



DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED-2024-OPE-0065]

Research and Development Infrastructure Grant

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Proposed priorities, requirements, and definitions.

SUMMARY: The Department of Education (Department) proposes priorities, requirements, and definitions for use in the Research and Development Infrastructure (RDI) grant program. The Department may use one or more of these priorities, requirements, and definitions for competitions in fiscal year (FY) 2024 and later years. We intend for these priorities, requirements, and definitions to help Historically Black Colleges and Universities (HBCUs), Tribally Controlled Colleges and Universities (TCCUs), and Minority-Serving Institutions (MSIs) implement transformational investments in research infrastructure, including research productivity, faculty expertise, graduate programs, physical infrastructure, human capital development, and partnerships leading to increases in external funding.

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

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at www.regulations.gov. However, if you

require an accommodation or cannot otherwise submit your comments via www.regulations.gov, please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email, or comments submitted after the comment period closes. To ensure the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using [Regulations.gov](http://www.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 on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jason Cottrell, Ph.D., U.S. Department of Education, 400 Maryland Avenue, SW, room 5C122, Washington, DC 20202-4260. Telephone: (202) 453-7530. Email: Jason.Cottrell@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:

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

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect public comments about the proposed priorities, requirements, and definitions by accessing Regulations.gov. To inspect comments in person, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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 these proposed

priorities, requirements, and definitions. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The RDI grant program is designed to provide HBCUs, TCCUs, and MSIs, including Asian American and Native American Pacific Islander Serving Institutions (AANAPISIs), Alaska Native and Native Hawaiian Serving Institutions (ANNH), Hispanic Serving Institutions (HSIs), Native American Serving Non-Tribal Institutions (NASNTIs), and Predominantly Black Institutions (PBIs), and consortia led by an eligible institution of higher education, with funds to implement transformational investments in research infrastructure, including research productivity, faculty expertise, graduate programs, physical infrastructure, human capital development, and partnerships leading to increases in external and sustained funding.

Program Authority: 20 U.S.C. 1138-1138d.

Background: The Nation's HBCUs, TCCUs, and MSIs provide access to a postsecondary education for many of the Nation's students of color. In the fall of 2022, the 96 Title-IV participating HBCUs (those that offer associate's and/or bachelor's degrees) enrolled 10 percent of all undergraduate Black or African American students and, between July 2021 and June 2022, they conferred 9.3 percent of all associate's and bachelor's degrees

to Black or African American students.¹ In 2022-2023, HSIs represented 20 percent of the Nation's institutions and educated 63 percent of the Nation's Hispanic undergraduate students.² In the Fall of 2021, the 35 Title IV degree-granting TCCUs enrolled over 13,000, or 14 percent, of the Nation's American Indian and Alaska Native undergraduate students.³ Between July 2021 and June 2022, twenty of those TCCUs cumulatively conferred 380 bachelor's degrees to American Indian and Alaska Native students, representing 87.4 percent of all bachelor's degrees conferred by TCCUs.⁴

Because of their central role in educating students of color, it is important for HBCUs, TCCUs, and MSIs to have the resources they need to excel in research activity. Teaching and research go hand-in-hand in ensuring student⁵ and institutional success.⁶ Research activity can impact funding, faculty and student recruitment and retention, and student research opportunities, and promote diversity in graduate students and faculty at an institution.

HBCUs, TCCUs, and many MSIs often lack the resources to plan, implement, and promote transformational investments in research infrastructure. According to a report from the Center

¹ U.S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), Completions and Fall Enrollment components.

² Excelencia in Education. (2023). Hispanic-Serving Institutions (HSIs) Fact Sheet: 2022-23.

³ U.S. Department of Education, IPEDS, Fall Enrollment component.

⁴ U.S. Department of Education, IPEDS, Completions component.

⁵ NSSE. (n.d.). Digging Deeper Into the Quality of High-Impact Practices: HIPs Must be "Done Well" to Achieve Benefits.

⁶ Rosowsky, D. (2022, March 2). The Role of Research at Universities: Why it Matters. In Forbes.com.

for American Progress,⁷ “Black researchers, inventors, and entrepreneurs have not had equitable access to capital to seed that innovation and research.” A report on Federal funding by the National Institutes of Health found that Black researchers are less likely to get access to Federal funds.⁸ Another study on the Small Business Innovation Research program found that only 0.3 percent of grants went to teams with a Black principal investigator.⁹ HBCUs receive fewer research and development dollars than predominantly white institutions.¹⁰ Yet, according to the National Science Foundation, HBCUs account for seven of the top eight institutions that graduate the highest number of Black undergraduates who go on to earn doctorates in science and engineering.¹¹ Further, HBCUs enroll only 9 percent of Black undergraduates in the United States, but they account for a much higher percentage of Black students who graduate with degrees in critical fields such as engineering, mathematics, and biological sciences.

TCCUs play a critical role in educating Native students and provide opportunities to produce research on American Indian

⁷ Center for American Progress. (2020). Redesigning Federal Funding of Research and Development.

⁸ Ginther, D.K., Schaffer, W.T., Schnell, J., Masimore, B., Liu, F., Haak, L.L., & Kington R. Race, Ethnicity, and NIH Research Awards. *Science*. 2011 Aug 19;333(6045):1015-9. doi: 10.1126/science.1196783. PMID: 21852498; PMCID: PMC3412416.

⁹ Nager, A., Hart, D., Ezell, S., & Atkinson, R.D. (2016). *The Demographics of Innovation in the United States*.

¹⁰ Congressional Research Service. (2011). *Federal Research and Development Funding at Historically Black Colleges and Universities*.

¹¹ Wondwossen, W. (2020). *The Science Behind HBCU Success*. National Science Foundation.

issues from an American Indian and Alaska Native perspective.¹² According to the National Academies, data provided to their committee looking at MSIs and STEM showed that 93 percent of the students enrolled in STEM programs at four-year TCCUs in the Fall of 2016 were Native American and Alaska Natives.¹³ However, TCCUs face obstacles in their efforts to sustain and implement extensive research activities. Administrations often have difficulty maintaining research activities due to the young nature of the institutions and their lack of research support offices.¹⁴ One study found that TCCUs' biggest obstacles in developing research activities are scheduling, infrastructure needs (i.e., lack of space, equipment, and literature), partnership challenges (i.e., lack of Tribal community knowledge), faculty capacity, and mistrust inside and outside of Tribal communities.¹⁵ Additionally, recent events like the COVID-19 pandemic have further demonstrated and exacerbated areas that need improvements to overcome barriers, including technology infrastructure, funding constraints (i.e., long-term funding),¹⁶ and isolation (i.e., remote areas).¹⁷ However, one

¹² Stull, G., Spyridakis, D., Gasman, M., Castro Samayoa, A., Booker, Y. (2015). *Redefining Success: How Tribal Colleges and Universities Build Nations, Strengthen Sovereignty, and Persevere Through Challenges.*

¹³ Espinosa, L.L, McGuire, K., Miles Jackson, L. (2019). *Minority Serving Institutions: Americans Underutilized Resource for Strengthening the STEM Workforce.*

¹⁴ Riley, E.T., Vadiiee, N., & Ganguli, A. (2017). *The Evolution of Research at Tribal Colleges and Universities.* In *Tribal College Journal*, 29(2).

¹⁵ Mortensen, M. (2001). *Survey of Tribal Colleges Reveals Research's Benefits, Obstacles.* In *Tribal College Journal*, 13(2).

¹⁶ Redden, E. (2021, March 15). *Trying Times for Tribal Colleges.* In *Inside Higher Ed.*

¹⁷ Stull, G., Spyridakis, D., Gasman, M., Castro Samayoa, A., & Booker, Y. (2015). *Redefining Success: How Tribal Colleges and Universities Build Nations, Strengthen Sovereignty, and Persevere Through Challenges.*

study found that the potential benefits of research activities for faculty and student development – such as knowledge production and dissemination through conferences, collaborations, and presentations – may far outweigh the costs of overcoming these obstacles. For example, faculty have reported that research opportunities have allowed them to introduce to their classes new information that was not previously available. Additionally, many researchers emphasized that Tribal college research is “more culturally sensitive and community-grounded, both in the methods and in the results.”¹⁸

The Carnegie Classification System is one way of determining whether HBCUs and MSIs are lagging behind in research infrastructure. The American Council on Education (ACE) uses the Carnegie Classification System to categorize institutions based on function and mission. The Doctoral Universities have been categorized into three groups. These groupings are Doctoral Universities with Very High Research Activity (R1), Doctoral Universities with High Research Activity (R2), and Research Colleges and Universities (RCU). According to the most recent ACE Carnegie Classification 2019-20 dashboard,¹⁹ of the 146 Doctoral Universities with Very High Research Activity (R1) universities, there are no HBCUs and only 15 MSIs. Of the 133 Doctoral Universities with High Research Activity (R2) universities, only 11 are HBCUs and 23 are MSIs.

¹⁸ Mortensen, M. (2001). Survey of Tribal Colleges Reveals Research's Benefits, Obstacles. In *Tribal College Journal*, 13(2).

¹⁹ <https://carnegieclassifications.acenet.edu/>.

ACE will change how these categories are defined in 2025. TCCUs have their own Carnegie Classification and are not included in the R1, R2, or RCU classifications.

The RDI grant program will support institutions in increasing their level of research activity in alignment with the Carnegie Classification designations. The first three proposed priorities would establish separate funding categories for each of the HBCU, TCCU, and MSI institutional types. This approach would enable the Department to meet the congressional intent regarding types of institutions to be served, as outlined in the explanatory statement accompanying Division D of the Further Consolidated Appropriations Act, 2024 (Pub. L. 118-47) and to make awards to institutions under each of these categories.

The fourth proposed priority would establish a priority for institutions with an enrollment of Pell Grant recipients that accounts for 50 percent or higher of their undergraduate student enrollment. The explanatory statement language for this program articulated the intent for these grants to provide "transformational" investments to improve institutions' research and development infrastructure. The Department believes these funds have the highest potential to transform an institution's Research and Development infrastructure if they are targeted to the institutions that enroll the highest percentage of students from low-income backgrounds. The Pell metric remains the best indicator of that.

PROPOSED PRIORITIES:

We propose four priorities. We may use one or more of these priorities in any year in which this program is in effect.

Proposed Priority 1: Funding for Historically Black Colleges and Universities' Research and Development Infrastructure.

Projects proposed by HBCUs to implement high-quality transformative research capacity initiatives and designed to move the institution from R2 to R1, or from RCU to R2, research activity status.

Proposed Priority 2: Funding for Tribally Controlled Colleges and Universities' Research and Development Infrastructure.

Projects proposed by TCCUs to improve their research and development activities, including infrastructure, faculty development, and academic programs.

Proposed Priority 3: Funding for Minority-Serving Institutions' Research and Development Infrastructure.

Projects proposed by MSIs to implement high-quality transformative research capacity initiatives and designed to move the institution from R2 to R1, or from RCU to R2, research activity status.

Proposed Priority 4: MSI Pell Grant Percentage.

Projects proposed by lead applicants with an enrollment of Pell Grant recipients that accounts for 50 percent or higher of their undergraduate student enrollment, as measured by the

Department using the most recent data available in the Integrated Postsecondary Education Data System (IPEDS).

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the *Federal Register*. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

PROPOSED REQUIREMENTS: The Department proposes the following program requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect and may limit the application of these requirements to one or more of the proposed priorities. The Department will announce within the notice inviting applications the final requirements that will apply to a particular grant competition, and whether those requirements will apply to grantees applying under each proposed priority for this program.

Proposed Requirement-1 - Use of Funds.

Background: RDI is funded under the Fund for the Improvement of Postsecondary Education (FIPSE) authority and was first authorized in FY 2023 as described in the explanatory statement accompanying Division H of the Consolidated Appropriation Act, 2023 (Pub. L. 117-328). As noted elsewhere in this document, Congress directed the Department through the explanatory statement accompanying Division D of the Further Consolidated Appropriations Act, 2024 (Pub. L. 118-47) to provide continued funding for this program. In order to fully implement this program in the manner that Congress has directed, the Department proposes the following Uses of Funds to provide specificity about the allowable activities to applicants and grantees under this program. The Department believes each of these activities would support the overall goal of the RDI program.

Requirement: Grantees must conduct one or more of the following activities:

(1) Providing for the improvement of infrastructure existing on the date of the grant award, including deferred maintenance, or the establishment of new physical infrastructure, including instructional program spaces, laboratories, and research facilities relating to the fields of science, technology, engineering, the arts, mathematics, health, agriculture, education, medicine, law, and other disciplines.

(2) Hiring and retaining faculty, students, research-related staff, or other personnel, including research personnel skilled in operating, using, or applying technology, equipment, or devices to conduct or support research.

(3) Supporting research internships and fellowships for students, including undergraduate, graduate, and post-doctoral positions, which may include providing direct student financial assistance and other supports to such students.

(4) Creating new, or expanding existing, academic positions, including internships, fellowships, and post-doctoral positions, in fields of research for which research and development infrastructure funds have been awarded to the grantee under this program.

(5) Creating and supporting inter- and intra-institutional research centers (including formal and informal communities of practice) in fields of research for which research and development infrastructure funds have been awarded to the

grantee under this program, including hiring staff, purchasing supplies and equipment, and funding travel to relevant conferences and seminars to support the work of such centers.

(6) Building new institutional support structures and departments that help faculty learn about, and increase faculty and student access to, Federal research and development grant funds and non-Federal academic research grants.

(7) Building data and collaboration infrastructure so that early findings and research can be securely shared to facilitate peer review and other appropriate collaboration.

(8) Providing programs of study and courses in fields of research for which research and development infrastructure funds have been awarded to the grantee under this program.

(9) Paying operating and administrative expenses for, and coordinating project partnerships with members of, the consortium on behalf of which the eligible institution has received a grant under this program, provided that grantees may not pay for the expenses of any R1 institutions that are members of the consortia.

(10) Installing or extending the life and usability of basic systems and components of campus facilities related to research, including high-speed broadband internet infrastructure sufficient to support digital and technology-based learning.

(11) Expanding, remodeling, renovating, or altering biomedical and behavioral research facilities existing on the

date of the grant award that received support under section 404I of the Public Health Service Act (42 U.S.C. 283k).

(12) Acquiring and installing furniture, fixtures, and instructional research-related equipment and technology for academic instruction in campus facilities in fields of research for which research and development infrastructure funds have been awarded to the grantee under this program.

(13) Providing increased funding to programs that support research and development at the eligible institution that are funded by the National Institutes of Health, including through their Path to Excellence and Innovation program.

(14) Faculty professional development.

(15) Planning purposes.

Proposed Requirement 2 - Indirect Cost Rate Information.

Background: In order to maximize the grant resources that support direct costs, the Department is proposing to limit indirect costs to 8 percent of a modified total direct cost base.

Requirement: A grantee's indirect cost reimbursement is limited to 8 percent of a modified total direct cost base. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see www.ed.gov/about/offices/list/ocfo/intro.html.

Proposed Requirement 3 - Matching Requirements and Exceptions.

Background: The Department proposes to require that grantees provide a 1:1 match of non-Federal to Federal contributions. This proposed requirement is intended to leverage the Federal funds to double the impact of overall project plans, to promote the sustainability of the activities funded under this program, and to ensure alignment of such activities to the institution's strategic plan. The Department also proposes waiver authority so that institutions located in areas with high rates of poverty, that enroll high numbers of students from low-income backgrounds, or that are otherwise under resourced such that complying with this matching requirement would be overly burdensome, can still benefit from this program.

Requirement: Grantees must provide a 1:1 match, which can include in-kind donations.

Waiver Authority: The Secretary may waive the matching requirement on a case-by-case basis upon showing any of the following exceptional circumstances: (i) The difficulty of raising matching funds for a program to serve an area with high rates of poverty in the lead applicant's geographic location, defined as a Census tract, a set of contiguous Census tracts, an American Indian Reservation, Oklahoma Tribal Statistical Area (as defined by the U.S. Census Bureau), Alaska Native Village Statistical Area or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area, or other Tribal land or county that has a poverty rate of at least 25 percent as determined

every 5 years using American Community Survey 5-Year data; (ii) Serving a significant population of students from low-income backgrounds at the lead applicant location, defined as at least 50 percent (or the eligibility threshold for the appropriate institutional sector available at <https://www2.ed.gov/about/offices/list/ope/idades/eligibility.html#app>) of degree-seeking enrolled students receiving need-based grant aid under Title IV of the HEA; (iii) Significant economic hardship as demonstrated by low average educational and general expenditures per full-time equivalent undergraduate student at the lead applicant institution, in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction without need of a waiver, as determined by the Secretary in accordance with the annual process for designation of eligible Titles III and V institutions.; or (iv) Information that otherwise demonstrates a commitment to the long-term sustainability of the applicant's projects, such as evidence of a consortium relationship with an R1 institution, a State bond, State matching, planning documents such as a campus plan, multi-year faculty hiring plan, support of industry, Federal grants received, or a demonstration of institutional commitment that may include commitment from the institution's board.

Proposed Requirement 4: Limitation on Grant Awards.

Background: The Department proposes to allow the Secretary, in a given RDI competition, to limit eligibility for

new awards to applicants without current active grants under this program. This proposed requirement is designed to increase the number of eligible institutions that can benefit from this program. The Department also believes that it would be inappropriate to allow institutions to have multiple grants concurrently under this program because the objective of this program is inherently an institution-wide objective.

Furthermore, since many of the activities that institutions can undertake under this program are inherently institution-wide activities, this proposed requirement would remove the risk that these funds could support duplicative activities.

Requirement: The Department will only make awards to applicants that are not the individual or lead applicant in a current active grant from the RDI grant program.

PROPOSED DEFINITIONS: The Department proposes the following definitions for this program. We may apply these definitions in any year in which this program is in effect. The proposed definitions for R1, R2, and RCU would align with the ACE Carnegie Classifications that will be in effect starting in 2025. The proposed definition of "underrepresented students" is intended for use in the performance measures the Department uses to evaluate the success of the RDI grant program, for example, a performance measure based on the number of doctorates conferred to underrepresented students annually.

Research 1: Very High Research Spending and Doctorate Production (R1) means that an institution has spent at least \$50

million in total research and development (R&D) in a year, as reported to the National Science Foundation (NSF) Higher Education Research and Development (HERD) Survey, and awarded at least 70 research/scholarship doctorates in a year, as reported to IPEDS.

Research 2: High Research Spending and Doctorate Production (R2) means that an institution has spent at least \$5 million in total R&D in a year, as reported to the NSF HERD Survey, and awarded at least 20 research/scholarship doctorates in a year, as reported to IPEDS. It does not include institutions designated R1.

Research Colleges and Universities (RCU) means that an institution has spent at least \$2.5 million in total R&D in a year, as reported to the NSF HERD Survey. It does not include institutions designated R1 or R2.

Historically Black College or University means an institution that meets the eligibility requirements under section 322(2) of the Higher Education Act of 1965, as amended (HEA).

Minority-Serving Institution means an institution that is eligible to receive assistance under sections 317 through 320 of part A of title III, or under title V of the HEA.

Tribal College or University has the meaning ascribed it in section 316(b)(3) of the HEA.

Underrepresented students means students enrolled in postsecondary, career, or technical education who are in one or more of the following subgroups: (i) A student from a low-income

background. (ii) A student who is American Indian, Alaska Native, Asian American, Black, Hispanic or Latino, Native Hawaiian, and/or Pacific Islander.

Final Priorities, Requirements, and Definitions

We will announce the final priorities, requirements, and definitions in a document in the *Federal Register*. We will determine the final priorities, requirements, and definitions after considering public comments on the proposed priorities, requirements, and definitions and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use one or more of these priorities, requirements, and definitions, we invite applications through a notice in the *Federal Register*.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, 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 (adjusted every three years by the Administrator of Office of Information and Regulatory Affairs (OIRA) 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 or communities;

(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 set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866, as

amended by Executive Order 14094. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

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

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

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

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has

emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed priorities, requirements, and definitions only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

The potential costs associated with these priorities, requirements, and definitions would be minimal, while the potential benefits are significant. The Department believes that this proposed regulatory action would not impose significant costs on eligible entities. Participation in this program is voluntary, and the costs imposed on applicants by this regulatory action would be limited to paperwork burden related to preparing an application. The potential benefits of implementing the program would outweigh the costs incurred by applicants, and the costs of carrying out activities associated with the application would be paid for with program funds. For these reasons, we have determined that the costs of implementation would not be burdensome for eligible applicants, including small entities.

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.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make these proposed priorities, requirements, and definitions easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed priorities, requirements, and definitions clearly stated?
- Do the proposed priorities, requirements, and definitions contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed priorities, requirements, and definitions (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed priorities, requirements, and definitions be easier to understand if we divided them into

more (but shorter) sections?

- Could the description of the proposed priorities, requirements, and definitions in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed priorities, requirements, and definitions easier to understand? If so, how?

- What else could we do to make the proposed priorities, requirements, and definitions easier to understand?

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

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

This document provides early notification of our specific plans and actions for this program.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed priorities, requirements, and definitions would not have a significant economic impact on a substantial number of small entities.

The small entities that this proposed regulatory action would affect are institutions that meet the eligibility requirements described in 316 through 320 of part A of title III, part B of title III, or title V of the HEA. The Secretary believes that the costs imposed on applicants by the proposed priorities, requirements, and definitions would be limited to paperwork burden related to preparing an application and that the benefits would outweigh any costs incurred by applicants.

Participation in this program is voluntary. For this reason, the proposed priorities, requirements, and definitions would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for RDI grant program funds, an eligible applicant would evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving an RDI program grant. Eligible applicants most likely would apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of that application to seek funding from other sources to address the institution's research and development infrastructure needs.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a

grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from eligible small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Paperwork Reduction Act of 1995

These proposed priorities, requirements, and definitions do not contain any information collection requirements.

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.

Nasser Paydar,
*Assistant Secretary for
Postsecondary Education.*

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