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DEPARTMENT OF EDUCATION

[Docket ID ED-2020-OPEPD-0096]

Administrative Priority and Definitions for Discretionary Grant Programs

AGENCY: Office of Planning, Evaluation and Policy Development, Department of Education.

ACTION: Proposed priority and definitions.

SUMMARY: The Secretary of Education proposes to establish a priority and definitions for discretionary grant programs that would promote the use of the Department of Education's (the Department's) discretionary grants funds to support remote learning (as defined in this notice).

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to

www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Help."

- Postal Mail, Commercial Delivery, or Hand Delivery:

If you mail or deliver your comments about the proposed priority and definitions, address them to Kelly Terpak, U.S. Department of Education, 400 Maryland Avenue, SW, room 4W312, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Kelly Terpak, U.S. Department of Education, 400 Maryland Avenue, SW, room 4W312, Washington, DC 20202. Telephone: (202) 205-5231. Email: kelly.terpak@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:

Invitation to Comment: We invite you to submit comments regarding the proposed priority and definitions. To ensure that your comments have maximum effect in developing the notice of final priority and definitions, we urge you to identify clearly the specific section of the proposed priority or definition that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from the proposed priority and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of our programs.

During and after the comment period, you may inspect all public comments about the proposed priority and definitions by accessing Regulations.gov. Due to the novel coronavirus 2019 (COVID-19) pandemic, the Department buildings are currently not open to the public. However, upon reopening you may also inspect the comments in person in room 4W312, 400 Maryland Avenue, SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing

the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority and definitions. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

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

PROPOSED PRIORITY: The Secretary proposes the following priority.

Building Capacity for Remote Learning.

Background:

The novel coronavirus 2019 (COVID-19) pandemic resulted in elementary, secondary, and post-secondary school closures across the country in school year 2019-2020, impacting almost 60 million elementary and secondary school students, and more than 20 million postsecondary students. These closures uncovered divides among schools with respect to their ability to leverage remote learning. Some schools were prepared to help their students continue learning by integrating a host of strategies such as streamlining content delivery, providing formal and informal opportunities for students to receive support and

feedback, providing accessible materials, and providing every student access to a device and internet connections while protecting student privacy. But far too many schools were not prepared to offer these supports, and their students did not receive relevant and engaging content, ongoing feedback, or could not access online materials, disproportionately harming the education of lower income children.¹ Concerns about significant potential learning losses persist moving into the 2020-2021 school year. For example, a recent analysis found that if in-person classes do not resume until January 2021, Hispanic, Black, and low income students will lose 9.2, 10.3, and 12.4 months of learning, respectively.² These disparate student experiences highlight the importance of in person instruction, especially for certain populations of students, rethinking education in general, and the critical role remote learning plays as a part of regular instructional programming and as a crucial link that can allow high-quality teaching and learning to continue when regular instruction is disrupted. As States, school

1 Gross, B. and Alice O. (2020). Too Many Schools Leave Learning to Chance During the Pandemic. Center on Reinventing Public Education.

2 Dorn, E., Hancock, B., Sarakatannis, J., and Viruleg, E. (2020). COVID-19 and student learning in the United States: The hurt could last a lifetime. McKinsey & Company.

districts, and schools work to ensure improved student outcomes and continued learning, students throughout the country must have access to high-quality remote learning to both ensure agile and responsive education systems and access to remote learning when it is the right educational option for a child. Educators also need training and support to help them to master remote instruction.

Therefore, the Department is proposing a priority to build State and local capacity to support remote learning and instruction. The Secretary may choose to include the entire priority within a grant program or merely one or more of the priority's component parts. In addition, proposed component part (f) of the priority would only be used in conjunction with another component part of the priority.

Proposed Priority: Under this priority, an applicant must propose a project that is designed to address one or more of the following priority areas:

(a) Adopting and supporting models that leverage technology (e.g., universal design for learning, competency-based education (as defined in this notice), or hybrid/blended learning) and provide high-quality digital learning content, applications, and tools.

(b) Providing personalized and job-embedded

professional learning to build the capacity of educators to effectively use technology to create remote learning experiences that advance student engagement and learning (e.g., synchronous and asynchronous professional learning, professional learning networks or communities, and coaching).

(c) Providing access to any of the following, in particular to serve learners without access to such technologies: reliable, high-speed internet, learning devices, and software applications that meet all students' and educators' remote learning needs while inside the school building and in remote learning environments. These technology costs cannot exceed 10 percent of the overall costs for all activities of the project.

(d) Developing performance-based assessments that promote competency-based education that can be delivered remotely or in-person to students and obtain valid and reliable results that accurately document students' skills (e.g., inquiry/game-based assessment or data visualization tools for monitoring ongoing learning).

(e) Supporting the development of digital interoperable credentials (as defined in this notice) that make transparent the competencies achieved through remote learning experiences and allow students to access, control,

and share their achievements across a variety of education and training processes (formal or informal, classroom-based, remote, or workplace-based). Information on these credentials must be publicly accessible using linked open data formats to ensure their transferability and the continuity of learning for students.

(f) Providing high-quality remote learning or competency-based education specifically for one or more of the following student subgroups: students from low-income families, students with disabilities, English learners, Native American students, homeless students, and students attending schools in rural areas.

The remote learning environment must be accessible to individuals with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act, as applicable. The remote learning environment must also provide appropriate remote learning language assistance services to English learners.

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)).

PROPOSED DEFINITIONS:

Background:

The Department proposes definitions for "remote learning," "competency-based education," and "interoperable credentials" to ensure common understanding of the terms used in the proposed priority.

Proposed Definitions:

The Secretary proposes the following definitions for use in any Department discretionary grant competition in which the proposed priority is used:

Competency-based education (CBE) (also called proficiency-based or mastery-based learning) means learning based on knowledge and skills that are transparent and measurable. Progression is based on demonstrated mastery of what students are expected to know (knowledge) and be able to do (skills), rather than seat time or age.

Interoperable credentials are those credentials built using open standards so that they are shareable, verifiable, portable, and secure. The credentials describe the specific achievements, such as credential type, skill level, or other information, using common, standardized frameworks so that the data are machine readable, exchangeable, and actionable across technology systems and, when appropriate, on the web. When credentials are interoperable, a full range of an individual's skills and achievements, earned through formal and informal learning experiences or workplace-based training, can be collected together and verified, regardless of available technology systems, reducing challenges as individuals transition between education and employment.

Remote learning means programming where at least part of the learning occurs away from the physical building in a manner that addresses a learner's educational needs.

Remote learning may include online, hybrid/blended learning, or non-technology-based learning (e.g., lab kits, project supplies, paper packets).

Final Priority and Definitions:

We will announce the final priority and definitions in a document in the *Federal Register*. We will determine the final priority and definitions after considering responses to the proposed priority and definitions and other information available to the Department. 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 the priority and definitions, 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 proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or

otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new significant regulation must be fully offset by the elimination of existing costs through deregulatory actions. However, Executive Order 13771 does not apply to "transfer rules" that cause only income transfers between taxpayers and program beneficiaries, such as those regarding discretionary grant programs. Because the proposed priority and definitions would be used in connection with one or more discretionary grant programs, Executive Order 13771 does not apply.

We have also reviewed this proposed 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 issue the proposed priority and definitions only on a reasoned determination that the benefits would justify the costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that the proposed priority and definitions are 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.

Potential Costs and Benefits

The Department believes that this proposed regulatory action would not impose significant costs on eligible entities, whose participation in our programs is voluntary, and costs can generally be covered with grant funds. As a result, the proposed priority and definitions would not impose any particular burden except when an entity voluntarily elects to apply for a grant. The benefits of the proposed priority and definitions would outweigh any associated costs because they would help ensure that the Department's discretionary grant programs select high-quality applicants to implement activities that are

designed to address critical remote learning needs.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed priorities and definitions easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed

regulations easier to understand?

To send any comments that concern how the Department could make the proposed priority and definitions easier to understand, see the instructions in the ADDRESSES section.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration 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.

Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary and related mostly to an increase in the number of applications prepared and submitted annually for competitive grant competitions. Therefore, we do not believe that the proposed priority and definitions would significantly impact small entities beyond the potential for increasing the likelihood of their

applying for, and receiving, competitive grants from the Department.

Paperwork Reduction Act

The proposed priority and definitions do not contain any information collection requirements.

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 the 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.

Betsy DeVos,
Secretary.

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