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DEPARTMENT OF EDUCATION

34 CFR Parts 75, 76, 77, 79, and 299

RIN 1875-AA14

[Docket ID ED-2023-OPEPD-0110]

Education Department General Administrative Regulations and Related Regulatory Provisions

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education proposes to amend the Education Department General Administrative Regulations (EDGAR) and associated regulatory provisions to update the regulations and better align them with other U.S. Department of Education (Department) regulations and procedures. A brief summary of the proposed rule is available on Regulations.gov in the docket for the rulemaking.

DATES: We must receive your comments on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Comments must be submitted electronically via the Federal eRulemaking Portal at www.regulations.gov. However, if you require an accommodation or cannot otherwise submit your comments via http://www.regulations.gov, please contact the program

contact person listed under FOR FURTHER INFORMATION CONTACT. The Department will not accept comments submitted after the comment period closes. 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.

Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "FAQ."

Note: The Department's policy is generally to make comments received from members of the public available for public viewing in their entirety at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available. Commenters should not include in their comments any information that identifies other individuals or that permits readers to identify other individuals. The Department will not make comments that contain personally identifiable information about someone other than the commenter publicly available on www.regulations.gov for privacy reasons. 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 4C212, Washington, DC 20202. Telephone: (202) 245-6776. Email: EDGAR@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of this Regulatory Action: The last major update to EDGAR was in 2013. Given that EDGAR serves as the foundational set of regulations for the Department, we have reviewed EDGAR, evaluated it for provisions that, over time, have become outdated, unnecessary, or inconsistent with other Department regulations, and identified ways in which EDGAR could be updated, streamlined, and otherwise improved. Specifically, we propose to amend parts 75, 76, 77, 79, and 299 of title 34 of the Code of Federal Regulations. These changes are detailed in the Summary of Major Provisions of this Regulatory Action and the Significant Proposed Regulations section of this document.

Summary of Major Provisions of this Regulatory Action: As discussed in greater detail in the Significant Proposed Regulations section of this document, the proposed regulations would:

- Make technical updates to refer to up-to-date statutory authorities, remove outdated terminology, use

consistent references, and eliminate obsolete cross-references.

- Align EDGAR with updates in the most recent reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA). For example, updates to EDGAR would revise the tiers of evidence to incorporate and parallel those in the ESEA and would specify the procedures used to give special consideration to an application supported by evidence in § 75.226.

- Clarify, streamline, and expand the selection criteria the Secretary may use to make discretionary awards under § 75.210.

- Clarify procedural approaches, such as those related to making continuation awards under § 75.253, and exceptions to the typical process for new awards under § 75.219, such as if a grant application had been mishandled.

- Improve public access to research and evaluation related to Department-funded projects by requiring, under §§ 75.590 and 75.623, that each grantee that prepares an evaluation or a peer-reviewed scholarly publication as part of the grant award or on the basis of grant-funded research make the final evaluation report or peer-reviewed scholarly publication available through the Education Resource Information Center (ERIC), which is current practice of the Department's Institute of Education Sciences (IES).

- Expand and clarify flexibility for the Department in administering its grants programs, including by--
    - Providing the Department the option to require applicants under grant programs to include a logic model supporting their proposed project under § 75.112;
    - Replacing the definition in § 75.225 of "novice applicant" with a broader definition of "new potential grantee," to allow additional flexibility to give special consideration to such grantees and increase equity in the applicant pool and recipients of Department funds;
    - Allowing the Department to require a grantee to conduct an independent evaluation of their project and make the results of such an evaluation public under § 75.590;
    - Defining "independent evaluation" under § 77.1(c);
    - Clarifying under § 76.50 that, where not prohibited by law, regulation, or the terms and conditions of the grant award, States have subgranting authority;
    - Allowing States flexibility under § 76.140 to adopt a process for amending a State plan that is distinct from the process used for initial approval; and

    - Clarifying the hearing and appeal process under § 76.401 for subgrants of State-administered formula grant programs, including by clarifying that aggrieved applicants must allege that a specific Federal or State statute or regulation has been violated.
- Consolidating and clarifying regulations about participation of private school children, teachers, and other educational personnel in part 299.

Costs and Benefits: The Department believes that the benefits of this regulatory action would outweigh any associated costs to States, local educational agencies (LEAs), and other Department applicants and grantees. The proposed regulations would, in part, update terminology to align with applicable statutes and regulations. Many of the adjustments would support the Department, its grantees, or both, in selecting high-quality grantees and to support those grantees in ensuring the effectiveness and continuous improvement of their projects. These changes include, for example, adding potential selection criteria that apply only to programs that elect to use them, as announced in a notice inviting applications (NIA), and clarifying the language in selection criteria for applicants and peer reviewers. Please refer to the Regulatory Impact Analysis section of this document for a more detailed discussion of costs and benefits. Consistent with Executive Order 12866,

as amended most recently by Executive Order 14094, the Secretary has determined that this action is significant and, thus, is subject to review by the Office of Management and Budget.

Incorporation by Reference: Proposed § 75.616 incorporates by reference the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) Standard 90.1. ASHRAE is included in the construction section focused on energy conservation and has been included in EDGAR for over 30 years. The ASHRAE standards are the industry leading standards and are relevant to the construction regulations in this section of EDGAR because grantees need to know the current standard with which they must comply. Standard 90.1 has been a benchmark for commercial building energy codes in the United States, and a key basis for codes and standards around the world, for almost half a century. This standard provides the minimum requirements for energy-efficient design of most sites and buildings, except low-rise residential buildings. It offers, in detail, the minimum energy efficiency requirements for design and construction of new sites and buildings and their systems, new portions of buildings and their systems, and new systems and equipment in existing buildings, as well as criteria for determining compliance with these requirements. It is an indispensable reference for engineers and other professionals involved in design of

buildings, sites, and building systems. This standard is available to the public at www.ashrae.org/technical-resources/bookstore/standard-90-1.

Proposed § 77.1 incorporates by reference the What Works Clearinghouse (WWC) Procedures and Standards Handbook, Version 5.0. The purpose of the What Works Clearinghouse is to review and summarize the quality of existing research in educational programs, products, practices, and policies. We incorporate the Handbook, which provides a detailed description of the standards and procedures of the WWC, by reference. The Handbook is available to interested parties at https://ies.ed.gov/ncee/wwc/Handbooks. The Version 5.0 Handbook includes a new Chapter I, Overview of the What Works Clearinghouse and Its Procedures and Standards and aligns the flow of content with the study review process. Additionally, it no longer allows for topic-specific customization of the standards, aligns its effectiveness ratings with the evidence definitions in § 77.1(c), and describes other protocols for specific study designs. More details are available at https://ies.ed.gov/ncee/WWC/Docs/referenceresources/Final_HandbookSummary-v5-0-508.pdf.

The WWC is an initiative of the Department's National Center for Education Evaluation and Regional Assistance, within IES, which was established under the Education

Sciences Reform Act of 2002 (Title I of Pub. L. 107-279). The WWC is an important part of the Department's strategy to use rigorous and relevant research, evaluation, and statistics to inform decisions in the field of education. The WWC provides critical assessments of scientific evidence on the effectiveness of education programs, policies, products, and practices (referred to as "interventions") and a range of publications and tools summarizing this evidence. The WWC meets the need for credible, succinct information by reviewing research studies, assessing the quality of the research, summarizing the evidence of the effectiveness of interventions on student outcomes and other outcomes related to education, and disseminating its findings broadly.

This handbook is available to the public at https://ies.ed.gov/ncee/wwc/handbooks#procedures.

Invitation to Comment: We invite you to submit comments regarding these proposed regulations.

The following standards appear in the amendatory text of the document and have already been approved for the locations in which they appear: What Works Clearinghouse Standards Handbook, Versions 4.0 and 4.1; What Works Clearinghouse Procedures Handbook, Versions 4.0 and 4.1; and the What Works Clearinghouse Procedures and Standards Handbook, Versions 2.1 and 3.0.

To ensure that your comments have maximum effect in

developing the final regulations, we urge you to clearly identify the specific section or sections of the proposed regulations that each of your comments addresses, and to provide relevant information and data whenever possible, even if there is no specific solicitation of data and other supporting materials in the request for comment. We also urge you to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall goal of reducing the regulatory burden that might result from the proposed regulations. Please let us know of any further ways that we may reduce potential costs or increase potential benefits, while preserving the effective and efficient administration of the Department's programs and activities. We also welcome comments on any alternative approaches to the subjects addressed by the proposed regulations.

During and after the comment period, you may inspect all public comments about the proposed regulations by accessing *Regulations.gov*. You may also inspect the comments in person. Please contact the person listed under FOR FURTHER INFORMATION CONTACT to make arrangements to inspect the comments in person.

Directed Questions: One of the Department's goals in these proposed regulations, in addition to helping strengthen and

streamline implementation and monitoring of Department grants, is to better support continuous improvement--encouraging grantees to use research, data, community and other engagement, and other feedback to periodically review and improve their project plans to best advance their programmatic objectives. We particularly welcome comments on how these proposed regulations could best advance this goal of continuous improvement.

We also specifically seek input on the proposed changes to § 75.210, which outlines the Department's general selection criteria. We carefully examined usage of these selection criteria over the years to inform the proposed changes. We also looked at how the selection criteria align with the components of a logic model, to allow peer reviewers to assess the logic model more directly, including how the pieces of the proposed project align with the intended outcomes. We seek public input on whether the proposed changes to § 75.210 would add clarity for applicants and peer reviewers and help ensure that the Department funds the highest-quality grant applications that are most likely to lead to successful projects.

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 regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

In this notice of proposed rulemaking (NPRM), we propose various updates to EDGAR and related regulatory provisions. The proposed changes range from technical updates (such as removing references to the Trust Territory of the Pacific Islands, which no longer exists) to streamlining regulations (such as consolidating those concerning State plans under State-administered formula grant programs) to adding new options for grant competition requirements (such as providing the Department the option to require a logic model in any competitive grant program or to require a grantee to conduct an independent evaluation). Except for minor or technical revisions, such as updates to citations, cross-references, references to outdated programs, links, or general terminology, the proposed changes and reasons for them are explained in detail in the Significant Proposed Regulations section of this NPRM. The applicable authority for this regulatory package is section 410 of the General Education Provisions Act (GEPA) and section 414 of the Department of Education Organization Act (20 U.S.C. 1221e-3 and 3474, respectively), unless otherwise noted.

Significant Proposed Regulations

34 CFR PART 75--DIRECT GRANT PROGRAMS

SECTIONS 75.1 AND 75.200 PROGRAMS TO WHICH PART 75 APPLIES AND HOW APPLICATIONS FOR NEW GRANTS AND COOPERATIVE AGREEMENTS ARE SELECTED FOR FUNDING; STANDARDS FOR USE OF COOPERATIVE AGREEMENTS

Current Regulation: Section 75.1 establishes that part 75 applies to direct grant programs of the Department. Section 75.200 further defines "direct grant programs" as either discretionary grant or formula grant programs.

Proposed Regulation: Proposed § 75.1 would combine § 75.1, and the note that follows that section, with § 75.200(a), (b)(1), and (c). Proposed § 75.1(c)(3) would specify what regulations in part 75 apply to direct grant programs, which the proposed regulation clarifies are either a discretionary grant program or a formula grant program other than a State-administered formula grant program covered by part 76. We also propose in § 75.1 to change "authorizing statute" to "applicable statutes and regulations." We also propose deleting current § 75.200(b)(3)(ii).

Reasons: We propose these changes to consolidate all information relevant to which programs are covered by part 75 into one regulatory provision. The changes are not substantive. We propose to change "authorizing statute" because we think the term is too narrow, as it does not

include other applicable statutes, such as annual appropriations laws, that may override, modify, or supplement the "authorizing statute" without amending them. Although not reiterated throughout this preamble, we propose to make this conforming change in each applicable instance throughout the proposed regulations. Likewise, we propose to make this change in relevant instances where the term "program statute" is used. We propose deleting current § 75.200(b)(3)(ii) to remove redundancy with § 75.200(b)(3)(i).

SECTION 75.4 DEPARTMENT CONTRACTS

Current Regulation: Section 75.4 describes what regulations apply to Federal contracts and in what circumstances part 75 applies to a contract of the Department.

Proposed Regulation: We propose to remove and reserve § 75.4.

Reasons: Section 75.4 discusses contractual arrangements of the Department and when part 75 may apply to a Department contract. However, part 75 concerns the administration of the Department's direct grant programs, not contracts entered into by the Department. Additionally, § 75.4 describes requirements found in Chapters 1 and 34 of title 48 of the Code of Federal Regulations. These requirements apply to Department procurements, not Department grant programs or procurements

undertaken by Department grantees. Therefore, to promote clarity and accessibility of the Department's regulations, we propose to remove § 75.4 as unnecessary and redundant given the focus on direct grants in part 75. This provision concerns the regulations that govern Federal agency contracting, not grantee contracting. We do not propose to remove any provision relevant to a grantee's contracting, and removing § 75.4 would not modify any provision related to contractual arrangements of the Department.

SECTION 75.60 INDIVIDUALS INELIGIBLE TO RECEIVE ASSISTANCE

Current Regulation: Section 75.60 prohibits certain individuals from receiving a fellowship, scholarship, or loan from the Department if they are in default, as that term is used in 34 CFR part 668. The current section lists specific Department programs that are fellowship, scholarship, or loan programs.

Proposed Regulation: The proposed revisions to § 75.60 would delete the outdated list of programs and instead define Department programs that provide a fellowship, scholarship, or loan as being a program that offers a fellowship, scholarship, or loan "administered by the Department."

Reasons: Current § 75.60 lists numerous programs that no longer exist. Rather than update the list with specific references to programs that may become outdated later, we

believe that reliance on a description of those programs ensures that, over the long term, the text does not become outdated. The change is not intended to be substantive.

SECTION 75.101 INFORMATION IN THE APPLICATION NOTICE THAT HELPS AN APPLICANT APPLY

Current Regulation: Section 75.101 describes what information the Secretary may include in an application notice, including information about the program and the application forms. Current § 75.101(a)(1) includes a description of what information an application package contains.

Proposed Regulation: We propose to revise § 75.101(a)(1) to refer more generally to the application package.

Reasons: The information described in current § 75.101(a)(1)(i) and (ii) is now included in the application notice itself and not in the application package. Therefore, we believe that removing § 75.101(a)(1)(i) and (ii) would improve the clarity of the regulations.

SECTIONS 75.102 AND 75.104 DEADLINE DATE FOR APPLICATIONS AND APPLICANTS MUST MEET PROCEDURAL RULES

Current Regulation: Section 75.102(b) provides that, if an applicant wants a new grant, the applicant must submit an application in accordance with the requirements in the application notice.

Proposed Regulation: We propose to move paragraph (b) of §

75.102 to § 75.104, where it would be added as a new paragraph (c). We also propose to revise the heading of § 75.104 to better reflect the topics covered by the regulation.

Reasons: Moving this paragraph, which concerns the requirements in application notices, from § 75.102 to § 75.104, would improve the clarity of the regulations because § 75.102 pertains to deadlines for submitting applications and § 75.104 concerns applicants' compliance with additional application provisions.

SECTION 75.105 ANNUAL PRIORITIES

Current Regulation: Section 75.105 describes the process by which the Secretary may use annual absolute and competitive preference priorities. Current § 75.105(b)(2) describes the exceptions to publishing the annual priorities for public comment. Paragraph (b)(2)(i) describes the Department's use of invitational priorities and paragraph (b)(2)(iii) refers to the exceptions to the requirement for notice-and-comment rulemaking in section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553).

Proposed Regulation: The proposed revisions would update the term "annual priorities" in the section title to "annual absolute, competitive preference, and invitational priorities," and add existing exceptions to the public comment requirement in a new paragraph (b)(2)(vi). These

include the exception authorized by section 437(d)(1) of GEPA (20 U.S.C. 1232(d)(1)) for the first grant competition under a new or substantially revised program authority, as well as rulemaking exceptions under specific statutes.

We also propose updates to paragraphs (b)(2)(i), (iii), and (b)(2)(iv) to properly describe the exceptions to the Department's normal practice of publishing proposed priorities for notice and comment.

Reasons: The Department has statutory authority to use and has used the GEPA exception for many years, and adding this exception would clarify that the regulation supplements the statutory exemption in GEPA section 437(d)(1). The exception to notice and comment rulemaking for the first grant competition under a new or substantially revised program authority is established by GEPA section 437(d)(1); therefore, this change is not substantive. In addition, we propose to add references to section 681(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1481(d)), and section 191 of the Education Sciences Reform Act (20 U.S.C. 9581), both of which provide longstanding exemptions to the generally applicable requirement for the Department to conduct notice and comment rulemaking with respect to its discretionary grants.

SECTION 75.109 CHANGES TO APPLICATION; NUMBER OF COPIES

Current Regulation: Section 75.109(a) requires each applicant that submits a paper copy of an application to

submit an original and two copies to the Department.

Proposed Regulation: We propose to remove paragraph (a) of this section and revise the section heading accordingly.

Reasons: We propose to remove this paragraph because it is no longer needed. The majority of applications are now submitted electronically.

SECTION 75.110 INFORMATION REGARDING PERFORMANCE MEASUREMENT

Current Regulation: Section 75.110 sets out information regarding the Secretary's authority to establish performance measurement requirements in an application notice.

Proposed Regulation: The proposed revisions would clearly differentiate between program performance measures and project-specific performance measures as well as establish requirements, to which grantees must agree, related to the quality of data and use of performance measures for continuous improvement.

Reasons: As a general matter, the Department's programs have program-level performance measures against which all grantees must report. Further, some programs also encourage or require grantees to establish project-specific performance measures. Both sets of measures are important sources of information about program and grantee performance. The current regulations do not clearly differentiate between these two types of performance

measures, and these proposed revisions would make that differentiation. Additionally, it is important to ensure that applicants propose to collect and report quality data and that grantees use their performance measures to inform continuous improvement of their projects. Therefore, we propose to require assurances for quality data as part of the applications, and that the data will be used to inform the continuous improvement plan for the project.

SECTION 75.112 INCLUDE A PROPOSED PROJECT PERIOD AND A TIMELINE

Current Regulation: Section 75.112 requires that applications include project periods and timelines of how the applicants plan to meet each project objective.

Proposed Regulation: We propose to revise § 75.112 to allow the Secretary to include a requirement for a logic model in a particular competition, in addition to requiring a project period and a timeline.

Reasons: This change would support the development of high-quality applications, given that logic models describe the need for a project, its inputs and outputs, and the intended outcomes. Logic models are helpful tools for applicants to use when establishing timelines and resource needs. They also are helpful to the Department and reviewers in understanding the applicant's rationale for how its proposed project will achieve the project outcomes. Accordingly, adding the flexibility for programs to

establish a requirement for logic models would support project planning as well as project implementation if the project is selected for funding.

SECTION 75.127 ELIGIBLE PARTIES MAY APPLY AS A GROUP

Current Regulation: Section 75.127(b) lists some of the terms used to identify a group of eligible parties that may apply as a group for a grant. The list includes: (1) a combination of institutions of higher education; (2) a consortium; (3) joint applicants; and (4) cooperative arrangements.

Proposed Regulation: We propose revising § 75.127(b) to include the term "partnerships." We also propose adding a paragraph (c) stating that, in the case of a group application submitted in accordance with §§ 75.127-75.129, all parties in the group must be eligible applicants under the competition. This change would not alter the ability of applicants to form partnerships with entities that are not eligible to be recipients under a program.

Reasons: We propose this change solely for clarity. In the case of an application submitted by a group of eligible applicants, a partnership is similar to a consortium, but in some programs the former term is used instead of the latter. Also, in the context of these regulations, the term "eligible applicant" is synonymous with "eligible party," although § 75.127(a) and (b) refer to both as "eligible parties."

SECTIONS 75.190-192 DEVELOPMENT OF CURRICULA OR INSTRUCTIONAL MATERIALS

Current Regulation: Sections 75.190, 75.191, and 75.192 describe assurances and define reasonable consultation costs when grantees develop curricula or instructional materials.

Proposed Regulation: We propose to remove §§ 75.190-75.192.

Reasons: These regulations duplicate other assurances and regulations, including the cost principles in 2 CFR part 200, subpart E, that allow consultation costs that are reasonable and necessary. In addition, we think the open licensing requirements in 2 CFR 3474.20 for Department competitive grants awarded in competitions announced after February 21, 2017, promote dissemination of materials developed with Department grant funds. We propose removing them to avoid unnecessary duplication, which we believe may be confusing to grantees if we duplicate certain assurances and regulations but not others.

SECTION 75.201 HOW THE SELECTION CRITERIA WILL BE USED

Current Regulation: Section 75.201(b) provides that, if points are assigned to the selection criteria, the Secretary informs applicants in the application package or a notice published in the *Federal Register*. Paragraph (c) provides that, if no points or weights are assigned to the selection criteria and selected factors, the Secretary

evaluates each criterion equally and, within each criterion, each factor equally.

Proposed Regulation: In § 75.201(b), we propose adding the words "or factors" after the words "selection criteria." In paragraph (c), we propose replacing the word "and" between the words "selection criteria" and "selected factors" with the word "or."

Reasons: The proposed revision to paragraph (b) would clarify that the Secretary may assign specific points, either to selection criteria or to the individual factors that make up an individual selection criterion, where appropriate to guide applicants and reviewers in more effectively preparing and reviewing applications. The revision to paragraph (c) would clarify the meaning of the provision and more accurately inform applicants and reviewers of how points are allocated among selection criteria and the individual factors making up each selection criterion when points are not assigned to the criteria or the selection factors.

SECTION 75.210 GENERAL SELECTION CRITERIA

Current Regulation: Section 75.210 lists the selection criteria and factors that the Department uses in the peer review process to score applications for discretionary grants.

Proposed Regulation: We propose changes to paragraphs (a)through(i) of § 75.210. Throughout this section, we

also propose to remove parenthetical cross-references to definitions in § 77.1(c), to improve the consistency of how we refer to those definitions throughout our regulations. This global technical change would not affect the applicability of those definitions.

Specifically, the proposed regulations would make the following updates:

In paragraph (a), Need for project, as further described below, we propose clarifying in the criterion heading that it is need for "the" project. Regarding paragraph (a), Need for project, and paragraph (b), Significance, we propose a number of changes to provide greater clarity to applicants regarding the information they should provide in their applications to demonstrate the need or significance of the proposed project, including how the proposed project focuses on underserved populations, with the intent that the clarity for applicants will also provide better guidance for peer reviewers as they assess the extent to which applicants address these revised selection criteria factors. We also propose consolidation of factors where factors were similar in focus to streamline the menu of factors under the criterion.

In paragraph (c), Quality of the project design, we propose revisions to the factors that more explicitly reference and connect to a logic model, emphasizing the

importance of considering the components of a logic model in relation to the design of the proposed project. We are also proposing to add three new factors regarding how the proposed project is informed by similar projects implemented by the applicant, the extent to which an applicant will allocate a significant portion of requested funding to the evidence-based components, and the commitment of key decision-makers at implementation sites for the proposed project.

In paragraph (d), Quality of project services, we propose clarifying in the criterion heading that it is the quality of "the" project services. We also propose to explicitly tie this factor to section 427 of GEPA (20 U.S.C. 1228(a)), and the related form Equity For Students, Teachers, And Other Program Beneficiaries (OMB Control No. 1894-0005), to connect an applicant's response to this form with the peer review of the application. Like Quality of the project design, proposed changes to Quality of project services reflect input from entities involved in the project, more direct connection to and engagement with the populations served by the proposed project, and the impacts of the services on those populations. We also propose a new factor related to early childhood and family outcomes, given the importance of serving young children and families effectively.

In paragraph (e), Quality of project personnel, we

propose clarifying in the criterion heading that it is quality of "the" project personnel. We also propose revisions that would address how the personnel of the proposed project are representative of the population to be served by the project, including a new factor that would speak to the project team reflecting the demographics of the community to be served. Revisions also would address the relevance of experience of the project personnel with similar projects. Lastly, we propose a new factor that seeks to ensure that the project team is familiar with the assets, needs, and other contextual considerations of the proposed implementation sites.

In paragraph (f), Adequacy of resources, we propose revisions that would combine the adequacy of the resources and how those resources will support the proposed project. We also propose revisions that clarify commitments from partners, long-term sustainability and institutionalization of the project, and a new proposed factor on the reasonableness of the costs related to potential future adoption of the project.

In paragraph (g), Quality of the management plan, we propose revisions that focus on the feasibility of the project, how data will be used to inform continuous improvement, and how the management plan includes the perspectives of underserved populations for the proposed project.

In paragraph (h), Quality of the project evaluation, we propose revising the criterion heading to "Quality of the project evaluation and evidence-building." In addition to the changes regarding the term "evidence-building," which we propose to define in § 77.1(c), we propose revisions that would focus on the relevance of the evaluation, a focus of the evaluation on underserved populations, continuous improvement efforts and data to inform continuous improvement, revising the current factor on "promising evidence" so that it refers to the types of studies instead, differentiation of impacts for project components, and the experiences and independence of the evaluator. Lastly, we propose new factors focused on fidelity of implementation and dissemination of evidence-building learnings from the project.

In paragraph (i), Strategy to scale, we propose revisions that would clarify how the scaling work is informed by, and builds on, the project, seeks to serve underserved populations, and addresses previous barriers to impact. The revisions would allow for scaling at either the regional level or the national level and could include dissemination as well as adaptation and replication. We also propose new factors that look at how scaling efforts will target new populations or settings, the efficiencies in the project that will be incorporated into the scaling efforts, and the revenue stream to support scaling.

Reasons: The proposed revisions would provide clarity, ensure technical and grammatical consistency, and make certain substantive changes, further described below. The menu of selection criteria and factors has expanded over the years through the various updates to EDGAR, and we closely reviewed it to determine what changes are needed. We also looked at how the existing factors were used in the various Department discretionary grant competitions to inform which factors are used frequently and which factors have rarely or never been used. For those rarely or never used, we examined whether there were other similar factors that might be used in their place, or if the language of the factor might be confusing. In some instances, we propose consolidating factors for these reasons, and, in some instances, we propose deleting the factors because they have rarely or never been used. We also sought to examine how the selection criteria can advance the Department's objectives of increasing diversity of applicants, ensuring equity in project services, and advancing usage of evidence. Clarity in the selection factors aids grant applicants' understanding and the Department's peer review and selection of grantees. The proposed changes to the selection criteria and factors under each criterion are based on lessons we have learned from using the existing selection criteria, ways to streamline the factors, and improvements to clarity. The

proposed revisions seek to broaden the applicability of the factors, focus on data to inform project design and continuous improvement, demonstrate how the project and its personnel reflect the population to be served, and indicate how lessons learned from the project are incorporated into the project and plans for continued implementation and improvement after the grant period.

In paragraph (a), Need for project, we propose to revise the factors to further distinguish need, including allowing the Department to request comparison data that help an applicant demonstrate their need for the project and having applicants identify gaps that the proposed project will fill. Furthermore, we propose to focus these factors to further target grant funds to individuals and populations that are underserved and lack access to services.

Like the factors under Need for project, the proposed revisions under paragraph (b), Significance, are meant to allow applicants to quantify the significance of the project, including significance beyond the individual grant project and relevance to broader educational challenges. The proposed changes are meant to provide information on contributions to the field, capacity for the project to be adopted by others in the field, and a new proposed factor (xvii) that would focus on innovative approaches to existing evidence-based project components that support

efforts under some Department programs to invest and then scale innovative projects. Additional revised factors would require using knowledge from project implementation to identify effective strategies to address educational challenges, as we think it is important for applicants to plan for not just implementing a project but developing ways to share knowledge from the implementation beyond the grant project. Recognizing that the Department is not the only agency or organization that funds and supports educational efforts, we think it is important for applicants to prepare for sharing their contributions to the field, and that the field is broader than just the Department. In addition, proposed factor (iv) would more explicitly reference rehabilitative services, which would be important for grant programs under the Rehabilitation Services Administration of the Department's Office of Special Education and Rehabilitative Services.

In paragraph (c), Quality of the project design, we intend to emphasize the importance of ensuring that the project design reflects engagement of the community to be served and other relevant entities, includes a focus on continuous improvement, and relies on relevant high-quality research that informs the proposed project. These revisions are intended to strengthen a proposed project design. We also propose to add new factors: how the proposed project is informed by similar projects

implemented by the applicant, the extent to which an applicant will allocate a significant portion of requested funding to the evidence-based project components, the commitment of key decision makers at implementation sites for the proposed project, and the engagement of community members and partners in the design of the proposed project. The intent of these additions is to focus on project designs that consider previous implementations, the evidence base, and the needs of the community by engaging them. Additional revisions propose the development and use of a logic model because we think that logic models establish project designs that connect the intended outcomes with the inputs and activities to support those outcomes. Current factors reference only a conceptual framework or the "demonstrates a rationale" or "promising evidence" evidence levels but do not specifically discuss a logic model, which is defined in part 77. Lastly, we propose a factor about commitments at implementation sites to address issues we have seen in grant projects for which implementation sites were named in an application, but their support was unclear and affected implementation during the project period.

In paragraph (d), Quality of project services, we propose to explicitly tie this factor to section 427 of GEPA (20 U.S.C. 1228(a)), and the related form Equity For Students, Teachers, And Other Program Beneficiaries (OMB

Control No. 1894-0005), for equitable access to, and participation in, the proposed project. The intent of this alignment is to connect an applicant's responses related to equity considerations on that form to the project services proposed under the project and aligns with the form's instructions, which include a broad list of potential barriers that may impede equitable access and participation. We propose these revisions under Quality of the project service and not under Quality of project personnel, as we think the responses on the form are more relevant to the project services and the activities being carried out under the grant. Other proposed revisions to factors under Quality of project services would align with proposed changes to other selection criteria, focusing on community engagement in project services, ensuring that project services are focused on underserved populations, and the relevance of the services and the data being collected and used to inform the project services. We propose a new factor focused on the outcomes of early childhood and families to align with Department programs that focus on these populations, because these populations are currently not included in this criterion.

In paragraph (e), Quality of project personnel, we propose revisions to parallel those under Quality of project services that would align the listed examples of groups that have experienced barriers between the two

criteria. We also propose factors that align the qualifications of the personnel with similar projects, factors that focus project personnel on being representative of the target population for project services, and a factor to have personnel who are familiar with the needs of the implementation sites for the proposed project. The proposed revisions and new factors are intended to help ensure that personnel are positioned to meet the needs of the underserved populations to be served and more closely reflect those populations, including a focus on the training and experiences of the personnel that align with the work to be carried out under the proposed project.

Regarding paragraph (f) Adequacy of resources, the proposed changes are intended to clarify the connection between the budget for the proposed project and how those costs are reasonable and significant, including a new factor that looks at the reasonableness of others being able to adopt and implement the project, because we are interested in the anticipated costs of broader implementation. We also propose revisions to the factor that requires applicants to address matching funds and partner commitments, which is significant given the number of program statutes that have matching requirements.

In paragraph (g), Quality of the management plan, we propose revisions to the existing factors to focus on the

applicant's plan to meet goals and objectives, timelines, and budgets. Separately, we propose a revised factor to involve the use of community and partner input in the management plan, to inform continuous improvement efforts related to project implementation. Lastly, the proposed revisions to criterion (v) are meant to ensure meaningful engagement from the underserved populations to be served by the project to ensure the management plan reflects their needs.

In paragraph (h), Quality of the project evaluation, the proposed changes are intended to recognize that rigorous evaluation is not feasible for all projects; however, there are efforts relating to project goals, objectives, and performance measurement that can be used to improve the project, reach intended outcomes, and focus on evidence-building, which would be supported by the proposed definition in § 77.1(c). We also propose revising the current factor on "promising evidence" so that it refers to the types of studies instead, which we think provides greater clarity on what evaluation designs are necessary to meet the requirements of the factor.

In paragraph (i), Strategy to scale, the proposed changes focus on underserved populations. We propose two factors that would establish the level of the efforts to scale, having a separate factor for scaling to the regional level because not all projects can scale to the national

level. A proposed new factor focuses scaling on new populations or settings, which is meant to get at the broader potential scaling of the proposed project. Multiple factors are meant to focus on how an applicant will address issues to scaling, including identifying and proposing strategies to address barriers to scaling, adaptions and replications to allow for scaling, and the addition of two new factors focused on the financial aspects of scaling, including efficiencies in scaling and revenue sources. All these revisions are meant to encourage applicants to more thoughtfully consider all of the aspects related to successful scaling of a project, to ensure ongoing support and growth for a project after Federal funding ends.

SECTION 75.216 APPLICATIONS NOT EVALUATED FOR FUNDING

Current Regulation: Section 75.216 provides that the Secretary does not evaluate an application if: (a) The applicant is not eligible; (b) the applicant does not comply with all procedural rules that govern the submission of the application; (c) the application does not contain the information required under the program; or (d) the proposed project cannot be funded under the applicable statute and regulation or implementing regulations for the program.

Proposed Regulation: We propose to revise § 75.216 by removing paragraphs (a) and (d) and revising the section

heading to read: Applications that the Secretary may choose not to evaluate for funding.

Reasons: We propose to revise this provision because the Department is bound by law to follow applicable statutes and regulations, and this change to § 75.216 would not change the rules that govern the eligible entities and types of projects that can be funded under a particular grant competition. To meet the deadlines for timely review of applications, the Department will often forward applications for evaluation to peer reviewers before making final determinations on compliance with all the requirements in § 75.216, which are often complex and time consuming. The proposed changes to § 75.216 align with current Department practice, allow the peer review process to proceed in a timely fashion, and allow final eligibility determinations to be made prior to an award being made to an applicant. For this reason, paragraphs (a) and (d) are unnecessary. In addition, the revisions to the title would clarify the Department's determinations not to evaluate an application for the reasons set forth in this regulation and codifies Department practice.

SECTION 75.217 HOW THE SECRETARY SELECTS APPLICATIONS FOR NEW GRANTS

Current Regulation: Paragraph (c) of § 75.217 provides that the Secretary prepares a rank order of the applications based solely on the evaluation of their

quality according to the selection criteria.

Proposed Regulation: We propose to revise paragraph (c) of § 75.217 to clarify that we may prepare multiple rank orders where we have a menu of absolute priorities that applicants must meet, as well as clarify that the rank order will also reflect any competitive preference points.

Reasons: The proposed change would provide a full description of the information relied on by the Secretary in preparing a rank order of applications under § 75.217 and codifies our current practice in § 75.217.

SECTION 75.219 EXCEPTIONS TO THE PROCEDURES UNDER § 75.217

Current Regulation: Section 75.219(b) excepts an application from the procedures described under § 75.217 if the application was rated highly enough to be funded but was not funded because it was mishandled.

Proposed Regulation: We propose to revise § 75.219(b)(2) and (3) to provide for situations in which an application was not selected for funding because the application was mishandled or improperly processed by the Department and an application has been rated highly enough to qualify for selection under § 75.217.

Reasons: We propose this change to improve the clarity of this provision. There have been instances in which the mishandling or improper processing of applications by the Department resulted in either an applicant not being rated or having its rating not properly recorded due to a

clerical or other error. As a result, we propose changes to clarify that § 75.219(b) applies if, in the absence of the mishandling or improper processing, an application either had been rated highly enough to be funded or would have been rated highly enough to be funded had it been reviewed. When the Department discovers an application that was not reviewed due to mishandling or improper processing, it has the application reviewed and, if the score is high enough, makes an award using funds that are available when the review is conducted. This proposed change clarifies the scope of this provision and the procedures the Department follows in practice.

SECTION 75.220 PROCEDURES THE DEPARTMENT USES UNDER § 75.219(a)

Current Regulation: Section 75.220(b)(2) references an employee of the Office of the Chief Financial Officer (OCFO) with responsibility for grants policy to serve on a board to review an application under the special circumstances of § 75.219(a) (The objectives of the project cannot be achieved unless the Secretary makes the grant before the date grants can be made under the procedures in § 75.217.)

Proposed Regulation: We propose revising paragraph (b)(2) to refer instead to the Office of Finance and Operations (OFO).

Reasons: In the reorganization at the Department that went

into effect in January 2019, the OCFO functions were incorporated into the new OFO, and this section would be updated to reference the correct office.

SECTION 75.221 PROCEDURES THE DEPARTMENT USES UNDER § 75.219(b)

Current Regulation: Section 75.221 provides that, if the special circumstances of § 75.219(b) appear to exist for an application, the Secretary may select the application for funding if: the Secretary has documentary evidence that the special circumstances of § 75.219(b) exist; and (b) the Secretary has a statement that explains the circumstances of the mishandling.

Proposed Regulation: We propose to revise § 75.221 to improve its clarity and eliminate the requirement that the Secretary have a statement that explains the circumstances.

Reasons: We propose to revise the provision to improve its clarity and eliminate unnecessary language. The proposed changes would remove the requirement for an explanation of the mishandling separate from documentation of the circumstances of the mishandling. The Department does not believe that further explanation of the reasons the application was mishandled is necessary if the Secretary has documentation of the circumstances, already required under § 75.219(b).

SECTION 75.522 PROCEDURES THE DEPARTMENT USES UNDER § 75.219(c).

Current Regulation: Section 75.222 describes the procedures for considering an unsolicited application, including the note accompanying § 75.222 references the Application Control Center, which no longer exists.

Proposed Regulation: Proposed § 75.222 would update the mailing procedures for unsolicited applications to align with the mailing procedures discussed in the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the *Federal Register* on December 7, 2022 (87 FR 75045).

SECTION 75.225 WHAT PROCEDURES DOES THE SECRETARY USE IF THE SECRETARY DECIDES TO GIVE SPECIAL CONSIDERATION TO NOVICE APPLICATIONS?

Current Regulation: Section 75.225 describes the circumstances in which the Secretary may give an absolute or competitive preference to an applicant that meets the definition of "novice applicant." To be a "novice applicant" under current § 75.225, an applicant must have, in part: (1) never received a grant or subgrant under the program from which it seeks funds; (2) never been a member of a group application; and (3) not had an active discretionary grant from the Federal government in the last five years.

Proposed Regulation: Proposed § 75.225 would replace the term "novice applicant" with the term "new potential grantee" and provide a definition of that new term. The

proposed definition includes five options from which the Department could choose to apply one or more of the conditions to a specific competition. The options of conditions for defining a new potential grantee would include: (1) an applicant that has never received a grant or cooperative agreement, including membership in a group application submitted in accordance with §§ 75.127-75.129 that received a grant, under the program from which it seeks funds; (2) an applicant that does not, as of the deadline date for submission of applications, have an active grant or cooperative agreement, including membership in a group application submitted in accordance with §§ 75.127-75.129 that received a grant, under the program from which it seeks funds; (3) an applicant that has not had an active discretionary grant or cooperative agreement, including membership in a group application submitted in accordance with §§ 75.127-75.129 that received a grant, under the program from which it seeks funds in a specified number of years before the deadline date for submission of applications under the program; (4) an applicant that has not had an active discretionary grant or cooperative agreement from the Department, including membership in a group application submitted in accordance with §§ 75.127-75.129 that received a grant, in a specified number of years before the deadline date for submission of applications under the program; or (5) an applicant that

has not had an active contract from the Department in a specified number of years before the deadline date for submission of applications under the program from which it seeks funds. Based on program needs, a discretionary grant program could choose to define "new potential grantee" using one or any combination of the five options described in proposed § 75.225(a). If used, the Secretary would specify the number of years for definitions (3), (4), and (5) in the NIA by selecting from among the identified options, as described in proposed § 75.225(b). In addition, the proposed regulations would create a corresponding inverse priority for applicants that are not "new potential grantees" to be used when the Secretary creates an absolute priority for "new potential grantees" and plans to create multiple funding slates for applicants that are "new potential grantees" and those that are not. The intent is for this inverse option to be used when the "new potential grantee" priority is used as an absolute priority, and there is a need to be able to create another funding slate for those applicants that do not meet the "new potential grantee" priority.

Reasons: Since the enactment of this regulation in 2002, we have discovered that the definition of "novice applicant" is often complex and overly restrictive in practice. For instance, many of the Department's grant programs have very few, if any, eligible entities (such as

institutions of higher education) that have not had other discretionary grants from the Federal government in the last five years. Despite § 75.225 being applicable to all the Department's discretionary grant programs, many programs have needed to create program-specific definitions of "novice applicant" that are tailored to their individual contexts because the vast majority of prospective applicants for our programs would not meet the current definition of "novice applicant" in § 75.225. These proposed revisions would provide the Department's programs with increased options to define "new potential grantee." We think that these proposed revisions would allow this priority to be usable in more discretionary grant programs and more effectively promote the Department's interest in awarding grants to a more diverse and inclusive variety of applicants. Furthermore, these revisions align with the successful implementation of the "Applications from New Potential Grantees" and "Applications from Grantees that are Not New Potential Grantees" priorities from the Administrative Priorities for Discretionary Grant Programs published in the *Federal Register* on March 9, 2020 (85 FR 13640) (Administrative Priorities), which have worked well in allowing the Department to prioritize new potential grantees. We propose to add those priorities to the regulations for clarity and consistency.

In the Administrative Priorities and proposed here,

option (1) would apply in programs where the Department would intend to focus on applicants that have never received a grant under the program; option (2) would apply in grant competitions for which the Department would intend to prioritize "new potential grantees" without an active grant under the program; option (3) would apply in the event that a program may have multiple cohorts of grantees, and the Department would intend to define "new potential grantees" as those that have not had a grant under the program for the specified number of years; option (4) would apply when the Department would intend to be inclusive of other Department grant programs when determining "new potential grantees;" and option (5) would apply in cases when there are grant programs where an applicant may not have a Department grant but may have Department contracts and is familiar with the work of the Department already. The intent of these options is to take into consideration program specific contexts, such as the different characteristics of programs, including different types of applicants and different frequencies in which grant competitions are run.

SECTION 75.226 WHAT PROCEDURES DOES THE SECRETARY USE IF THE SECRETARY DECIDES TO GIVE SPECIAL CONSIDERATION TO APPLICATIONS SUPPORTED BY STRONG, MODERATE, OR PROMISING EVIDENCE?

Current Regulation: Section 75.226 describes the

Secretary's authority to give special consideration to applications supported by strong, moderate, or promising evidence.

Proposed Regulation: The proposed revision would also permit the Secretary to give special consideration to an application that "demonstrates a rationale" as defined in § 77.1(c) without disallowing evidence that may meet more than one of the four levels described in that section. We also propose removing cross-references to the definitions of "strong evidence," "moderate evidence," and "promising evidence" in § 77.1(c), because we do not include such cross-references elsewhere in part 75, and they are not necessary.

Reasons: While we continue to be very interested in grant projects that are supported by rigorous evidence, we recognize that the research base supporting many of our discretionary grant programs is still emerging. In addition, we think it is important to provide incentives for innovative approaches to systemic problems in education wherever possible. Adding the "demonstrates a rationale" level of evidence to § 75.226 would allow the Department to give priority to applications that meet this standard, thereby requiring or encouraging applicants to incorporate research into their project planning, where possible, while still supporting the identification of innovative solutions. This addition is also consistent with the

"Applications that Demonstrate a Rationale" priority in the Administrative Priorities, which has been beneficial to achieving these objectives in discretionary grant competitions.

SECTION 75.227 [Reserved]

Current Regulation: Section 75.227 is currently reserved.

Proposed Regulation: We propose to add a new § 75.227 that would allow the Secretary to establish a separate competition for, or provide competitive preference to, applicants that propose to serve rural locations. Specifically, the Secretary could decide to give such special consideration to applicants that can demonstrate one or more of the following: (1) the area the applicant proposes to serve is a rural LEA, (2) the area the applicant proposes to serve is a rural community, (3) the area the applicant proposes to serve is a rural school, or (4) the applicant is a rural institution of higher education. We propose to utilize rural programs authorized under ESEA as well as the locale codes from the National Center for Education Statistics School District search tool, given that there are different Federal definitions for "rural." The proposed regulation also specifies that, if using an absolute priority related to rural applicants, the Secretary may also include an absolute priority for applicants that do not meet that priority in order to offer separate competitions, resulting in separate rank orders,

for each competition.

Reasons: Rural communities face unique challenges due to their being remote, and they also have unique opportunities. These factors are reflected in many program statutes' priorities accorded to applicants that serve rural communities in many Department programs, but we believe that it is necessary that every discretionary grant program have the option to give priority to applicants that will serve rural communities. This section would enable the Department to specifically encourage applications that will provide services in rural communities. This addition would also be consistent with "Rural Applicants" and "Non-Rural Applicants" priorities in the Administrative Priorities, which have worked well to achieve these goals in discretionary grant competitions.

SECTION 75.234 THE CONDITIONS OF THE GRANT

Current Regulation: Section 75.234 refers to "special conditions" that the Secretary determines prior to making a grant.

Proposed Regulation: Proposed § 75.234 replaces the term "special" with the term "specific."

Reasons: "Specific" is the term the Department now uses, consistent with 2 CFR 200.208 to refer to conditions imposed on a grant award. The change is not substantive.

SECTION 75.250 MAXIMUM FUNDING PERIOD

Current Regulation: Section 75.250(a) provides that the

Secretary may approve a project period of up to 60 months to perform the substantive work of the grant.

Proposed Regulation: We propose to revise the heading for § 75.250 to change "funding" to "project" and propose to revise § 75.250(a) to clarify that the Secretary may approve project periods of up to 60 months unless statutory authority provides otherwise. We also propose removing § 75.250(b) because we propose a new § 75.254 to separately address data collection periods.

Reasons: We propose the change to the heading to align with the use of the term "project period" in § 75.250(a). We propose the change to § 75.250(a) to clarify that EDGAR does not supersede the applicable statutes and regulations that apply to a given program. We also propose to delete § 75.250(b) as we propose a new § 75.254 to allow for data collection periods separate from the extension of a project period.

SECTION 75.253 CONTINUATION OF A MULTIYEAR PROJECT AFTER THE FIRST BUDGET PERIOD

Current Regulation: Section 75.253 describes the process and requirements for making continuation awards.

Proposed Regulation: The proposed revisions would clarify those procedures and requirements, including addition of verification of the quality data submitted, and explain that, if the Department decides not to make a continuation award, a grantee will be given an opportunity to object

under 2 CFR 200.341 through a request for reconsideration. They also would explain existing Department practices that a determination by the Secretary to not make a continuation award, or to reduce the amount of a continuation award, to a grantee does not constitute a withholding under section 455 of GEPA (20 U.S.C. 1234d).

Reasons: These proposed changes would reflect existing Department practices and provide a clearer description of the relevant requirements and procedural rights of grantees in the continuation awards process. In addition, these revisions would explain that a determination by the Department not to make a continuation award, or to reduce the amount of a continuation award, to a grantee does not constitute a withholding under section 455 of GEPA. That provision of GEPA deals with circumstances in which funds have already been obligated, such as a discretionary grantee that has already received a continuation award or, as is the case with a formula grant program, a grantee that is entitled to receive funds or has already received funds if it meets certain eligibility requirements. Neither of these conditions is present if the Secretary decides to not make, or to reduce, a continuation award.

SECTION 75.254 [Reserved]

Current Regulation: Section 75.254 is currently reserved.

Proposed Regulation: We propose to add a new § 75.254 that would allow the Secretary to award a data collection period

of up to 72 months after the end of the project period and provide funds for the data collection period. The proposed regulation would also set forth how the Secretary would inform applicants of this data collection period. It would further state that the Secretary may require applicants to include a budget and description for the data collection period in their applications if the data collection period is announced through the NIA.

Reasons: Currently, § 75.250 allows for a data collection period for a grant for a period of up to 72 months after the end of the project period. However, § 75.250 is not an option for those Department programs for which there is a maximum statutory performance period. Flexibility in how and for which programs the Department can allow data collection awards would give us opportunities to learn more about the impacts of our grants. Statutory limitations on project periods inhibit this longer-term data collection that could inform impacts beyond grant project periods. Furthermore, the Department operationalizes the data collection period under § 75.250 as a separate grant award and establishing a separate section in EDGAR gives the Department greater flexibility in how to use data collection awards. This section would also align with a similar priority from the Administrative Priorities, building on lessons learned from that priority, including notifying applicants in the NIA to propose a timeline that

includes a data collection period.

SECTION 75.261 EXTENSION OF A PROJECT PERIOD

Current Regulation: Section 75.261 describes when grant project periods may be extended and under what conditions a grantee may receive a project period extension.

Proposed Regulation: Proposed § 75.261 would clarify that there are two types of project period extensions: (1) a one-time extension of up to 12 months without prior approval if the requirements in 2 CFR 200.308(e)(2) are met and there are no applicable statutes, regulations, or grant conditions prohibiting such an extension; and (2) an additional extension beyond the 12 months with prior approval of the Secretary, if certain other conditions are met. The proposed revision also would remove references to specific technical assistance centers in current paragraph (b) that no longer exist, correct citations, and align language to be consistent with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements (the Uniform Guidance) for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Reasons: The regulation, as currently written, includes numerous revisions made over the years and is now in need of streamlining, and contains outdated references and citation errors. These proposed changes would promote greater clarity and accessibility for the public regarding

project period extensions. The proposed changes are not substantive.

SECTION 75.263 PRE-AWARD COSTS; WAIVER OF APPROVAL

Current Regulation: Section 75.263 describes when pre-award costs may be incurred.

Proposed Regulation: Proposed § 75.263 would remove the clause "notwithstanding any requirement in 2 CFR part 200."

Reasons: The language we propose to remove is not necessary to establish that the requirements of 2 CFR part 200 apply; removing it would add clarity to the regulation. The proposed change is not substantive.

SECTION 75.519 DUAL COMPENSATION OF STAFF

Current Regulation: Section 75.519 prohibits paying for project staff who are compensated from another source of funds.

Proposed Regulation: Proposed § 75.519 would add a reference to the cost principles described in 2 CFR part 200, subpart E—Cost Principles.

Reasons: The reference we propose to add provides the source for the prohibition discussed in § 75.519. The change is not substantive.

SECTIONS 75.560-75.564 INDIRECT COST RATES

Current Regulations: Sections 75.560-75.564 describe the application of indirect costs under discretionary grant programs, including who approves indirect costs rates and how they are applied.

Proposed Regulations: The proposed revisions would align these sections of EDGAR with the Uniform Guidance in 2 CFR part 200, include cost allocation plans along with indirect costs rates, and provide clarity on the application of indirect cost rates.

Reasons: The Uniform Guidance sets out requirements that apply to Federal grants and was adopted by the Department in 2 CFR part 3474. The Uniform Guidance, in conjunction with EDGAR, governs Department grants and therefore these provisions should be closely aligned with one another. These sections of EDGAR do not reflect recent updates to the Uniform Guidance, including the addition of the de minimis rate, referencing cost allocation plans as performing a role equivalent to indirect costs rate, and clarifications on restricted rates, and this alignment is necessary to ensure that there is no confusion. Moreover, the proposed changes are intended to add clarity regarding how indirect cost rates are applied, as well as the indirect cost rate options an entity has.

SECTION 75.590 EVALUATION BY THE GRANTEE

Current Regulation: Section 75.590 describes what grantees must demonstrate or provide to the Department regarding performance reporting and the evaluation of their projects.

Proposed Regulation: The proposed revision would add a new paragraph (c) that would permit the Department to include a requirement for an independent evaluation in any grant

competition, for the results of that evaluation to be made public, including the option to make the data available to third-party researchers, and for the results of that evaluation or a grantee final report to be submitted to ERIC, which is administered by IES.

Reasons: We want to have more tools available to build, use, and disseminate rigorous evidence more effectively. Requiring grantees to conduct independent evaluations, where appropriate, would help increase the credibility of their project evaluations because the entity conducting the evaluation would have no vested interest in the outcome of the evaluation. An independent evaluation to assess the implementation or impact of a project or project component has the potential to build the evidence base through the work of competitive program grantees, and the sharing of data with third-party researchers allows for additional data analysis. Submitting evaluations and the final performance reports under grants to ERIC can help identify emerging evidence and promote further research.

SECTION 75.591 FEDERAL EVALUATION – COOPERATION BY A GRANTEE

Current Regulation: Section 75.591 requires grantees to cooperate in the Department's efforts to evaluate the program supporting their project.

Proposed Regulation: We propose to clarify the types of activities that grantees could be expected to undertake as

part of their participation in a Federal program evaluation.

Reasons: Although the current regulation makes it clear that grantees must cooperate with the Secretary's evaluation of the program, it does not provide potential applicants information about what that cooperation might entail. The proposed regulation would provide increased transparency about the types of activities in which a grantee may be required to participate. For example, a grantee may be required to participate in a randomized controlled trial conducted by the Department, and we think that it is important to provide clarity, where possible, on grantee expectations under the regulation.

SECTION 75.600-75.617 CONSTRUCTION

Current Regulations: Sections 75.600-75.617 cover various regulations related to construction projects and the acquisition of real property.

Propose Regulation: We propose to amend certain regulations related to construction projects and real property acquisition in parts 75, 76, and 77. The proposed changes to parts 76 and 77 are addressed in more detail in the applicable sections of this preamble.

Specifically, the proposed changes include the following:

- A reorganization of §§ 75.600–75.614 for a more logical progression of the statutory and regulatory

requirements at each stage of the construction project. The proposed regulations are organized to progress through all the stages of a construction project, through Department approval (§ 75.601), planning the project (§ 75.602), beginning the project (§ 75.603), during the project (§ 75.604), and after the project (§ 75.605).

- Clarifying that the Secretary considers a grantee's compliance with specific statutes and regulations related to construction prior to approval of the construction project (proposed § 75.602(c)).
- Adding specific provisions regarding real property acquisition that, in part, incorporate requirements from existing governmentwide assurances, including nondiscrimination assurances (proposed § 75.606). These provisions mirror the construction provisions in proposed § 75.601 to clarify that real property projects must also receive Department approval.
- Incorporating, and updating, as appropriate, applicable cross references to the Uniform Guidance and other applicable law in the various stages of the construction project in various sections of the regulations.
- Moving and consolidating the requirements currently in §§ 75.607-75.608 into proposed § 75.602. We do not propose any substantive changes to the current

requirements in § 75.607 or § 75.608.

- Decreasing the period for which the grantee must retain title to the site from 50 years to 25 years in proposed § 75.610.
- Clarifying the requirements of the National Environmental Policy Act of 1969 (NEPA) (proposed § 75.611). This section would not create a requirement, but rather provide additional guidance that the NEPA requirements apply to "major Federal projects" as defined by NEPA.
- Moving the requirements of § 75.611 (Avoidance of flood hazards) and § 75.617 (Compliance with the Coastal Barrier Resources Act) to proposed § 75.612 and § 75.613, respectively. We do not propose any substantive changes to the current requirements in § 75.611 or § 75.617.
- Clarifying the process and roles of the Secretary and State reviewing a construction project involving historic preservation (proposed §§ 75.614 and 76.600). We do not propose any substantive changes to the current requirements in § 75.602.
- Adding the applicability of the new Build America, Buy America Act to construction projects (proposed § 75.615). This section explains that a grantee must comply with the requirements of the Build America, Buy America Act, Pub. L. No. 117-58, §§ 70901-70927 and

implementing regulations in 2 CFR part 184.

- Updating the requirements of § 75.616 (Energy conservation) to require compliance with the most current ASHRAE standards. The current regulation requires compliance with standards from 1975, 1977, and 1980, respectively.
- Moving the requirements of § 75.610 (Access by the handicapped) to proposed § 75.617 and updating the title to "Access for individuals with disabilities." We do not propose any substantive changes to the current requirements in § 75.610.
- Moving and consolidating the requirements currently in § 75.609 (Comply with safety and health standards) into proposed § 75.618. We do not propose any substantive changes to the current requirements in § 75.609.

Reasons: The purpose of these proposed changes is to update the current construction regulations in response to statutory changes and related issues that have arisen over the last thirty years, as many of the regulations for this section have not been updated since 1992; to better align the regulations to the Uniform Guidance that was first promulgated in 2014 and updated in 2020; and to improve clarity and transparency regarding Federal program operations. The Department proposes to decrease the period in proposed § 75.610 because we found that grantees with

site leases had difficulty establishing that they had an option to extend their lease for 50 years. Rather, we propose to reduce to 25 years or the useful life of the construction, which we think more closely aligns with the Federal investment. We also propose to update these regulations to include the requirements grantees must follow during construction projects under the Build America, Buy America Act, Pub. L. No. 117-58, §§ 70901-70927. The Build America, Buy America Act was enacted as part of the overall Infrastructure Investment and Jobs Act in November 2021. The purpose of the Build America, Buy America Act is to create demand for domestically produced goods, helping to sustain and grow domestic manufacturing.

SECTION 75.618 CHARGES FOR USE OF EQUIPMENT OR SUPPLIES

Current Regulation: Section 75.618 states that a grantee may not charge for ordinary use of equipment or supplies.

Proposed Regulation: We propose to repurpose § 75.618 for use under the Construction subheading and move the current § 75.618 to currently unused § 75.619. We do not propose any changes to the text of this section.

Reasons: To create space for an additional section under the Construction heading regarding safety and health standards, we propose to move current § 75.618 to § 75.619.

SECTION 75.620 GENERAL CONDITIONS ON PUBLICATION

Current Regulation: Section 75.620(b) includes the text of a statement that grantees must include in any publication

that contains project materials.

Proposed Regulation: The proposed revision would update the required statement with current and more comprehensive language, including current forms of publication, such as on a website or a webpage.

Reasons: The statement was last updated in 1980. Since then, Federal Government endorsement disclaimers, including the one in § 75.620(b), have evolved to be more comprehensive. We propose updating the statement to mirror the standard disclaimer used by the Department in other contexts, such as what the Department may require on work products developed by Department contractors. In addition, methods of publication have changed since 1980, to include websites and webpages.

SECTION 75.623 PUBLIC AVAILABILITY OF GRANT-SUPPORTED RESEARCH ARTICLES

Current Regulation: None.

Proposed Regulation: We propose to add a new § 75.623 to require each grantee that prepares a peer-reviewed scholarly publication as part of its grant award or based on grant-funded research to make the publication available to the public by submitting the final peer-reviewed scholarly publication to ERIC. To support § 75.620, we also propose to add a definition of "peer-reviewed scholarly publication" under § 77.1(c).

Reasons: This section would align the practice of the

entire Department with the current practice of IES, which requires all its grantees to make their peer-reviewed publications available to the public in this manner. Currently, these materials are exempt from the open licensing requirements in 2 CFR 3474.20. Applying the requirement in this section to peer-reviewed publications produced under grants made by other offices in the Department is in line with the Department's Plan and Policy Development Guidance for Public Access,[1] with the Office of Science and Technology Policy's memorandum, Increasing Access to the Results of Federally Funded Research,[2] and would ensure that the results of grant-funded research are available to a wider array of Department partners and other interested parties than is currently the case.

SECTION 75.700 COMPLIANCE WITH THE U.S. CONSTITUTION, STATUTES, REGULATIONS, STATED INSTITUTIONAL POLICIES, AND APPLICATIONS.

Current Regulation: Section 75.700 states that grantees shall comply with and uses Federal funds in accordance with applicable statutes, regulations, and approved applications.

Proposed Regulation: We propose to revise § 75.700 to

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[1] The Department's Plan and Policy Development Guidance for Public Access is available at https://ies.ed.gov/funding/pdf/EDPlanPolicyDevelopmentGuidanceforPublicAccess.pdf.

[2] The Office of Science and Technology Policy's memorandum is available at https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/ostp_public_access_memo_2013.pdf.

include Executive orders in addition to statutes, regulations, and approved applications.

Reasons: We propose this revision to align § 75.700 to § 75.708, which includes the requirement for subgrantees to comply with Executive orders.

SECTION 75.708 SUBGRANTS

Current Regulation: Section 75.708(b) states that the Secretary may, through an announcement in the *Federal Register*, authorize subgrants when necessary to meet the purposes of a program, and paragraph (e) states that grantees may contract for supplies, equipment, construction, and other services.

Proposed Regulation: We propose to revise paragraph (b) to state that this authorization may take place "through an announcement in the *Federal Register* or other reasonable means of notice." We propose to revise paragraph (e) to clarify that, when subgrants are not allowed, grantees are still authorized to contract, as needed, for supplies, equipment, and other services.

Reasons: There may be circumstances in which *Federal Register* notification is not the most efficient or effective way for the Secretary to authorize subgrants. To account for these situations, we propose adding more flexibility to the current regulation. We also propose to clarify when and how contracts for supplies, equipment, and other services can be used when subgrants are not allowed.

SECTION 75.720 FINANCIAL AND PERFORMANCE REPORTS

Current Regulation: Section 75.720 sets out the financial and performance reporting requirements that grantees must meet.

Proposed Regulation: We propose to add a new paragraph (d) that would require grantees to publish, on a public-facing website, the reports they submit to the Secretary under § 75.720 upon request of the Secretary. Under this new paragraph, the Secretary could choose which grant competitions would be subject to this requirement. The Department expects that any such publication on a public-facing website would be consistent with applicable accessibility requirements and in accordance with privacy laws.

Reasons: This requirement would increase transparency with respect to grantee performance and provide useful information on the effectiveness of projects supported by Department grant funds to grantee participants and beneficiaries as well as the general public.

SECTION 75.901 SUSPENSION AND TERMINATION

Current Regulation: Section 75.901 indicates that the Secretary may use the Office of Administrative Law Judges (OALJ) to resolve disputes concerning a variety of matters that are not subject to other proceedings.

Proposed Regulation: We propose to revise the introductory language to this regulation by removing the following

words: "that are not subject to other procedures."

Reasons: This proposed change would clarify the authority of the Secretary to use the OALJ to resolve disputes on the matters identified in § 75.901(a)-(f).

PART 76--STATE-ADMINISTERED PROGRAMS

SECTION 76.1 PROGRAMS TO WHICH PART 76 APPLIES

Current Regulation: Section 76.1 describes the programs to which part 76 applies. Paragraph (a) of § 76.1 references "each State-administered program" while paragraph (b) references "a State formula grant program."

Proposed Regulation: We propose to revise the language in both paragraphs to clarify that part 76 applies to "State-administered formula grant programs." We also propose to make conforming changes, as necessary, throughout this part, including the title for this part.

Reasons: Inconsistent use of terms within part 76 could create confusion about its applicability. These updates would clarify that all provisions of part 76 apply only to "State-administered formula grant programs."

SECTION 76.50 STATUTES DETERMINE ELIGIBILITY AND WHETHER SUBGRANTS ARE MADE

Current Regulation: Section 76.50 describes the circumstances in which the Secretary makes a grant to a State agency, either as directed by the applicable statute and regulation or as designated by the State consistent with the applicable statute and regulation. The regulation

states explicitly that the applicable statute determines the extent to which a State may use grant funds itself or make subgrants. Regarding subgrants, § 76.50(c) states that the regulations in part 76 on subgrants apply to a program only if subgrants are authorized under that program, and paragraph (d) states that the applicable statute determines an applicant's eligibility for a subgrant.

Proposed Regulation: We propose to modify § 76.50 in six general ways. First, we propose to change the heading to read "Basic Requirements for Subgrants." Second, we propose to add references to a State-administered formula grant program's regulations throughout. Third, we propose to make clear in new paragraph (b) that States may make subgrants using funds from State-administered formula grant programs unless prohibited by their authorizing statutes, implementing regulations, or the terms and conditions of their awards. Fourth, we propose to delete paragraphs (c) on how other requirements in part 76 apply to subgrants and (d), which was a previous statement about entities eligible for subgrants, and to incorporate essential requirements into new paragraph (b). Fifth, we propose to add a new paragraph (c) to explicitly identify grantee responsibility for subgrantee monitoring consistent with 2 CFR 200.332. Finally, we propose to add a new paragraph (d) to clarify that subgranting prohibitions under which Department

programs operate should not be construed as prohibiting grantees from entering into contracts for goods or services in accordance with 2 CFR part 200, subpart D—Post Federal Award Requirements (2 CFR §§ 200.317-200.326).

Reasons: We propose to modify this section to ensure that State-administered formula grant programs have maximum flexibility to make subgrants. To that end, we propose to revise the heading to signal to States that subgrants are allowed, unless specifically prohibited by statute, regulation, or the terms and conditions of a grant award. Under the current regulations, some State-administered formula grant programs have interpreted statutory silence as meaning that subgranting is not permissible. We believe that the proposed regulations would address this unintended consequence through the changes proposed to the heading and to new paragraph (b). However, we may prohibit subgranting under the terms and conditions of a grant award, as appropriate, such as when subgranting would be counter to fundamental statutory or regulatory requirements for a program. We also propose to refer to both applicable statutes and regulations throughout the provision, rather than just statutes, in case the applicable regulations provide necessary clarification. We propose to remove current paragraph (b) because it does not provide any guidance that is not already provided in a program's authorizing statute. We propose to incorporate essential

requirements from paragraphs (c) and (d) into new paragraph (b). As a result, we propose to delete current paragraphs (c) and (d) as no longer necessary. We propose to add new paragraph (c) to highlight grantee responsibilities for monitoring subgrantees to encourage fiscal responsibility, transparency, and appropriate control of taxpayer funds. We propose to add a new paragraph (d) to clarify that, regardless of the authority to subgrant, a grantee is authorized to contract for supplies, equipment, and other services in accordance with 2 CFR part 200, subpart D--Post Federal Award Requirements (2 CFR §§ 200.317-200.326.

SECTION 76.101 THE GENERAL STATE APPLICATION

Current Regulation: Section 76.101 requires a State that makes subgrants to LEAs under a program subject to this part to have on file with the Secretary a State plan that meets the requirements of section 441 of GEPA (20 U.S.C. 1232d).

Proposed Regulation: We propose to revise § 76.101 to make clear that the requirements of section 441 of GEPA do not apply to a State plan submitted for a program under the ESEA.

Reasons: Section 8304(b) of the ESEA (20 U.S.C. 7844(b)) states that the requirements of section 441 of GEPA do not apply to State plans under the ESEA. The purpose of this change is to align the regulations with that statutory provision.

SECTION 76.102 DEFINITION OF STATE PLAN FOR PART 76

Current Regulation: Section 76.102 includes a table specifying applications or other documents required under various State-administered formula grant programs that, for the purpose of part 76, are considered "State plans."

Proposed Regulation: We propose to remove the table from § 76.102 and to describe a State plan, as that term is used in part 76, as "any document that the applicable statutes and regulations for a State-administered formula grant program require a State to submit in order to receive funds for the program." To the extent that any provision of part 76 conflicts with program-specific implementing regulations related to the plan, the program-specific implementing regulations govern.

Reasons: Current § 76.102 includes a table intended to list all programs that are covered by the State plan regulations in part 76. However, some of the listed programs no longer exist. Other programs have been renamed under a reauthorized statute. Rather than update the table of programs, given that programs may become outdated in the future, we believe that a definition aligned with governing statutes and regulations would be the best way to convey the intended scope of the provision. In addition, the proposed regulations would make clear that, if any provision of part 76 conflicts with program-specific implementing regulations related to the plan, the program-

specific implementing regulations govern.

SECTION 76.103 MULTI-YEAR STATE PLANS

Current Regulation: Section 76.103 makes clear that a State plan will be effective for a period of more than one fiscal year, to be determined by the Secretary or by regulations. It authorizes the Secretary to stagger submission of State plans and identifies numerous programs to which the section does not apply.

Proposed Regulation: We propose to simplify § 76.103 by deleting the list of programs to which the provision does not apply. Instead, we would make clear that a State plan may be effective for more than one year unless otherwise specified by statute, regulation, or the Secretary. In addition, we remove the note at the end of this section.

Reasons: All the programs listed in § 76.103(c) have been reauthorized or repealed since the provision was promulgated in 1980. Rather than listing other programs that could become outdated, we would add language that affords flexibility for a multiyear State plan unless a statute, regulation, or the Secretary specifies otherwise. We also propose to remove the note at the end of this section because it is outdated and no longer needed.

SECTIONS 76.125-76.137 CONSOLIDATED GRANT APPLICATIONS FOR INSULAR AREAS

Current Regulation: The Department's consolidated grant authority regulations in part 76, as well as in the

definitions of "State" in §§ 77.1(c) and 79.2, refer to the Trust Territory of the Pacific Islands. In addition, § 76.125(c) states that the Secretary may make annual consolidated grants to assist an Insular Area in carrying out a Department State-administered formula grant program. The following sections then refer to programs listed in § 76.125 as being eligible for consolidation.

Proposed Regulations: We propose to update the regulations to remove all references to the Trust Territory of the Pacific Islands. In addition, the proposed regulations would revise § 76.125(c) to clarify that grantees may consolidate grants only if not otherwise prohibited from doing so by applicable law. Also, we propose to change all references in the following sections from "programs listed in § 76.125(c)" to "State-administered formula grant programs." We also propose to revise the examples in §§ 76.128 and 76.129 to update the statutory references, and to make conforming changes to remove the term "Trust Territory of the Pacific Islands," from the definitions of "State" in §§ 77.1(c) and 79.2.

Reasons: The Trust Territory of the Pacific Islands was a United Nations trust territory administered by the United States from 1947 to 1986. During the latter part of that time, it was eligible for Department program funding and services much like the Outlying Areas of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and

the U.S. Virgin Islands. For that reason, it was included, in EDGAR, in the Department's consolidated grant authority regulations as well as in the EDGAR definitions of "State" in §§ 77.1(c) and 79.2.

The trusteeship ended in 1986 and from it emerged the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau (collectively, the Freely Associated States). While the Freely Associated States still have a special relationship with the United States and each of them receives certain funds through the Department, as provided in their Compacts of Free Association with the United States, they do not receive funds as part of the Trust Territory of the Pacific Islands, which no longer exists. On this point, as a purely technical matter, we propose to delete the outdated reference to the Trust Territory of the Pacific Islands.

The change to § 76.125(c) would clarify that consolidation may take place only in a manner that is consistent with applicable law. For clarity, we propose to update references elsewhere to § 76.125(c) to refer directly to "State-administered formula grant programs."

SECTIONS 76.140-76.142 STATE PLAN AMENDMENTS

Current Regulation: Section 76.140 requires a State to amend its State plan if the Secretary determines that an amendment is essential or if there is a significant and relevant change regarding the plan. Section 76.141

requires a State to use the same procedures when amending its State plan as it did when submitting the plan to the Secretary. Section 76.142 requires the Secretary to use the same procedures to approve an amendment as the Secretary used when reviewing and approving the initial State plan.

Proposed Regulation: We propose to remove duplicate language in § 76.140(b) regarding when an amendment is needed. New proposed paragraph (c) would incorporate current § 76.141 with revisions that would allow the Secretary to prescribe different procedures for a State to amend its State plan based on the characteristics of a particular State-administered formula grant program. We propose to remove §§ 76.141-76.142.

Reasons: The current regulations, in § 76.140(b), go into greater detail than necessary about the kinds of changes that result in an amendment; the proposed regulations would simplify and clarify the regulations by stating that a State must submit an amendment whenever there is a significant and relevant change in information or assurances in the State plan. The language in current § 76.140(b)(2) and (b)(3) could be included in the general "information" in the State plan and thus we propose combining the provisions in proposed § 76.140(b)(1). Current §§ 76.141-76.142 are overly prescriptive in requiring States and the Secretary to use the same process

for submitting and approving amendments as they used when submitting and approving an initial State plan. Those processes may be burdensome and may not always be appropriate for an amendment to a State plan. We propose to remove current § 76.141 and add a new paragraph (c) to § 76.140, which seeks to provide flexibility so that the Secretary may prescribe different procedures for States to use based on the specific State-administered formula grant program. The proposed regulations would also remove the requirement in current § 76.142 that the Secretary follow the same procedures when approving an amendment as the Secretary used to approve the initial State plan in order to allow the Secretary discretion to streamline the approval of amendments.

SECTION 76.301 LOCAL EDUCATIONAL AGENCY APPLICATION IN GENERAL

Current Regulation: Section 76.301 requires an LEA that applies for a subgrant under a program subject to part 76 to have on file with the State an application that meets the requirements of section 442 of GEPA (20 U.S.C. 1232e).

Proposed Regulation: We propose to make clear that the requirements of section 442 of GEPA do not apply to an LEA application for a program under the ESEA.

Reasons: Section 8306(b) of the ESEA (20 U.S.C. 7846(b)) states that the requirements of section 442 of GEPA do not apply to LEA plans under the ESEA. We propose this change

to align the regulation with the statute.

SECTION 76.401 DISAPPROVAL OF AN APPLICATION--OPPORTUNITY FOR A HEARING

Current Regulation: Section 76.401 sets forth the requirements that a state educational agency (SEA) must meet when disapproving an application for a subgrant in one of the Department's covered State-administered formula grant programs, which are identified in a table in the regulations. The regulation restates the requirements in section 432 of GEPA (20 U.S.C. 1231b-2), including the due process an SEA must provide to an applicant for a subgrant before (or after, in some cases) the SEA either: (1) disapproves or fails to approve a subgrant application in whole or in part; or (2) fails to provide funds in amounts in accordance with the requirements of laws and regulations. Section 76.401 also reiterates the statutory requirements for the relevant timelines, the right of an applicant to appeal an SEA's final decision disapproving an application or failing to provide funds in the required amount to the Secretary, and the standard of review that the Secretary must apply in considering such an appeal. Section 76.401 is silent regarding the information that must be included in a notice of appeal submitted to the Secretary. Under § 76.401(b), the requirements for providing an opportunity for a hearing before disapproving a subgrant application do not apply to a State agency other

than an SEA.

Proposed Regulation: We propose to revise the regulation in current § 76.401 in several respects by:

(1) Removing the table of programs and clarifying that the requirements apply to State-administered formula grant programs administered by an SEA in which the SEA makes subgrants.

(2) Clarifying that an applicant must include a citation to the alleged violation of a Federal or State statute, rule, regulation, or guideline governing the applicable program and a brief description of the alleged violation when it requests that the SEA hold a hearing on the application disapproval.

(3) Requiring a notice of appeal to the Secretary submitted pursuant to section 432(b) of GEPA to include, at a minimum, a citation to the specific Federal statute, rule, regulation, or guideline that an SEA allegedly violated and a brief description of the alleged violation.

(4) Deleting an opportunity for a hearing if an SEA fails to provide funds in amounts required by statutes and regulations because § 76.401 applies only to disapproval of an application for a subgrant. Rather, the requirement that an SEA hold a hearing, upon request of a subgrantee, when the SEA fails to provide funds in accordance with applicable statutes and regulations would be added to §76.783(a)(3), which describes other circumstances in which

a subgrantee may request that an SEA hold a hearing that meets the procedural requirements in § 76.401.

(5) Making numerous other changes to eliminate duplicate provisions.

Reasons: For several reasons, described below, we propose to clarify that a notice of appeal to the Secretary must cite the specific Federal statute, rule, regulation, or guideline the appellant believes the SEA's final decision violates and provide a brief description of the alleged violation. For the same reasons, we are also proposing to clarify that an applicant's request to an SEA for a hearing must provide a brief description of the alleged violation of Federal or State statute, rule, regulation, or guideline governing the applicable program.

Section 432 of GEPA affords a subgrantee that is aggrieved by the final action of an SEA in disapproving or failing to approve its application for funds the right to request that the SEA conduct a hearing and, upon receiving an adverse final decision, to appeal the SEA's decision to the Secretary. This section applies only to SEAs. In some programs, the authorizing statute may require that a particular State agency be the sole State agency to administer the approved State plan, such as the Independent Living Services for Older Individuals Who are Blind program in section 752(a)(2) of the Rehabilitation Act of 1973 (29 U.S.C. 796k(a)(2)). This program requires that the sole

State agency to administer the approved State plan be the State Vocational Rehabilitation Services agency that provides services to individuals who are blind in the State. Even if that State agency is located within an SEA, if it is the other State agency designated by statute that is the only agency authorized to take the final action in disapproving or failing to approve a subgrantee's application for funds, then it is not the SEA that is taking the final action within the meaning of § 76.401, and this section does not apply to that program.

These due process protections contemplate that an SEA has violated a Federal or State statute, rule, regulation, or guideline governing the applicable program. Clarifying that a notice of appeal to the Secretary must cite the specific Federal statute, rule, regulation, or guideline that the SEA allegedly violated will help to ensure that an appeal subject to GEPA and the procedures described in § 76.401 is about a violation of Federal law, consistent with GEPA, and not solely a disagreement with the SEA's substantive decision. The GEPA appeal rights apply only when an SEA allegedly violates Federal law and, so, it follows that a GEPA appeal must, at a minimum, allege such a violation.

In the past few years, the Department received numerous GEPA appeals that were without merit; these appeals often came from applicants whose applications were

not selected for funding pursuant to a discretionary subgrant competition. In a large portion of these appeals, the primary argument that the appellant made was that it disagreed with the SEA's assessment of its application. This argument is insufficient as a matter of law in a GEPA appeal because it does not allege that the SEA's final decision was contrary to Federal laws, rules, regulations, or guidelines. Even so, currently, when such an appeal is filed, the appeal is fully briefed, reviewed, and adjudicated before the Secretary issues a final decision denying the appeal, thereby tying up SEA and Department resources for an extended period.

Under our proposed revisions to § 76.401(d)(3), the Secretary would be able to dismiss an appeal immediately upon receipt of a notice of appeal if it is apparent on the face of the notice that it fails to allege a violation of Federal statutes, rules, regulations, or guidelines governing the applicable program. The Secretary would, as a matter of practice, prior to dismissing a GEPA appeal, first request that the appellant show cause for why the appeal should not be dismissed and permit the appellant to revise its notice of appeal to include the specific Federal statute, rule, regulation, or guideline the appellant alleges the SEA violated. By asking that the appellant show cause prior to dismissing the appeal, the Secretary would not cause undue harm to appellants unrepresented by

legal counsel who submit their appeals on their own behalf and might have omitted the specific Federal statute, rule, regulation, or guideline the appellant alleges the SEA violated from the initial version of the appeal. Absent the appellant's ability to show cause, however, the appeal would be dismissed, thereby limiting GEPA appeals to those that fall under the Secretary's authority under section 432 of GEPA: those that allege a violation of Federal law, rule, regulation, or guideline governing the applicable program.

The proposed regulations would also make changes to clarify, streamline, and delete duplicative information. For example, current § 76.401 includes a table of programs to which the section applies. Some programs listed no longer exist. Other programs have been renamed under a reauthorized statute. Rather than update the table of programs, which may become outdated, we believe that clarifying that the procedures described in the section apply only to an applicant that is aggrieved by the final action of an SEA with respect to disapproving or failing to approve its application for funds under a State-administered formula grant program ensures that, over the long term, the text does not become outdated. Additionally, we propose to move the requirements with respect to a subgrantee's allegation that an SEA failed to provide funds in amounts in accordance with the

requirements of applicable statutes and regulations to § 76.783(a)(3). Section 76.401 is about disapproval of an application, and it is, therefore, more logical to include the "failing to provide funds" provision in § 76.783, which describes other circumstances in section 432 of GEPA in which a subgrantee may request a hearing and, ultimately, appeal to the Secretary. This does not change the procedural requirements that apply when a subgrantee alleges that an SEA failed to provide funds in amounts prescribed by law.

The other changes in proposed § 76.401 are for consistency and clarity.

SECTION 76.560-76.569 INDIRECT COST RATES

Current Regulation: Sections 76.560-76.569 describe the application of indirect costs under State-administered formula grant programs, including who approves indirect costs rates and how they are applied.

Proposed Regulation: The Uniform Guidance, in conjunction with EDGAR, governs Department grants and, therefore, these provisions should be closely aligned with one another. The proposed revisions would align these sections of EDGAR with the Uniform Guidance, include cost allocation plans along with indirect costs rates, and provide clarity on the application of indirect cost rates, as well as the addition of § 76.562, specific to reimbursement of indirect costs.

Reasons: These sections of EDGAR currently do not reflect

updates to the Uniform Guidance, including the addition of the de minimis rate, referencing cost allocation plans as performing a role equivalent to indirect costs rate, and clarifications on restricted rates and this alignment is necessary to ensure that there is no confusion about these requirements. Moreover, the proposed changes are intended to add clarity to how indirect cost rates are applied, the indirect cost rate options an entity has, and reimbursement of indirect costs.

SECTION 76.600 WHERE TO FIND CONSTRUCTION REGULATIONS

Current Regulations: Section 76.600 provides section references to the EDGAR regulations on construction.

Propose Regulation: We propose to amend certain regulations related to construction projects and real property acquisition in parts 75, 76, and 77. Specifically for § 76.600, the proposed regulations would update citations to align with the proposed revision in part 75.

Reasons: The purpose of these proposed changes is to update the current regulations in response to statutory changes and related issues that have arisen, as many of the regulations for this section have not been updated since 1992; to better align the regulations to the Uniform Guidance; and to improve clarity and transparency regarding Federal program operations. The proposed changes would also update the citations to the regulations on construction in part 75 and set out the State's

responsibilities when approving construction projects.

SECTION 76.650-76.662 PARTICIPATION OF STUDENTS ENROLLED IN PRIVATE SCHOOLS

Current Regulation: Sections 76.650-76.662 include general requirements applicable to State-administered formula grant programs that require a grantee or subgrantee to provide for participation by students enrolled in private schools.

Proposed Regulation: We propose to amend section 76.650 and remove §§ 76.651-76.662. As a result, we also propose updates to § 75.119, which cross-references § 76.656, and § 75.650, which cross-references §§ 76.650-76.662. In addition, we propose to delete § 299.6(c), which provides that §§ 76.650-76.662 do not apply to the programs covered under § 299.6(b).

Reasons: Sections 76.650-76.662 are currently unchanged since they were issued in 1980. Since then, applicable statutory requirements have changed, and the Department has issued program-specific regulations regarding the provision of services to private school children, teachers and other educational personnel, and families. These include the following regulations: (1) 34 CFR §§ 200.62-200.68, applicable to the provision of equitable services under part A of Title I of the ESEA; (2) §§ 299.6-299.10, applicable to equitable services for programs subject to the requirements in section 8501 of the ESEA; and (3) 34 CFR §§ 300.130-300.144, applicable to equitable services

under part B of the Individuals with Disabilities Education Act (IDEA). Therefore, we propose to remove §§ 76.651-76.662 because they are unnecessary, redundant, and, in some instances, inconsistent with current law. We propose to amend § 76.650 to reference §§ 299.7-299.11 to cover any State-administered formula grant program that requires the provision of services to private school children, teachers and other educational personnel, and families and that is not otherwise governed by applicable regulations. We believe that this approach would ensure greater alignment across programs and reduce the potential for confusion. These proposed changes are for clarity and would not substantively affect the services and assistance available to private school students, educators, or families.

SECTION 76.665 PROVIDING EQUITABLE SERVICES TO STUDENTS AND TEACHERS IN NON-PUBLIC SCHOOLS

Current Regulation: Section 76.665 applies to providing equitable services to children and teachers in non-public schools under the CARES Act. It was necessary because equitable services under the CARES Act were not governed by the provisions in part 299.

Proposed Regulation: We propose to delete § 76.665.

Reasons: Section 76.665 is no longer needed because funds under the CARES Act are no longer available for obligation. Moreover, the regulations on determining the proportional share under § 76.665(b) have been invalidated by several

United States district courts (see, e.g., *Michigan v. DeVos*, 481 F.Supp.3d 984 (N.D. Cal. 2020) and *Washington v. DeVos*, 481 F.Supp.3d 1184 (W.D. Wash. 2020)).

SECTIONS 76.670-76.677 PROCEDURES FOR BYPASS

Current Regulation: Sections 76.670-76.677 establish procedural requirements applicable to programs under which the Secretary is authorized to waive requirements for providing services to private school children and implement a bypass under which the Department assumes responsibility for providing those services.

Proposed Regulation: We propose to remove §§ 76.670-76.677 and add §§ 299.18-299.28 in a new subpart G of part 299 and amend the requirements to reflect statutory changes.

Reasons: Currently, the Secretary is authorized to implement a bypass only under ESEA State-administered formula grant programs and part B of the IDEA. With respect to part B of the IDEA, the Department has established program-specific regulations applicable to a bypass. Because the current bypass regulations in §§ 76.670-76.677 apply only to applicable ESEA State-administered formula grant programs, it is appropriate to remove these requirements from part 76, which applies to more than the ESEA, and add similar provisions as §§ 299.18-299.28 of part 299, which establishes uniform administrative rules for ESEA programs. We describe §§ 299.18-299.28 elsewhere in this document.

SECTION 76.783 STATE EDUCATIONAL AGENCY ACTION—SUBGRANTEE'S OPPORTUNITY FOR A HEARING

Current Regulation: Section 76.783 requires an SEA to provide a subgrantee an opportunity for a hearing under certain circumstances. With respect to an SEA, the regulation cross-references § 76.401, which restates the requirements from section 432 of GEPA, including the due process an SEA must provide to subgrantees if the SEA either: (1) orders the repayment of misspent or misapplied Federal funds; or (2) terminates further assistance for an approved project.

Proposed Regulation: The proposed regulation would add to § 76.783 the requirement currently in § 76.401 that an SEA hold a hearing, upon request of a subgrantee, when the SEA fails to provide funds in amounts in accordance with the requirements of statutes, rules, regulations, or guidelines.

Reasons: The proposed regulation would move the requirements with respect to a subgrantee's allegation that an SEA failed to provide funds in amounts in accordance with the requirements of statutes, rules, regulations, and guidelines from § 76.401 to § 76.783. Section 76.401 is about disapproval of an application, and it is, therefore, more logical to include the "failing to provide funds" provision in § 76.783, which describes other circumstances under section 432 of GEPA in which a subgrantee of an SEA

may request a hearing and, ultimately, appeal to the Secretary. This provision does not change the procedural requirements that apply when an SEA is alleged to have failed to provide funds in amounts prescribed by law; rather, it moves the requirement to a more relevant section of this part.

Part 77 DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

SECTION 77.1 DEFINITIONS THAT APPLY TO ALL DEPARTMENT PROGRAMS

Current Regulation: Section 77.1 includes a number of definitions, including a definition of "direct grant program," which is referred to in § 75.1. The regulation also includes definitions of "Director of the Institute of Museum Services," "Director of the National Institute of Education," and "State," definitions related to evidence, and definitions about the scope of a project. The current definition of "evidence-based" applies to both direct grant programs administered under part 75 and State-administered formula grant programs administered under part 76. These definitions support the various sections in EDGAR and are used by the Department in NIAs where relevant to the specific grant competition.

Proposed Regulation: We propose to remove the definitions of "direct grant program" and "Director of the Institute of Museum Services." In addition, we propose technical updates to the following definitions: "demonstrates a

rationale," "Director of the National Institute of Education," and "evidence-based." Specifically, we propose limiting the definition of "evidence-based" to only direct grant programs administered under part 75, to align with the interpretation that underlying authorizing statutes are the source for the definition of "evidence-based" for formula grant programs. We propose technical updates to the cross-references in section 77.1(b) as a result of changes to the Uniform Guidance. We propose additional updates to the definitions of "moderate evidence," "national level," "performance period," "promising evidence," "regional level", "strong evidence," and "What Works Clearinghouse Handbooks." We propose to add definitions of "construction," "evaluation," "evidence-building," "independent evaluation," and "minor remodeling," "peer-reviewed scholarly publication," and "quality data."

Reasons:

Definitions of Direct Grant Program and Director of the National Institute of Education

We propose to remove the definition of "direct grant program," because it applies only to part 75 and the proposed regulations would define it in § 75.1. Although a technical change, we propose to replace the definition of "Director of the National Institute of Education" with a definition of "Director of the Institute of Education

Sciences" due to a statutory change in the name of that position, enacted in 2002.

Definitions of National Level and Regional Level

We propose revising the definitions of "national level" and "regional level" to replace the phrase "process, product, strategy, or practice" in these two definitions with the term "project component" because "project component" is already defined and would provide more clarity.

Definition of Project Period

We propose clarifying, in the definition of "performance period," that the "period during which funds can be obligated" is specific to grantees and not the Department.

Evidence-Related Definitions

We propose expanding the definitions of "moderate evidence," "promising evidence," and "strong evidence," and the references to evidence levels for practice guides, effectiveness ratings for intervention reports, studies and samples in intervention reports to correspond with the designations on the What Works Clearinghouse website and in Version 5.0 of the What Works Clearinghouse Handbooks. We also propose to update the definition of "What Works Clearinghouse Handbooks" to incorporate by reference these updated standards.

Additionally, we propose to modify the definition of

"moderate evidence" to allow, for example, high-quality studies of low-incidence populations to meet the standard in the context of a systematic review. The new definition of "construction" would give meaning to a term used in multiple sections in parts 75 and 76, and is meant to add clarity, as well as the proposed definition of "minor remodeling" that is meant to help distinguish it from construction. The new definition of "evaluation," a term used in various sections and especially in § 75.210, would clarify and provide a shared understanding of what is meant when this term is used. The new definition of "evidence-building," a term used in § 75.210, would support the Department's efforts to ensure learning from funded grants where rigorous evaluation is not appropriate but feedback and continuous improvement efforts are better suited. The new definition of "quality data," as referenced in section 515 of the Treasury and General Government Appropriations Act, 2001 (Appendix C of Public Law 106-554) (commonly known as the "Information Quality Act") and further defined in the Department's Information Quality Act Guidelines (www2.ed.gov/policy/gen/guid/iq/iqg.html), would support the Department's ongoing effort to improve the data that the Department receives from applicants and grantees by ensuring data encompass utility, objectivity, and integrity of the information. The new definition of "independent evaluation," a term used in § 75.590, would support the

Department's ongoing effort to increase the quality and credibility of the project evaluations supported by competitive grant programs through evaluations conducted independently from project developers and implementers. As discussed in greater detail in the section regarding §§ 76.125-76.137, the revised definition of "State" would remove the reference to the Trust Territory of the Pacific Islands. The revisions to the other definitions listed above would clarify the regulations and align with statutory language.

Definition of Evidence-Based

State-administered formula grant programs administered under part 76 have their own statutory definitions of "evidence-based" and limiting the scope of this definition to part 75 will help ensure that the regulatory and statutory definitions of "evidence-based" do not conflict.

Definitions of Construction and Minor Remodeling

We propose adding a definition of "construction" and revising the definition of "minor remodeling" under § 77.1(c). This proposed definition of "construction" is modeled after the definition of "construction" in the Impact Aid program regulations (34 CFR 222.176(a) "Construction"). The Department has found that it is important to define "construction" to distinguish construction activity from "minor remodeling", a term already defined in § 77.1(c), as there has been confusion

about what activities are considered construction, and which are considered minor remodeling. We propose to revise the term "minor remodeling" to more clearly indicate that minor remodeling is not considered "construction" under the proposed definition.

Definition of Peer-Reviewed Scholarly Publication

We propose adding a definition of "peer-reviewed scholarly publication" to support the use of this term in § 75.620. This definition is intended to clarify that research is made available in a variety of formats, and that research funded by the Department that is submitted for publication in scholarly publications should also be made available for free by submission to ERIC.

34 CFR PART 79--INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF EDUCATION PROGRAMS AND ACTIVITIES

SECTION 79.1-79.8 INTERGOVERNMENTAL REVIEW

Current Regulation: Part 79 discusses the requirements related to intergovernmental review of Department programs and activities.

Proposed Regulation: We propose to remove from §§ 79.1, 79.3, 79.4, and 79.8 references to Section 401 of the Intergovernmental Cooperation Act of 1968 and Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, which are outdated.

Reasons: Section 401 of the Intergovernmental Cooperation Act of 1968 and Section 204 of the Demonstration Cities and

Metropolitan Development Act of 1966 are outdated, and we therefore propose to remove them from these sections.

34 CFR PART 299--GENERAL PROVISIONS

SECTION 299.7

Current Regulation: None.

Proposed Regulation: We propose to add a new § 299.7 to incorporate the requirements in ESEA section 8501 for consultation with private school officials for programs that require the provision of equitable services to private school children, teachers, and other educational personnel.

Reasons: This section would reflect the requirements for consultation with private school officials for programs that require the provision of equitable services to private school children, teachers, and other educational personnel. The addition of a section on consultation is consistent with the current regulations on Title I equitable services in § 200.63. This section would also clarify the requirements in section 8501(c)(1)(H) of the ESEA, which reference the number of children from low-income families in a participating public school attendance area who attend private schools. This language is the same as a similar provision in section 1117(b)(1)(J) of the ESEA, which applies to equitable services under Title I, part A, but is not applicable to equitable services under other covered programs because participation in equitable services under these other programs is not limited to children from low-

income families who live in a Title I participating public school attendance area.

34 CFR PART 299--GENERAL PROVISIONS

SECTION 299.8

Current Regulation: Section 76.660, which elsewhere in this document we propose to remove, contains information about the context in which a subgrantee may use program funds to pay for the services of an employee of a private school.

Proposed Regulation: We propose to add a new § 299.8 to incorporate the information articulated in § 76.660, which we propose elsewhere in this document to remove. Proposed § 299.8 would note that, in providing for the participation of students in private schools, a grantee or subgrantee may use program funds to pay a private school employee if the employee performs services outside of his or her regular hours of duty and under public supervision and control. While § 76.660 refers only to subgrantees, the proposed § 299.8 would also clarify that a grantee, in addition to a subgrantee, may pay for services of private school personnel if the relevant conditions are met.

Reasons: Incorporating this provision in part 299 would consolidate regulations related to the participation of private school students and teachers in part 299 and clarify that the same approach applies whether a grantee or subgrantee is providing services to students enrolled in

private schools.

SECTION 299.16 WHAT MUST AN SEA INCLUDE IN ITS WRITTEN RESOLUTION OF A COMPLAINT?

Current Regulation: None.

Proposed Regulation: We propose to add a new § 299.16 to require that an SEA's written resolution of a complaint from an organization or individual alleging violation of a Federal statute or regulation that applies to an applicable program include specific elements.

Reasons: This section would add clarity regarding the contents of an SEA's written resolution of a complaint to help ensure that the resolution includes relevant information and is clear, concise, and understandable to the parties involved. This would also help facilitate the Department's timely review and resolution of any appeal of an SEA's written resolution of a complaint, particularly within the context of equitable services appeals that require the Department to investigate and resolve an appeal within 90 days of receipt.

SECTION 299.17 WHAT MUST A PARTY SEEKING TO APPEAL AN SEA'S WRITTEN RESOLUTION OF A COMPLAINT INCLUDE IN ITS APPEAL REQUEST?

Current Regulation: None.

Proposed Regulation: We propose to add a new § 299.17 to require that certain elements be included in a party's appeal of an SEA's written resolution of a complaint.

Reasons: This section would clarify what must be included in an appeal in order to facilitate the Department's timely review and resolution of the appeal, particularly within the context of equitable services appeals that require the Department to investigate and resolve an appeal within 90 days of receipt.

SECTION 299.18 WHEN ARE BYPASS PROVISIONS APPLICABLE?

Current Regulation: None.

Proposed Regulation: We propose to add a new § 299.18, which would incorporate part of current § 76.670(a), which elsewhere in this document we propose to remove. Section 299.18 would clarify those applicable ESEA programs under which the Secretary is authorized to waive the requirements for providing equitable services to private school children, teachers, and other educational personnel (hereafter, for ease of reference, "private school children") and implement a bypass.

Reasons: Because current § 76.670(a) applies only to ESEA programs under which the Secretary is authorized to waive the requirements for providing equitable services to private school children and implement a bypass, we propose to move this section to a new subpart G of part 299, which would contain other requirements regarding the provision of equitable services to private school children. Proposed § 299.18 would delete the list of applicable programs contained in current § 76.670(a) because that list is out

of date.

SECTION 299.19 BYPASS--GENERAL

Current Regulation: None.

Proposed Regulation: Proposed § 299.19 would state the statutory standards that authorize the Secretary to implement a bypass.

Reasons: We propose to add § 299.19 to clarify the circumstances in which the Secretary is authorized to waive the requirements for providing equitable services to private school children and implement a bypass.

SECTION 299.20 HOW TO REQUEST A BYPASS

Current Regulation: None.

Proposed Regulation: Proposed § 299.20 would clarify the circumstances in which a private school official or an agency, consortium, or entity, as applicable, may request a bypass.

Reasons: Sections 1117(b)(6)(C) and 8501(c)(6)(C) of the ESEA contain provisions added by the Every Student Succeeds Act that require an SEA to provide equitable services directly or through a contract with a public or private agency, organization, or institution if an appropriate private school official has requested that the SEA provide those services and demonstrated that an agency, consortium, or entity has not met the requirements of section 1117 or 8501, as applicable. If an SEA determines that it is appropriate to provide equitable services itself, a bypass

request to the Secretary would be unnecessary. Accordingly, proposed § 299.20(a) would clarify that an appropriate private school official may request a bypass from the Secretary if an SEA declines to provide equitable services itself following a private school official's request or if the failure to provide equitable services is by an SEA. Proposed § 299.20(b) would clarify that such a request may also be made if an agency, consortium, or entity is prohibited by law from providing equitable services.

SECTION 299.21 NOTICE OF INTENT TO IMPLEMENT A BYPASS

Current Regulation: Section 76.671 contains notice procedures that the Secretary uses prior to implementing a bypass, which elsewhere in this document we propose to remove.

Proposed Regulation: Proposed § 299.21 contains notice provisions essentially identical to those in current § 76.671, with a few edits to conform language to section 8504 of the ESEA.

Reasons: We propose to remove current § 76.671 and include its substance in proposed § 299.21 in new Subpart G of part 299, which contains other provisions regarding the provision of equitable services to private school children.

SECTION 299.22 FILING REQUIREMENTS

Current Regulation: Section 76.670(b) contains filing requirements to request that the Secretary implement a

bypass, which elsewhere in this document we propose to remove.

Proposed Regulation: Proposed § 299.22 contains filing requirements similar to those in current § 76.670(b).

Reasons: We propose to remove current § 76.670(b) and include its substance in proposed § 299.22 in new Subpart G of part 299, with changes to replace references to facsimile transmission with references to electronic mail.

SECTIONS 299.23 THROUGH 299.28 BYPASS DETERMINATION PROCESS

Current Regulation: Sections 76.672-76.677, which elsewhere in this document we propose to remove, contain procedures for implementing a bypass.

Proposed Regulation: Proposed §§ 299.23-299.28 are essentially identical to §§ 76.672-76.677, with a few edits to conform to section 8504 of the ESEA.

Reasons: We propose to remove current §§ 76.672-76.677 and include their substance, with minor edits, in proposed §§ 299.23-299.28 in new subpart G of part 299, which contains other regulations regarding the provision of equitable services to private school children.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine 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, as amended by Executive Order 14094, 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 $200 million or more (as of 2022 but adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) of OMB for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments;

(2) Create a 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 legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles stated in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f)(4) of Executive Order 12866, as amended by Executive

Order 14094. Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this proposed regulatory action and have determined that the benefits would justify the costs.

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

(1) Propose or adopt regulations only 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." OIRA 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 proposed regulations 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 an analysis of anticipated costs and benefits, we believe that these proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Potential Costs and Benefits

We have reviewed the changes proposed in this NPRM in

accordance with Executive Order 12866, as amended by Executive Order 14094, and do not believe that these changes would generate a considerable increase in burden. In total, we estimate that the proposed changes in this NPRM would result in a net decrease in burden of approximately $4,000 with transfers of between $109.7 and $113.8 million. Most of the changes proposed in this NPRM are technical in nature and are unlikely to affect the administration of programs or allocation of benefits in any substantial way. However, given the large number of edits proposed herein, we discuss each provision, other than those for which we are updating citations or cross-references and making other technical edits, and its likely costs and benefits in turn below.

Proposed changes to §§ 75.1 and 75.200 would simply combine currently existing text into a single section and clarify terms used. We do not expect that these changes will have any quantifiable cost, and it may benefit the Department and general public by improving the clarity of the regulations.

The proposed deletion of § 75.4 as unnecessary and redundant is unlikely to generate any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.60, which would delete an outdated table and clarify a definition, are unlikely to

generate any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.101 are unlikely to generate any meaningful cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to §§ 75.102 and 75.104, which would move paragraph (b) of § 75.102 to § 75.104, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.105, which add reference to an already existing exemption to the public comment period to the regulations, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.109, which would eliminate the requirement that an applicant submit two copies of any paper applications in addition to the original, may reduce costs for applicants that submit paper applications. However, those savings are likely to be minimal, given the small incremental cost of photocopies and the low number of paper applications the Department receives in any year. At most, we estimate that it would save applicants $7.50 per application, assuming a 75-page application photocopied at a rate of $0.05 per page. Assuming an average of 50 paper

applications submitted per year, this change would result in an annual savings of approximately $375.

Proposed changes to § 75.110, which would more clearly specify how applicants must report against program measures and project-specific performance measures, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.112, which would allow the Secretary to require applicants to submit a logic model, are unlikely to generate any quantifiable costs or benefits. Many grant competitions already include this requirement and, to the extent that it is included in additional competitions in the future, we do not believe that it would create a substantial burden for applicants, because we assume that applicants in those programs would likely already have conceptualized an implicit logic model for their applications and, therefore, would experience only minimal paperwork burden associated with memorializing it in their applications.

Proposed changes to § 75.127, which would add the term "partnership" and clarify that all members of a group application must be eligible entities, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

The proposed deletion of §§ 75.190-75.192 as duplicative is unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.201, which refer to selection "factors," as well as "criteria" are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.210, which would clarify word choice and make updates to language based on past experience in using the current selection criteria and factors, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.216, which would remove paragraphs (a) and (d) and revise the section heading, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations and providing the Department additional flexibility in considering applications.

Proposed changes to § 75.217, which would remove the word "solely" and add "and any competitive preference points," are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.219, which would reorganize

the section to improve clarity, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.221, which would revise the section to improve clarity and remove unnecessary language, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.222, which would update the mailing address for unsolicited applications, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

The proposed change to § 75.225 would change the current term "novice applicant" to "new potential grantee" and revise the definition to provide greater flexibility to the Department in classifying applicants as "new potential grantees." We believe that this proposed regulation may result in a number of changes in the behavior of both Department staff and applicants. First, we believe that the additional flexibility in the new definition will increase the number of competitions in which § 75.225 is used. Second, we believe that it may result in additional applicants submitting applications for competitions in which § 75.225 is used. Finally, we believe that the additional applicants, in conjunction with any absolute or

competitive preference associated with the revised section, may shift at least some of the Department's grants among eligible entities. However, because this revised standard would neither expand nor restrict the universe of eligible entities for any Department grant program, and since application submission and participation in our discretionary grant programs is completely voluntary, we do not think that it would be appropriate to characterize any increased participation in our grant competitions as costs associated with this regulation.

Proposed changes to § 75.226, which would provide the Secretary with the authority to give special consideration to an application that demonstrates a rationale, are unlikely to generate any quantifiable costs or benefits. Many grant competitions already ask applicants to discuss the extent to which they can demonstrate a rationale for their proposed projects through a selection factor and, to the extent that it is included in additional competitions in the future, we do not believe that it would create a substantial burden for applicants, because we assume that applicants in those programs would likely already have conceptualized an implicit logic model for their applications and would, therefore, experience only minimal paperwork burden associated with memorializing it in their applications.

Proposed changes to § 75.227 would give the Secretary

the authority to give special consideration to rural applicants. The proposed language in this section mirrors language adopted by the Department in the Administrative Priorities. As such, these proposed changes will not generate any quantifiable costs and may benefit the Department and general public by improving the clarity and transparency of the Department's authority to provide special consideration to particular applicants.

Proposed changes to § 75.234, which would replace the word "special" with the word "specific," are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.250, which would update the heading and would clarify that an extension of the project period is authorized by EDGAR only if the applicable statutes and regulations permit it, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.253, which would allow a grantee whose request for a non-competitive continuation award has been denied to request reconsideration, could generate costs to affected grantees and the Department. In general, we do not deny a large number of non-competing continuation awards and, if that does happen, grantees are

often aware of the likelihood of the decision well in advance and often cite no concerns if they do not receive a continuation award. Therefore, we do not believe that many grantees would qualify for the redress, and we do not believe that the few who may qualify would exercise the right. However, for the purpose of this analysis, we assume that we would process 10 such requests annually -- which we believe is an overestimate of the likely incidence. For each request, we assume a project director earning $106.76 per hour, on average, would spend 24 hours drafting and submitting the request. At the Department, a program officer at the GS-13/1 level ($61.96 per hour) would spend approximately 8 hours reviewing each request, along with 2 hours for their supervisor at the GS-14/1 level ($72.69 per hour) to review. We also assume that a Department attorney ($72.69 per hour) would spend approximately 4 hours reviewing each request. In sum, we estimate that this provision would generate an additional cost of approximately $25,622 for grantees and $9,320 for the Department per year.

The proposed addition of a new § 75.254 would give the Secretary the authority to approve data collection periods. The proposed language in this section is aligned with this previous authority under § 75.250(b) as well the Administrative Priorities. As such, these proposed changes will not generate any quantifiable costs and may benefit

the Department and general public by allowing for data collection periods that give grantees additional time to collection data to measure project impact.

Proposed changes to § 75.261, which would remove references to obsolete programs and make other edits, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.263, which would remove the clause "notwithstanding any requirement in 2 CFR part 200," are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to §§ 75.560-75.564, which align these sections with the Uniform Guidance and provide additional information on the application of indirect cost rates, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.590, which would allow the Department to require the use of an independent evaluation in a program, would likely generate transfers for affected grantees. Specifically, we assume that grantees that are required to use an independent evaluator will transfer grant funds from their currently designated purpose (such as to defray the costs of an internal evaluation) to pay

for an independent evaluation. We note, however, that we do not believe that these transfers would substantially affect the level of support that beneficiaries of our competitive grant programs receive; the grantees would have spent a certain percentage of their awards on evaluation, whether such evaluation is conducted by an internal or external entity. We believe that the most likely programs in which the Department would require an independent evaluation are those that include an expectation of a rigorous evaluation using selection factors related to What Works Clearinghouse evidence standards in project evaluations. From 2014 through 2022, we included such selection factors in 18 competitions (excluding programs that have their own independent evaluation requirements, such as Education Innovation and Research and its predecessor, Investing in Innovation, because these programs are already included in the baseline), with a combined average of $194.8 million in awards per year. Assuming that evaluation costs in these programs average approximately 15 percent of total project costs, we estimate that the evaluations for these competitions would cost approximately $29,227,000 per year. Assuming equal-sized cohorts of new grants per year, we estimate that this total would increase through Year 5, when it would plateau at $146,135,000 per year. To the extent that grantees already use evaluators that would meet the requirements for

an independent evaluation, this would represent an overestimate of the transfers associated with this provision.

Proposed changes to § 75.591, which clarify how grantees cooperate with Federal research activities, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to §§ 75.600-75.615 and §§ 75.618-75.619 would restructure the sections on construction to improve the flow of the information, as well as update citations, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.620, which would update language regarding Federal endorsement, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

The proposed addition of § 75.623 would require certain grantees to submit final versions of Department-funded research publications to ERIC so that they are publicly available. Given that submission of the files would be a required grant activity, we do not anticipate that the requirement generating any additional costs for grantees. To the extent that submission did generate

additional burdens, they would likely be minimal and would be properly considered transfers from support of other grant-related activities. Such transfers would be de minimis. Further, the addition of this requirement would generate benefits for the general public by increasing the availability of publicly supported research.

Proposed changes to § 75.700, which would add Executive orders to the list of authorities with which grantees must comply, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.708, which would allow the Secretary to provide notice authorizing subgrants through the *Federal Register* or another reasonable means, may generate minimal efficiency returns to the Department by reducing burdens and costs associated with preparing a notice for publication in the *Federal Register*. However, we estimate that staff time to draft and compile these notices will likely remain unchanged and, therefore, do not estimate any changes in burden associated with this provision.

Proposed changes to § 75.720 would allow the Secretary to require grantees to publish their annual performance reports on a public-facing website. Given that this requirement would apply only to a subset of discretionary competitive grant programs and participation in such

programs is voluntary, we do not estimate any costs associated with this proposed change. However, we believe that, to the extent that the requirement results in a shift in activities by grantees, it is possible that there would be minimal transfers. We estimate that it would take a web developer approximately 30 minutes to post a copy of the grantee's annual performance report on the website. Assuming that a loaded wage rate is $57.05 per hour for web developers, we estimate that this requirement could generate approximately $29 per year per affected grantee. In FY 2020, the Department made approximately 7,700 grants. Assuming this requirement would be used in 20 percent of those grants, we estimate total transfers of approximately $43,930 per year.

Proposed changes to § 76.1, which would ensure consistent reference to State-administered formula grant programs, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 76.50 would clarify that, in the absence of a statutory or regulatory prohibition against subgranting, or in the absence of a term and condition in the grant award that would prohibit subgranting, States, consistent with 2 CFR 200.332, determine whether to make subgrants. These proposed changes would likely generate cost savings for States associated with the reduced burden

associated with making subgrants as opposed to contracts. However, we do not have sufficient information to quantify this impact and we invite public comment on the cost savings associated with such a shift at the State level.

Proposed changes to § 76.101, which would clarify the applicability of section 441 of GEPA, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 76.102, which would remove a table and provide a general definition of the term "State plan," are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 76.103, which would remove extraneous text and simplify the section, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to §§ 76.125-76.137, which would remove references to the Trust Territory of the Pacific Islands and make other changes, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to §§ 76.140-76.142, which would, among other things, allow the Secretary to prescribe

alternative amendment processes on a program-by-program basis, could generate benefits for both States and the Department. The proposed changes would provide the Secretary broad flexibility in prescribing alternative procedures, which makes it difficult to assess precisely the specific cost reductions that would occur. However, we assume that these alternative procedures would result in a net burden reduction of 2 hours for a management analyst at the State level and 0.5 hours for an administrator at the State level for each State plan revision under the ESEA. We further estimate that likely alternative procedures would result in a burden reduction of 5 hours for a management analyst and 0.5 hours for a chief executive at the State level for each State plan revision under the Workforce Innovation and Opportunity Act (WIOA). We further assume an average of 15 State plan amendments under the ESEA and 52 State plan amendments under WIOA each year. In total, we estimate that these alternative procedures would reduce costs for States by approximately $23,733 per year. We also assume that the alternative procedures would reduce burden on Federal staff by approximately 1 hour per State plan amendment for a total Federal savings of approximately $4,150 per year.

Proposed changes to § 76.301, which would clarify that section 442 of GEPA does not apply to LEA subgrantees, would not generate any quantifiable costs, and would

benefit the Department and the general public by improving the clarity of the regulations.

Proposed changes to § 76.401, which would clarify that a notice of appeal must include an allegation of a specific violation of law by the SEA, are likely to generate benefits for the Department by reducing the number of appeals that fail to state a claim that we receive and process each year. On average, we process approximately 10 appeals each year, with an attorney spending approximately 30 hours reviewing each appeal. We estimate that this provision would reduce the number of appeals the Department receives each year by approximately 20 percent, resulting in a net savings of 60 hours per year or approximately $5,530 per year. We also believe that this provision would generate cost savings at the State level, but do not have sufficient information on the case load at the State level to make a reliable estimate. We invite public comment on the potential savings at the State level associated with this proposed change.

Proposed changes to §§ 76.560-76.569, which would align these sections with the Uniform Guidance and provide additional information on the application of indirect cost rates, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 76.650 and related sections,

which would revise regulatory references, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

The proposed deletion of § 76.655 as unnecessary is unlikely to generate any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 76.783 indicate that a subgrantee may request a hearing related to a State educational agency's failure to provide funds in amounts in accordance with the requirements of applicable statutes and regulations. These proposed changes would not generate any additional costs, as this circumstance was previously contemplated in § 76.401, which we are proposing to delete.

Proposed changes to § 77.1(c), which would update existing definitions, remove unnecessary definitions, and add new definitions, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to part 79, which would remove outdated statutory references, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to part 299, which would reflect statutory changes, are unlikely to generate any

quantifiable costs and may benefit the Department and the general public by improving the clarity of the regulations. The proposed additions of §§ 299.16-299.17 would add specificity as to what an SEA's resolution of a complaint must include and what a party's appeal to the Secretary of an SEA decision must include. The specific elements named in these sections are all things that a legal decision or appeal should already include (such as a description of applicable statutory and regulatory requirements, legal analysis and conclusions, supporting documentation). When the Department receives records on appeal that do not include one or more of these elements, we go back to the parties to request the missing element(s). Specifying in these sections what we need to issue a decision would prevent this unnecessary delay; however, we do not think that the specific elements would generate quantifiable costs.

Proposed additions of §§ 299.18-299.28 regarding the procedures for a bypass in providing equitable services to eligible private school children, teachers or other educational personnel, and families, as applicable, are unlikely to generate any quantifiable costs and may benefit the Department and the general public by improving the clarity of the regulations. These sections reflect only minor updates to information previously contained in §§ 76.670-76.677, which elsewhere we propose to remove.

In total, we estimate that these regulations would result in a net decrease in costs of approximately $4,014 per year with transfers ranging from $109.7 million to $113.8 million per year. Of the net benefit, approximately $3,610 would accrue to grantees. The remaining approximately $400 in net additional benefits would accrue to the Department.

As noted above, we do not anticipate any meaningful, quantifiable impact from the majority of proposed regulatory changes. However, for those provisions for which we do estimate impacts, we summarize those impacts below using 3 and 7 percent discount rates, consistent with OMB Circular A-4:

PROVISION	BENEFITS	
	3% discount rate	7% discount rate
§ 75.109 – Reduce the number of paper copies of an application to be submitted	$375	$375
§ 76.140-142 – Amendments to State Plan	$34,940	$34,940
§ 76.401 – Disapproval of an application	$10,655	$10,655
	COSTS	
	3%	7%
§ 75.253 – Request for Reconsideration	($27,924)	($27,924)
	TRANSFERS	
	3%	7%
§ 75.590 – Independent evaluation	$113,824,837	$109,706,758

§ 75.720 – Financial and Performance Reports	$43,500	$43,500

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 regulations 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 regulations 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 these regulations present any significant impact on 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 regulatory action does not contain any

information collection requirements. However, we do anticipate that the proposed changes to §§ 76.140-76.142 would reduce State burden under existing information collection requirements by approximately 323.5 hours per year (see the Discussion of Costs, Benefits, and Transfers for more information on this estimate). The valid OMB control number for that information collection is 1810-0576.

Intergovernmental Review

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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.

List of Subjects

34 CFR Part 75

Accounting; Copyright; Education; Grant programs-education; Incorporation by reference; Indemnity payments; Inventions and patents; Private schools; Reporting and recordkeeping requirements; Youth organizations.

34 CFR Part 76

Accounting; Administrative practice and procedure; American Samoa; Education; Grant programs-education; Guam; Northern Mariana Islands; Pacific Islands Trust Territory; Prisons; Private schools; Reporting and recordkeeping requirements; Virgin Islands; Youth organizations.

34 CFR Part 77

Education; Grant programs-education; Incorporation by reference.

34 CFR Part 79

Intergovernmental relations.

34 CFR Part 299

Administrative practice and procedure; Elementary and secondary education; Grant programs-education; Private schools; Reporting and recordkeeping requirements.

Miguel A. Cardona,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 75, 76, 77, 79, and 299 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3 and 3474, unless otherwise noted.

Section 75.263; 2 CFR 200.308(d)(1).

Section 75.617, 31 U.S.C. 3504, 3505.

Section 75.740 also issued under 20 U.S.C. 1232g and 1232h.

2. Revise § 75.1 to read as follows:

§ 75.1 Programs to which part 75 applies.

(a) *General*. (1) The regulations in this part apply to each direct grant program of the Department of Education, except as specified in these regulations for direct formula grant programs, as referenced in paragraph (c)(3) of this section.

(2) The Department administers two kinds of direct grant programs. A direct grant program is either a discretionary grant program or a formula grant program other than a State-administered formula grant program covered by 34 CFR part 76.

(3) If a direct grant program does not have implementing regulations, the Secretary implements the

program under the applicable statutes and regulations and, to the extent consistent with the applicable statutes and regulations, under the General Education Provisions Act and the regulations in this part. With respect to the Impact Aid Program (Title VII of the Elementary and Secondary Education Act of 1965), see 34 CFR 222.19 for the limited applicable regulations in this part.

(b) *Discretionary grant programs.* A discretionary grant program is one that permits the Secretary to use discretionary judgment in selecting applications for funding.

(c) *Formula grant programs.* (1) A formula grant program is one that entitles certain applicants to receive grants if they meet the requirements of the program. Applicants do not compete with each other for the funds, and each grant is either for a set amount or for an amount determined under a formula.

(2) The Secretary applies the applicable statutes and regulations to fund projects under a formula grant program.

(3) For specific regulations in this part that apply to the selection procedures and grant-making processes for direct formula grant programs, see §§ 75.215 and 75.230.

Note 1 to § 75.1: See 34 CFR part 76 for the general regulations that apply to programs that allocate funds by formula among eligible States.

§ 75.4 [Removed and Reserved]

3. Remove and reserve § 75.4.

§ 75.50 [Amended]

4. Amend § 75.50 in paragraph (a) by removing the words "the authorizing statute" and adding in their place the words "applicable statutes and regulations".

§ 75.51 [Amended]

5. Amend § 75.51 in paragraph (a) by removing the parenthetical sentence "(See the definition of *nonprofit* in 34 CFR 77.1.)".

6. Revise § 75.60 to read as follows:

§ 75.60 Individuals ineligible to receive assistance.

An individual is ineligible to receive a fellowship, scholarship, or discretionary grant funded by the Department if the individual—-

(a) Is not current in repaying a debt or is in default, as that term is used in 34 CFR part 668, on a debt—-

(1) Under a program administered by the Department under which an individual received a fellowship, scholarship, or loan that they are obligated to repay; or

(2) To the Federal Government under a nonprocurement transaction; and

(b) Has not made satisfactory arrangements to repay the debt.

§ 75.61 [Amended]

7. Amend section 75.61 by:

a. In paragraph (a)(2), removing the words "section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a)" and adding in their place the words "section 421 of the Controlled Substances Act (21 U.S.C. 862)"; and

b. Removing the parenthetical authority citation at the end of the section.

§ 75.62 [Amended]

8. Amend § 75.62 by:

a. In paragraph (a)(2), removing the words "section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a)" and adding, in their place, the words "section 421 of the Controlled Substances Act (21 U.S.C. 862)"; and

b. Removing the parenthetical authority citation at the end of the section.

9. Amend § 75.101 by:

a. Revising paragraph (a)(1);

b. Adding the period after "assistance?)" in paragraph (a)(7);

c. Removing paragraphs (a)(1)(i) and (ii); and

d. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.101 Information in the application notice that helps an applicant apply.

(a) * * *

(1) How an applicant can obtain an application

package.

* * * * *

§ 75.102 [Amended]

10. Amend § 75.102 by removing and reserving paragraph (b) and removing the parenthetical authority citation at the end of the section.

§ 75.103 [Amended]

11. Amend § 75.103 by:

a. Removing in paragraph (b) the citation "§ 75.102(b) and (d)" and adding in its place the citation "§ 75.102(d)"; and

b. Removing the parenthetical authority citation at the end of the section.

12. Amend § 75.104 by:

a. Revising the section heading;

b. Adding paragraph (c); and

c. Removing the parenthetical authority citation at the end of the section.

The revision and addition read as follows.

§ 75.104 Additional application provisions.

* * * * *

(c) If an applicant wants a new grant, the applicant must submit an application in accordance with the requirements in the application notice.

13. Amend § 75.105 by:

a. Revising the section heading;

b. In paragraph (b)(2)(i), removing the words "by inviting applications that meet the priorities" and adding in their place the words "through invitational priorities";

c. In paragraph (b)(2)(iii), removing the words "seriously interfere with an orderly, responsible grant award process or would otherwise";

d. In paragraph (b)(2)(iv), removing the word "or" after the semicolon;

e. In paragraph (b)(2)(v), removing the period and adding in its place "; or";

f. Adding paragraph (b)(2)(vi);

g. Removing the words "high quality" in paragraph (c)(3) and adding in their place the words "high-quality"; and

h. Removing the parenthetical authority citation at the end of the section.

The revision and addition read as follows:

§ 75.105 Annual absolute, competitive preference, and invitational priorities.

* * * * *

(b) * * *

(2) * * *

(vi) The final annual priorities are developed under the exemption from rulemaking for the first grant competition under a new or substantially revised program authority pursuant to section 437(d)(1) of GEPA, 20 U.S.C.

1232(d)(1), or an exemption from rulemaking under section 681(d) of the Individuals with Disabilities Education Act, 20 U.S.C. 1481(d), section 191 of the Education Sciences Reform Act, 20 U.S.C. 9581, or any other applicable exemption from rulemaking.

* * * * *

14. Revise § 75.109 to read as follows:

§ 75.109 Changes to applications.

An applicant may make changes to its application on or before the deadline date for submitting the application under the program.

15. Amend § 75.110 by:

a. Revising paragraph (a);

b. Redesignating paragraphs (b) and (c) as paragraphs (c) and (b), respectively;

c. In newly redesignated paragraph (b) introductory text, adding the word "program" before the words "performance measurement";

d. Revising newly redesignated paragraphs (b)(1)(ii) and (b)(2);

e. Revising newly redesignated paragraphs (c)(1) and (c)(2)(i); and

f. Removing the parenthetical authority citation at the end of the section.

The revisions read as follows:

§ 75.110 Information regarding performance measurement.

(a) The Secretary may establish, in an application notice for a competition, one or more program performance measurement requirements, including requirements for performance measures, baseline data, or performance targets, and a requirement that applicants propose in their applications one or more of their own project-specific performance measures, baseline data, or performance targets and ensure that the applicant's project-specific performance measurement plan would, if well implemented, yield quality data.

(b) * * *

(1) * * *

(ii) If the Secretary requires applicants to collect data after the substantive work of a project is complete in order to measure progress toward attaining certain performance targets, the data-collection and reporting methods the applicant would use during the post-performance period and why those methods are likely to yield quality data.

(2) The applicant's capacity to collect and report the quality of the performance data, as evidenced by quality data collection, analysis, and reporting in other projects or research.

(c) * * *

(1) *Project-specific performance measures.* How each proposed project-specific performance measure would:

accurately measure the performance of the project; be consistent with the program performance measures established under paragraph (a) of this section; and be used to inform continuous improvement of the project.

(2) * * *

(i) Why each proposed baseline is valid and reliable, including an assessment of the quality data used to establish the baseline; or

* * * * *

16. Amend § 75.112 by:

a. Revising the section heading;

b. Adding paragraph (c); and

c. Removing the parenthetical authority citation at the end of the section.

The revision and addition read as follows:

§ 75.112 Include a proposed project period, a timeline, and a logic model.

* * * * *

(c) The Secretary may establish, in an application notice, a requirement to include a logic model.

§ 75.117 [Amended]

17. Amend § 75.117 in paragraph (a) by adding "and" after the semicolon.

§ 75.118 [Amended]

18. Amend § 75.118 by:

a. In paragraph (a), removing "2 CFR 200.327 and

200.328" and adding in its place "2 CFR 200.328 and 200.329"; and

b. Removing the parenthetical authority citation at the end of the section.

19. Revise § 75.119 to read as follows:

§ 75.119 Information needed if private school children participate.

If a program provides for participation of students enrolled in private schools and, as applicable, their teachers or other educational personnel, and their families, the application must include a description of how the applicant will meet the requirements under §§ 299.7-299.11.

20. Amend § 75.127 by:

a. Redesignating paragraphs (b)(3) and (4) as paragraphs (b)(4) and (5), respectively;

b. Adding new paragraph (b)(3) and paragraph (c); and

c. Removing the parenthetical authority citation at the end of the section.

The additions read as follows:

§ 75.127 Eligible parties may apply as a group.

* * * * *

(b) * * *

(3) Partnership.

* * * * *

(c) In the case of a group application submitted in

accordance with §§ 75.127 through 75.129, all parties in the group must be eligible applicants under the competition.

§ 75.135 [Amended]

21. Amend § 75.135 by:

a. In paragraph (a) introductory text, removing the citation "2 CFR 200.320(c) and (d)" and adding in its place the citation "2 CFR 200.320(b)"; and

b. In paragraph (b) introductory text, removing the citation "2 CFR 200.320(b)" and adding in its place the citation "2 CFR 200.320(a)".

§ 75.155 [Amended]

22. Amend § 75.155 by removing the words "the authorizing statue requires" and adding in their place the words "applicable statutes and regulations require".

§ 75.157 [Amended]

23. Amend § 75.157 by removing the parenthetical authority citation at the end of the section.

§ 75.158 [Amended]

24. Amend § 75.158 by:

a. In paragraph (c), removing the citation "§ 75.102(b) and (d)" and adding in its place the citation "§ 75.102(d)"; and

b. Removing the parenthetical authority citation at the end of the section.

§§ 75.190 through 75.192 [Removed and Reserved]

25. Remove the undesignated section heading before §75.190, and remove and reserve §§ 75.190 through 75.192.

26-27. Revise the undesignated center heading before § 75.200 and revise § 75.200 to read as follows:

Selection of New Discretionary Grant Projects

§ 75.200 How applications for new discretionary grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.

(a) The Secretary uses selection criteria to evaluate the applications submitted for new grants under a discretionary grant program.

(b) To evaluate the applications for new grants under the program, the Secretary may use--

(1) Selection criteria established under § 75.209;

(2) Selection criteria in § 75.210; or

(3) Any combination of criteria from paragraphs (b)(1) and (b)(2) of this section.

(c)(1) The Secretary may award a cooperative agreement instead of a grant if the Secretary determines that substantial involvement between the Department and the recipient is necessary to carry out a collaborative project.

(2) The Secretary uses the selection procedures in this subpart to select recipients of cooperative agreements.

§ 75.201 [Amended]

28. Amend § 75.201 by:

a. In paragraph (b), adding the words "or factors" after the words "selection criteria";

b. In paragraph (c), removing the word "and" between the words "selection criteria" and "selected factors" and adding in its place the word "or"; and

c. Removing the parenthetical authority citation at the end of the section.

§ 75.209 [Amended]

29. Amend § 75.209 by:

a. In the introductory text, adding a comma immediately after "limited to"; and

b. In paragraph (c), removing the words "the program statute or regulations" and adding in their place the words "applicable statutes and regulations".

30. Revise § 75.210 to read as follows:

§ 75.210 General selection criteria.

In determining the selection criteria to evaluate applications submitted in a grant competition, the Secretary may select one or more of the following criteria and may select from among the list of optional factors under each criterion. The Secretary may define a selection criterion by selecting one or more specific factors within a criterion or assigning factors from one criterion to another criterion.

(a) *Need for the project.* (1) The Secretary

considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers one or more of the following factors:

(i) The data presented (including a comparison to local, State, regional, national, or international data) that demonstrates the issue, challenge, or opportunity to be addressed by the proposed project.

(ii) The extent to which the proposed project demonstrates the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(iii) The extent to which the proposed project will provide support, resources, or services; close gaps in educational opportunity; or otherwise address the needs of the targeted population, including addressing the needs of underserved populations most affected by the issue, challenge, or opportunity to be addressed by the proposed project.

(iv) The extent to which the proposed project will focus on serving or otherwise addressing the needs of underserved populations.

(v) The extent to which the specific nature and magnitude of gaps or challenges are identified and the extent to which these gaps or challenges will be addressed by the services, supports, infrastructure, or opportunities

described in the proposed project.

(vi) The extent to which the proposed project will prepare individuals from underserved populations for employment in fields and careers in which there are demonstrated shortages.

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

(2) In determining the significance of the proposed project, the Secretary considers one or more of the following factors:

(i) The extent to which the proposed project is relevant at the national level.

(ii) The significance of the problem or issue as it affects educational access and opportunity, including the underlying or related challenges for underserved populations.

(iii) The extent to which findings from the project's implementation will contribute new knowledge to the field by increasing knowledge or understanding of, including the underlying or related challenges, effective strategies for addressing educational challenges and their effective implementation.

(iv) The potential contribution of the proposed project to improve the provision of rehabilitative services, increase the number or quality of rehabilitation counselors, or develop and implement effective strategies

for providing vocational rehabilitation services to individuals with disabilities.

(v) The likelihood that the proposed project will result in systemic change that supports continuous and sustainable improvement.

(vi) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study, including the extent to which the contributions may be used by other appropriate agencies, organizations, or institutions.

(vii) The potential for generalizing from the findings or results of the proposed project.

(viii) The extent to which the proposed project is likely to build local, State, or national capacity to provide, improve, sustain, or expand training or services that address the needs of underserved populations.

(ix) The extent to which the proposed project involves the development or demonstration of innovative and effective strategies that build on, or are alternatives to, existing strategies.

(x) The extent to which the proposed project is innovative and likely to be effective compared to other efforts to address a similar problem.

(xi) The likely utility of the resources (such as materials, processes, or techniques) that will result from the proposed project, including the potential for effective

use in a variety of conditions, populations, or settings.

(xii) The extent to which the resources, tools, and implementation lessons of the proposed project will be disseminated in ways to the targeted population and local community that will enable them and others (including practitioners, researchers, education leaders, and partners) to implement similar strategies.

(xiii) The potential effective replicability of the proposed project or strategies, including, as appropriate, the potential for implementation by a variety of populations or settings.

(xiv) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially contributions toward improving teaching practice and student learning and achievement.

(xv) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in employment, independent living services, or both, as appropriate.

(xvi) The importance or magnitude of the results or outcomes likely to be attained by the proposed project that demonstrate the impact of the proposed project for the targeted underserved populations in terms of breadth and depth of services.

(xvii) The extent to which the proposed project introduces an innovative approach, such as a modification

of an evidence-based project component to serve different populations, an extension of an existing evidence-based project component, a unique composition of various project components to explore combined effects, or an emerging project component that needs further testing.

(c) *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 one or more of the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified, measurable, and ambitious yet achievable within the project period, and aligned with the purposes of the grant program.

(ii) The extent to which the design of the proposed project demonstrates community engagement and input to ensure that the project is appropriate to successfully address the needs of the target population or other identified needs and will be used to inform continuous improvement strategies.

(iii) The quality of the conceptual framework, such as a logic model, underlying the proposed project, including how inputs are related to outcomes.

(iv) The extent to which the proposed project's logic

model was developed based on engagement of a broad range of community members and partners.

(v) The extent to which the proposed project proposes specific, measurable targets, connected to strategies, activities, resources, outputs, and outcomes.

(vi) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to enable successful achievement of project objectives.

(vii) The quality of the proposed demonstration design, such as qualitative and quantitative design, and procedures for documenting project activities and results for underserved populations.

(viii) 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 valid and reliable information about the effectiveness of the approach or strategies employed by the project.

(ix) The extent to which the proposed development efforts include adequate quality controls, continuous improvement efforts, and, as appropriate, repeated testing of products.

(x) The extent to which the proposed project

demonstrates that it is designed to build capacity and yield sustainable results that will extend beyond the project period.

(xi) The extent to which the design of the proposed project reflects the most recent and relevant knowledge and practices from research and effective practice.

(xii) The extent to which the proposed project represents an exceptional approach for meeting program purposes and requirements and serving the target population.

(xiii) The extent to which the proposed project represents an exceptional approach to any absolute priority or absolute priorities established for the competition.

(xiv) The extent to which the proposed project will integrate or build on ideas, strategies, and efforts from similar external projects to improve relevant outcomes, using existing funding streams from other programs or policies supported by community, State, and Federal resources.

(xv) The extent to which the proposed project is informed by similar past projects implemented by the applicant with demonstrated results.

(xvi) The extent to which the proposed project will include coordination with other Federal investments, as well as appropriate agencies and organizations providing similar services to the target population.

(xvii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards and increased social, emotional, and educational development for students, including members of underserved populations.

(xviii) The extent to which the proposed project encourages explicit plans for authentic, meaningful, and ongoing community member and partner engagement, including their involvement in planning, implementing, and revising project activities for underserved populations.

(xix) The extent to which the proposed project encourages consumer involvement.

(xx) The extent to which performance feedback and formative data are integral to the design of the proposed project and will be used to inform continuous improvement.

(xxi) The extent to which fellowship recipients or other project participants are to be selected on the basis of academic excellence.

(xxii) The extent to which the applicant demonstrates that it has the resources to operate the project beyond the project period, including a multiyear financial and operating model and accompanying plan; the demonstrated commitment of any partners; demonstration of broad support from community members and partners (such as State educational agencies, teachers' unions, families, business and industry, community members, and State vocational

rehabilitation agencies) that are critical to the project's long-term success; or capacity-building leveraged from more than one of these types of resources.

(xxiii) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the applicant beyond the end of the project period.

(xxiv) The extent to which the proposed project will increase efficiency in the use of time, staff, money, or other resources in order to improve results and increase productivity.

(xxv) The extent to which the proposed project will integrate with, or build on, similar or related efforts in order to improve relevant outcomes, using nonpublic funds or resources.

(xxvi) The extent to which the proposed project demonstrates a rationale that is aligned with the purposes of the grant program.

(xxvii) The extent to which the proposed project represents implementation of the evidence cited in support of the proposed project with fidelity.

(xxiii) The extent to which the applicant plans to allocate a significant portion of its requested funding to the evidence-based project components.

(xxix) The strength of the commitment from key decision-makers at proposed implementation sites.

(d) *Quality of project services.* (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equitable and adequate access and participation for project participants who experience barriers based on one or more of the following: economic disadvantage; gender; race; ethnicity; color; national origin; disability; age; language; migration; living in a rural location; experiencing homelessness or housing insecurity; involvement with the justice system; pregnancy, parenting, or caregiver status; and sexual orientation. This determination includes the steps developed and described in the form Equity For Students, Teachers, And Other Program Beneficiaries (OMB Control No. 1894-0005) (section 427 of the General Education Provisions Act (20 U.S.C. 1228a)).

(3) In addition, the Secretary considers one or more of the following factors:

(i) The extent to which the services to be provided by the proposed project were determined with input from the community to be served to ensure that they are appropriate to the needs of the intended recipients or beneficiaries, including underserved populations, of those services.

(ii) The extent to which the proposed project is

supported by entities that it is intended to serve.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge and an evidence-based project component.

(iv) The likely benefit to the intended recipients, as indicated by the logic model, of the services to be provided.

(v) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to build recipient and project capacity in ways that lead to improvements in practice among the recipients of those services.

(vi) The extent to which the services to be provided by the proposed project are likely to provide long-term solutions to alleviate the personnel shortages that have been identified or are the focus of the proposed project.

(vii) The likelihood that the services to be provided by the proposed project will lead to meaningful improvements in the achievement of students as measured against rigorous and relevant standards.

(viii) The likelihood that the services to be provided by the proposed project will lead to meaningful improvements in early childhood and family outcomes.

(ix) The likelihood that the services to be provided by the proposed project will lead to meaningful

improvements in the skills and competencies necessary to gain employment in high-quality jobs, careers, and industries or build capacity for independent living.

(x) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners, including those from underserved populations, for maximizing the effectiveness of project services.

(xi) The extent to which the services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(xii) The extent to which the services to be provided by the proposed project are focused on recipients, community members, or project participants that are most underserved as demonstrated by the data relevant to the project.

(e) *Quality of the project personnel*. (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant demonstrates that it has project personnel or a plan for hiring of personnel who are members of groups that have historically encountered barriers, or who have professional or personal experiences with barriers, based on one or more

of the following: economic disadvantage; gender; race; ethnicity; color; national origin; disability; age; language; migration; living in a rural location; experiencing homelessness or housing insecurity; involvement with the justice system; pregnancy, parenting, or caregiver status; and sexual orientation.

(3) In addition, the Secretary considers one or more of the following factors:

(i) The qualifications required of the project director or principal investigator, including formal training or work experience in fields related to the objectives of the project and experience in designing, managing, or implementing similar projects for the target population to be served by the project.

(ii) The qualifications required of each of the key personnel in the project, including formal training or work experience in fields related to the objectives of the project and be a representative of the target population.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iv) The extent to which the proposed project team reflects the demographics of project participants to maximize inclusion of diverse perspectives.

(v) The extent to which the proposed planning, implementing, and evaluating project team are familiar with the assets, needs, and other contextual considerations of

the proposed implementation sites.

(f) *Adequacy of resources*. (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers one or more of the following factors:

(i) The adequacy of support for the project, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(iii) The extent to which the budget is adequate to support the proposed project and the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(iv) The extent to which the costs are reasonable in relation to the number of persons to be served, the depth and intensity of services, and the anticipated results and benefits.

(v) The extent to which the costs of the program are reasonable for potential entities to adopt.

(vi) The level of initial matching funds or other commitment from partners, indicating the likelihood for

potential continued support of the project after Federal funding ends.

(vii) The potential for the purposes, activities, or benefits of the proposed project to be institutionalized into the ongoing practices and programs of the institution, agency, or organization and continue after the end date of Federal funding.

(g) *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 one or more of the following factors:

(i) The feasibility of the management plan to achieve project objectives and goals on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of plans for ensuring the use of quantitative and qualitative data, including community member and partner input, to inform continuous improvement in the operation of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality and accessible products and services from the proposed project for the target population.

(iv) The extent to which the time commitments of the project director and principal investigator and other key

project personnel are appropriate and adequate to meet the objectives of the proposed project.

(v) How the applicant will ensure that a diversity of perspectives, including those from underserved populations, are brought to bear in the design, implementation, operation, evaluation, and improvement of the proposed project, including those of parents, educators, community-based organizations, civil rights organizations, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(h) *Quality of the project evaluation or other evidence-building*. (1) The Secretary considers the quality of the evaluation or other evidence-building of the proposed project.

(2) In determining the quality of the evaluation or other evidence-building, the Secretary considers one or more of the following factors:

(i) The extent to which the methods of evaluation or other evidence-building are thorough, feasible, relevant, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation or other evidence-building are appropriate to the context within which the project operates and the target population of the proposed project.

(iii) The extent to which the methods of evaluation or other evidence-building provide for describing the fidelity of implementation of the project.

(iv) The extent to which the methods of evaluation or other evidence-building include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quality data that are quantitative and qualitative.

(v) The extent to which the methods of the evaluation or other evidence-building will provide guidance for quality assurance and continuous improvement.

(vi) The extent to which the methods of evaluation or other evidence-building will provide performance feedback and provide formative or interim data that is a periodic assessment of progress toward achieving intended outcomes.

(vii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing and potential implementation in other settings.

(viii) The extent to which the methods of evaluation will, if well implemented, produce evidence about the effectiveness of the project on relevant outcomes that would meet the What Works Clearinghouse standards without reservations, as described in the What Works Clearinghouse Handbooks.

(ix) The extent to which the methods of evaluation

will, if well implemented, produce evidence about the effectiveness of the project on relevant outcomes that would meet the What Works Clearinghouse standards with or without reservations, as described in the What Works Clearinghouse Handbooks.

(x) The extent to which the methods of evaluation include an experimental study, a quasi-experimental design study, or a correlational study with statistical controls for selection bias (such as regression methods to account for differences between a treatment group and a comparison group) to assess the effectiveness of the project on relevant outcomes.

(xi) The extent to which the evaluation plan employs an appropriate analytic strategy to build evidence about the relationship between key project components, mediators, and outcomes for the purpose of informing specific actions on which elements to continue, revise, or dissolve.

(xii) The quality of the evaluation plan for measuring fidelity of implementation, including thresholds for acceptable implementation, to inform how implementation is associated with outcomes.

(xiii) The extent to which the evaluation plan includes a dissemination strategy that is likely to promote others' learning from the project.

(xiv) The qualifications, including relevant training, experience, and independence, of the evaluator,

including experience conducting evaluations of similar methodology as proposed, familiar with evaluations for the proposed population and setting.

(xv) The extent to which the proposed project plan includes sufficient resources to conduct the project evaluation effectively.

(i) *Strategy to scale*. (1) The Secretary considers the applicant's strategy to effectively scale, including to underserved populations, the proposed project.

(2) In determining the applicant's capacity to effectively scale the proposed project for recipients and community members and partners, including those from underserved populations, the Secretary considers one or more of the following factors:

(i) The quality of the strategies to reach scale by expanding the project to new populations or settings.

(ii) The applicant's capacity (such as qualified personnel, financial resources, or management capacity), including project partners, to bring the proposed project effectively to scale on a national or regional level working directly, or through partners, during the grant period.

(iii) The applicant’s capacity (such as qualified personnel, financial resources, or management capacity) to further develop and bring the proposed project to scale on a regional level working directly, or through partners,

during the grant period, based on the findings of the proposed project.

(iv) The mechanisms the applicant will use to broadly disseminate information and resources on its project to support further development, adaptation, or replication by other entities to implement project components in additional settings or with other populations.

(v) The extent to which there is unmet demand for broader implementation of the project that is aligned with the proposed level of scale.

(vi) The extent to which there is a market of potential entities that will commit resources toward implementation.

(vii) The quality of the strategies to scale that take into account previous barriers to being able to expand the proposed project.

(viii) The quality of the plan to deliver project services more efficiently at scale and maintain effectiveness.

(ix) The quality of the plan to develop revenue sources that will make the program self-sustaining.

31. Revise § 75.215 to read as follows:

§ 75.215 How the Department selects a new project.

Sections 75.216 through 75.222 describe the process the Secretary uses to select applications for new grants. All these sections apply to a discretionary grant

program. However, only § 75.216 applies also to a formula grant program.(See § 75.1(b) Discretionary grant programs, § 75.1(c) Formula grant programs, and § 75.200, How applications for new discretionary grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.)

32. Revise § 75.216 to read as follows:

§ 75.216 Applications that the Secretary may choose not to evaluate for funding.

The Secretary may choose not to evaluate an application if--

(a) The applicant does not comply with all of the procedural rules that govern the submission of the application; or

(b) The application does not contain the information required under the program.

§ 75.217 [Amended]

33. Amend § 75.217 by:

a. In paragraph (a), removing the words "the authorizing statute" and adding in their place the words "applicable statutes and regulations";

b. In paragraph (c), removing the word "solely" and adding the words "and any competitive preference points" after the words "selection criteria"; and

c. Removing the parenthetical authority citation at the end of the section.

34. Amend § 75.219 by:

a. Revising paragraph (b); and

b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.219 Exceptions to the procedures under § 75.217.

* * * * *

(b)(1) The application was submitted under the preceding competition of the program;

(2) The application was not selected for funding because the application was mishandled or improperly processed by the Department; and

(3) The application has been rated highly enough to deserve selection under § 75.217; or

* * * * *

§ 75.220 [Amended]

35. Amend § 75.220 by:

a. In paragraph (b)(2), removing the words "Office of the Chief Financial Officer (OCFO)" and adding, in their place, the words "Office of Finance and Operations (OFO)"; and

b. Removing the parenthetical authority citation at the end of the section.

36. Revise § 75.221 to read as follows:

§ 75.221 Procedures the Department uses under § 75.219(b).

If the special circumstances of § 75.219(b) appear to

exist for an application, the Secretary may select the application for funding if the Secretary has documentary evidence that those circumstances exist.

§ 75.222 [Amended]

37. Amend § 75.222 by:

a. In paragraph (a)(1), removing the word "under" before "which funds" and adding in its place the word "for";

b. In paragraph (a)(2)(ii)(B), removing the citation "(a)(2)(ii)" and adding in its place the citation "(a)(2)(ii)(A)";

c. In paragraph (b)(1), removing the word "ED" and adding, it its place, the word "the Department";

d. Removing, in paragraph (b)(2), the word "codified";

e. Revising the Note; and

f. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.222 Procedures the Department uses under § 75.219(c).

* * * * *

Note 1 to § 75.222: To assure prompt consideration, an applicant submitting an unsolicited application should send the application, marked "Unsolicited Application" on the outside, to U.S. Department of Education, OFO/G5 Functional Application Team, Mail Stop 5C231, 400 Maryland

Avenue SW, Washington, DC 20202-4260.

38. Revise § 75.225 to read as follows:

§ 75.225 What procedures does the Secretary use when deciding to give special consideration to new potential grantees?

(a) If the Secretary determines that special consideration of new potential grantees is appropriate, the Secretary may establish a separate competition under the procedures in § 75.105(c)(3), or provide competitive preference under the procedures in § 75.105(c)(2).

(b) As used in this section, "new potential grantee" means an applicant that meets one or more of the following conditions--

(1) The applicant has never received a grant or cooperative agreement, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129 that received a grant or cooperative agreement, under the program from which it seeks funds;

(2) The applicant does not, as of the deadline date for submission of applications, have an active grant or cooperative agreement, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129 that has an active grant or cooperative agreement, under the program from which it seeks funds;

(3) The applicant has not had an active discretionary grant or cooperative agreement under the program from which

it seeks funds, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129, within one of the following number of years before the deadline date for submission of applications under the program:

(i) 1 year;

(ii) 2 years;

(iii) 3 years;

(iv) 4 years;

(v) 5 years;

(vi) 6 years; or

(vii) 7 years;

(4) The applicant has not had an active discretionary grant or cooperative agreement from the Department, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129, within one of the following number of years before the deadline date for submission of applications under the program from which it seeks funds:

(i) 1 year;

(ii) 2 years;

(iii) 3 years;

(iv) 4 years;

(v) 5 years;

(vi) 6 years; or

(vii) 7 years;

(5) The applicant has not had an active contract from the Department within one of the following number of years before the deadline date for submission of applications under the program for which it seeks funds:

(i) 1 year;

(ii) 2 years;

(iii) 3 years;

(iv) 4 years;

(v) 5 years;

(vi) 6 years; or

(vii) 7 years; or

(6) Any combination of paragraphs (b)(1) through (5) of this section.

(c) If the Secretary determines that special consideration of applications from new potential grantees is appropriate and chooses, under the procedures in § 75.105(c)(3), to establish a separate competition for those applicants that meet one or more of the conditions in paragraph (b) of this section, the Secretary may also establish a separate competition for applications that do not meet such priority under the procedures in § 75.105(c)(3) and consider those applications separately.

(d) As used in this section, an "application from a grantee that is not a new potential grantee" means an applicant that meets one or more of the following conditions--

(1) The applicant has received a grant or cooperative agreement, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129 that received a grant or cooperative agreement, under the program from which it seeks funds;

(2) The applicant has, as of the deadline date for submission of applications, an active grant or cooperative agreement, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129 that has an active grant or cooperative agreement, under the program from which it seeks funds;

(3) The applicant has had an active discretionary grant or cooperative agreement under the program from which it seeks funds, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129, within one of the following number of years before the deadline date for submission of applications under the program:

(i) 1 year;

(ii) 2 years;

(iii) 3 years;

(iv) 4 years;

(v) 5 years;

(vi) 6 years; or

(vii) 7 years;

(4) The applicant has had an active discretionary

grant or cooperative agreement from the Department, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129, within one of the following number of years before the deadline date for submission of applications under the program from which it seeks funds:

(i) 1 year;

(ii) 2 years;

(iii) 3 years;

(iv) 4 years;

(v) 5 years;

(vi) 6 years; or

(vii) 7 years;

(5) The applicant has had an active contract from the Department within one of the following number of years before the deadline date for submission of applications under the program from which it seeks funds:

(i) 1 year;

(ii) 2 years;

(iii) 3 years;

(iv) 4 years;

(v) 5 years;

(vi) 6 years; or

(vii) 7 years.

(e) For the purpose of this section, a grant, cooperative agreement, or contract is active until the end

of the grant's, cooperative agreement's, or contract's project or funding period, including any extensions of those periods that extend the grantee's or contractor's authority to obligate funds.

39. Revise § 75.226 to read as follows:

§ 75.226 What procedures does the Secretary use if the Secretary decides to give special consideration to an application supported by strong evidence, moderate evidence, or promising evidence, or an application that demonstrates a rationale?

If the Secretary determines that special consideration of applications supported by strong evidence, moderate evidence, promising evidence, or evidence that demonstrates a rationale is appropriate, the Secretary may establish a separate competition under the procedures in § 75.105(c)(3), or provide competitive preference under the procedures in § 75.105(c)(2), for applications that are supported by--

(a) Strong evidence;

(b) Moderate evidence;

(c) Promising evidence; or

(d) Evidence that demonstrates a rationale.

40. Add § 75.227 before the undesignated center heading "Procedures to Make a Grant" to read as follows:

§ 75.227 What procedures does the Secretary use if the Secretary decides to give special consideration to rural

applicants?

(a) If the Secretary determines that special consideration of rural applicants is appropriate, the Secretary may establish a separate competition under the procedures in § 75.105(c)(3), or provide competitive preference under the procedures in § 75.105(c)(2).

(b) As used in this section, "rural applicant" means an applicant that meets one or more of the following conditions--

(1) The applicant proposes to serve a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under title V, part B of the Elementary and Secondary Education Act of 1965.

(2) The applicant proposes to serve a community that is served by one or more LEAs--

(i) With a locale code of 32, 33, 41, 42, or 43; or

(ii) With a locale code of 41, 42, or 43.

(3) The applicant proposes a project in which a majority of the schools served--

(i) Have a locale code of 32, 33, 41, 42, or 43; or

(ii) Have a locale code of 41, 42, or 43.

(4) The applicant is an institution of higher education (IHE) with a rural campus setting, or the applicant proposes to serve a campus with a rural setting.

Rural settings include one or more of the following: Town-Fringe, Town-Distant, Town-Remote, Rural Fringe, Rural-Distant, and Rural-Remote, as defined by the National Center for Education Statistics (NCES) College Navigator search tool.

(c) If the Secretary determines that special consideration of rural applicants is appropriate and chooses, under the procedures in § 75.105(c)(3), to establish a separate competition for those applicants that meet one or more of the conditions in paragraph (b) of this section, the Secretary may also establish a separate competition for applications that do not meet that priority under the procedures in § 75.105(c)(3) and consider such applications separately.

(d) As used in this section, a "non-rural applicant" means an applicant that meets one or more of the following conditions--

(1) The applicant does not propose to serve a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under title V, part B of the Elementary and Secondary Education Act of 1965.

(2) The applicant does not propose to serve a community that is served by one or more LEAs--

(i) With a locale code of 32, 33, 41, 42, or 43; or

(ii) With a locale code of 41, 42, or 43.

(3) The applicant proposes a project in which a majority of the schools served--

(i) Have a locale code of 32, 33, 41, 42, or 43; or

(ii) Have a locale code of 41, 42, or 43.

(4) The applicant is not an institution of higher education (IHE) with a rural campus setting, or the applicant proposes to serve a campus with a rural setting. Rural settings include one or more of the following: Town-Fringe, Town-Distant, Town-Remote, Rural Fringe, Rural-Distant, and Rural-Remote, as defined by the National Center for Education Statistics (NCES) College Navigator search tool.

41. Revise § 75.230 to read as follows:

§ 75.230 How the Department makes a grant.

(a) If the Secretary selects an application under §§ 75.217, 75.220, or 75.222, the Secretary follows the procedures in §§ 75.231 through 75.236 to set the amount and determine the conditions of a grant. Sections 75.235 through 75.236 also apply to grants under formula grant programs. (See § 75.200 for more information.)

§ 75.234 [Amended]

42. Amend § 75.234 by:

a. In paragraph (a)(2), removing the word “special” and adding in its place the word “specific”; and

b. Removing the parenthetical authority citation at

the end of the section.

43. Revise § 75.250 to read as follows:

§ 75.250 Maximum project period.

The Secretary may approve a project period of up to 60 months to perform the substantive work of a grant unless an applicable statute provides otherwise.

44. Revise § 75.253 to read as follows:

§ 75.253 Continuation of a multiyear project after the first budget period.

(a) *Continuation award.* A grantee, in order to receive a continuation award from the Secretary for a budget period after the first budget period of an approved multiyear project, must--

(1) Either--

(i) Demonstrate that it has made substantial progress in achieving--

(A) The goals and objectives of the project; and

(B) The performance targets in the grantee's approved application, if the Secretary established performance measurement requirements for the grant in the application notice; or

(ii) Obtain the Secretary's approval for changes to the project that--

(A) Do not increase the amount of funds obligated to the project by the Secretary; and

(B) Enable the grantee to achieve the goals and

objectives of the project and meet the performance targets of the project, if any, without changing the scope or objectives of the project;

(2) Submit all reports as required by § 75.118;

(3) Continue to meet all applicable eligibility requirements of the grant program;

(4) Maintain financial and administrative management systems that meet the requirements in 2 CFR 200.302 and 200.303; and

(5) Receive a determination from the Secretary that continuation of the project is in the best interest of the Federal Government.

(b) *Information considered in making a continuation award.* In determining whether the grantee has met the requirements described in paragraph (a) of this section, the Secretary may consider any relevant information regarding grantee performance. This includes considering reports required by § 75.118, performance measures established by § 75.110, financial information required by 2 CFR part 200, and any other relevant information.

(c) *Funding for continuation awards.* Subject to the criteria in paragraphs (a) and (b) of this section, in selecting applications for funding under a program, the Secretary gives priority to continuation awards over new grants.

(d) *Budget period.* If the Secretary makes a

continuation award under this section--

(1) The Secretary makes the award under §§ 75.231 through 75.236; and

(2) The new budget period begins on the day after the previous budget period ends.

(e) *Amount of continuation award.* (1) Within the original project period of the grant and notwithstanding any requirements in 2 CFR part 200, a grantee may expend funds that have not been obligated at the end of a budget period for obligations of subsequent budget periods if--

(i) The obligation is for an allowable cost within the approved scope and objectives of the project; and

(ii) The obligation is not otherwise prohibited by applicable statutes, regulations, or the conditions of an award.

(2) The Secretary may--

(i) Require the grantee to submit a written statement describing how the funds made available under paragraph (e)(1) of this section will be used; and

(ii) Determine the amount of new funds that the Department will make available for the subsequent budget period after considering the statement the grantee provides under paragraph (e)(2)(i) of this section and any other information available to the Secretary about the use of funds under the grant.

(3) In determining the amount of new funds to make

available to a grantee under this section, the Secretary considers whether the unobligated funds made available are needed to complete activities that were planned for completion in the prior budget period.

(4) A decision to reduce the amount of a continuation award under this paragraph (e) does not entitle a grantee to reconsideration under 2 CFR 200.341.

(f) *Decision not to make a continuation award.* The Secretary may decide not to make a continuation award if--

(1) A grantee fails to meet any of the requirements in paragraph (a) of this section; or

(2) A grantee fails to ensure that data submitted to the Department as a condition of the grant meet the definition of "quality data" in 34 CFR 77.1(c) and does not have a plan acceptable to the Secretary for addressing data-quality issues in the next budget period.

(g) *Request for reconsideration.* If the Secretary decides not to make a continuation award under this section, the Secretary will notify the grantee of that decision, the grounds on which it is based, and, consistent with 2 CFR 200.341, provide the grantee with an opportunity to request reconsideration of the decision.

(1) A request for reconsideration must--

(i) Be submitted in writing to the Department official identified in the notice denying the continuation award by the date specified in that notice; and

(ii) Set forth the grantee's basis for disagreeing with the Secretary's decision not to make a continuation award and include relevant supporting documentation.

(2) The Secretary will consider the request for reconsideration.

(h) *No-cost extension when a continuation award is not made.* If the Secretary decides not to make a continuation award under this section, the Secretary may authorize a no-cost extension of the last budget period of the grant in order to provide for the orderly closeout of the grant.

(i) *A decision to reduce or not to make a continuation award does not constitute withholding.* A decision by the Secretary to reduce the amount of a continuation award under paragraph (e) of this section or to not make a continuation award under paragraph (f) of this section does not constitute a withholding under section 455 of GEPA (20 U.S.C. 1234d).

45. Revise § 75.254 to read as follows:

§ 75.254 Data collection period.

(a) The Secretary may approve a data collection period for a grant for a period of up to 72 months after the end of the project period and provide funds for the data collection period for the purpose of collecting, analyzing, and reporting performance measurement data on the project.

(b) If the Secretary plans to approve a data collection period, the Secretary may inform applicants of the Secretary's intent to approve data collection periods in the application notice published for a competition or may decide to fund data collection periods after grantees have started their project periods.

(c) If the Secretary informs applicants of the intent to approve data collection periods in the notice inviting applications, the Secretary may require applicants to include in the application a budget for, and description of, a data collection period for a period of up to 72 months, as specified in the notice inviting applications, after the end of the project period.

§ 75.260 [Amended]

46. Amend § 75.260 by:

a. In paragraph (b), removing the words "the authorizing statute for that program" and adding in their place the words "applicable statutes and regulations"; and

b. Removing the parenthetical authority citation at the end of the section.

47. Revise § 75.261 to read as follows:

§ 75.261 Extension of a project period.

(a) *One-time extension of project period without prior approval.* A grantee may extend the project period of an award one time, for a period up to 12 months, without the prior approval of the Secretary, if--

(1) The grantee meets the requirements for extension in 2 CFR 200.308(e)(2); and

(2) The extension is not otherwise prohibited by statute, regulation, or the conditions of an award.

(b) *Extension of project period with prior approval.* At the conclusion of the project period extension authorized under paragraph (a) of this section, or in any case in which a project period extension is not authorized under paragraph (a) of this section, a grantee, with prior approval of the Secretary, may extend a project for an additional period if--

(1) The extension is not otherwise prohibited by statute, regulations, or the conditions of an award;

(2) The extension does not involve the obligation of additional Federal funds;

(3) The extension is to carry out the approved objectives and scope of the project; and

(4)(i) The Secretary determines that, due to special or unusual circumstances applicable to a class of grantees, the project periods for the grantees should be extended; or

(ii)(A) The Secretary determines that special or unusual circumstances would delay completion of the project beyond the end of the project period;

(B) The grantee requests an extension of the project period at least 45 calendar days before the end of the project period; and

(C) The grantee provides a written statement, before the end of the project period, of the reasons the extension is appropriate under paragraph (b)(4)(ii)(A) of this section and the period for which the project extension is requested.

(c) *Waiver.* The Secretary may waive the requirement in paragraph (b)(4)(ii)(B) of this section if--

(1) The grantee could not reasonably have known of the need for the extension on or before the start of the 45-day period; or

(2) The failure to give notice on or before the start of the 45-day period was unavoidable.

§ 75.263 [Amended]

48. Amend § 75.263 by:

a. Removing ", notwithstanding any requirement in 2 CFR part 200," from the introductory text.

b. Removing the parenthetical authority citation at the end of the section.

§ 75.264 [Amended]

49. Remove the authority citation at the end of the section.

50. Amend § 75.500 by revising paragraph (a) to read as follows:

§ 75.500 Federal statutes and regulations on nondiscrimination.

(a) Each grantee must comply with the following

statutes and regulations:

Table 1 to § 75.500(a)

Subject	Statute	Regulations
Discrimination on the basis of race, color, or national origin	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*)	34 CFR part 100
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*)	34 CFR part 106
Discrimination on the basis of disability	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)	34 CFR part 104
Discrimination on the basis of age	Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*)	34 CFR part 110

* * * * *

§ 75.519 [Amended]

51. Amend § 75.519 by:

a. Removing the words "its grantee" and adding in their place the words "its grant";

b. Adding ", consistent with the cost principles described in 2 CFR part 200" after the word "funds"; and

c. Removing the parenthetical authority citation at the end of the section.

§ 75.531 [Amended]

52. Amend § 75.531 by removing the word "insure" and adding in its place the word "ensure".

§ 75.533 [Amended]

53. Amend § 75.533 by:

a. Removing the words "authorizing statute or

implementing regulations for the program" and adding in their place the words "applicable statutes and regulations".

b. Removing the parenthetical authority citation at the end of the section.

§ 75.534 [Amended]

54. Amend §75.534 in paragraph (a) by removing the words "the program statute" and adding in their place the words "applicable statutes and regulations".

55. Revise § 75.560 to read as follows:

§ 75.560 General indirect cost rates and cost allocation plans; exceptions.

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for--

(1) All grantees, other than hospitals and commercial (for-profit) organizations, at 2 CFR part 200, subpart E;

(2) Hospitals, at 45 CFR part 75, appendix XI; and

(3) Commercial (for-profit) organizations, at 48 CFR part 31.

(b) Except as specified in paragraph (c) of this section, a grantee must have obtained a current indirect cost rate agreement or approved cost allocation plan from its cognizant agency, to charge indirect costs to a grant. To obtain a negotiated indirect cost rate agreement or

approved cost allocation plan, a grantee must submit an indirect cost rate proposal or cost allocation plan to its cognizant agency within 90 days after the date on which the Department issues the Grant Award Notification (GAN).

(c) A grantee that meets the requirements in 2 CFR 200.414(f) may elect to charge the *de minimis* rate of modified total direct costs (MTDC) specified in that provision, which may be used indefinitely. The *de minimis* rate may not be used on programs that have statutory or regulatory restrictions on the indirect cost rate. No documentation is required to justify the *de minimis* rate.

(1) If the grantee has established a threshold for equipment that is lower than the amount specified in the Uniform Guidance, the grantee must use that threshold to exclude equipment from the MTDC base.

(2) For purposes of the MTDC base and application of the *de minimis* rate, MTDC includes up to the amount specified in the definition of MTDC in the Uniform Guidance of each subaward, each year.

(d) If a grantee is required to, but does not, have a federally recognized indirect cost rate agreement or approved cost allocation plan, the Secretary may permit the grantee to charge its grant for indirect costs at a temporary rate of 10 percent of budgeted direct salaries and wages.

(e)(1) If a grantee fails to submit an indirect cost

rate proposal or cost allocation plan to its cognizant agency within the required 90 days, the grantee may not charge indirect costs to its grant from the end of the 90-day period until it obtains a federally recognized indirect cost rate agreement applicable to the grant.

(2) If the Secretary determines that exceptional circumstances warrant continuation of a temporary indirect cost rate, the Secretary may authorize the grantee to continue charging indirect costs to its grant at the temporary rate specified in paragraph (d) of this section even though the grantee has not submitted its indirect cost rate proposal within the 90-day period.

(3) Once a grantee obtains a federally recognized indirect cost rate that is applicable to the affected grant, the grantee may use that indirect cost rate to claim indirect cost reimbursement for expenditures made on or after the date on which the grantee submitted its indirect cost proposal to its cognizant agency or the start of the project period, whichever is later. However, this authority is subject to the following limitations:

(i) The total amount of funds recovered by the grantee under the federally recognized indirect cost rate is reduced by the amount of indirect costs previously recovered under the temporary indirect cost rate specified in paragraph (d) of this section.

(ii) The grantee must obtain prior approval from the

Secretary to shift direct costs to indirect costs in order to recover indirect costs at a higher negotiated indirect cost rate.

(iii) The grantee may not request additional funds to recover indirect costs that it cannot recover by shifting direct costs to indirect costs.

(f) The Secretary accepts a current indirect cost rate and cost allocation plan approved by a grantee's cognizant agency but may establish a restricted indirect cost rate or cost allocation plan compliant with 34 CFR 76.564 through 76.569 to satisfy the statutory requirements of certain programs administered by the Department.

56. Amend § 75.561 by:

a. Revising the section heading and paragraph (a); and

b. Removing the second sentence of paragraph (b).

The revisions read as follows:

§ 75.561 Approval of indirect cost rates and cost allocation plans.

(a) If the Department of Education is the cognizant agency, the Secretary approves an indirect cost rate or cost allocation plan for a grantee that is eligible and does not elect a *de minimis* rate, and is not a local educational agency. For the purposes of this section, the term “local educational agency” does not include a State agency.

* * * * *

57. Revise § 75.562 to read as follows:

§ 75.562 Indirect cost rates for educational training projects; exceptions.

(a) Educational training grants provide funds for training or other educational services. Examples of the work supported by training grants are summer institutes, training programs for selected participants, the introduction of new or expanded courses, and similar instructional undertakings that are separately budgeted and accounted for by the sponsoring institution. These grants do not usually support activities involving research, development, and dissemination of new educational materials and methods. Training grants largely implement previously developed materials and methods and require no significant adaptation of techniques or instructional services to fit different circumstances.

(b) The Secretary uses the definition in paragraph (a) of this section to determine which grants are educational training grants.

(c)(1) Indirect cost reimbursement on a training grant is limited to the lesser of the recipient's approved indirect cost rate, or 8 percent of the modified total direct cost (MTDC) base. MTDC is defined in 2 CFR 200.1.

(2) If the grantee does not have a federally recognized indirect cost rate agreement on the date on

which the training grant is awarded, the grantee may elect to use the temporary indirect cost rate authorized under § 75.560(d)(3) or a rate of 8 percent of the MTDC base. The *de minimis* rate may not be used on educational training programs.

(i) If the grantee has established a threshold for equipment that is lower than the amount specified in the Uniform Guidance, the grantee must use that threshold to exclude equipment from the MTDC base.

(ii) For purposes of the MTDC base and application of the 8 percent rate, MTDC includes up to the amount specified in the definition of MTDC in the Uniform Guidance of each subaward, each year.

(3) The 8 percent indirect cost rate reimbursement limit specified in paragraph (c)(1) of this section also applies when subrecipients issue subawards that fund training, as determined by the Secretary under paragraph (b) of this section.

(4) The 8 percent limit does not apply to agencies of Indian tribal governments, local governments, and States as defined in 2 CFR 200.1.

(5) Indirect costs in excess of the 8 percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

(d) A grantee using the training rate of 8 percent is

required to maintain documentation to justify the 8 percent rate.

58. Revise § 75.563 to read as follows:

§ 75.563 Restricted indirect cost rate or cost allocation plans--programs covered.

If a grantee or subgrantee decides to charge indirect costs to a program that is subject to a statutory prohibition on using Federal funds to supplant non-Federal funds, the grantee shall--

(a) Use a negotiated restricted indirect cost rate or restricted cost allocation plan compliant with 34 CFR 76.564 through 76.569; or

(b) Elect to use an indirect cost rate of 8 percent of the modified total direct costs (MTDC) base if the grantee or subgrantee does not have a negotiated restricted indirect cost rate. MTDC is defined in 2 CFR 200.1. If the Secretary determines that the grantee or subgrantee would have a lower rate under 34 CFR 76.564 through 76.569, the lower rate shall be used on the affected program.

(c) If the grantee has established a threshold for equipment that is lower than the amount specified in the Uniform Guidance, the grantee must use that threshold to exclude equipment from the MTDC base.

(d) For purposes of the MTDC base and application of the 8 percent rate, MTDC includes up to the amount specified in the definition of MTDC in the Uniform Guidance

of each subaward, each year.

59. Amend § 75.564 by:

a. Revising paragraph (b);

b. Adding the words “and other applicable restrictions” at end of paragraph (d);

c. Removing the word “for” after the phrase “to the direct cost base” and adding in its place the word “of” in paragraph (e)(1);

d. Adding the words “and program requirements” at the end of paragraph (e)(1);

e. Removing the hyphen between “sub” and “awards” in paragraph (e)(2); and

f. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.564 Reimbursement of indirect costs.

* * * * *

(b) The application of the negotiated indirect cost rate (determination of the direct cost base) or cost allocation plan (charging methodology) must be in accordance with the agreement/plan approved by the grantee's cognizant agency.

* * * * *

§ 75.580 [Amended]

60. Amend § 75.580 is amended by removing the parenthetical authority citation.

61. Amend § 75.590 by:

a. Adding paragraph (c); and

b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.590 Grantee evaluations and reports.

* * * * *

(c) An application notice for a competition may require each grantee under that competition to do one or more of the following:

(1) Conduct an independent evaluation;

(2) Make public the final report, including results of any required independent evaluation;

(3) Ensure that the data from the independent evaluation are made available to third-party researchers consistent with applicable privacy requirements;

(4) Submit the final evaluation to the Education Resources Information Center (ERIC), which is administered by the Institute of Education Sciences; or

(5) Submit the final performance report under the grant to ERIC.

62. Revise § 75.591 to read as follows:

§ 75.591 Federal evaluation; cooperation by a grantee.

A grantee must cooperate in any evaluation of the program by the Secretary, in accordance with program statute. If requested by the Secretary, a grantee must--

(a) Cooperate with the collection of information, including from all or a subset of subgrantees and potential project beneficiaries, including both participants and non-participants, through surveys, observations, administrative records, or other data collection and analysis methods. This information collection may include program characteristics, including uses of program funds, as well as beneficiary characteristics, participation, and outcomes; and

(b) If required by the Secretary, pilot its Department-funded activities with a subset of subgrantees, potential project beneficiaries, or eligible participants and allow the Department or its agent to randomly select the subset for the purpose of providing a basis for an experimental evaluation that could meet What Works Clearinghouse standards, with or without reservations.

63. Revise § 75.600 to read as follows:

§ 75.600 Applicability of using grant funds for construction or real property.

(a) As used in this section, the terms "construction" and "minor remodeling" have the meanings given those terms in 34 CFR 77.1(c).

(b) Except as provided in paragraph (c) of this section, §§ 75.600 through 75.618 apply to:

(1) An applicant that requests funds for construction or real property; and

(2) A grantee whose grant includes funds for construction or real property.

(c) Sections 75.600 through 75.618 do not apply to grantees in--

(1) Programs prohibited from using funds for construction or real property under § 75.533; and

(2) Projects determined by the Secretary to be minor remodeling under 34 CFR 77.1(c).

64. Revise § 75.601 to read as follows:

§ 75.601 Approval of the construction.

(a) The Secretary approves a direct grantee construction project--

(1) When the initial grant application is approved; or

(2) After the grant has been awarded.

(b) A grantee may not advertise or place the construction project on the market for bidding until after the Secretary has made a determination on the specifications of the project.

65. Revise § 75.602 to read as follows:

§ 75.602 Planning the construction.

(a) In planning the construction project, a grantee--

(1) Must ensure that the design is functional, economical, and not elaborate in design or extravagant in the use of materials compared with facilities of a similar type constructed in the State or other applicable

geographic area.

(2) May consider excellence of architecture and design and inclusion of works of art. A grantee must not spend more than 1 percent of the cost of the project on works of art.

(3) May make reasonable provision, consistent with the other uses to be made of the construction, for areas that are adaptable for artistic and other cultural activities.

(b) In developing the proposed budget for the construction project, a grantee--

(1) Must ensure that sufficient funds are available to meet any non-Federal share of the cost of the construction project.

(2) May budget for reasonable and predictable contingency costs consistent with 2 CFR 200.433.

(c) Prior to providing approval of the final working specifications of a construction project under § 75.601, the Secretary considers a grantee's compliance with the following requirements, as applicable--

(1) Title to site (§ 75.610).

(2) Environmental impact assessment (§ 75.611).

(3) Avoidance of flood hazards (§ 75.612).

(4) Compliance with the Coastal Barrier Resources Act (§ 75.613).

(5) Preservation of historic sites (§75.614).

(6) Build America, Buy America Act (§75.615).

(7) Energy conservation (§ 75.616).

(8) Access for individuals with disabilities (§ 75.617).

(9) Safety and health standards (§ 75.618).

66. Revise § 75.603 to read as follows:

§75.603 Beginning the construction.

(a) A grantee must begin work on the construction project within a reasonable time after the Secretary has approved the project under § 75.601.

(b) A grantee must follow all applicable procurement standards in 2 CFR part 200, subpart D, when advertising or placing the project on the market for bidding.

67. Revise § 75.604 to read as follows:

§ 75.604 During the construction.

(a) A grantee must maintain competent architectural engineering supervision and inspection at the construction site to ensure that the work conforms to the approved final working specifications.

(b) A grantee must complete the construction in accordance with the approved final working specifications unless a revision is approved.

(c) If a revision to the timeline, budget, or approved final working specifications is required, the grantee must request prior written approval consistent with 2 CFR 200.308(h).

(d) A grantee must comply with Federal laws regarding prevailing wages on construction and minor remodeling projects assisted with Department funding, including, as applicable, subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"; as applied through section 439 of GEPA; 20 U.S.C. 1232b) and any tribally determined prevailing wages.

(e) A grantee must submit periodic performance reports regarding the construction project containing information specified by the Secretary consistent with 2 CFR 200.329(d).

68. Revise § 75.605 to read as follows:

§ 75.605 After the construction.

(a) A grantee must ensure that sufficient funds will be available for effective operation and maintenance of the facilities after the construction is complete.

(b) A grantee must operate and maintain the facilities in accordance with applicable Federal, State, and local requirements.

(c) A grantee must maintain all financial records, supporting documents, statistical records, and other non-Federal entity records pertinent to the construction project consistent with 2 CFR 200.334.

69. Revise § 75.606 is revised to read as follows:

§ 75.606 Real property requirements.

(a) The Secretary approves a direct grantee real

property project--

(1) When the initial grant application is approved;

(2) After the grant has been awarded; or

(3) With the approval of a construction project under § 75.601.

(b) A grantee using any grant funds for real property acquisition must:

(1) Comply with the Real Property Standards of the Uniform Guidance (2 CFR 200.310 through 200.316).

(2) Not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without written permission and instructions from the Secretary.

(3) Record the Federal interest in the title of the real property in the official real property records for the jurisdiction in which the facility is located.

(4) Include a covenant in the title of the real property to ensure nondiscrimination.

(5) Report at least annually on the status of real property in which the Federal Government retains an interest consistent with 2 CFR 200.330.

(c) A grantee is subject to the regulations on relocation assistance and real property acquisition in 34 CFR part 15 and 49 CFR part 24, as applicable

§ 75.607 through 75.609 [Removed and Reserved]

70. Remove and reserve §§ 75.607 through 75.609.

71. Revise § 75.610 to read as follows:

§ 75.610 Title to site.

A grantee must have or obtain a full title or other interest in the site (such as a long-term lease), including right of access, that is sufficient to ensure the grantee's undisturbed use and possession of the facilities for at least 25 years after completion of the project or for the useful life of the construction, whichever is longer.

72. Revise § 75.611 to read as follows:

§ 75.611 Environmental impact assessment.

(a) When a grantee’s construction or real property project is considered a “Major Federal Action,” as defined in 40 CFR 1508.1(q), the grantee must include an assessment of the impact of the proposed construction on the quality of the environment in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) and Executive Order 11514 (35 FR 4247).

(b) If a grantee’s construction or real property project is not considered a “Major Federal Action” under NEPA, a NEPA environmental impact assessment is not required; however--

(1) An environmental impact assessment may be required under State or local requirements; and

(2) Grantees are encouraged to perform some type of environmental assessment for projects that involve breaking ground, such as projects to expand the size of an existing

building or replace an outdated building.

73. Revise § 75.612 to read as follows:

§ 75.612 Avoidance of flood hazards.

In planning the construction or real property project, a grantee must, in accordance with Executive Order 11988 of May 24, 1977 (3 CFR, 1978 Comp., pp. 117-120):

(a) Evaluate flood hazards in connection with the construction; and

(b) As far as practicable, avoid uneconomic, hazardous, or unnecessary use of flood plains in connection with the construction.

74. Revise § 75.613 to read as follows:

§ 75.613 Compliance with the Coastal Barrier Resources Act.

A grantee may not use, within the Coastal Barrier Resources System, funds made available under a program administered by the Secretary for any purpose prohibited by the Coastal Barrier Resources Act (16 U.S.C. 3501-3510).

75. Revise § 75.614 to read as follows:

§ 75.614 Preservation of historic sites.

(a) A grantee must describe the relationship of the proposed construction to, and probable effect on, any district, site, building, structure, or object that is:

(1) Included in the National Register of Historic Places; or

(2) Eligible under criteria established by the Secretary of the Interior for inclusion in the National

Register of Historic Places.

(b) In deciding whether to approve a construction project, the Secretary considers:

(1) The information provided by the applicant under paragraph (a) of this section; and

(2) Any comments received by the Advisory Council on Historic Preservation (see 36 CFR subpart 800.2).

76. Revise § 75.615 to read as follows:

§ 75.615 Build America, Buy America Act.

A grantee must comply with the requirements of the Build America, Buy America Act, Pub. L. No. 117-58, §§ 70901-70927 and implementing regulations, as applicable.

77. Revise § 76.616 to read as follows:

§ 75.616 Energy conservation.

(a) To the extent practicable, a grantee must design and construct facilities to maximize the efficient use of energy.

(b) A grantee must comply with ASHRAE 90.1 in their construction project.

(c) ASHRAE 90.1, Energy Standard for Sites and Buildings Except Low-Rise Residential Buildings, 2022 is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Department of Education (the Department) and at the National Archives and Records

Administration (NARA). Contact the Department at: Department of Education, 400 Maryland Avenue, SW., room 4C212, Washington, DC 20202-8472; phone: 202-245-6776; email: EDGAR@ed.gov. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov. The material may be obtained from the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) at American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., 1791 Tullie Circle, NE., Atlanta, Georgia 30329; www.ashrae.org.

78. Revise § 75.617 to read as follows:

§ 75.617 Access for individuals with disabilities.

A grantee must comply with the following Federal regulations on access by individuals with disabilities that apply to the construction of facilities:

(a) For residential facilities: 24 CFR part 40; and

(b) For non-residential facilities: 41 CFR 102-76.60 to 102-76.95.

§ 75.618 [Redesignated as § 75.619]

79. Redesignate § 75.618 as § 75.619.

80. Add new § 75.618 to read as follows:

§ 75.618 Safety and health standards.

In planning for and designing a construction project, a grantee must comply with the following:

(a) The standards under the Occupational Safety and

Health Act of 1970 (See 29 CFR part 1910); and

(b) State and local codes, to the extent that they are more stringent.

81. Revise § 75.620 to read as follows:

§ 75.620 General conditions on publication.

(a) *Content of materials.* Subject to any specific requirements that apply to its grant, a grantee may decide the format and content of project materials that it publishes or arranges to have published.

(b) *Required statement.* The grantee must ensure that any publication that contains project materials also contains the following statement:

> The contents of this [insert type of publication; such as book, report, film, website, and webpage] were developed under a grant from the U.S. Department of Education (Department). The Department does not mandate or prescribe practices, models, or other activities described or discussed in this document. The contents of this [insert type of publication] may contain examples of, adaptations of, and links to resources created and maintained by another public or private organization. The Department does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. The content of this [insert type of publication] does not necessarily represent the policy of the Department.

This publication is not intended to represent the views or policy of, or be an endorsement of any views expressed or materials provided by, any Federal agency.

82. Revise § 75.622 to read as follows:

§ 75.622 Definition of "project materials."

As used in §§ 75.620 through 75.621, "project materials" means a copyrightable work developed with funds from a grant of the Department. (See 2 CFR 200.307 and 200.315.)

83. Add § 75.623 to read as follows:

§ 75.623 Public availability of grant-supported research publications.

(a) Grantees must make final peer-reviewed scholarly publications resulting from research supported by Department grants available to the Education Resources Information Center (ERIC), which is administered by the Institute of Education Sciences, upon acceptance for publication.

(b) A final, peer-reviewed scholarly publication is the final version accepted for publication and includes all edits made as part of the peer review process, as well as all graphics and supplemental materials that are associated with the article.

(c) The Department will make the final, peer-reviewed scholarly publication available to the public through ERIC

no later than 12 months after the official date of publication.

(d) Grantees are responsible for ensuring that any publishing or copyright agreements concerning submitted articles fully comply with this section.

84. Remove the cross-reference under the heading "Inventions and Patents" before § 75.626.

85. Amend § 75.626 by:

a. Revising the section heading; and

b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.626 Show Federal support.

* * * * *

86. Revise § 75.650 to read as follows:

§ 75.650 Participation of students enrolled in private schools.

If applicable statutes and regulations provide for participation of students enrolled in private schools and, as applicable, their teachers or other educational personnel, and their families, the grantee must provide, as applicable, services in accordance with §§ 299.7 through 299.11.

§ 75.682 [Amended]

87. Amend § 75.682 by:

a. Removing the word "shall" and adding in its place

the word “must”;

b. Removing the words “of 1970” after the words “Animal Welfare Act”; and

c. Removing the parenthetical authority citation at the end of the section.

88. Revise § 75.700 to read as follows:

§ 75.700 Compliance with the U.S. Constitution, statutes, regulations, stated institutional policies, and applications.

A grantee must comply with § 75.500, applicable statutes, regulations, Executive orders, stated institutional policies, and applications, and must use Federal funds in accordance with the U.S. Constitution and those statutes, regulations, Executive orders, stated institutional policies, and applications.

§ 75.702 [Amended]

89. Amend § 75.702 by removing the word “insure” and adding in its place the word “ensure”.

90. Amend § 75.708 by:

a. Revising paragraph (b) introductory text;

b. In paragraph (d)(2), removing the words “Federal statute and executive orders and their implementing regulations” and adding in their place the words “applicable law”;

c. In paragraph (d)(3), removing the word “anti-discrimination” and adding in its place the word

"nondiscrimination";

d. Revising paragraph (e); and

e. Removing the parenthetical authority citation at the end of the section.

The revisions reads as follows:

§ 75.708 Subgrants.

* * * * *

(b) The Secretary may, through an announcement in the *Federal Register* or other reasonable means of notice, authorize subgrants when necessary to meet the purposes of a program. In this announcement, the Secretary will—

* * * * *

(e) Grantees that are not allowed to make subgrants under paragraph (b) of this section are authorized to contract, as needed, for supplies, equipment, and other services, in accordance with 2 CFR part 200, subpart D (2 CFR 200.317 through 200.326).

91. Amend § 75.720 by:

a. In paragraph (a)(1), removing the citation "2 CFR 200.327" and adding in its place the citation "2 CFR 200.328";

b. In paragraph (a)(2), removing the citation "2 CFR 200.328" and adding in its place the citation "2 CFR 200.329";

c. Adding paragraph (d); and

d. Removing the parenthetical authority citation at

the end of the section.

The addition reads as follows:

§ 75.720 Financial and performance reports.

* * * * *

(d) Upon request of the Secretary, a grantee shall, at the time of submission to the Secretary, post any report on performance and financial expenditure required by this section on a public-facing website maintained by the grantee.

92. Amend § 75.740 by:

a. In paragraph (a), revising the parenthetical sentence at the end;

b. In paragraph (b), adding " ; 20 U.S.C. 1232h, commonly known as the "Protection of Pupil Rights Amendment" or "PPRA"; and the Common Rule for the protection of Human Subjects and its implementing regulations at 34 CFR part 97, as applicable"" after the word "GEPA and its implementing regulations at 34 CFR part 98"; and

c. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.740 Protection of and access to student records; student rights in research, experimental programs, and testing.

* * * (Section 444 of GEPA (20 U.S.C. 1232g) is

commonly referred to as the "Family Educational Rights and Privacy Act of 1974" or "FERPA".)

* * * * *

§ 75.900 [Amended]

93. Amend § 75.900 by removing "ED" in paragraphs (a) and (b) and adding in its place the words "the Department".

§ 75.901 [Amended]

94. Amend § 75.901 by:

a. In the introductory text, removing the words "that are not subject to other procedures"; and

b. Removing the parenthetical authority citation from the end of the section.

PART 76--STATE-ADMINISTERED FORMULA GRANT PROGRAMS

95. The authority citation for part 76 is revised to read as follows:

AUTHORITY: 20 U.S.C. 1221e-3 and 3474, unless otherwise noted.

Section 76.101 also issued under 20 U.S.C. 1221e-3, 3474, and 7844(b).

Section 76.127 also issued under 48 U.S.C. 1469a.

Section 76.128 also issued under 48 U.S.C. 1469a.

Section 76.129 also issued under 48 U.S.C. 1469a.

Section 76.130 also issued under 48 U.S.C. 1469a.

Section 76.131 also issued under 48 U.S.C. 1469a.

Section 76.132 also issued under 48 U.S.C. 1469a.

Section 76.134 also issued under 48 U.S.C. 1469a.

Section 76.136 also issued under 48 U.S.C. 1469a.

Section 76.140 also issued under 20 U.S.C. 1221e-3, 1231g(a), and 3474.

Section 76.301 also issued under 1221e-3, 3474, and 7846(b).

Section 76.401 also issued under 20 U.S.C. 1221e-3, 1231b-2, and 3474.

Section 76.709 also issued under 20 U.S.C. 1221e-3, 1225(b), and 3474.

Section 76.710 also issued under 20 U.S.C. 1221e-3, 1225(b), and 3474.

Section 76.720 also issued under 20 U.S.C. 1221e-3, 1231a, and 3474.

Section 76.740 also issued under 20 U.S.C. 1221e-3, 1232g, 1232h, and 3474.

Section 76.783 also issued under 20 U.S.C. 1231b-2.

Section 76.785 also issued under 20 U.S.C. 7221e.

Section 76.786 also issued under 20 U.S.C. 7221e

Section 76.787 also issued under 20 U.S.C. 7221e.

Section 76.788 also issued under 20 U.S.C. 7221e.

Section 76.901 also issued under 20 U.S.C. 1234.

96. The part heading for part 76 is revised to read as set forth above.

§ 76.1 [Amended]

97. Revise § 76.1 to read as follows:

§ 76.1 Programs to which this part applies.

(a) The regulations in this part apply to each State-administered formula grant program of the Department.

(b) If a State-administered formula grant program does not have implementing regulations, the Secretary implements the program under the applicable statutes and, to the extent consistent with the authorizing statute, under the GEPA and the regulations in this part. For the purposes of this part, the term State-administered formula grant program means a program whose applicable statutes or implementing regulations provide a formula for allocating program funds among eligible States.

§ 76.2 [Amended]

98. Amend § 76.2 by removing the parenthetical authority citation at the end of the section.

99. Revise § 76.50 to read as follows:

§ 76.50 Basic requirements for subgrants.

(a) Under a program covered by this part, the Secretary makes a grant--

(1) To the State agency designated by applicable statutes and regulations for the program; or

(2) To the State agency designated by the State in accordance with applicable statutes and regulations.

(b) Unless prohibited by applicable statutes or regulations or by the terms and conditions of the grant award, a State may use State-administered formula grant funds--

(1) Directly;

(2) To make subgrants to eligible applicants; or

(3) To authorize a subgrantee to make subgrants.

(c) Grantees are responsible for monitoring subgrantees consistent with 2 CFR 200.332.

(d) Grantees, in cases where subgrants are prohibited by applicable statutes or regulations or the conditions of a grant award, are authorized to contract, as needed, for supplies, equipment, and other services, in accordance with 2 CFR part 200, subpart D (2 CFR 200.317 through 200.326).

§ 76.51 [Amended]

100. Amend §76.51 by:

a. In the introductory text, removing the words "a program statute authorizes" and adding in their place "applicable statutes and regulations authorize"; and

b. Removing the parenthetical citation authority at the end of the section.

§ 76.52 [Amended]

101. Amend § 76.52 by:

a. In paragraphs (a)(3) and (4), (b), (c)(1), and (d)(1) and (2), removing the words "State-Administered Formula Grant" and adding in their place "State-administered formula grant"; and

b. In paragraph (e), adding the word "Federal" between the words "indirect" and "financial assistance".

§ 76.100 [Amended]

102. Amend § 76.100 by removing the words "the authorizing statute and implementing regulations" and adding in their place the words "applicable statutes and regulations".

103. Revise § 76.101 to read as follows:

§ 76.101 State plans in general.

(a) Except as provided in paragraph (b) of this section, a State that makes subgrants to local educational agencies under a program subject to this part must have on file with the Secretary a State plan that meets the requirements of section 441 of GEPA (20 U.S.C. 1232d).

(b) The requirements of section 441 of GEPA do not apply to a State plan submitted for a program under the Elementary and Secondary Education Act of 1965.

104. Revise § 76.102 to read as follows:

§ 76.102 Definition of "State plan" for this part.

As used in this part, *State plan* means any document that applicable statutes and regulations for a State-administered formula grant program require a State to submit in order to receive funds for the program. To the extent that any provision of this part conflicts with program-specific implementing regulations related to the plan, the program-specific implementing regulations govern.

105. Revise § 76.103 to read as follows:

§ 76.103 Multiyear State plans.

Unless otherwise specified by statute, regulations, or

the Secretary, each State plan is effective for a period of more than one fiscal year, to be determined by the Secretary or by regulations.

§ 76.125 [Amended]

106. Amend § 76.125 by:

a. In paragraph (b), removing "the Trust Territory of the Pacific Islands,";

b. In paragraph (c), adding ", consistent with applicable law" after the word "Department"; and

c. Removing the parenthetical authority citation at the end of the section.

§ 76.127 [Amended]

107. Amend § 76.127 by:

a. In the introductory text, removing the words "of the programs listed in § 76.125(c)" and adding in their place the words "State-administered formula grant programs"; and

b. Removing the parenthetical authority citation at the end of the section.

108. Amend § 76.128 by:

a. Removing the words "of the programs listed in § 76.125(c)" and adding in their place the words "State-administered formula grant programs";

b. Revising the example at the end of the section; and

c. Removing the parenthetical authority citation at

the end of the section.

The revision reads as follows:

§ 76.128 What is a consolidated grant?

* * * * *

Example 1 to § 76.128. Assume the Virgin Islands applies for a consolidated grant that includes funds under the Carl D. Perkins Career and Technical Education Act of 2006 and title I, part A; title II, part A; and title IV, part A of the Elementary and Secondary Education Act of 1965. If the Virgin Islands' allocation under the formula for each of these four programs is $150,000, the total consolidated grant to the Virgin Islands would be $600,000.

109. Amend § 76.129 by:

a. Revising the example after paragraph (a) and the example after paragraph (b).

b. Removing the parenthetical authority citation at the end of the section.

The revisions read as follows:

§ 76.129 How does a consolidated grant work?

(a) * * *

Example 1 to paragraph (a). Assume that Guam receives, under the consolidated grant, funds from Carl D. Perkins Career and Technical Education Act of 2006, Title I, part A of the ESEA, and Title IV, part A of the ESEA. The sum of the allocations under these programs is

$600,000. Guam may choose to allocate this $600,000 among one, two, or all three of the programs.

(b) * * *

Example 2 to paragraph (b). Assume that American Samoa uses part of the funds under a consolidated grant to carry out programs and activities under Title IV, part A of the ESEA. American Samoa need not submit to the Secretary a State plan that addresses the program's application requirement that the State educational agency describe how it will use funds for State-level activities. However, in carrying out the program, American Samoa must use the required amount of funds for State-level activities under the program.

§ 76.130 [Amended]

110. Amend § 76.130 by:

a. Removing in paragraph (d) the words "statute and regulations for that program" and adding in their place the words "statutes and regulations that apply to that program"; and

b. Removing the parenthetical authority citation at the end of the section.

§ 76.131 [Amended]

111. Amend § 76.131 by:

a. In paragraph (a), removing the words "programs listed in § 76.125(c)" and adding in their place the words "State-administered formula grant programs";

b. In paragraph (b), removing the words “the authorizing statutes and regulations” and adding in their place the words “applicable statutes and regulations”;

c. In paragraph (c)(1), removing the words “programs in § 76.125(c)” and adding in their place the words “State-administered formula grant programs”;

c. In paragraph (c)(2), removing the words “program or programs in § 76.125(c)” and adding in their place the words “State-administered formula grant programs”; and

d. Removing the parenthetical authority citation at the end of the section.

§ 76.132 [Amended]

112. Amend § 76.132 by:

a. In paragraphs (a)(2),removing the word “authorizing” and adding in its place the word “applicable”;

b. In paragraph (a)(4), removing the word “assure” and adding in its place the word “ensure”;

c. In paragraph (a)(5),removing the phrase “2 CFR 200.327 and 200.328” and adding in its place “2 CFR 200.328 and 200.329”;

d. In paragraph (a)(9),removing the word “authorizing” and adding in its place the word “applicable”; and

e. Removing the parenthetical authority citation at the end of the section.

113. Amend § 76.134 by:

a. Revising paragraph (a);

b. In paragraph (b), removing the words "the program statute" and adding in their place the words "applicable statutes"; and

c. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 76.134 What is the relationship between consolidated and non-consolidated grants?

(a) An Insular Area may request that any State-administered formula grant programs be included in its consolidated grant and may apply separately for assistance under any other of those programs for which it is eligible.

* * * * *

§ 76.136 [Amended]

114. Amend § 76.136 by:

a. Removing the words "programs described in § 76.125(c)" and adding in their place the words "State-administered formula grant programs"; and

b. Removing the parenthetical authority citation at the end of the section.

115. Revise § 76.140 to read as follows:

§ 76.140 Amendments to a State plan.

(a) If the Secretary determines that an amendment to a State plan is essential during the effective period of the plan, the State must make the amendment.

(b) A State must also amend a State plan if there is a significant and relevant change in the information or the assurances in the plan.

(c) If a State amends a State plan, to the extent consistent with applicable law, the State must use the same procedures as those it must use to prepare and submit a State plan, unless the Secretary prescribes different procedures based on the characteristics of a particular State-administered formula grant program.

§§ 76.141 and 76.142 [Removed and Reserved]

116. Remove and reserve §§ 76.141 and 76.142.

§ 76.260 [Amended]

117. Amend § 76.260 by:

a. In the section heading, removing the words "program statute" and adding in their place the words "applicable statutes".

b. Removing the words "the authorizing statute" wherever they appear and adding in their place the words "applicable statutes".

118. Revise § 76.301 to read as follows:

§ 76.301 Local educational agency application in general.

(a) A local educational agency (LEA) that applies for a subgrant under a program subject to this part must have on file with the State an application that meets the requirements of section 442 of GEPA (20 U.S.C. 1232e).

(b) The requirements of section 442 of GEPA do not

apply to an LEA's application for a program under the ESEA.

§ 76.400 [Amended]

119. Amend § 76.400 in paragraphs (b)(2), (c)(2), and (d) by removing the words "Federal statutes" and adding in their place the words "applicable statutes".

120. Revise § 76.401 to read as follows:

§ 76.401 Disapproval of an application--opportunity for a hearing.

(a) *State educational agency hearing regarding disapproval of an application.* When financial assistance is provided to (or through) a State educational agency (SEA) consistent with an approved State plan and the SEA takes final action by disapproving or failing to approve an application for a subgrant in whole or in part, the SEA must provide the aggrieved applicant with notice and an opportunity for a hearing regarding the SEA's disapproval or failure to approve the application.

(b) *Applicant request for SEA hearing.* (1) The aggrieved applicant must request a hearing within 30 days of the final action of the SEA.

(2) The aggrieved applicant's request for a hearing must include, at a minimum, a citation to the specific State or Federal statute, rule, regulation, or guideline that the SEA allegedly violated when disapproving or failing to approve the application in whole or in part and a brief description of the alleged violation.

(3) The SEA must make available, at reasonable times and places to each applicant, all records of the SEA pertaining to the SEA's failure to approve the application in whole or in part that is the subject of the applicant's request for a hearing under this paragraph (b).

(c) *SEA hearing procedures*. (1) Within 30 days after it receives a request that meets the requirements of paragraphs (b)(1) and (2) of this section, the SEA must hold a hearing on the record to review its action.

(2) No later than 10 days after the hearing, the SEA must issue its written ruling, including findings of fact and reasons for the ruling.

(3) If the SEA determines that its action was contrary to State or Federal statutes, rules, regulations, or guidelines that govern the applicable program, the SEA must rescind its action in whole or in part.

(d) *Procedures for appeal of SEA action to the Secretary*. (1) If an SEA does not rescind its final action disapproving or failing to approve an application in whole or in part after the SEA conducts a hearing consistent with paragraph (c) of this section, the applicant may appeal the SEA's final action to the Secretary.

(2) The applicant must file a notice of appeal with the Secretary within 20 days after the applicant has received the SEA's written ruling.

(3) The applicant's notice of appeal must include, at

a minimum, a citation to the specific Federal statute, rule, regulation, or guideline that the SEA allegedly violated and a brief description of the alleged violation.

(4) The Secretary may issue interim orders at any time when considering the appeal, including requesting the hearing record and any additional documentation, such as additional documentation regarding the information provided pursuant to paragraph (d)(3) of this section.

(5) After considering the appeal, the Secretary issues an order either affirming the final action of the SEA or requiring the SEA to take appropriate action, if the Secretary determines that the final action of the SEA was contrary to a Federal statute, rule, regulation, or guideline that governs the applicable program.

(e) *Programs administered by State agencies other than an SEA*. Under programs with an approved State plan under which financial assistance is provided to (or through) a State agency that is not the SEA, that State agency is not required to comply with this section unless specifically required to do so by Federal statute or regulation.

121. Amend § 76.500 by revising paragraph (a) and removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 76.500 Federal statutes and regulations on

nondiscrimination.

(a) A State and a subgrantee must comply with the following statutes and regulations:

Table 1 to § 76.500(a)

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*)	34 CFR part 100
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*)	34 CFR part 106
Discrimination on the basis of disability	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)	34 CFR part 104
Discrimination on the basis of age	Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*)	34 CFR part 110

* * * * *

§ 76.532 [Amended]

122. Amend § 76.532 by removing the parenthetical authority citation at the end of the section.

§ 76.533 [Amended]

123. Amend § 76.533 by:

a. Removing the words "the authorizing statute" and adding in their place the words "applicable statutes"; and

b. Removing the parenthetical authority citation at the end of the section.

124. Revise § 76.560 to read as follows:

§ 76.560 General indirect cost rates and cost allocation

plans; exceptions.

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for--

(1) All grantees, other than hospitals and commercial (for-profit) organizations, at 2 CFR part 200, subpart E;

(2) Hospitals, at 45 CFR part 75, appendix IX; and

(3) Commercial (for-profit) organizations, at 48 CFR part 31.

(b) Except as specified in paragraph (c) of this section, a grantee must have a current indirect cost rate agreement or approved cost allocation plan to charge indirect costs to a grant. To obtain a negotiated indirect cost rate agreement or approved cost allocation plan, a grantee must submit an indirect cost rate proposal or cost allocation plan to its cognizant agency.

(c) A grantee that meets the requirements in 2 CFR 200.414(f) may elect to charge the *de minimis* rate of modified total direct costs (MTDC) specified in that provision, which may be used indefinitely. The *de minimis* rate may not be used on programs that have statutory or regulatory restrictions on the indirect cost rate. No documentation is required to justify the *de minimis* rate.

(1) If the grantee has established a threshold for equipment that is lower than the amount specified in the

Uniform Guidance, the grantee must use that threshold to exclude equipment from the MTDC base.

(2) For purposes of the MTDC base and application of the 10 percent rate, MTDC includes up to the amount specified in the definition of MTDC in the Uniform Guidance of each subaward, each year.

(d) If a grantee is required to, but does not, have a federally recognized indirect cost rate or approved cost allocation plan, the Secretary may permit the grantee to charge a temporary indirect cost rate of 10 percent of budgeted direct salaries and wages.

(e)(1) If a grantee fails to submit an indirect cost rate proposal or cost allocation plan to its cognizant agency within the required 90 days, the grantee may not charge indirect costs to its grant from the end of the 90-day period until it obtains a federally recognized indirect cost rate agreement applicable to the grant.

(2) If the Secretary determines that exceptional circumstances warrant continuation of a temporary indirect cost rate, the Secretary may authorize the grantee to continue charging indirect costs to its grant at the temporary rate specified in paragraph (d) of this section even though the grantee has not submitted its indirect cost rate proposal within the 90-day period.

(3) Once a grantee obtains a federally recognized indirect cost rate that is applicable to the affected

grant, the grantee may use that indirect cost rate to claim indirect cost reimbursement for expenditures made on or after the date on which the grantee submitted its indirect cost proposal to its cognizant agency or the start of the project period, whichever is later. However, this authority is subject to the following limitations:

(i) The total amount of funds recovered by the grantee under the federally recognized indirect cost rate is reduced by the amount of indirect costs previously recovered under the temporary indirect cost rate specified in paragraph (d) of this section.

(ii) The grantee must obtain prior approval from the Secretary to shift direct costs to indirect costs in order to recover indirect costs at a higher negotiated indirect cost rate.

(iii) The grantee may not request additional funds to recover indirect costs that it cannot recover by shifting direct costs to indirect costs.

(f) The Secretary accepts a negotiated indirect cost rate or approved cost allocation plan but may establish a restricted indirect cost rate or cost allocation plan compliant with §§ 76.564 through 76.569 for a grantee to satisfy the statutory requirements of certain programs administered by the Department.

125. Revise § 76.561 to read as follows:

§ 76.561 Approval of indirect cost rates and cost

allocation plans.

(a) If the Department of Education is the cognizant agency, the Secretary approves an indirect cost rate or cost allocation plan for a State agency and for a subgrantee other than a local educational agency. For the purposes of this section, the term "local educational agency" does not include a State agency.

(b) Each State educational agency, on the basis of a plan approved by the Secretary, shall approve an indirect cost rate for each local educational agency that requests it to do so.

(c) The Secretary generally approves indirect cost rate agreements annually. Indirect cost rate agreements may be approved for periods longer than a year if the Secretary determines that rates will be sufficiently stable to justify a longer rate period.

126. Add § 76.562 to read as follows:

§ 76.562 Reimbursement of indirect costs.

(a) Reimbursement of indirect costs is subject to the availability of funds and statutory or administrative restrictions.

(b) The application of the negotiated indirect cost rate (determination of the direct cost base) or cost allocation plan (charging methodology) must be in accordance with the agreement/plan approved by the grantee’s cognizant agency.

(c) Indirect costs for joint applications and projects (see § 76.303) are limited to the amount derived by applying the rate of the applicant, or a restricted rate when applicable, to the direct cost base for the grant in keeping with the terms of the applicant's federally recognized indirect cost rate agreement and program requirements.

§ 76.563 [Amended]

127. Amend § 76.563 by:

a. Removing the words “agencies of State and local governments that are grantees under”;

b. Removing the words “their subgrantees” and adding in their place the word “subgrants”; and

c. Removing the parenthetical authority citation at the end of the section.

128. Revise § 76.654 to read as follows:

§ 76.564 Restricted indirect cost rate formula.

(a) An indirect cost rate for a grant covered by §§ 76.563 or 75.563 is determined by the following formula: Restricted indirect cost rate = (General management costs + Fixed costs) ÷ (Other expenditures).

(b) General management costs, fixed costs, and other expenditures must be determined under §§ 76.565 through 76.567.

(c) Under the programs covered by § 76.563, a grantee or subgrantee that is not a State or local government

agency--

(1) Shall use a negotiated restricted indirect cost rate computed under paragraph (a) of this section or cost allocation plan that complies with the formula in paragraph (a) of this section; or

(2) May elect to use an indirect cost rate of 8 percent of the modified total direct costs (MTDC) base if the grantee or subgrantee does not have a negotiated restricted indirect cost rate. MTDC is defined in 2 CFR 200.1. If the Secretary determines that the grantee or subgrantee would have a lower rate as calculated under paragraph (a) of this section, the lower rate shall be used for the affected program.

(3) If the grantee has established a threshold for equipment that is lower than the amount specified in the Uniform Guidance, the grantee must use that threshold to exclude equipment from the MTDC base.

(4) For purposes of the MTDC base and application of the 8 percent rate, MTDC includes up to the amount specified in the definition of MTDC in the Uniform Guidance of each subaward, each year.

(d) Indirect costs that are unrecovered as a result of these restrictions may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

§ 76.565 [Amended]

129. Amend § 76.565 by removing the parenthetical authority citation at the end of the section.

§ 76.566 [Amended]

130. Amend § 76.566 by:

a. In the introductory text, adding the word "allowable" before the words "indirect costs"; and

b. Removing the parenthetical authority citation at the end of the section.

131. Amend § 76.567 by:

a. Revising paragraph (b)(3);

b. In paragraph (b)(7), removing the punctuation and word "; and";

c. Redesignating paragraph (b)(8) as paragraph (b)(9);

d. Adding a new paragraph (b)(8); and

e. Removing the parenthetical authority citation at the end of the section.

The revision and addition read as follows:

§ 76.567 Other expenditures - restricted rate.

* * * * *

(b) * * *

(3) Subawards exceeding the amount specified in the definition of Modified Total Direct Cost in the Uniform Guidance each, per year;

* * * * *

(8) Other distorting items; and

* * * * *

§ 76.568 [Amended]

132. Amend § 76.568 by:

a. In paragraph (c), adding the word "(denominator)" after the word "expenditures"; and

b. Removing the parenthetical authority citation at the end of the section.

133. Amend § 76.569 by:

a. Revising paragraph (a) and removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 76.569 Using the restricted indirect cost rate.

(a) Under the programs referenced in §§ 75.563 and 76.563, the maximum amount of indirect costs recovery under a grant is determined by the following formula:

Indirect costs = (Restricted indirect cost rate) × (Total direct costs of the grant minus capital outlays, subawards exceeding amount specified in the definition of Modified Total Direct Cost in the Uniform Guidance each, per year, and other distorting or unallowable items as specified in the grantee's indirect cost rate agreement)

* * * * *

§ 76.580 [Amended]

134. Amend § 76.580 by removing the parenthetical authority citation at the end of the section.

135. Revise § 76.600 to read as follows:

§ 76.600 Where to find the construction regulations.

(a) A State or a subgrantee that requests program funds for construction, or whose grant or subgrant includes funds for construction, must comply with the rules on construction that apply to applicants and grantees under 34 CFR 75.600 through 75.618.

(b) The State must perform the functions of the Secretary for subgrantee requests under 34 CFR 75.601 (Approval of the construction).

(c) The State must perform the functions that the Secretary performs under 34 CFR 75.614(b). The State may consult with the State Historic Preservation Officer and Tribal Historic Preservation Officer to identify and evaluate historic properties and assess effects. The Secretary will continue to participate in the consultation process when:

(1) The State determines that "Criteria of Adverse Effect" applies to a project;

(2) There is a disagreement between the State and the State Historic Preservation Officer or Tribal Historic Preservation Officer regarding identification and evaluation or assessment of effects;

(3) There is an objection from consulting parties or the public regarding findings, determinations, the implementation of agreed-upon provisions, or their

involvement in a National Historic Preservation Act Section 106 review (see 36 CFR part 800); or

(4) There is the potential for a foreclosure situation or anticipatory demolition as specified in Section 110(k) of the National Historic Preservation Act (see 36 CFR part 800).

(d) The State must provide to the Secretary the information required under 34 CFR 75.614(a) (Preservation of historic sites).

(e) The State must submit periodic reports to the Secretary regarding the State's review and approval of construction or real property projects containing information specified by the Secretary consistent with 2 CFR 200.329(d).

136-137. Revise the undesignated center heading before § 76.650 and revise § 76.650 to read as follows:

Participation of Private School Children, Teachers or Other Educational Personnel, and Families

§ 76.650 Participation of private school children, teachers or other educational personnel, and families.

If a program provides for participation by private school children, teachers or other educational personnel, and families, and the program is not otherwise governed by applicable regulations, the grantee or subgrantee must provide, as applicable, services in accordance with the requirements under §§ 299.7 through 299.11.

§§ 76.651 through 76.662 [Removed and Reserved]

138. Remove and reserve §§ 76.651 through 76.662.

§ 76.665 [Removed and Reserved]

139. Remove the undesignated center heading "Equitable Services under the CARES Act" above § 76.665 and remove and reserve § 76.665.

§§ 76.670 through 76.677 [Removed and Reserved]

140. Remove the undesignated section heading "Procedures for Bypass" above § 76.670 and remove and reserve §§ 76.670 through 76.677.

§ 76.682 [Amended]

141. Amend § 76.682 by removing the parenthetical authority citation at the end of the section.

§ 76.702 [Amended]

142. Amend § 76.702 removing the word "insure" and adding in its place the word "ensure".

143. Amend § 76.707 by revising paragraph (h) and removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 76.707 When obligations are made.

* * * * *

If the obligation is for—	**The obligation is made—**
* * * *	* * *

(h) A pre-agreement cost that was properly approved by the Secretary under the cost principles in 2 CFR part 200, subpart E	On the first day of the grant or subgrant period of performance.

§ 76.708 [Amended]

144. Amend § 76.708 by:

a. In paragraph (a) introductory text, removing the words "the authorizing statute" and adding in their place the words "applicable statutes and regulations", removing the word "requires" and adding in its place the word "require", and removing the words "(see § 76.5)" and adding, in their place, the words "(see § 76.51(a))";

b. In paragraph (c), removing the words "the authorizing statute" and adding in their place the words "applicable statutes and regulations" and removing the word "gives" and adding in its place the word "give"; and

c. Removing the parenthetical authority citation at the end of the section.

§ 76.709 [Amended]

145. Amend § 76.709 by removing the Note and the parenthetical authority citation at the end of the section.

§ 76.710 [Amended]

146. Amend § 76.710 by removing the Note and the parenthetical authority citation at the end of the section.

§ 76.711 [Amended]

147. Amend § 76.711 by:

a. In the section heading, removing the abbreviation "CFDA" and adding in its place the abbreviation "ALN"; and

b. Removing the phrase "Catalog of Federal Domestic Assistance (CFDA)" and adding in its place the phrase "Assistance Listing Number (ALN)".

§ 76.714 [Amended]

148. Amend § 76.714 by adding ", as defined in § 76.52(c)(3)," after "Federal financial assistance".

§ 76.720 [Amended]

149. Amend § 76.720 by:

a. In paragraph (a), removing the citation "2 CFR 200.327" and adding in its place the citation "2 CFR 200.328", removing the citation "2 CFR 200.328" and adding, in its place, the citation "2 CFR 200.329", and removing the words "the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520" and adding, in their place, the words "Subchapter 1 of Chapter 35 (sections 3501–3521) of Title 44, U.S. Code, commonly known as the "Paperwork Reduction Act"";

b. In paragraph (c)(2), removing the words "the General Education Provisions Act" and adding, in their place, the word "GEPA"; and

c. Removing the parenthetical authority citation at the end of the section.

150. Amend § 76.740 by:

a. In paragraph (a), removing the number "438" and adding in its place the number "444" in the first sentence and revising the parenthetical sentence at the end;

b. In paragraph (b), removing the number "439" and adding in its place the number "445"; and adding the words "(20 U.S.C. 1232h; commonly known as the "Protection of Pupil Rights Amendment" or "PPRA")" after the words "of GEPA"; and

c. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 76.740 Protection of and access to student records; student rights in research, experimental programs, and testing.

(a) * * * (Section 444 of GEPA (20 U.S.C. 1232g) is commonly referred to as the "Family Educational Rights and Privacy Act of 1974" or "FERPA".)

* * * * *

§ 76.761 [Amended]

151. Amend § 76.761 in paragraph (b) by removing the words "the authorizing statute and implementing regulations for the program" and adding in their place the words "applicable statutes and regulations".

152. Amend § 76.783 by:

a. In paragraph (a)(1), removing the word "or"'

b. In paragraph (a)(2), removing the period and adding in its place "; or";

c. Adding paragraph (a)(3);

d. Removing the citation "76.401(d)(2)-(7)" in paragraph (b) and adding in its place the citation "76.401(a) through (d)"; and

e. Removing the Note and parenthetical authority citation at the end of the section.

The addition reads as follows:

§ 76.783 State educational agency action--subgrantee's opportunity for a hearing.

(a) * * *

(3) Failing to provide funds in amounts in accordance with the requirements of applicable statutes and regulations.

* * * * *

§ 76.785 [Amended]

153. Amend § 76.785 by:

a. Removing the words "section 10306" and adding in their place the words "section 4306"; and

b. Removing the parenthetical authority citation at the end of the section.

§ 76.786 [Amended]

154. Amend § 76.786 by:

a. In paragraph (a), removing the words "Public Charter Schools Program" and adding in their place the

words “Charter School State Entity Grant Program”; and

b. Removing the parenthetical authority citation at the end of the section.

§ 76.787 [Amended]

155. Amend § 76.787 by:

a. In the definition of “charter school,” removing the words “title X, part C of the ESEA” and adding in their place the words “section 4310(2) of the ESEA (20 U.S.C. 7221i(2))”;

b. In the definition of “covered program,” removing the words “an elementary or secondary education program administered by the Department under which the Secretary allocates funds to States on a formula basis” and adding in their place the words “a State-administered formula grant program”;

c. In the definition of “local educational agency,” removing the words “the authorizing statute” and adding in their place the words “applicable statutes and regulations”; and

d. Removing the parenthetical authority citation at the end of the section.

156. Revise the undesignated center heading before § 76.788 to read “Responsibilities for Notice and Information”.

§ 76.788 [Amended]

157. Amend § 76.788 by:

a. In paragraph (c), removing the words "the authorizing statute or implementing regulations for the applicable covered program" and adding in their place the words "applicable statutes or regulations"; and

b. Removing the parenthetical authority citation at the end of the section.

§ 76.900 [Amended]

158. Amend § 76.900 by removing "ED" in paragraphs (a) and (b) and adding in its place the words "the Department".

§ 76.901 [Amended]

159. Amend § 76.901 by:

a. In paragraph (a) introductory text, removing the words "Part E" and adding in their place the words "Part D (20 U.S.C. 1234-1234h)"; and

b. Removing the parenthetical authority citation at the end of the section.

PART 77--DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

160. The authority citation for part 77 continues to read as follows:

Authority: 20 U.S.C. 1221e-3 and 3474, unless otherwise noted.

161. Amend § 77.1 by:

a. Revising paragraph (b); and

b. In paragraph (c):

i. In the definition of "Applicant" removing the word

"requesting" and adding in its place the words "applying for";

ii. In the definition of "Award" removing the words "the definition of";

iii. In the definition of "Budget" removing the words "that recipient's" and adding in their place "a recipient's";

iv. Adding in alphabetical order a definition for "construction";

v. Revising the definition of "Demonstrates a rationale";

vi. Removing the definitions of "Direct grant program" and "Director of the Institute of Museum Services";

vii. Revising the definition of "Director of the National Institute of Education";

viii. Adding in alphabetical order a definition for "Evaluation";

ix. In the definition of "Evidence-based" adding ", for the purposes of 34 CFR part 75," after the word "Evidence-based";

x. Adding in alphabetical order a definition for "Evidence-building";

xi. In the definition of "GEPA" removing the word "The" and adding in its place the word "the";

xii. Adding in alphabetical order definitions for

"independent evaluation";

xiii. Revising the definitions of "minor remodeling", "Moderate evidence", and "National level";

xiv. Adding in alphabetical order a definition for "peer-reviewed scholarly publication";

xv. In the definition of "Project period" removing the citation "2 CFR 200.77" and adding in its place the citation "2 CFR 200.1";

xvi. Revising the definition of "Promising evidence";

xvii. Adding in alphabetical order a definition for "quality data";

xviii. Revising the definitions of "Regional level", "State", and "Strong evidence";

xix. In the definition of "Subgrant" removing the words "definition of "grant or award"" and adding in their place the words "definitions of "Grant" or "Award"";

xx. Revising the definition of "What Works Clearinghouse (WWC) Handbooks (WWC Handbooks)"; and

xxi. In the definition of "Work of art" removing the word "facilities" and adding it its place the words "a facility".

The revisions and additions read as follows:

§ 77.1 Definitions that apply to all Department programs.

* * * * *

(b) Unless a statute or regulation provides otherwise, the following definitions in 2 CFR part 200

apply to the regulations in subtitles A and B of this title. The following terms have the definitions given those terms in 2 CFR part 200.1. Phrasing given in parentheses references the term or terms used in title 34 that are consistent with the term defined in title 2.

Contract

Equipment

Federal award (The terms "award," "grant," and "subgrant", as defined in paragraph (c) of this section, have the same meaning, depending on the context, as "Federal award" in 2 CFR 200.1.).

Period of performance (For discretionary grants, ED uses the term "project period," as defined in paragraph (c) of this section, instead of "period of performance," to describe the period during which funds can be obligated by the grantee.).

Personal property

Real property

Recipient

Subaward (The term "subgrant," as defined in paragraph (c) of this section, has the same meaning as "subaward" in 2 CFR 200.1).

Supplies

(c) * * *

Construction means

(i)(A) the preparation of drawings and specifications

for a facilities project;

(B) erecting, building, demolishing, acquiring, renovating, major remodeling of, or extending a facilities project; or

(C) inspecting and supervising the construction of a facilities project;

(ii) Does not include minor remodeling.

* * * * *

Demonstrates a rationale means that there is a key project component included in the project's logic model that is supported by citations of high-quality research or evaluation findings that suggest that the project component is likely to significantly improve relevant outcomes.

* * * * *

Director of the Institute of Education Sciences means the Director of the Institute of Education Sciences or an officer or employee of the Institute of Education Sciences acting for the Director under a delegation of authority.

* * * * *

Evaluation means an assessment using systematic data collection and analysis of one or more programs, policies, practices, and organizations intended to assess their implementation, outcomes, effectiveness, or efficiency.

Evidence-building means a systematic plan for identifying and answering questions relevant to programs and policies through performance measurement, exploratory

studies, or program evaluation.

* * * * *

Independent evaluation means an evaluation of a project component that is designed and carried out independently of, but in coordination with, the entities that develop or implement the project component.

* * * * *

Minor remodeling means minor alterations in a previously completed facilities project. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed facility. The term may also include related designs and drawings for these projects. The term does not include construction or renovation, structural alterations to buildings, facilities maintenance, or repairs.

Moderate evidence means evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks reporting “strong evidence” or “moderate evidence” for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks reporting "Tier 1 strong evidence" of effectiveness or "Tier 2 moderate evidence" of effectiveness or a "positive effect" on a relevant outcome based on a sample including at least 20 students or other individuals from more than one site (such as a State, county, city, local educational agency (LEA), school, or postsecondary campus), or a "potentially positive effect" on a relevant outcome based on a sample including at least 350 students or other individuals from more than one site (such as a State, county, city, LEA, school, or postsecondary campus), with no reporting of a "negative effect" or "potentially negative effect" on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC most recently using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks, or otherwise assessed by the Department using version 5.0 of the WWC Handbook, as appropriate, and that--

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (i.e., favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the

study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (such as a State, county, city, LEA, school, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet the requirements in paragraphs (iii)(A) through (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

National level means the level of scope or effectiveness of a project component that is able to be effective in a wide variety of communities, including rural and urban areas, as well as groups with different characteristics (such as socioeconomic status, race, ethnic, gender, disability, language, and migrant populations), populations, and settings.

* * * * *

Peer-reviewed scholarly publication means a final peer-reviewed manuscript accepted for publication, that arises from research funded, either fully or partially, by Federal funds awarded through a Department-managed grant, contract, or other agreement. A final peer-reviewed manuscript is defined as an author's final manuscript of a peer-reviewed scholarly paper accepted for publication,

including all modifications resulting from the peer review process. The final peer-reviewed manuscript is not the same as the final published article, which is defined as a publisher's authoritative copy of the paper including all modifications from the publishing peer review process, copyediting, stylistic edits, and formatting changes. However, the content included in both the final peer-reviewed manuscript and the final published article, including all findings, tables, and figures should be identical.

* * * * *

Promising evidence means evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC reporting "strong evidence", "moderate evidence", or "promising evidence" for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting "Tier 1 strong evidence" of effectiveness, or "Tier 2 moderate evidence" of effectiveness, or "Tier 3 promising evidence" of effectiveness, or a "positive effect," or "potentially positive effect" on a relevant outcome, with no reporting of a "negative effect" or "potentially negative effect" on a relevant outcome; or

(iii) A single study assessed by the Department, as

appropriate, that—-

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (such as a study using regression methods to account for differences between a treatment group and a comparison group);

(B) Includes at least one statistically significant and positive (i.e., favorable) effect on a relevant outcome; and

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report.

* * * * *

Quality data encompasses utility, objectivity, and integrity of the information. "Utility" refers to how the data will be used, either for its intended use or other uses. "Objectivity" refers to data being accurate, complete, reliable, and unbiased. "Integrity" refers to the protection of data from being manipulated.

* * * * *

Regional level means the level of scope or effectiveness of a project component that is able to serve a variety of communities within a State or multiple States, including rural and urban areas, as well as groups with different characteristics (such as socioeconomic status,

race, ethnicity, gender, disability, language, and migrant status). For an LEA-based project, to be considered a regional-level project, a project component must serve students in more than one LEA, unless the project component is implemented in a State in which the State educational agency is the sole educational agency for all schools.

* * * * *

State means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

* * * * *

Strong evidence means evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks reporting "strong evidence" for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks reporting "Tier 1 strong evidence" of effectiveness or a "positive effect" on a relevant outcome based on a sample including at least 350 students or other individuals across

more than one site (such as a State, county, city, local educational agency (LEA), school, or postsecondary campus), with no reporting of a "negative effect" or "potentially negative effect" on a relevant outcome; or

(iii) A single experimental study reviewed and reported by the WWC most recently using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks, or otherwise assessed by the Department using version 5.0 of the WWC Handbook, as appropriate, and that--

(A) Meets WWC standards without reservations;

(B) Includes at least one statistically significant and positive (i.e., favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (such as a State, county, city, LEA, school, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet the requirements in paragraphs (iii)(A) through (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

* * * * *

What Works Clearinghouse (WWC) Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 5.0, or in the WWC Standards Handbook, Version 4.0 or 4.1, or in the WWC Procedures Handbook, Version 4.0 or 4.1, the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

* * * * *

162. Revise § 77.2 to read as follows:

§ 77.2 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Department of Education (the Department) and the National Archives and Records Administration (NARA). Contact the Department at: Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, 550 12th

Street, SW, PCP-4158, Washington, DC 20202-5900; phone: (202) 245-6940; email: Contact.WWC@ed.gov. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov. The following material may be obtained from Institute of Education Sciences, 550 12th Street SW, Washington, DC 20202; phone: (202) 245-6940; website: http://ies.ed.gov/ncee/wwc/Handbooks:

(b) What Works Clearinghouse Procedures and Standards Handbook, Version 5.0, August 2022 (Revised December 2022); IBR approved for § 77.1.

(c) What Works Clearinghouse Standards Handbook, Version 4.1, January 2020, IBR approved for § 77.1.

(d) What Works Clearinghouse Procedures Handbook, Version 4.1, January 2020, IBR approved for § 77.1.

(e) What Works Clearinghouse Standards Handbook, Version 4.0, October 2017, IBR approved for § 77.1.

(f) What Works Clearinghouse Procedures Handbook, Version 4.0, October 2017, IBR approved for § 77.1.

(g) What Works Clearinghouse Procedures and Standards Handbook, Version 3.0, March 2014, IBR approved for § 77.1.

(h) What Works Clearinghouse Procedures and Standards Handbook, Version 2.1, September 2011, IBR approved for § 77.1.

PART 79--INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF

EDUCATION PROGRAMS AND ACTIVITIES

163. The authority citation for part 79 continues to read as follows:

Authority: 31 U.S.C. 6506; 42 U.S.C. 3334; and E.O. 12372, unless otherwise noted.

Section 79.2 also issued under E.O. 12372.

164. In part 79, remove the word "state" wherever it appears and in its place add the word "State" and remove the word "states" where it appears and in its place add the word "States".

§ 79.1 [Amended]

165. Amend § 79.1 by removing the second sentence in paragraph (a).

166. Amend § 79.2 by:

a. Removing the definitions of "Department" and "Secretary".

b. Revising the definition of "State".

c. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 79.2 What definitions apply to these regulations?

* * * * *

State means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

§ 79.3 [Amended]

167. Amend § 79.3 by:

a. In paragraph (a), removing the words "and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act";

b. In paragraph (c)(6), removing the words "(e.g., block grants under Chapter 2 of the Education Consolidation and Improvement Act of 1981)"; and

c. In paragraph (c)(7), removing the words "development national" and adding in their place the words "development that is national".

§ 79.4 [Amended]

168. Amend § 79.4 in paragraph (b)(3) by removing the word "official's" and adding in its place the word "officials'".

§ 79.5 [Amended]

169. Amend § 79.5 by removing the word "assure" and adding in its place the word "ensure".

§ 79.6 [Amended]

170. Amend § 79.6 by removing the word "state's" and adding in its place the word "State's".

§ 79.8 [Amended]

171. Amend § 79.8 by removing paragraph (d).

§ 79.9 [Amended]

172. Amend § 79.9 in paragraph (e) by removing the

words “of this part”.

§ 79.10 [Amended]

173. Amend § 79.10 in paragraph (a)(2) by removing the words “a mutually agreeable solution with the state process” and adding in their place the words “an agreement with the State”.

PART 299--GENERAL PROVISIONS

174. The authority citation for part 299 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3 and 3474, unless otherwise noted.

Section 299.4 also issued under 20 U.S.C. 7821 and 7823.

Section 299.5 also issued under 20 U.S.C. 7428(c), 7801(11), 7901.

Section 299.6 also issued under 20 U.S.C. 7881.

Section 299.7 also issued under 20 U.S.C. 7881.

Section 299.8 also issued under 20 U.S.C. 7881.

Section 299.9 also issued under 20 U.S.C. 7881.

Section 299.10 also issued under 20 U.S.C. 7881.

Section 299.11 also issued under 20 U.S.C. 7881.

Section 299.12 also issued under 20 U.S.C. 7881(a)(3)(B).

Section 299.13 also issued under 20 U.S.C. 7844(a)(3)(C), 7883.

Section 299.14 also issued under 20 U.S.C.

7844(a)(3)(C), 7883.

Section 299.15 also issued under 20 U.S.C. 7844(a)(3)(C), 7883.

Section 299.16 also issued under 20 U.S.C. 7883.

Section 299.17 also issued under 20 U.S.C. 7883.

Section 299.18 issued under 20 U.S.C. 6320(e), 7882, and 7883.

Section 299.19 issued under 20 U.S.C. 6320(e) and 7882(a).

Section 299.20 issued under 20 U.S.C. 6320(b)(6) and (e), 7881(c)(6), 7882, and 7883.

Section 299.21 issued under 20 U.S.C. 7884(a)(1).

Section 299.22 issued under 20 U.S.C. 7884(a)(1).

Section 299.23 issued under 20 U.S.C. 7884(a)(1).

Section 299.24 issued under 20 U.S.C. 7884(a)(1).

Section 299.25 issued under 20 U.S.C. 7884(a)(1).

Section 299.26 issued under 20 U.S.C. 7884(a)(1).

Section 299.27 issued under 20 U.S.C. 7884(a)(2).

Section 299.28 issued under 20 U.S.C. 7884(b).

§ 299.6 [Amended]

175. Amend § 299.6 by removing paragraph (c).

§§ 299.7 through 299.13 [Redesignated as §§ 299.9 through 299.15]

176. Redesignate §§ 299.7 through 299.13 as §§ 299.9 through 299.15.

177. Add new §§ 299.7 and 299.8 to subpart E to read

as follows:

§ 299.7 What are the requirements for consultation?

(a)(1) In order to have timely and meaningful consultation, an agency, consortium, or entity must--

(i) Consult with appropriate private school officials during the design and development of the agency, consortium, or entity's program for eligible private school children and their teachers and other educational personnel; and

(ii) Consult before the agency, consortium, or entity makes any decision that affects the opportunities of eligible private school children and their teachers and other educational personnel to participate in the applicable program.

(2) Such consultation must continue throughout the implementation and assessment of equitable services.

(b) Both the agency, consortium, or entity and private school officials must have the goal of reaching agreement on how to provide equitable and effective programs for private school children and their teachers and other educational personnel, including, at a minimum, on issues such as--

(1) How the agency, consortium, or entity will identify the needs of eligible private school children and their teachers and other educational personnel;

(2) What services the agency, consortium, or entity

will offer to eligible private school children and their teachers and other educational personnel;

(3) How and when the agency, consortium, or entity will make decisions about the delivery of services;

(4) How, where, and by whom the agency, consortium, or entity will provide services to eligible private school children and their teachers and other educational personnel;

(5) How the agency, consortium, or entity will assess the services and use the results of the assessment to improve those services;

(6) Whether the agency, consortium, or entity will provide services directly or through a separate government agency, consortium, entity, or third-party contractor;

(7) The size and scope of the equitable services that the agency, consortium, or entity will provide to eligible private school children and their teachers and other educational personnel, the amount of funds available for those services, and how that amount is determined; and

(8) Whether to provide equitable services to eligible private school children and their teachers and other educational personnel—-

(i) On a school-by-school basis;

(ii) By creating a pool or pools of funds with all the funds allocated under the applicable program based on the amount of funding allocated for equitable services to

two or more participating private schools served by the same agency, consortium, or entity, provided that all the affected private schools agree to receive services in this way; or

(iii) By creating a pool or pools of funds with all the funds allocated under the applicable program based on the amount of funding allocated for equitable services to two or more participating private schools served across multiple agencies, consortia, or entities, provided that all the affected private schools agree to receive services in this way.

(c)(1) Consultation must include—-

(i) A discussion of service delivery mechanisms the agency, consortium, or entity can use to provide equitable services to eligible private school children and their teachers and other educational personnel; and

(ii) A thorough consideration and analysis of the views of private school officials on the provision of services through a contract with a third-party provider.

(2) If the agency, consortium, or entity disagrees with the views of private school officials on the provision of services through a contract, the agency, consortium, or entity must provide in writing to the private school officials the reasons why the agency, consortium, or entity chooses not to use a contractor.

(d)(1) The agency, consortium, or entity must

maintain in its records and provide to the SEA a written affirmation, signed by officials of each private school with participating children or appropriate private school representatives, that the required consultation has occurred. The written affirmation shall provide the option for private school officials to indicate such officials' belief that timely and meaningful consultation has not occurred or that the program design is not equitable with respect to eligible private school children.

(2) If private school officials do not provide the affirmations within a reasonable period of time, the agency, consortium, or entity must submit to the SEA documentation that the required consultation occurred.

(e) A private school official has the right to complain to the SEA that the agency, consortium, or entity did not--

(1) Engage in timely and meaningful consultation;

(2) Give due consideration to the views of the private school official; or

(3) Make a decision that treats the private school or its students equitably as required by this section.

§ 299.8 Use of Private School Personnel.

A grantee or subgrantee may use program funds to pay for the services of an employee of a private school if:

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

178. Transfer newly redesignated § 299.12 from subpart F to subpart E and revise it to read as follows:

§ 299.12 Ombudsman.

To help ensure equity for eligible private school children, teachers, and other educational personnel, an SEA must direct the ombudsman designated under section 1117 of the ESEA and § 200.68 to monitor and enforce the requirements in §§ 299.6-299.11.

179. Add §§ 299.16 and 299.17 to subpart F to read as follows:

§ 299.16 What must an SEA include in its written resolution of a complaint?

An SEA must include the following in its written resolution of a complaint under an applicable program:

(a) A description of applicable statutory and regulatory requirements.

(b) A description of the procedural history of the complaint.

(c) Findings of fact supported by citation, including page numbers, to supporting documents under paragraph (g) of this section.

(d) Legal analysis and conclusions.

(e) Corrective actions, if applicable.

(f) A statement of applicable appeal rights.

(g) A statement regarding the State's determination about whether it will provide services.

(h) All documents reviewed by the SEA in reaching its decision, paginated consecutively.

§ 299.17 What must a party seeking to appeal an SEA's written resolution of a complaint or failure to resolve a complaint in 45 days include in its appeal request?

(a) A party appealing an SEA's written resolution of a complaint, or failure to resolve a complaint, must include the following in its request within 30 days of either the SEA's resolution or the 45-day time limit:

(i) A clear and concise statement of the parts of the SEA's decision being appealed, if applicable.

(ii) The legal and factual basis for the appeal.

(iii) A copy of the complaint filed with the SEA.

(iv) A copy of the SEA's written resolution of the complaint being appealed, if one is available, including all supporting documentation required under § 299.16(h).

(v) Any supporting documentation not included as part of the SEA's written resolution of the complaint being appealed.

(b) Unless substantiating documentation identified in paragraph (a) of this section is provided to the Department, the appeal is not considered complete. Statutory or regulatory time limits are stayed until the appeal is complete as determined by the Department.

(c) In resolving the appeal, if the Department determines that additional information is necessary, all applicable statutory or regulatory time limits are stayed pending receipt of that information.

180. Add subpart G part 299 to read as follows:

Subpart G--Procedures for Bypass

Sec.

Subpart G--Procedures for Bypass

§ 299.18 Applicability.

The regulations in this subpart apply to part A of Title I and applicable programs under section 8501(b)(1) of the ESEA under which the Secretary is authorized to waive the requirements for providing services to private school children, teachers or other educational personnel, and families, as applicable, and to implement a bypass.

§ 299.19 Bypass--general.

(a) The Secretary arranges for a bypass if--

(1) An agency, consortium, or entity is prohibited by law from providing for the participation in programs of children enrolled in, or teachers or other educational

personnel from, private elementary and secondary schools, on an equitable basis; or

(2) The Secretary determines that the agency, consortium, or entity has substantially failed, or is unwilling, to provide for that participation as required by section 1117 or 8501 of the ESEA, as applicable.

(b) If the Secretary determines that a bypass is appropriate after following the requirements in §§ 299.21 through 299.26, the Secretary--

(1) Waives the requirements under section 1117 or 8501 of the ESEA, as applicable, for the agency, consortium, or entity; and

(2) Arranges for the provision of equitable services to those children, teachers or other educational personnel, and families, as applicable, through arrangements subject to the requirements of section 1117 or 8501 of the ESEA, as applicable, and sections 8503 and 8504 of the ESEA.

§ 299.20 Requesting a bypass.

(a) A private school official may request a bypass of an agency, consortium, or entity under the following circumstances:

(1) The private school official has--

(i) Filed a complaint with the State educational agency (SEA) under section 1117(b)(6)(A)-(B) or section 8501(c)(6)(A)-(B) of the ESEA and §§ 299.13 through 299.17 that an agency, consortium, or entity other than the SEA

has substantially failed or is unwilling to provide equitable services;

(ii) Requested that the SEA provide equitable services on behalf of the agency, consortium, or entity under section 1117(b)(6)(C) or section 8501(c)(6)(C) of the ESEA; and

(iii) Submitted an appeal of the SEA's resolution of the complaint filed under this paragraph (a)(1) to the Secretary under section 8503(b) of the ESEA and § 299.17.

(2) If an SEA has substantially failed, or is unwilling, to provide equitable services, the private school official has--

(i) Filed a complaint with the SEA under section 8503(a) of the ESEA and §§ 299.13 through 299.16; and

(ii) Submitted an appeal to the Secretary under section 8503(b) of the ESEA and § 299.17 of the SEA's resolution of the complaint filed under paragraph (a)(1) of this section in which the private school official requests a bypass.

(b) An agency, consortium, or entity may request that the Secretary implement a bypass if the agency, consortium, or entity is prohibited by law from providing equitable services under section 1117 or section 8501 of the ESEA.

§ 299.21 Notice of intent to implement a bypass.

(a) Before taking any final action to implement a bypass, the Secretary provides the affected agency,

consortium, or entity with written notice.

(b) In the written notice, the Secretary--

(1) States the reasons for the proposed bypass in sufficient detail to allow the agency, consortium, or entity to respond;

(2) Cites the requirement that is the basis for the alleged failure to comply; and

(3) Advises the agency, consortium, or entity that it--

(i) Has a deadline (which shall not be fewer than 45 days after receiving the written notice) to submit written objections to the proposed bypass; and

(ii) May request in writing the opportunity for a hearing to show cause why the Secretary should not implement the bypass.

§ 299.22 Filing requirements.

(a) Any written submission under § 299.21 must be filed by hand delivery, mail, or email.

(b) The filing date for a written submission is the date on which the document is--

(1) Hand delivered;

(2) Mailed; or

(3) Emailed.

§ 299.23 Bypass procedures.

Sections 299.24 through 299.26 describe the procedures that the Secretary uses in conducting a show-cause hearing.

The hearing officer may modify the procedures for a particular case if all parties agree that the modification is appropriate.

§ 299.24 Appointment and functions of a hearing officer.

(a) If an agency, consortium, or entity requests a hearing to show cause why the Secretary should not implement a bypass, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children, teachers or other educational personnel, or families that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the agency, consortium, or entity and representatives of the private school children, teachers or other educational personnel, or families of the time and place of the hearing.

§ 299.25 Hearing procedures.

(a) The following procedures apply to a show-cause hearing regarding implementation of a bypass:

(1) The hearing officer arranges for a transcript to be created.

(2) The agency, consortium, or entity and representatives of the private school children, teachers or other educational personnel, or families each may--

(i) Be represented by legal counsel; and

(ii) Submit oral or written evidence and arguments at the hearing.

(b) Within 10 days after the hearing, the hearing officer--

(1) Indicates that a decision will be issued based on the existing record; or

(2) Requests further information from the agency, consortium, or entity, representatives of the private school children, teachers or other educational personnel, or families, or Department officials.

§ 299.26 Decision.

(a)(1) Within 120 days after the record of a show-cause hearing is closed, the hearing officer issues a written decision on whether the Secretary should implement a bypass.

(2) The hearing officer sends copies of the decision to the agency, consortium, or entity; representatives of the private school children, teachers or other educational personnel, or families; and the Secretary.

(b) Within 30 days after receiving the hearing officer's decision, the agency, consortium, or entity, and representatives of the private school children, teachers or other educational personnel, or families may each submit to the Secretary written comments on the decision.

(c) The Secretary may adopt, reverse, modify, or

remand the hearing officer's decision.

§ 299.27 Judicial review.

If an agency, consortium, or entity is dissatisfied with the Secretary's final action after a proceeding under §§ 299.13 through 299.26, it may, within 60 days after receiving notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which it is located.

§ 299.28 Continuation of a bypass.

The Secretary continues a bypass until the Secretary determines, in consultation with the relevant agency, consortium, or entity and representatives of the affected private school children, teachers or other educational personnel, or families, that there will no longer be any failure or inability on the part of the agency, consortium, or entity to meet the requirements for providing services.

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