requirements in year two and subsequent years of the grant.

The good cause exception is appropriate "in emergency situations or where delay could result in serious harm." See *Jifry v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir. 2004) (internal citations omitted). "The public interest prong of the good cause exception to the APA notice and comment requirement is met only in the rare circumstance when ordinary procedures--generally presumed to serve the public interest--would in fact harm that interest." *Mack Trucks Inc. v. E.P.A.*, 682 F.3d 87, 95 (D.C. Cir. 2012).

The COVID-19 pandemic has escalated at a rapid pace and scale, resulting in extraordinary circumstances including widespread school closures and financial hardship in the nonprofit sector. Some grantees are having trouble meeting their matching requirements in year two due to financial difficulties of nonprofit organizations and reprogramming of nonprofit funds to focus on COVID-19. They may also have difficulties meeting their matching requirement in subsequent years. Due to the emergency nature of this situation, there is not time for notice and comment rulemaking. By allowing grantees to request a lower matching requirement, they will be able to continue to address the objectives in their grants,

which are especially important during this difficult time for families, including financial hardship and virtual learning.

The APA also generally requires that regulations be published at least 30 days before their effective date but excepts from that requirement rules that grant or recognize an exemption or relieve a restriction (5 U.S.C. 553(d)(1)).

Because this requirement relieves restrictions on the required matching funds, this exception to the delayed effective date under the APA applies.

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 entitlements, 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)(1) 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 2020, any new incremental costs associated with a significant regulatory action 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. 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).

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 on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things, and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or

marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this final requirement only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this final 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 the 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 Costs, Benefits, and Need for Regulatory Action

The Department recognizes that SFEC grantees provide resources to support and improve parent and family engagement in education, which now more than ever is of critical importance. We also understand that matching requirements serve the significant purpose of leveraging non-Federal resources to increase the impact of Federal grantmaking. However, given the extraordinary economic circumstances surrounding the COVID-19 pandemic, the Department believes we must provide flexibility to SFEC grantees to request and implement a reduced matching contribution where needed. Absent this regulatory action, the Department would be obligated to take appropriate enforcement action against a grantee that fails to comply with the 15 percent matching requirement, which could include reducing the grantee's continuation award or terminating its grant. Such actions if taken would inflict greater harm on program beneficiaries than would adjustments to the provision of project services occasioned by a reduced matching contribution.

Based on currently available information, the Department estimates that two of the 12 SFEC grantees will request a match reduction for the current fiscal year (project year two), to one

percent.¹ Using an average project year two continuation award of approximately \$900,000, a reduction from 15 percent to one percent would mean that matching contributions would be reduced from \$135,000 to \$9,000, or by \$126,000, per grantee, for a total reduction of \$252,000 in FY 2020 if each request is approved. While this estimated reduction in matching contributions might be considered a cost attributable to this regulatory action, it is in any case minor relative to program funding (2.5 percent of \$10 million in FY 2020). Moreover, we note that, consistent with the final requirement, no reduction to a matching contribution may result in a change to the scope and objectives of a grantee's project. Lastly, we believe any costs associated with this action are outweighed by the benefits to stakeholders discussed in the previous paragraph.

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice and comment under 5 U.S.C. 553.

Paperwork Reduction Act of 1995

This final regulatory action does not create any new information collection requirements.

¹ Given uncertainty in the persistence of widespread economic impacts of the COVID-19 pandemic in FY 2021 and (if applicable) future years, the Department does not believe it can estimate with confidence the number of SFEC grantees that will request a match reduction in those years nor the reduction amounts.

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Betsy DeVos,
Secretary of Education.