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Description of document: Department of Education (ED) Division of Regulatory Services (DRS) Regulatory Quality Manual (RQM), 2012 and Privacy Information Collection Clearance Division (PICCD) Guide to the Information Collection Clearance Process. 2016

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Office of Management  
Office of the Chief Privacy Officer  
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Washington, DC 20202-4536  
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**UNITED STATES DEPARTMENT OF EDUCATION**

**OFFICE OF MANAGEMENT**

**Office of the Chief Privacy Officer**

April 26, 2017

RE: FOIA Request No. 17-01244-F

This letter is a final response to your letter dated March 18, 2017, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request has been assigned to the following office within the Department of Education (the Department) to search for responsive records: Office of the General Counsel (OGC) and Office of Management (OM).

You requested: a digital/electronic copy of the Regulatory Quality Manual, also called the OGC/DRS - Regulatory Quality Manual (RQM) and a copy of the PICCD Guide to the Information Clearance Process.

On April 5, 2017, you agreed that the Department will exclude all sections from the Regulatory Quality Manual (RQM) that are deemed obsolete, but will err on the side of caution, producing sections that are marginal. The Department will include a table of contents for the items excluded from production.

On April 25, 2017, we sent you an interim response that was responsive to your request. Staff in OGC provided documents related to that portion of your request for Regulatory Quality Manual; OGC/DRS - Regulatory Quality Manual (RQM) and PICCD Guide to the Information Clearance Process.

Attached to this e-mail are 50 pages of fully releasable documents responsive to your request. The documents provided are:

➤ **PICCD Guide**

Provisions of the FOIA allow us to recover the costs pertaining to your request. The Department has concluded that you fall within the category of a "other" requester. However, the Department has provided you with these responsive documents, at no cost. The Department's release of information at no cost does not constitute the grant of a fee waiver, and does not infer or imply that you will be granted a fee waiver for future requests made under FOIA to the Department.

You have the right to seek assistance and/or dispute resolution services from the Department's FOIA Public Liaison or the Office of Government Information Services (OGIS). The FOIA

Public Liaison is responsible, among other duties, for assisting in the resolution of FOIA disputes. OGIS, which is outside the Department of Education, offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to appeals or litigation.

They can be contacted by:

Mail	FOIA Public Liaison Office of the Chief Privacy Officer U.S. Department of Education 400 Maryland Ave., SW, LBJ 2E321 Washington, DC 20202-4536	Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road Room 2510 College Park, MD 20740-6001
E-mail	<a href="mailto:robert.wehausen@ed.gov">robert.wehausen@ed.gov</a>	<a href="mailto:OGIS@nara.gov">OGIS@nara.gov</a>
Phone	202-205-0733	301-837-1996; toll free at 1-877-684-6448
Fax	202-401-0920	301-837-0348

Lastly, you have the right to appeal this determination. You must submit any appeal within 90 calendar days after the date of this letter. Using the services described above does not affect your right, or the deadline, to pursue an appeal. An appeal must be in writing and must include a detailed statement of all legal and factual bases for the appeal; it should be accompanied by a copy of this letter, the initial letter of request, and any documentation that serves as evidence or supports the argument you wish the Department to consider in resolving your appeal.

Appeals may be submitted using the on-line form available at [www.ed.gov/policy/gen/leg/foia/foia-appeal-form.pdf](http://www.ed.gov/policy/gen/leg/foia/foia-appeal-form.pdf).

Appeals can also be submitted by:

E-mail: [EDFOIAappeals@ed.gov](mailto:EDFOIAappeals@ed.gov)  
Fax: 202-401-0920  
Mail: Appeals Office  
Office of the Chief Privacy Officer  
U.S. Department of Education  
400 Maryland Avenue, SW, LBJ 2E320  
Washington, DC 20202-4536

If you have any questions, please contact the FOIA Service Center at (202) 401-8365 or via e-mail at [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov).

Sincerely,

*Arthur Caliguiran*

Arthur Caliguiran  
FOIA Analyst  
FOIA Service Center

Enclosure

**Chapter P: HOW DO I PREPARE A NOTICE OF ONE OR  
MORE FINAL PRIORITIES, REQUIREMENTS, DEFINITIONS,  
OR SELECTION CRITERIA FOR A DISCRETIONARY GRANT  
PROGRAM?**

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(Revised, August 2012)

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## **[P.1] INTRODUCTION**

This chapter contains instructions for preparing a notice establishing one or more final priorities, requirements, definitions, or selection criteria for a discretionary grant program. This type of notice is commonly referred to as an NFP or notice of final priorities. If you are preparing a notice of one or more proposed priorities, requirements, definitions, or selection criteria for a discretionary grant program--commonly referred to as an NPP or notice of proposed priorities--use the instructions in Chapter O.

This chapter contains four sections: (1) this introduction; (2) instructions for preparing an NFP; (3) a sample NFP; and (4) a template NFP that contains minimal instructions.

### **General Information**

Except as noted under Exemptions, generally if you want to establish one or more absolute or competitive preference priorities, requirements (such as application requirements), definitions, or selection criteria, you first must request public comment on them by publishing an NPP in the Federal Register.

Following the publication of an NPP and the review of the public comments received on the NPP, you must publish an NFP in order to use the priorities, requirements, definitions, or selection criteria in a discretionary grant competition that you will announce in a notice inviting applications. Generally you may not include priorities or other requirements in an NFP if you did not include them in the NPP.

**Note:** You do not publish an NFP without first publishing an NPP. However, you are not required to request public comment or publish an NPP or NFP if the priorities, requirements, definitions, or selection criteria are drawn directly from an authorizing statute, regulations for this program, an NFP that has been published in the Federal Register, or the Education Department General Administrative Regulations (EDGAR).

For more information on the rulemaking requirements governing the Department's use of absolute and competitive

preference priorities, requirements, definitions, and selection criteria for discretionary grant competitions, please see 34 CFR 75.105 of EDGAR governing how the Department establishes funding priorities; sections 410 and 437 of the General Education Provisions Act (GEPA); section 414 of the Department of Education Organization Act; and section 553 of title 5 of the United States Code, the Administrative Procedure Act.

### Exemptions

Under certain conditions specified in section 437(d)(1) of GEPA, you may be able to waive proposed rulemaking and thus be exempt from publishing an NPP and NFP for a particular program. You may do this if you are establishing one or more final priorities, requirements, definitions, or selection criteria for the first grant competition of a new or substantially revised program. In this situation, you do not need to request public comment or prepare an NPP or NFP. Instead, you may establish final priorities, requirements, definitions, or selection criteria in an application notice (see Chapter J for instructions on how to prepare a notice inviting applications).

In addition, certain programs under the Individuals with Disabilities Education Act, as amended (IDEA) (see 20 U.S.C. 1481(d)), and certain special demonstration programs under the Rehabilitation Act of 1973, as amended (see 34 CFR 373.6), are not required to publish an NPP or NFP and may establish one or more priorities in the application notice (see Chapter J). Be sure to check with your program attorney to determine whether your program or competition qualifies for one of these exemptions.

### Other Requirements

In developing an NFP you must keep in mind the requirements of a number of statutes, Executive orders, and other mandates. These include the Paperwork Reduction Act of 1995 (PRA), Executive Order 12866 ("Regulatory Planning and Review"), and the Presidential memorandum on "Plain Language in Government Writing." You should also be familiar with the Department's Principles for Regulating, which are included in the Department's Regulatory Quality Manual.

Under Executive Order 12866, the Office of Management and Budget (OMB) reviews NFPs to determine if they are "significant regulatory actions," as that term is defined in the Executive order. If OMB determined that the NFP upon which you based your NFP is a significant regulatory action, OMB likely will review formally the NFP to ensure that it contains all of the appropriate information specified in that Executive order, including an assessment of costs and benefits.

If OMB determined that the NFP was not a significant regulatory action or declined review of the NFP under Executive Order 12866, check with the Division of Regulatory Services (DRS) of the Office of the General Counsel as to whether the Department must send the NFP to OMB for review.

In drafting the NFP upon which you based your NFP, you gave consideration to whether your NFP included requirements that constitute information collections (i.e., "paperwork") under the PRA. Most carefully drafted priorities will not require approval under the PRA, but application requirements and selection criteria may require approval.

If your NFP includes information collection requirements that you have added since you published your NFP, you will need to ensure that you have cleared the information collections with OMB. This clearance process is handled by the Regulatory Information Management Service (RIMS) in the Office of Management. Please direct any questions about information collections and the PRA to RIMS.

In developing the NFP you must also keep in mind the following:

- Generally you should not specify a single year in which the Department will use a final priority, requirement, definition, or selection criterion. This "no-year" approach enables you to use the same priority, requirement, definition, or selection criterion in a future competition for the program--as long as the program remains authorized--without again having to conduct rulemaking. This approach offers flexibility, saves work, and expedites the timely issuance of awards. If you specify the year, you cannot use that priority, requirement, definition, or

selection criterion in future competitions without first going through rulemaking.

- If you are developing an NFP that contains one or more priorities, the Department also encourages you not to specify the type of priority (i.e., absolute or competitive preference) in the NFP. Specifying the priority type in an application notice, rather than in an NFP, enables you to determine, on a competition-by-competition basis, whether to make the priority an absolute or competitive preference priority. (For example, if you state in the NFP that a priority will be used as a competitive preference priority, you would not be able to use that priority as an absolute priority in another competition without first conducting rulemaking.)

- It is the policy of the Department not to assign points to selection criteria in NFPs. Because you may want to assign different point values to the selection criteria from year to year, it is best to assign the point values in the application notice and the application package for each year's specific competition. Again, this approach gives you flexibility and potentially avoids the need for additional rulemaking.

- Generally an NFP should not quote laws or regulations.

As you draft an NFP, we recommend that you refer to any notes you have on issues that were raised, deliberated, and decided in connection with the NFP. These notes can be very useful as you draft the NFP and explain to readers the various options that the Department considered and the reasons for our decisions.

#### Well-Written NFPs

A well-written NFP promotes a better public understanding of the document and what you are trying to achieve through the final priorities, requirements, definitions, or selection criteria described in the NFP. Ultimately a well-written NFP helps to attract better applications for awards and enhances the mission of the Department. The following are some guidelines you should follow to help draft a clear and effective NFP:

- Unless you have made changes as a result of public

comment or intradepartmental review, state each final priority, requirement, definition, or selection criterion exactly as you did in the NPP; but you must drop the word "proposed," the conditional mood (e.g., "would"), and any similar references.

- You must describe any changes you made to the priorities, requirements, definitions, or selection criteria since publication of the NPP; and you must state the rationale for those changes.

- The final priorities, requirements, definitions, or selection criteria, as well as the discussion in your preamble, should be comprehensible to the general public, not just to "persons in the field." Do not use jargon.

### **Requirements of Format, Style, and Standard Language**

This chapter tells you what information you must include in an NFP and how you must present it. Included is standard language required by the Department, the Office of the Federal Register (OFR), or OMB.

OFR publishes the Federal Register Document Drafting Handbook, which is intended to help agencies create and submit documents that comply with OFR's requirements. The Document Drafting Handbook is available at the following Internet address:  
[www.archives.gov/federal-register/write/handbook](http://www.archives.gov/federal-register/write/handbook).

The United States Government Printing Office (GPO) also mandates many of the style requirements in these instructions. The GPO Style Manual, which you can download in PDF, is available at the following Internet address:  
[www.gpoaccess.gov/stylemanual/browse.html](http://www.gpoaccess.gov/stylemanual/browse.html).

### **Differences between an NFP and an NPP**

Several features of the NFP differ from the NPP, including the following:

- A summary and discussion of comments received during the public comment period, together with a full description of any changes (except technical and other minor changes) made as a result of public comment or intradepartmental review since publication of the NPP.



- The establishment of an effective date.
- Dropping the use of the conditional mood that characterized proposed actions that "would" have a certain result and replacing it with the active voice showing that the Assistant Secretary or other issuing principal officer "announces," "publishes," or "issues," for example. Also, don't suggest that the final priority or priorities "will" have a certain effect. Instead, say that a priority is "likely to," "we have designed the priority to," or "we intend the priority to" lead to certain results.
- A cross-reference to the NPP. Each program office may choose a user-friendly approach that is most helpful for its particular customers. However, we strongly recommend not repeating in the NFP much of the background material and rationale from the SUPPLEMENTARY INFORMATION section of the NPP. Generally a cross-reference to the NPP will do. Moreover, a cross-reference will shorten the document and typically the effort and time to review the NFP.

#### Technical Requirements

- Double-space the notice.
- Leave a 1.5-inch margin on the left, a 1-inch margin on the right, and a 1-inch margin at the top and bottom.
- Justify the left margin only.
- Except as otherwise indicated in the instructions, indent (five spaces) the first line of each paragraph of text.
- Use 12-point Courier New font.
- Begin numbering at the center bottom of the first page in Arabic numerals ("1").
- Never type in bold or italics.
- Underline only as shown in the instructions.
- Indent the first line of any bullet five spaces and leave two spaces after the bullet. Do not use the

automatic bulleting function in Microsoft Word.

- Use initial capitals and underline the term Federal Register unless you are asking OFR to compute a date, in which case type FEDERAL REGISTER in all capitals without underlining.

Example:

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

Material inside Square Brackets

In this chapter bold-faced, italicized material inside square brackets [ ] is instructions to the drafter of the notice; do not include this material in your NFP. The shaded, bold-faced letters and numbers inside the italicized brackets--e.g., [P.4] or [P.6-3]--are for purposes of reference and cross-reference for users of this manual; do not include them in your NFP.

The other material inside non-italicized square brackets [ ] is alternative wording intended for use, as appropriate, in your NFP. Instructions to OFR to compute dates must be in all capitals inside non-italicized square brackets.

Delegation of Authority and Referring to the Department

Under a delegated authority a principal officer other than the Secretary (such as an Assistant Secretary or a Director of a principal office) signs an NFP. However, we recommend that you use the title of this principal officer only if the title is necessary (such as in the signature block). In keeping with the Presidential memorandum on "Plain Language in Government Writing," we prefer that you use the pronoun "we" or "us" in referring to the Department.

For Further Information

If you have questions regarding these instructions, please consult the Regulations Quality Officer or the



Regulations Coordinator for your program or document, both of whom are in DRS. The DRS telephone number is: (202) 401-8300.

HOW DO I PREPARE A NOTICE OF ONE OR MORE  
FINAL PRIORITIES, REQUIREMENTS, DEFINITIONS, OR  
SELECTION CRITERIA FOR A DISCRETIONARY GRANT PROGRAM?

*[P.2 Introductory Material and Summary]*

4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Chapter *[insert number, in Roman numerals, for the chapter of the CFR in which regulations for your principal office are codified; e.g., IV, for Office of Postsecondary Education]*

RIN *[Insert the RIN (regulation identifier number), if any, you used in your notice of proposed priorities, requirements, definitions, or selection criteria (NPP). Otherwise omit.]*

Final *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* *[priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria].* *[Name of Program. Fill in the name of the program or the name of the program followed by two hyphens [--] and the name of the competition (this is often the title of a priority).*  
*Double space; use initial capitals only; do not end with a period. Note: The number of characters, including spaces, may not exceed 200.]*

*[CFDA Number [Numbers]: [Fill in the number or numbers, including suffix letter or letters, if any. Place this line inside square brackets. If a number has not yet been assigned, omit this line].]*

AGENCY: *[Name of Principal Office]*, Department of  
Education.

ACTION: Final *[select appropriate term or terms from the  
following; use commas and insert "and" before the last word  
or words in your series:]* [priority] [priorities]  
[requirement] [requirements] [definition] [definitions]  
[selection criterion] [selection criteria].

SUMMARY: *[In 100 words or less, describe, in plain  
language: (1) the action you are taking; (2) why you are  
taking the action; and (3) the intended effect of the  
action. Confine your statement to these three matters and  
be concise. If it is necessary to refer to an act of  
Congress, use a shorter, easily recognizable form (e.g.,  
the No Child Left Behind Act of 2001), but do not give the  
legal citation. Begin with the following:]*

*[The Assistant Secretary for [name of principal office]]  
[or] [title of other principal officer issuing this notice]  
announces [a] [select appropriate term or terms from the  
following; use commas and insert "and" before the last word  
or words in your series:]* [priority] [priorities]  
[requirement] [requirements] [definition] [definitions]  
[selection criterion] [selection criteria] under [the]  
*[name of program]*. The Assistant Secretary *[or other  
title]* may use *[select appropriate term or terms from the  
following; use commas and insert "and" before the last word  
or words in your series:]* [this [priority] [requirement]  
[definition] [selection criterion]] *[or]* [one or more of

these [priorities] [definitions] [requirements] [selection criteria]] for competitions in fiscal year (FY) [insert year] and later years. [Continue your SUMMARY with why you are taking the action, and the intended effect of the action.] [Example: We take this action to focus Federal financial assistance on an identified national need. We intend the priority to increase the availability of tested learning materials for pupils in kindergarten through grade three.]

[P.3 Effective Date]

EFFECTIVE DATE: [This] [These] [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria] [is] [are] effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

[P.4 For Further Information]

FOR FURTHER INFORMATION CONTACT: [Select Option 1 or Option 2, as follows:]

[Option 1: Insert the name, address, and telephone number of the person most knowledgeable about the priority, requirement, definition, or selection criterion in this notice, as follows:]

[Insert name of person], U.S. Department of Education,  
[select one of the following addresses:] [400 Maryland Avenue, SW.] [555 New Jersey Avenue, NW.] [or] [1990 K

Street, NW.], room [fill in room number and, if necessary, building designation; e.g., 6126, PCP], Washington, DC [fill in ZIP Code. Use 20202 for Maryland Avenue, 20208 for New Jersey Avenue, or 20006 for K Street]-[fill in last four digits of ZIP Code]. Telephone: (202) [fill in number][.] [optional:] [or by email: [insert address; e.g., george.jones@ed.gov].]

[or]

[Option 2: If you have more than one priority, requirement, definition, or selection criterion, you may prefer to have different persons with different areas of expertise contacted for further information about different priorities, requirements, definitions, or selection criteria. In that case, you should adapt the material from Option 1 so that your readers understand these distinctions and have all the necessary information. For example, all of the experts may have the same mailing address but different telephone numbers. In that case you can list the respective telephone number directly after the name of each person and then state the address only once.]

[Whether you have selected Option 1 or Option 2, use the following:]

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call [include either of the following:] [the TDD/TTY number at (202) [fill in number].] [or, if a TDD/TTY number is not available, use the following:] [the Federal Relay Service (FRS), toll free, at 1-800-877-8339.]

#### [P.5 Supplementary Information]

SUPPLEMENTARY INFORMATION:

[P.5-1 [If applicable] Executive Summary]

[Under Executive Order 13563, "Improving Regulations and Regulatory Review," OMB has determined that a lengthy or complex rule, both proposed and final, should include an executive summary. Because NFPs are classified as final regulations, they are subject to the Executive order.

The Department has decided that an NFP that is 100 or more typed pages, double-spaced, or that is identified as "economically significant" under Executive Order 12866 must contain an executive summary. Generally the maximum length of the summary should be three to four, double-spaced pages.

If your NFP contained an executive summary and you have not made any significant changes in this NFP, you may copy the executive summary from the NFP. Be sure to change the conditional mood of verbs (e.g., don't say "The proposed priority would enable a grantee to etc."; instead say "The final priority enables a grantee to etc.").

If you have made significant changes in this NFP that affect your executive summary, rewrite the executive summary as necessary and include the following:]

Executive Summary:

Purpose of This Regulatory Action: [Include a short statement of the need for this regulatory action and how the action will meet this need. Much of this material is in the SUMMARY section near the beginning of this notice. Pertinent material may also be in section P.7 (Final Priorities, Requirements, Definitions, Selection Criteria) and any sections cross-referenced in P.7. If it would assist readers' understanding, you may repeat some of the Background information you included in your NFP. Pertinent information may also be in section P.6 (Public Comment). Include a succinct statement of the legal authority, explaining in brief the legal authority in section P.5-2 (Program Authority) and possibly, also, in the SUMMARY section.]

Summary of the Major Provisions of This Regulatory Action: [Describe clearly and separately each major provision, together with a brief justification. Much of

this material is in sections P.6 and P.7 and any sections cross-referenced in section P.7. To offer readers a fuller discussion of the major provisions, refer them to these sections of your NFP.]

Costs and Benefits: [Summarize costs and benefits based on material in P.8 (Executive Order 12866). If this NFP is economically significant, consult with Budget Service and include a brief assessment of costs and benefits, both quantitative and qualitative. (See section B.4-1-3 in Chapter B of this Regulatory Quality Manual.) To offer readers a fuller discussion of costs and benefits, refer them to section P.8 and other appropriate sections of your NFP.]

[P.5-2 Purpose of Program]

Purpose of Program: [Repeat the Purpose of Program you stated in the NPP.]

[P.5-3 Program Authority]

Program Authority: [Fill in title number; e.g., 20] U.S.C.  
[fill in section number or numbers].

[P.5-4 Applicable Program Regulations]

Applicable Program Regulations: 34 CFR part [parts] [fill in number or numbers].

[Note: List part number or numbers for program regulations only. If applicable, also include parts that may apply to more than one program, such as 34 CFR part 299. Do not list part numbers for EDGAR. If there are no applicable program regulations omit the heading Applicable Program Regulations:.]

[P.5-5 Relationship to NPP]

[Reference the NPP as follows:]

We published a notice of proposed [select appropriate term or terms from the following; use commas and insert

"and" before the last word or words in your series:]  
[priority] [priorities] [requirement] [requirements]  
[definition] [definitions] [selection criterion] [selection  
criteria] for this program [this competition] in the  
Federal Register on [insert date] ([volume number] FR [page  
number]). That notice contained background information and  
our reasons for proposing the particular [select  
appropriate term or terms from the following; use commas  
and insert "and" before the last word or words in your  
series:] [priority] [priorities] [requirement]  
[requirements] [definition] [definitions] [selection  
criterion] [selection criteria].

[The following is optional: Unless the Analysis of  
Comments and Changes section of this notice is relatively  
brief (e.g., five typed pages or fewer), we recommend that  
you state here any significant differences between the NPP  
and this NPP. This could include a summary (one or two  
sentences) of significant changes resulting from public  
comment and any other significant changes since publication  
of the NPP; or you could simply state in one or two  
sentences--to alert readers--that this NPP contains a  
significant change or several significant changes from the  
NPP and that we fully explain these changes in the Analysis  
of Comments and Changes section elsewhere in this notice.]

[or]

[If there are no significant differences between the NPP  
and this NPP, use one of the following, as appropriate:]

There are no differences between the proposed [select  
appropriate term or terms from the following; use commas  
and insert "and" before the last word or words in your



*series:] [priority] [priorities] [requirement]*  
*[requirements] [definition] [definitions] [selection*  
*criterion] [selection criteria] and [this] [these] final*  
*[select appropriate term or terms from the following; use*  
*commas and insert "and" before the last word or words in*  
*your series:] [priority] [priorities] [requirement]*  
*[requirements] [definition] [definitions] [selection*  
*criterion] [selection criteria].*

*[or]*

Except for minor [editorial] [technical] [editorial  
and technical] revisions, there are no differences between  
the proposed *[select appropriate term or terms from the*  
*following; use commas and insert "and" before the last word*  
*or words in your series:] [priority] [priorities]*  
*[requirement] [requirements] [definition] [definitions]*  
*[selection criterion] [selection criteria] and [this]*  
*[these] final [select appropriate term or terms from the*  
*following; use commas and insert "and" before the last word*  
*or words in your series:] [priority] [priorities]*  
*[requirement] [requirements] [definition] [definitions]*  
*[selection criterion] [selection criteria].*

#### *[P.6 Public Comment]*

*[The contents of this section will vary depending on*  
*whether you received any comments, whether the comments*  
*were substantive, whether changes resulted solely from*

intradepartmental review rather than--or in addition to-- public comment, etc. The instructions on the next several pages provide three options.]

[Option 1: If you received substantive comments from the public or substantive comments from the public and through intradepartmental review, use the instructions and boilerplate language in [P.6-1 Response to Substantive Comments].]

[Option 2: If (a) you received no comments, no substantive comments, or no comments to which the Department must respond, and (b) you've made no substantive changes to the text of the priorities, requirements, definitions, or selection criteria (as applicable)--other than dropping the word "proposed," the conditional mood (e.g., "would") and any similar references, and purely technical edits--use the instructions and boilerplate language in [P.6-2 No Changes to the NPP].]

[Option 3: If (a) you received no comments, no substantive comments, or no comments to which the Department must respond, but (b) you've made substantive changes to the text of the priorities, requirements, definitions, or selection criteria (as applicable) solely as a result of intradepartmental review since publication of the NPP, use the instructions and boilerplate language in [P.6-3 Changes to the NPP Based Solely on Intradepartmental Review].]

[P.6-1 Response to Substantive Comments]

[Use the following if you received substantive comments from the public or substantive comments from the public and through intradepartmental review.]

Public Comment: In response to our invitation in the notice of proposed [select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:] [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria], [insert number]

[or, in place of an absolute number, use a descriptive adjective; e.g., several, many, more than 25, more than 100, more than 300] parties submitted comments on the proposed [select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:] [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria].

[Use any of the following sentences that applies to the way in which you've organized this section:]

[We group major issues according to subject.] [We discuss [other] substantive issues under the title [number] of the item to which they pertain.] Generally, we do not address technical and other minor changes.

[As an alternative, you may wish (1) to address the most important of these suggested changes, (2) to list without discussion other suggested changes that the law does not authorize you to make, or (3) to do both. If you choose any of these alternatives, change the introductory language accordingly.]

[Note: It may not be necessary to respond to comments that do not express a view on the substance of a priority, requirement, definition, or selection criterion. Please feel free to consult your program attorney or an attorney in DRS for guidance on whether a response is necessary.]

[Generally we discuss comments on priorities, requirements, definitions, and selection criteria under those respective headings. However, it may be helpful to structure the discussion based on the issues raised. In that case, you may want to group comments under subheadings. If you use subheadings, type each subheading flush left and underline.

[Example:

Priority 2--High School Students

Evaluation

Reporting

General]

Analysis of Comments and Changes: An analysis of the [comment] [comments] and of any changes in the *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria] since publication of the notice of proposed *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria] follows.

Comment: *[In discussing the comment, follow this guidance:*

- *Describe the substantive and major issues raised by each commenter to allow the reader to understand the basis for the commenter's concerns and what changes the commenter requested.*

- *Discuss similar comments under a single "Comment" heading.*

- *Avoid quoting from the NFP.*

- *In summarizing the comments, paraphrase rather than*

quote the exact wording of the comment or changes requested, unless a quotation is absolutely necessary to understand the comment.

- Do not use quotation marks in describing any changes that you make.

- Double space.]

[Example:

DO WRITE: Comment: One commenter recommended that we restrict the priority to the preparation of curricular materials for mathematics and science in grades six through nine only.

DO NOT WRITE: Comment: One commenter recommended that we amend the priority to read as follows: "Projects that produce materials for use in the teaching of science and/or mathematics in middle or junior high school; i.e., in grades six through nine, as the term is defined under State or local law."]

[Note: If you base the discussion of a change on intradepartmental review that did not result from public comment, leave this Comment section blank except for the word: None.]

[Example:

Comment: None.]

Discussion: [Describe the considerations relevant to the Department's decision to make changes (or not to make changes) in the proposed priority, priorities, requirement, requirements, definition, definitions, selection criterion, or selection criteria. Include information and analysis that responds to the concerns raised in the comments. The summary of the comments and this discussion, taken

together, must be adequate to inform a reader of the major issues and alternatives you considered and why you decided to make changes (described under the next heading) or to make no changes.

- If OMB will review this NFP under E.O. 12866, also assess costs and benefits affecting your decision to make changes or not to make changes.

- Do not describe the actual changes in this Discussion.

- Do not use quotations.

- Double space.

- If your changes have resulted from the Department's own review of the NFP, this Discussion alone must provide the information necessary to justify the changes.]

[Note: It is not necessary to attribute to the Assistant Secretary (or other principal officer issuing this NFP) the Department's analysis of public comments.]

[Example:

DO WRITE Discussion: While NIDRR agrees with the commenter that there is a need for research about strategies and assistive devices to enhance the functional and community participation outcomes for individuals with multiple sclerosis, NIDRR does not believe that it is necessary to revise the priority to address this specific need. Applicants under this priority already have flexibility to choose the types of interventions they propose to identify, or to develop and evaluate. Assistive devices are one specific type of intervention that could be examined under this priority.

DO NOT WRITE Discussion: NIDRR does not believe that it is necessary to revise the priority to address this specific need.]

Changes:

- If you've not made changes, write: None.
- If you've made changes, describe them. Do not use quotation marks.
- Do not add further analysis of why you are making changes. Analysis belongs under the heading Discussion.
- Double space.]

[Example:

DO WRITE: Changes: We have revised the priority by adding two activities that an applicant may propose to carry out in meeting the purpose of the priority.

DO NOT WRITE: Changes: We have revised the priority by adding the following two paragraphs to the priority to read as follows:

"(d) Preparation of materials for the teaching of mathematics or science or both in any of grades 6 through 9, as appropriate.

"(e) Preparation of materials for the teaching of civics in elementary school, as the term 'elementary school' is defined by State law."]

[P. 6-2. No Changes to the NPP]

[Use the following paragraph if: (1) you didn't receive

*comments, you didn't receive substantive comments, or you didn't receive comments to which the Department must respond and (2) you've not made any substantive changes since you published the NPP:]*

Public Comment: In response to our invitation in the notice of proposed *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria], [we did not receive any comments] [we did not receive any substantive comments] on the proposed *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria].

**[P.6-3 Changes to the NPP Based Solely on Intradepartmental Review:]**

*[Use the following if: (1) you didn't receive comments, you didn't receive substantive comments, or you didn't receive any comments to which the Department must respond but (2) as a result of the Department's own review, you've made substantive changes since you published the NPP:]*

Public Comment: In response to our invitation in the notice of proposed *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [priority] [priorities] [requirement] [requirements] [definition] [definitions]



[selection criterion] [selection criteria], [we did not receive any comments] [we did not receive any substantive comments] on the proposed *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria].

However, as a result of our further review of the proposed *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria] since publication of the notice of proposed *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria], we have made [a change] [changes] as follows:

Analysis of Comments and Changes:

Comment: None.

Discussion: *[Describe the considerations relevant to the Department's decision to make changes in the proposed priorities, requirements, definitions, or selection criteria, as applicable. Because there is no Comment, this Discussion alone must provide the information necessary to*

*justify your changes. If OMB will review this NFP under E.O. 12866, include an assessment of costs and benefits in justifying our decision to make changes. However, do not describe or quote the actual changes in this Discussion.]*

[Example:

Discussion: In reviewing this proposed priority further, NIDRR has decided that limiting the activities of the priority to assistive technology is too restrictive because it would not allow applicants to focus on the range of technology developed by entities receiving NIDRR funding.]

Changes:

- [• Describe the changes. Do not use quotation marks.*
- Do not add further analysis of why you are making changes. Analysis belongs under the heading Discussion.*
- Double space.]*

[Example:

Changes: As a result of our further review, we have revised the second paragraph of the priority by deleting the list of technology areas. We have clarified the language to indicate that the Center's original research and development must concentrate on no more than three technology areas that are the focus of current NIDRR technology grantees. Information on technology research currently funded by NIDRR can be found at [www.naric.com/research/pd/priority.cfm](http://www.naric.com/research/pd/priority.cfm).

[P.7 Final Priorities, Requirements, Definitions,

## Selection Criteria]

### FINAL PRIORITY [PRIORITIES]:

[State the title, if any, of each priority. Underline. Use initial capitals for all principal words and place a period at the end. Omit the Background section. State the text of each priority. Indent the first sentence of each paragraph. Double space.

If you have not made any change since issuance of the NPP, the text of each final priority must be identical to the text of the proposed priority. If you have made a change since issuance of the NPP and fully explained any substantive change in the Analysis of Comments and Changes section, state the reworded priority here. In either instance, drop the word "proposed," the conditional mood (e.g., "would"), and any similar references.]

### Types of Priorities:

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

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

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that

meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

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

*[FINAL REQUIREMENTS, DEFINITIONS, SELECTION CRITERIA: If this notice contains one or more final requirements, definitions, or selection criteria, insert material relating to them here in that order. In each case include a heading in capital letters (e.g., FINAL REQUIREMENT) and begin with the paragraph "The Assistant Secretary for . . . [announces] [establishes] . . . ." Follow the format of the NPP but do not include any material related to background or rationale. Indent the first line of each paragraph. Double space.]*

*If you have not made any change since issuance of the NPP, the text of each final requirement, definition, and selection criterion, as applicable, must be identical to the text of the proposed requirement, definition, and selection criterion. If you have made a change since issuance of the NPP and fully explained any substantive change in the Analysis of Comments and Changes section, state the reworded requirement, definition, or selection criterion, as applicable, here. In either instance, drop the word "proposed," the conditional mood (e.g., "would"), and any similar references.]*

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In

any year in which we choose to use *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [this] [priority] [requirement] [definition] [selection criterion] *[or] [one or more of these [select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [priorities] [requirements] [definitions] [selection criteria], we invite applications through a notice in the Federal Register.

**[P.8 Executive Orders 12866 and 13563]**

**Executive Orders 12866 and 13563**

**[P.8-1 Regulatory Impact Analysis]**

**Regulatory Impact Analysis**

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment,

public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

*[Under Executive Order 12866, OMB formally reviews all regulatory actions that are deemed either "significant" or "economically significant." If the Department believes that an NFP is neither significant nor economically significant under the Executive order, the Department--through DRS--requests a significance determination from OMB. If OMB agrees that the regulatory action is not significant, it does not review the NFP under Executive Order 12866.]*

*[If this NFP is not significant, add the text from P.8-1-1. If this NFP is significant, add the text from P.8-1-2. If this NFP is economically significant, add the text from P.8-1-3.]*

*[P.8-1-1 If this NFP is not significant]*

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

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

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

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

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

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

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

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

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

We are issuing this [these] final *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]*  
[priority] [priorities] [requirement] [requirements]  
[definition] [definitions] [selection criterion] [selection criteria] only on a reasoned determination that its [their] benefits justify its [their] costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

*[Use the next paragraph if this regulatory action does not*



*affect any of the following: State, local, or tribal governments. If one or more of those levels of government are affected, revise the statement accordingly.]*

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

In accordance with both 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.

*[If there are identifiable or measurable costs and benefits, include a brief discussion here].*

*[P.8-1-2 If this NFP is significant]*

This final regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law,

Executive Order 13563 requires that an agency--

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

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

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

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

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

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated

present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this [these] final *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]*  
[priority] [priorities] [requirement] [requirements]  
[definition] [definitions] [selection criterion] [selection criteria] only on a reasoned determination that its [their] benefits justify its [their] costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

*[Use the next paragraph if this regulatory action does not affect any of the following: State, local, or tribal governments. If one or more of those levels of government are affected, revise the statement accordingly.]*

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental

functions.

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

*[Insert discussion of the potential costs and benefits, which may include a discussion of net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.]*

***[P.8-1-3 If this NFP is economically significant]***

This final regulatory action will have an annual effect on the economy of more than \$100 million because ***[briefly explain why]***. Therefore, this final action is "economically significant" and subject to review by OMB under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this final regulatory action and have determined that the benefits justify the costs.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and

definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

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

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

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

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

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

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

We are issuing this [these] final *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]*  
[priority] [priorities] [requirement] [requirements]  
[definition] [definitions] [selection criterion] [selection criteria] only on a reasoned determination that its [their] benefits justify its [their] costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

*[Use the next paragraph if this regulatory action does not affect any of the following: State, local, or tribal governments. If one or more of those levels of government are affected, revise the statement accordingly.]*

We also have determined that this final regulatory

action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

*[Insert substantive discussion of costs and benefits. You must discuss this with Budget Service, which prepares this section of the NFP. If the Regulatory Impact Analysis contains charts or graphs or is particularly lengthy, you should consider placing it in an appendix and simply referencing it here.]*

#### Accounting Statement

As required by OMB Circular A-4 (available at [www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf)), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the changes in annual monetized transfers as a result of this regulatory action. Expenditures are classified as transfers from *[insert entities from which the transfers are made; e.g., the Federal Government, SEAs, LEAs, IHES, financial aid recipients]* to *[insert entities to which the transfers are made; e.g., the Federal Government, SEAs,*

*LEAs, IHEs, financial aid recipients].*

Accounting Statement Classification of Estimated  
Expenditures [in millions]

Category	Transfers
Annualized Monetized Transfers	\$(insert amount)
From Whom To Whom?	from [insert the term you used in the preceding paragraph] to [insert the term you used in the preceding paragraph]

**[P.9 Intergovernmental Review: Executive Order 12372]**

*[In your NPP, you informed readers whether this program is subject to Executive Order 12372. If the order does not apply, delete this section and its heading from this NPP. If this program is subject to the order, the wording of this section should be identical to the wording in the NPP, as follows:]*

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.



**[P.10 Accessible Format; Electronic Access]**

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person [persons] listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). 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 Adobe 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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**[P.11 Signature Page]**

**[Note: At least one line of text must appear on the page containing the signature of the Assistant Secretary or other authorized principal officer. Do not date this**

document. Type the name and title of the signing official in the following format:]

Dated:

[Insert Name of Authorizing Official],  
[Insert and underline Title of  
Authorizing Official].

[Example:

John W. Doe,  
Assistant Secretary for  
Vocational and Adult Education.]

**[P.12] EXAMPLE OF A NOTICE OF FINAL PRIORITIES,  
REQUIREMENTS, DEFINITIONS, AND SELECTION CRITERIA FOR  
A DISCRETIONARY GRANT PROGRAM**

[Note: This is a fictional notice provided as an example of Chapter P of the Department's Regulatory Quality Manual.]

4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Chapter III

Final priority and definitions--Disability and  
Rehabilitation Research Projects and Centers Program--  
Disability Rehabilitation Research Projects (DRRPs)

[CFDA Number: 84.133A.]

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

ACTION: Final priority and definitions.

SUMMARY: The Assistant Secretary for Special Education and  
Rehabilitative Services announces a priority and  
definitions for a Center on Postsecondary Education for  
Students with Intellectual Disabilities (Center) under the  
DRRP program administered by the National Institute for  
Disability and Rehabilitation Research (NIDRR). The  
Assistant Secretary for Special Education and  
Rehabilitative Services may use this priority and these  
definitions for competitions in fiscal year (FY) 2008 and

later years. We take this action to focus research attention on areas of national need. We intend this priority and these definitions to improve postsecondary education and other outcomes for individuals with intellectual disabilities.

EFFECTIVE DATE: This priority and these definitions are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 5107, Potomac Center Plaza, Washington, DC 20202-2700. Telephone: (202) 245-7462 or by email: donna.nangle@ed.gov.

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

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities.

DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, training, demonstration, development, utilization, dissemination, and technical assistance. An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). In addition, NIDRR intends to require all DRRP applicants to meet the priority on General DRRP Requirements that it published in a notice of final priorities in the Federal Register on April 28, 2006 (71 FR 25472).

Additional information on the DRRP program can be found at: [www.ed.gov/rschstat/research/pubs/res-program.html#DRRP](http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP).

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority and definitions for this program in the Federal Register on December 11, 2007 (72 FR 70316). That notice contained background information and our reasons for proposing the particular priority and definitions.

There are differences between the notice of proposed priority and definitions and this notice of final priority and definitions (NFP) as discussed in the Analysis of Comments and Changes section elsewhere in this notice.

Public Comment: In response to our invitation in the notice of proposed priority and definitions, 11 parties submitted comments on the proposed priority and definitions.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition we do not address general comments that raised concerns not directly related to the proposed priority or definitions.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority and definitions since publication of the notice of proposed priority and definitions follows.

Comment: One commenter suggested that the Center be designed so that students with intellectual disabilities (ID) or developmental disabilities (DD) are not segregated from other students.

Discussion: The Center is designed to conduct research and disseminate information on promising practices in

postsecondary education; it will not provide postsecondary education for students with ID or DD. Therefore, because the Center will not provide direct services to students, the commenter's suggestion is inapplicable.

Changes: None.

Comment: One commenter noted that individuals with disabilities often have significant health issues and that success in postsecondary education may be related to their health status. This commenter recommended that the Center involve personnel with expertise in health issues related to individuals with disabilities.

Discussion: Nothing in the priority precludes applicants from proposing to involve personnel with expertise in the health of individuals with ID (e.g., these personnel might serve on the Center's advisory committee). However, we have no basis for requiring all applicants to do so.

Changes: None.

Comment: Two commenters asked for a definition of "longitudinal study" and whether the longitudinal study must be limited to an analysis of existing datasets, or if the Center could collect its own longitudinal data. In addition, they asked whether applicants could propose to conduct analyses of existing datasets that were not

mentioned specifically in the notice of proposed priority and definitions.

Discussion: Given the level of funding available for the Center, we recognize that it would be very difficult for the Center to conduct its own longitudinal study.

Therefore, we have revised the priority to require the Center to do one or both of the following: (1) engage in data collection activities, or (2) conduct secondary analyses of existing national and State longitudinal datasets.

The purpose of the data collection activities and secondary data analyses is to generate knowledge about the extent to which variations in educational, vocational, and independent living outcomes for students with ID are associated with participation in different types of postsecondary education programs.

The National Longitudinal Transition Study-2 (NLTS-2) and the Florida K-20 Data Warehouse are examples of existing data sources that contain relevant data and have not been analyzed fully. Applicants may propose to use other extant data sources. We believe that much can be learned from existing data sources without necessarily expending funds on designing surveys or collecting data. Finally, we do not believe it is necessary to define the



term "longitudinal study" because the final priority does not require the Center to conduct such a study.

Changes: We have removed from the priority all references to conducting a longitudinal study. Instead, we have clarified the language in paragraph (b)(2) of the priority to indicate that the Center must (1) engage in data collection activities; (2) conduct secondary analyses of existing datasets, such as the NLTS-2 and the Florida K-20 Data Warehouse; or (3) both.

Comment: One commenter suggested that efforts to collect new longitudinal data or establish baseline data may be more beneficial than analyses of existing data that are intended to generate knowledge about the relationship between postsecondary education and outcomes among individuals with ID.

Discussion: The funds available for this priority will likely not permit the Center to collect new longitudinal data or establish baseline data. However, we are convinced that conducting data collection activities, secondary analyses of existing data, or both, will generate new and beneficial knowledge about outcomes associated with postsecondary education programs for individuals with ID. Because this is the case, paragraph (b) of the priority

allows applicants to conduct data collection activities, analyze existing datasets, or engage in both activities.

Changes: None.

Comment: Seven commenters noted that the datasets mentioned under paragraph (b)(2)(ii) of the priority (i.e., the NLTS-2 and the Florida K-20 Data Warehouse) have limitations in disability variables and descriptors of postsecondary education programs. The commenters said that these limitations could have a negative impact on the extent to which secondary analyses relating to the population of individuals with ID may be completed.

Further, the commenters expressed concern that neither of these datasets contains variables that are necessary to connect the outcomes of students with ID to the different types of postsecondary education programs that serve students with ID. These commenters also noted that neither dataset provides information on dual enrollment programs and that some variables relating to postsecondary outcomes in the NLTS-2 dataset have zero percent of cases of people with ID.

Discussion: With respect to disability variables or identifier codes, while it is true that neither of the datasets mentioned in the priority include the "intellectual disabilities" code, both datasets include

related codes. These related codes could make it possible to conduct analyses that cover students with ID and that could address important outcomes for this population.

For example, although the Florida K-20 Data Warehouse does not include an "intellectual disabilities" code, it contains 22 "exceptionality" codes that include (a) educable mentally handicapped, (b) trainable mentally handicapped, and (c) profoundly mentally handicapped. Using these codes, it would be possible to (1) identify a sample of students with ID by selecting students whose primary disability is educable, trainable, or profoundly mentally handicapped; and (2) conduct any number of analyses related to the outcomes for this population. Likewise, while the NLTS-2 does not include an "intellectual disabilities" code, it would be possible to identify a sample of students with ID in the dataset by selecting students whose primary disability is mental retardation or who were identified, on either the parent or teacher interview, as having mental retardation.

With respect to descriptors of postsecondary education, while it is true that neither dataset provides information on dual enrollment programs, we believe that there are many variables or descriptors related to

postsecondary education and students with ID that are worth more thorough review and analysis.

Lastly, the commenters observed that some variables related to postsecondary outcomes in the NLTS-2 dataset show zero percent of cases of individuals with ID. However, the commenters did not identify any specific postsecondary variables or explain the importance of these variables to the work of the Center.

The NLTS-2 has five waves of data, and only three of these waves include individuals who are old enough to be included in the postsecondary sample, particularly because many students with ID attend secondary school to the maximum age (21 years old or older). We believe that the number of variables lacking relevant cases should decline as individuals age in the postsecondary category.

Changes: None.

Comment: Seven commenters noted that the effort to develop and implement postsecondary education programs for individuals with ID is in its early stages. Given this fact, six of these commenters said that experimental designs would be premature, and one recommended that the Center be allowed to use multiple research methods and data collection designs.

Discussion: Paragraph (b)(1) of the priority requires the Center to conduct scientifically based research. As the term is used in the priority, scientifically based research includes but is not limited to research that uses experimental or quasi-experimental designs. We are interested in rigorous methods of research that produce findings that are useful for the education field and for further research. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: One commenter asked how postsecondary education programs are defined.

Discussion: Although the Definitions section of the NPP included a definition for the term postsecondary education programs, on further review we believe that this definition is not sufficiently clear. This definition did not incorporate the language from the background section of the NPP referring to dual-enrollment programs for students with ID who are still enrolled in high school and are receiving special education services. For clarification we believe that a more expansive explanation of the term is needed in the actual text of the priority.

Changes: We have removed the definition of postsecondary education programs from the Definitions section of this

notice and revised paragraph (a)(1) of the priority to provide a fuller explanation of what is meant by this term.

Comment: Four commenters recommended that the Department's Office of Postsecondary Education (OPE) be included in the list of the Center's required collaborators in paragraph (h) of the priority.

Discussion: Because OPE does not fund technical assistance grantees, it would not be appropriate or useful to require the Center to collaborate with OPE for purposes of this priority.

Comment: Six commenters suggested that "employment" be added to the list of key outcomes described in the opening sentence of paragraph (b)(1) of this priority. While these commenters noted that vocational outcomes are important, they stated that employment should be highlighted by specifically including it in the list of outcomes for students with ID.

Discussion: We agree that employment is a desired outcome for individuals with ID participating in postsecondary education programs and will add it to the list of outcomes in paragraph (b)(1) of the priority.

Changes: We have added employment to the list of outcomes in paragraph (b)(1) of the priority.

Comment: Five commenters noted that pending congressional legislation would authorize demonstration projects and a coordinating center, the primary purpose of which would be training and technical assistance for programs providing postsecondary education for individuals with ID. The commenters recommended that the Center focus primarily on research and dissemination of technical assistance materials and remain distinct from the projects pending in Congress.

Discussion: We agree that the focus of the Center should be on research and the dissemination of technical assistance materials, and we believe that this purpose is reflected in the priority.

Changes: None.

Comment: Five commenters recommended that the priority expand the age range of students with ID who will be the focus of the Center's work. They suggested the range be 13 to 26 years. The commenters explained that students with ID may require additional time to complete a postsecondary education program. These commenters also noted that the definition of students with intellectual disabilities is overly restrictive in terms of the age of onset of a student's disability and the scope of the disabilities covered.

Discussion: We agree that the proposed age range of 16 to 24 years is too restrictive. The age range of students included in the NLTS-2 and the Florida K-20 Education Data Warehouse is comparable to the age range of 13 to 26 years suggested by the commenters. Changing the age range to 13 to 26 years of age in the definition of students with intellectual disabilities would support the Center's potential use of these two databases as key data sources for its analyses. In addition, using this age range would address the commenters' concerns that students with ID may require additional time to complete a postsecondary education program. Therefore, we will change the definition of students with intellectual disabilities to cover individuals 13 to 26 years of age.

Although some individuals acquire disabilities that result in cognitive limitations after the age of 18, we continue to agree with the American Association of Intellectual and Developmental Disabilities and the Equal Employment Opportunity Commission that students with intellectual disabilities are students whose disability occurred before age 18. We do not believe the definition of this term is too restrictive in terms of scope of disabilities covered; we are simply restricting the definition to those individuals who acquired their



disability before age 18 regardless of the specific disability involved.

Changes: We have revised paragraph (a) of the definition of students with intellectual disabilities so that the term includes individuals ages 13 to 26.

Comment: Two commenters suggested that universal design for learning be a required element for evaluating promising practices under paragraph (a) of the priority. These commenters proposed a definition of universal design for learning that the Department could use in connection with the proposed priority.

Discussion: We consider universal design for learning to be one approach that could be evaluated as a promising practice, rather than a required element for evaluating promising practices. We, therefore, decline to make the requested changes.

Changes: None.

FINAL PRIORITY:

Center on Postsecondary Education for Students with Intellectual Disabilities.

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority under the DRRP program for a Center on Postsecondary Education for

Students with Intellectual Disabilities (Center). In order to meet this priority, the Center must--

(a)(1) Identify key characteristics and promising practices of postsecondary education programs at community colleges, vocational-technical schools, and four-year colleges that currently serve students with intellectual disabilities (ID), including specialized programs that are intended to promote independence and improve employment outcomes for students with ID. An example of such a specialized program is a dual-enrollment program for students with ID who are still enrolled in high school and receiving special education services.

(2) In identifying key characteristics and promising practices under paragraph (a)(1) of this priority, the Center must collect information on--

(i) How students with ID are recruited and retained in these programs;

(ii) The extent to which students with ID are enrolled in academic courses as part of these programs; and

(iii) The types and extent of accommodations provided to students with ID to ensure their active participation in these programs;

(b)(1) Conduct scientifically based research to determine whether variations in educational, vocational,

employment, and independent living outcomes for students with ID are associated with participation in different types of postsecondary education programs.

(2) To fulfill the requirement in paragraph (b)(1) of this priority, the Center must do one or both of the following:

(i) Engage in data collection activities; or

(ii) Conduct secondary analyses of existing national and State longitudinal datasets, such as the National Longitudinal Transition Study-2 (NLTS-2) and the Florida K-20 Education Data Warehouse.

Note: The NLTS-2 and the Florida K-20 Education Data Warehouse are examples of existing datasets that may be used for purposes of conducting secondary analysis. Reports of study findings and data tables containing frequency counts for some variables can be accessed at: [www.nlts2.org](http://www.nlts2.org). For information on acquiring restricted-use datasets for NLTS-2, see: [www.nlts2.org/data\\_tables/datatable\\_training.html](http://www.nlts2.org/data_tables/datatable_training.html). The Florida K-20 Education Data Warehouse can be accessed at: [www.edwapp.doe.state.fl.us/doe/](http://www.edwapp.doe.state.fl.us/doe/).

(c)(1) Compile existing technical assistance materials and develop new materials, as needed--including information on promising practices that can be replicated--

for postsecondary education institutions that are developing new programs or expanding existing programs to provide activities for students with ID.

(2) Any technical assistance materials developed under paragraph (c)(1) of this priority must be informed by knowledge acquired through the Center's research program, as the knowledge becomes available;

(d)(1) Partner with existing training and technical assistance providers for the purpose of disseminating technical assistance materials to postsecondary education programs interested in developing new programs or expanding existing programs for students with ID.

(2) To the extent possible, the partnership should disseminate technical assistance and other informational materials to interested students with ID and their families;

(e) Provide technical assistance information and materials to appropriate NIDRR research and dissemination centers, including the National Center for the Dissemination of Disability Research;

(f) Establish an advisory committee of researchers, vocational rehabilitation providers, transition planners, secondary and postsecondary educators, individuals with ID, and parents of individuals with ID to provide the Center,

on an ongoing basis, with guidance on the Center's research and technical assistance activities;

(g) Conduct a formative evaluation of the Center's activities, using clear performance objectives to ensure continuous improvement in the operation of the Center, including objective measures of progress in implementing the project and ensuring the quality of research and technical assistance; and

(h)(1) To the extent possible, consult with the sponsors of activities that are similar or related to the Center's activities, especially existing training and technical assistance resources that have been established by relevant offices within the U.S. Department of Education. These resources include the Rehabilitation Services Administration's Rehabilitation Continuing Education Programs, the Office of Special Education Programs' Technical Assistance and Dissemination Network and Technical Assistance Communities of Practice, the Office of Vocational and Adult Education's National Research Center for Career and Technical Education, and the NIDRR network of knowledge translation grantees.

(2) The consultation required under paragraph (h)(1) of this priority must be designed to avoid duplication of efforts and to facilitate the exchange of information, pool

resources, and improve the overall effectiveness of the Center's activities.

Types of Priorities:

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

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

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

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

FINAL DEFINITIONS:

The Assistant Secretary for Special Education and Rehabilitative Services establishes the following definitions for the purpose of the priority on Center on Postsecondary Education for Students with Intellectual Disabilities. We may apply one or more of these definitions in any year in which the priority is in effect.

Adaptive skill areas, as used in the definition of students with intellectual disabilities, means the basic skills needed for everyday life, such as communication, self-care, home living, social skills, leisure, health and safety, self-direction, functional academics (reading, writing, basic math), and work.

Students with intellectual disabilities means individuals--

(a) Ages 13 through 26 whose intellectual functioning levels require significant changes in instructional methods and modifications to the curriculum for these individuals to participate in postsecondary education programs;

(b) Who have significant limitations in adaptive skill areas as expressed in conceptual, social, and practical adaptive skills; and

(c) Whose disabilities originated before the age of 18.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority and these definitions, we invite applications through a notice in the Federal Register.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise



interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

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

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

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

extent practicable--the costs of cumulative regulations;

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

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

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

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

We are issuing this final priority and these final definitions only on a reasoned determination that their

benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

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

In accordance with both 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.

Summary of potential costs and benefits:

The benefits of the DRRP programs have been well-established over the years in that other DRRP projects have been completed successfully. The priority and definitions announced in this notice will generate new knowledge through research, dissemination, utilization, and technical assistance.

Another benefit of the final priority and definitions is that establishing a new DRRP will improve the lives of individuals with disabilities. The new DRRP will generate, disseminate, and promote the use of new information that will improve the options for individuals with intellectual disabilities to achieve improved education, employment, and independent living outcomes.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). 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 Adobe 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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated:

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John S. Doe,  
Assistant Secretary for  
Special Education and  
Rehabilitative Services.

**[P.13] TEMPLATE FOR A NOTICE OF FINAL  
PRIORITIES, REQUIREMENTS, DEFINITIONS,  
OR SELECTION CRITERIA**

*[Note to ED Program Offices: The following template contains the major headings a notice of final priorities, requirements, definitions, or selection criteria must include, but the template does not contain all of the headings or boilerplate text that must be included. Please consult the instructions in Chapter P to determine what additional content your notice must contain. Make sure any material you insert is not set in bold or italics.]*

4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Chapter *[insert number, in Roman numerals]*

*[If applicable]* RIN

Final *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria]—*[Name of Program. Fill in the name of the program or the name of the program, followed by two hyphens [--] and the name of the competition. Note: The number of characters, including spaces, may not exceed 200.]*

[CFDA Number [Numbers]:                      ]

AGENCY: *[Name of Principal Office]*, Department of Education.

ACTION: Final *[select appropriate term or terms from the*

*following; use commas and insert "and" before the last word  
or words in your series:]* [priority] [priorities]  
[requirement] [requirements] [definition] [definitions]  
[selection criterion] [selection criteria].

SUMMARY:

EFFECTIVE DATE:

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION:

*[If applicable]* Executive Summary:

Purpose of This Regulatory Action:

Summary of the Major Provisions of This Regulatory  
Action:

Costs and Benefits:

Purpose of Program:

Program Authority:

Applicable Program Regulations:

*[Reference the NPP]*

Public Comment:

*[If applicable]* Analysis of Comments and Changes:

Comment:

Discussion:

Changes:

FINAL PRIORITY [PRIORITIES]:

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)).

**[If applicable] FINAL REQUIREMENT [REQUIREMENTS]:**

**[If applicable] FINAL DEFINITION [DEFINITIONS]:**

**[If applicable] FINAL SELECTION CRITERION [CRITERIA]:**

This notice does not preclude us from proposing



additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use [this] [one or more of these] [*select appropriate term or terms*], we invite applications through a notice in the Federal Register.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this proposed regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). [*Continue as appropriate.*]  
  
[*If applicable*] Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

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

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person [persons] listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at:

[www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). 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 Adobe 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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated:

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**Chapter O: HOW DO I PREPARE A NOTICE OF ONE OR  
MORE PROPOSED PRIORITIES, REQUIREMENTS,  
DEFINITIONS, OR SELECTION CRITERIA FOR A  
DISCRETIONARY GRANT PROGRAM?**

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(Revised, August 2012)

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## [O.1] INTRODUCTION

This chapter contains instructions for preparing a notice containing one or more proposed priorities, requirements, definitions, or selection criteria for a discretionary grant program. This type of notice is commonly referred to as an NPP. If you are preparing a notice of one or more final priorities, requirements, definitions, or selection criteria for a discretionary grant program (an NFP), use the instructions in Chapter P.

This chapter contains five sections: (1) this introduction; (2) instructions for preparing an NPP; (3) appendices containing materials you include in an NPP; (4) a sample NPP; and (5) a template NPP that contains minimal instructions.

### General Information

Except as noted under Exemptions, generally if you want to establish one or more absolute or competitive preference priorities, requirements (such as application requirements), definitions, or selection criteria, you must request public comments on them by publishing an NPP in the Federal Register. However, you are not required to request public comments or publish an NPP if those priorities, requirements, definitions, or selection criteria are drawn directly from an authorizing statute, regulations for this program, an NFP that has been published in the Federal Register, or the Education Department General Administrative Regulations (EDGAR).

For more information on the rulemaking requirements governing the Department's use of absolute and competitive preference priorities, requirements, definitions, and selection criteria for discretionary grant competitions, please see 34 CFR 75.105 of EDGAR governing how the Department establishes funding priorities; sections 410 and 437 of the General Education Provisions Act (GEPA); section 414 of the Department of Education Organization Act; and section 553 of title 5 of the Administrative Procedure Act.

Following the publication of an NPP and the review of the public comments received on the NPP, you must publish an NFP in order to use the priorities, requirements, definitions, or selection criteria in a discretionary grant

competition that you will announce in a notice inviting applications. **Note:** Generally you may not include additional priorities or other requirements in an NPP if you did not include them in the NPP.

### Exemptions

Under certain conditions specified in section 437(d)(1) of GEPA, you may be able to waive proposed rulemaking and thus be exempt from publishing an NPP for a particular program. You may do this if you are establishing one or more final priorities, requirements, definitions, or selection criteria for the first grant competition of a new or substantially revised program. In this situation, you do not need to request public comment or prepare an NPP. Instead, you may establish final priorities, requirements, definitions, or selection criteria in an application notice (see Chapter J for instructions on how to prepare a notice inviting applications).

In addition, certain programs under the Individuals with Disabilities Education Act, as amended (IDEA) (see 20 U.S.C. 1481(d)), and certain special demonstration programs under the Rehabilitation Act of 1973, as amended (see 34 CFR 373.6), also are not required to publish an NPP and may establish one or more priorities in the application notice (see Chapter J). Be sure to check with your program attorney to determine whether your program or competition qualifies for one of these exemptions.

You do not need to request public comment on an invitational priority because invitational priorities do not involve any requirements on the part of grantees. If you wish to use an invitational priority for a competition, you simply would announce the invitational priority in the notice inviting applications for the competition (see Chapter J).

### Other Requirements

In developing an NPP you must keep in mind--and provide information required by--a number of statutes, Executive orders, and other mandates. These include the Paperwork Reduction Act of 1995 (PRA), Executive Order 12866 ("Regulatory Planning and Review"), and the

Presidential memorandum on "Plain Language in Government Writing." You should also be familiar with the Department's Principles for Regulating, which are included in the Department's Regulatory Quality Manual.

Under Executive Order 12866, the Office of Management and Budget (OMB) reviews NPPs to determine if they are "significant regulatory actions," as that term is defined in the Executive order. If OMB determines that an NPP is a significant regulatory action, OMB will formally review the notice to ensure that it contains all of the appropriate information specified in that Executive order, including an assessment of costs and benefits.

Be mindful of whether your NPP includes requirements that would constitute information collections (i.e., "paperwork") under the PRA. Most carefully drafted priorities will not require approval under the PRA, but application requirements and selection criteria typically do require approval.

If your NPP includes information collection requirements, you will need to ensure that you have cleared the information collections with OMB. This clearance process is handled by the Regulatory Information Management Service (RIMS) in the Office of Management. Please direct any questions about information collections and the PRA to RIMS.

In developing the NPP you must also keep in mind the following:

- Generally you should not specify a single year in which the Department will use a proposed priority, requirement, selection criterion, or definition. This "no-year" approach enables you to use the same priority, requirement, selection criterion, or definition in a future competition for the program--as long as the program remains authorized--without again having to conduct rulemaking. This approach offers flexibility, saves work, and expedites the timely issuance of awards. If you specify the year, you cannot use that priority, requirement, selection criterion, or definition in future competitions without first going through rulemaking.

- If you are developing an NPP (or an NFP) that



contains one or more priorities, the Department also encourages you not to specify the type of priority (i.e., absolute or competitive preference) in the NPP or NFP. Specifying the priority type in an application notice, rather than in an NPP (or NFP), enables you to determine, on a competition-by-competition basis, whether to make the priority an absolute or competitive preference priority. (For example, if you state in the NPP (or NFP) that a priority will be used as a competitive preference priority, you would not be able to use that priority as an absolute priority in another competition without first conducting rulemaking.)

- It is the policy of the Department not to assign points to selection criteria in NPPs or NFPs. Because you may want to assign different point values to the selection criteria from year to year, it is best to assign the point values in the application notice and the application package for each year's specific competition. Again, this approach gives you flexibility and potentially avoids the need for additional rulemaking.

- Generally an NPP should not quote laws or regulations.

As you develop an NPP, we recommend that you keep notes as issues are raised, deliberated, and decided. These notes can be very useful as you draft the NPP and NFP and explain to readers the various options that the Department considered and the reasons for our decisions.

### **Well-Written NPPs**

A well-written NPP promotes a better public understanding of the document and what you are trying to achieve through the proposed priorities, requirements, definitions, or selection criteria described in the NPP. Ultimately a well-written NPP helps to attract better applications for awards and enhances the mission of the Department. The following are some guidelines you should follow to help you draft a clear and effective NPP:

- State each proposed priority, requirement, definition, or selection criterion as simply and briefly as possible. The proposed priority, requirement, definition, or selection criterion should be comprehensible to the

general public, not just to "persons in the field." Do not use jargon.

- Avoid being overly prescriptive. Proposed priorities, requirements, definitions, and selection criteria need not be as detailed as requests for proposals issued to prospective bidders on a contract. If possible, proposed priorities, requirements, definitions, and selection criteria should allow prospective applicants sufficient flexibility to propose well-reasoned, creative, and scientifically measurable projects to meet the goals of the program.

### Requirements of Format, Style, and Standard Language

This chapter tells you what information you must include in an NPP and how you must present it. Included is standard language required by the Department, the Office of the Federal Register (OFR), or OMB.

OFR publishes the Federal Register Document Drafting Handbook, which is intended to help agencies create and submit documents that comply with OFR's requirements. The Document Drafting Handbook is available at the following Internet address:  
[www.archives.gov/federal-register/write/handbook](http://www.archives.gov/federal-register/write/handbook).

The United States Government Printing Office (GPO) also mandates many of the style requirements in these instructions. The GPO Style Manual, which you can download in PDF, is available at the following Internet address:  
[www.gpoaccess.gov/stylemanual/browse.html](http://www.gpoaccess.gov/stylemanual/browse.html).

### Technical Requirements

- Double-space the notice.
- Leave a 1.5-inch margin on the left, a 1-inch margin on the right, and a 1-inch margin at the top and bottom.
- Justify the left margin only.
- Except as otherwise indicated in the instructions, indent (five spaces) the first line of each paragraph of text.

- Use 12-point Courier New font.
- Begin numbering at the center bottom of the first page in Arabic numerals ("1").
- Never type in bold or italics.
- Underline only as shown in the instructions.
- Indent the first line of any bullet five spaces and leave two spaces after the bullet. Do not use the automatic bulleting function in Microsoft Word.
- Use initial capitals and underline the term Federal Register unless you are asking the OFR to compute a date, in which case type FEDERAL REGISTER in all capitals without underlining.

Example:

DATES: We must receive your comments on or before [INSERT DATE *[insert number of days for the comment period; e.g., 30]* DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Material inside Square Brackets

In this chapter bold-faced, italicized material inside square brackets [ ] is instructions to the drafter of the notice; do not include this material in your NPP. The shaded, bold-faced letters and numbers inside the italicized brackets--e.g., [0.6] or [0.12-3]--are for purposes of reference and cross-reference for users of this manual; do not include them in your NPP.

The other material inside non-italicized square brackets [ ] is alternative wording intended for use, as appropriate, in your NPP. Instructions to the OFR to compute dates must be in all capitals inside non-italicized square brackets.

### Delegation of Authority and Referring to the Department

Under a delegated authority a principal officer other than the Secretary (such as an Assistant Secretary or a Director of a principal office) signs an NPP. However, we recommend that you use the title of this principal officer only if the title is necessary (such as in the signature block). In keeping with the Presidential memorandum on "Plain Language in Government Writing," we prefer that you use the pronoun "we" or "us" in referring to the Department.

### For Further Information

If you have questions regarding these instructions, please consult the Regulations Quality Officer or the Regulations Coordinator for your program or document, both of whom are in the Division of Regulatory Services (DRS) of the Office of the General Counsel. The DRS telephone number is: (202) 401-8300.

HOW DO I PREPARE A NOTICE OF ONE OR MORE  
PROPOSED PRIORITIES, REQUIREMENTS, DEFINITIONS, OR  
SELECTION CRITERIA FOR A DISCRETIONARY GRANT PROGRAM?

[0.2 Introductory Material and Summary]

4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Chapter [insert number, in Roman numerals, for the chapter of the CFR in which regulations for your principal office are codified; e.g., III, for Office of Special Education and Rehabilitative Services]

RIN [An RIN (regulation identifier number) is required if the Office of Management and Budget (OMB) will be formally reviewing this document under Executive Order (EO) 12866. Consult with your Regulations Program Specialist in the Division of Regulatory Services (DRS) regarding OMB review and the assignment of an RIN.]

Proposed [select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:] [priority] [priorities]

[requirement] [requirements] [definition] [definitions]

[selection criterion] [selection criteria]--[Name of

Program. Fill in the name of the program or the name of the program followed by two hyphens [--] and the name of the competition (this is often the title of a priority).

Double space; use initial capitals only; do not end with a period. Note: The number of characters, including spaces, may not exceed 200.]

[CFDA Number {Numbers}: [Fill in the number or numbers, including suffix letter or letters, if any. Place this

line inside square brackets. If a number has not yet been assigned, omit this line.].]

AGENCY: [Name of Principal Office], Department of Education.

ACTION: Proposed [select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:] [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria].

SUMMARY: [In 100 words or less, describe, in plain language: (1) the action you are taking; (2) why you are taking the action; and (3) the intended effect of the action. Confine your statement to these three matters and be concise. If it is necessary to refer to an act of Congress, use a shorter, easily recognizable form (e.g., the No Child Left Behind Act of 2001), but do not give the legal citation. Begin with the following:]

[The Assistant Secretary for [name of principal office]] [or] [title of other principal officer issuing this notice] proposes [a] [select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:] [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria] under [the] [name of program]. The Assistant Secretary [or other title] may use [select appropriate term or terms from the following; use commas and insert "and" before the last word

*or words in your series:] [this [priority] [requirement] [definition] [selection criterion]] [or] [one or more of these [priorities] [definitions] [requirements] [selection criteria]] for competitions in fiscal year (FY) [insert year] and later years. [Continue your SUMMARY with why you are taking the action, and the intended effect of the action.] [Example: We take this action to focus Federal financial assistance on an identified national need. We intend the priority to increase the availability of tested learning materials for pupils in kindergarten through grade three.]*

### ***[0.3 Dates and Addresses]***

DATES: We must receive your comments on or before [INSERT DATE *[insert the appropriate number of days to determine the length of the public comment period; e.g., 30]* DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Address all comments about this notice to *[insert name of person]*, U.S. Department of Education, *[select one of the following addresses:]* [400 Maryland Avenue, SW. *[which includes Potomac Center Plaza (PCP)]*] [555 New Jersey Avenue, NW.] *[or]* [1990 K Street, NW.], room *[fill in room number and, if necessary, building designation; e.g., 6126, PCP]*, Washington, DC *[fill in ZIP*

Code. Use 20202 for Maryland Avenue, 20208 for New Jersey Avenue, or 20006 for K Street]-[fill in last four digits of ZIP Code].

[Optional:] If you prefer to send your comments by e-mail, use the following address: [insert the appropriate e-mail address, such as the address of the person in your office to whom the electronic comments are to be addressed; e.g., jane.smith@ed.gov]. [Then, if desired, add the following sentence: You must include the term [insert the term of your choice; e.g., PWI] in the subject line of your electronic message.]

#### [0.4 For Further Information]

FOR FURTHER INFORMATION CONTACT: [Select Option 1, Option 2, or Option 3, as follows:]

[Option 1: If the FOR FURTHER INFORMATION CONTACT person is the same person you have listed in the ADDRESSES section [0.3], use the following:]

[Insert the name of the person listed in the ADDRESSES section of this notice]. Telephone: (202) [fill in number][.] [optional:] [or by e-mail: [insert address; e.g., jane.smith@ed.gov].]

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call [include either of the following:] [the TDD/TTY number at (202) [fill in



number].] [or, if a TDD/TTY number is not available, use the following:] [the Federal Relay Service (FRS), toll free, at 1-800-877-8339.]

[or]

[Option 2: If the FOR FURTHER INFORMATION CONTACT person is not the same person you have listed in the ADDRESSES section [0.3], insert the name, address, and telephone number of the person most knowledgeable about the proposed priority, requirement, definition, or selection criterion in this notice, as follows:]

[Insert name of person], U.S. Department of Education,  
[select one of the following addresses:] [400 Maryland Avenue, SW.] [555 New Jersey Avenue, NW.] [or] [1990 K Street, NW.], room [fill in room number and, if necessary, building designation; e.g., 6126, PCP], Washington, DC  
[fill in ZIP Code. Use 20202 for Maryland Avenue, 20208 for New Jersey Avenue, or 20006 for K Street]-[fill in last four digits of ZIP Code]. Telephone: (202) [fill in number][.] [optional:] [or by e-mail: [insert address; e.g., george.jones@ed.gov].]

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call [include either of the following:] [the TDD/TTY number at (202) [fill in number].] [or, if a TDD/TTY number is not available, use the following:] [the Federal Relay Service (FRS), toll free, at 1-800-877-8339.]

[or]

[Option 3: If you have more than one priority, requirement, definition, or selection criterion, you may prefer to have different persons with different areas of expertise contacted for further information about different proposed priorities, requirements, definitions, or selection criteria. In that case, you should adapt the preceding paragraphs so that your readers understand these distinctions and have all the necessary information. For example, all of the experts may have the same mailing address but different telephone numbers. In that case you can list the respective telephone number directly after the name of each person and then state the address only once.]

[0.5 Supplementary Information]

SUPPLEMENTARY INFORMATION:

[0.5-1 [If applicable] Executive Summary]

[Under Executive Order 13563, "Improving Regulations and Regulatory Review," OMB has determined that a lengthy or complex rule, both proposed and final, should include an executive summary. Because NPPs are classified as proposed regulations, they are subject to the Executive order.

The Department has decided that an NPP that is 100 or more typed pages, double-spaced, or that is identified as "economically significant" under Executive Order 12866 must contain an executive summary. Generally the maximum length of the summary should be three to four, double-spaced pages. If this document must contain an executive summary, place the summary here and include the following:]

Executive Summary:

Purpose of This Regulatory Action: [Include a short statement of the need for this regulatory action and how the action will meet this need. Much of this material is in the SUMMARY section near the beginning of this notice. Pertinent material may also be in section [0.6] (Proposed Priorities, Requirements, Definitions, Selection Criteria) and other sections cross-referenced in [0.6], including Background, if appropriate. Include a succinct statement of the legal authority, explaining in brief the Program

Authority in section [O.5-4] and possibly, also, in the SUMMARY section.]

#### Summary of the Major Provisions of This Regulatory

Action: [Describe clearly and separately each major provision, together with a brief justification. Much of this material is in section [O.6] and in the Background section of Appendix 4 [O.11-4], Appendix 5 [O.11-5], and Appendix 6 [O.11-6], if applicable. To offer readers a fuller discussion of the major provisions, refer them to these sections of your NPP.]

Costs and Benefits: [Summarize costs and benefits based on material in section [O.7] (Executive Orders 12866 and 13563). If this NPP is economically significant, consult with Budget Service and include a brief assessment of costs and benefits, both quantitative and qualitative. (See section [B.4-1-3] in Chapter B of this Regulatory Quality Manual.) To offer readers a fuller discussion of costs and benefits, refer them to section [O.7] and other appropriate sections of this NPP.]

#### [O.5-2 Invitation to Comment]

Invitation to Comment: We invite you to submit comments regarding this notice. [If this notice contains more than one priority, requirement, definition, or selection criterion, continue as follows:] [To ensure that your comments have maximum effect in developing the notice of final [select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:] [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria], we urge you to identify clearly the specific proposed [select appropriate term or

*terms from the following; use commas and insert "and" before the last word or words in your series:]* [priority] [requirement] [definition] [selection criterion] that each comment addresses.]

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [this proposed [priority] [requirement] [definition] [selection criterion]] *[or]* [these proposed [priorities] [requirements] [definitions] [selection criteria]]. 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 all public comments about this notice in *[insert room number and street address]*, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an

appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person [persons] listed under FOR FURTHER INFORMATION CONTACT.

**[0.5-3 Purpose of Program]**

Purpose of Program: [Summarize the purpose of the program (not the priorities or requirements proposed in this notice) in one or two sentences. You do not have to repeat exactly the purpose stated in the authorizing statute or in any regulations for the program.].

**[0.5-4 Program Authority]**

Program Authority: [Fill in title number; e.g., 20] U.S.C. [fill in section number or numbers].

**[0.5-5 Applicable Program Regulations]**

Applicable Program Regulations: 34 CFR part [parts] [fill in number or numbers].

[Note: List part number or numbers for program regulations only. If applicable, also include parts that may apply to more than one program, such as 34 CFR part 299. Do not list part numbers for EDGAR. If there are no applicable program regulations omit the heading Applicable Program Regulations:.]

**[0.5-6 Public Participation]**

[If applicable] Public Participation [and Governmental

Coordination]: [Describe any public participation in the development of the proposed priority, requirement,

definition, or selection criterion (e.g., public meetings; notices requesting suggestions in advance of developing the NPP; use of electronic bulletin boards, the Internet, teleconferences, or other electronic communications). Also include a description of any coordination that has taken place between the Department and other governmental entities, such as State, local, and tribal governments, as well as other Federal departments and agencies.].

**[O.6 Proposed Priorities, Requirements, Definitions, Selection Criteria]**

PROPOSED PRIORITY [PRIORITIES]:

[If your notice contains only one priority, use the format shown in Appendix 1 [O.11-1]. If your notice contains two or more priorities and if the background and rationale information applies to all of the proposed priorities, use the format shown in Appendix 2 [O.11-2]. If your notice contains two or more priorities and if the background and rationale information is different for each priority, use the format shown in Appendix 3 [O.11-3].]

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, DEFINITIONS, SELECTION CRITERIA:**  
**If this notice also contains one or more proposed**  
**requirements, definitions, or selection criteria, insert**  
**material relating to them here in that order. For the**  
**format for requirements, see Appendix 4 [O.11-4]. For the**  
**format for definitions, see Appendix 5 [O.11-5]. For the**  
**format for selection criteria, see Appendix 6 [O.11-6].]**

Final **[select appropriate term or terms from the following;**  
**use commas and insert "and" before the last word or words**  
**in your series:]** [Priority] [Priorities] [Requirement]  
[Requirements] [Definition] [Definitions] [Selection  
Criterion] [Selection Criteria]:

We will announce the final **[select appropriate term or**  
**terms from the following; use commas and insert "and"**  
**before the last word or words in your series:]** [priority]  
[priorities] [requirement] [requirements] [definition]  
[definitions] [selection criterion] [selection criteria] in  
a notice in the Federal Register. We will determine the  
final **[select appropriate term or terms from the following;**

use commas and insert "and" before the last word or words in your series:] [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria] after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [this] [priority] [requirement] [definition] [selection criterion] [or] [one or more of these *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [priorities] [requirements] [definitions] [selection criteria]], we invite applications through a notice in the Federal Register.

***[0.7 Executive Orders 12866 and 13563]***

Executive Orders 12866 and 13563

***[0.7-1 Regulatory Impact Analysis]***



## Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

[Under Executive Order 12866, OMB formally reviews all regulatory actions that are deemed either "significant" or "economically significant." If the Department believes that an NPP is neither significant nor economically significant under the Executive order, the Department--through DRS--requests a significance determination from OMB. If OMB agrees that the regulatory action is not significant, it does not review the NPP under Executive Order 12866.]

[If this NPP is not significant, add the text from O.7-1-1. If this NPP is significant, add the text from O.7-1-2. If this NPP is economically significant, add the text from O.7-1-3.]

[O.7-1-1 If this NPP is not significant]

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

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

(1) Propose or adopt regulations only 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 this [these] proposed *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria] only on a reasoned determination that its [their] benefits would justify its [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.

*[Use the next paragraph if the proposed regulations would not affect any of the following: State, local, or tribal governments. If one or more of those levels of government are affected, revise the statement accordingly.]*

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 both 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.

*[If there are identifiable or measurable costs and benefits, include a brief discussion here].*

*[0.7-1-2 If this NPP is significant]*

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

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

(1) Propose or adopt regulations only 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 this [these] proposed *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [priority] [priorities] [requirement]

[requirements] [definition] [definitions] [selection criterion] [selection criteria] only on a reasoned determination that its [their] benefits would justify its [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.

***[Use the next paragraph if the proposed regulations would not affect any of the following: State, local, or tribal governments. If one or more of those levels of government are affected, revise the statement accordingly.]***

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

***[Insert discussion of the potential costs and benefits, which may include a discussion of net budget impacts, assumptions, limitations, and data sources, as well as***

*regulatory alternatives we considered.]*

*[0.7-1-3 If this NPP is economically significant]*

This proposed regulatory action would have an annual effect on the economy of more than \$100 million because *[briefly explain why]*. Therefore, this proposed action is "economically significant" and subject to review by OMB under section 3(f)(1) of Executive Order 12866.

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

(1) Propose or adopt regulations only 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 this [these] proposed *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria] only on a reasoned determination that its [their] benefits would justify its [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.

*[Use the next paragraph if the proposed regulations would not affect any of the following: State, local, or tribal governments. If one or more of those levels of government are affected, revise the statement accordingly.]*

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

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered. *[Insert substantive discussion of costs and benefits. You*

*must discuss this with Budget Service, which prepares this section of the NPP. If the Regulatory Impact Analysis contains charts or graphs or is particularly lengthy, you should consider placing it in an appendix and simply referencing it here.]*

#### Accounting Statement

As required by OMB Circular A-4 (available at [www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf)), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the changes in annual monetized transfers as a result of this regulatory action. Expenditures are classified as transfers from *[insert entities from which the transfers are made; e.g., the Federal Government, SEAs, LEAs, IHES, financial aid recipients]* to *[insert entities to which the transfers are made; e.g., the Federal Government, SEAs, LEAs, IHES, financial aid recipients]*.

#### Accounting Statement Classification of Estimated Expenditures [in millions]

Category	Transfers
Annualized Monetized Transfers	<i>[\$[insert amount]</i>
From Whom To Whom?	<i>from [insert the term you used in the preceding</i>

	<p>paragraph]</p> <p>to [insert the term you used in the preceding paragraph]</p>
--	---

**[0.8 Intergovernmental Review: Executive Order 12372]**

[Before drafting the next section, you must determine whether Executive Order 12372 applies to this program. Select Option 1 or Option 2, as appropriate.]

[Option 1: Use the following if this program is subject to Executive Order 12372. The Executive order is applicable if any of the following applies:

- The program is included on the list published in the Federal Register on May 25, 1990 (55 FR 21712). If you have questions about this list, please consult your program attorney.

- The regulations for the program state that the program is subject to 34 CFR part 79.

- The program currently has no regulations other than EDGAR and the program is not excluded under 34 CFR 79.3(c) and (d).]

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.

*[Option 2: Use the following if the Department has determined that this program is not subject to Executive Order 12372:]*

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

**[0.9 Accessible Format; Electronic Access]**

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person [persons] listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). 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 Adobe 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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**[O.10 Signature Page]**

**[Note: At least one line of text must appear on the page containing the signature of the Assistant Secretary or**

other authorized principal officer. Do not date this document. Type the name and title of the signing official in the following format:]

Dated:

[Insert Name of Authorizing Official],  
[Insert and underline Title of  
Authorizing Official].

[Example:

Troy Justesen,  
Assistant Secretary for  
Vocational and Adult Education.]

## [0.11] APPENDICES

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- [0.11-5] Appendix 5: Format for Proposed [Definition] [Definitions]
- [0.11-6] Appendix 6: Format for Proposed Selection [Criterion] [Criteria]



[O.11-1] APPENDIX 1

Format for a Single Proposed Priority

This notice contains one proposed priority.

[Title, if any, of the proposed priority.]

[Underline. Use initial capitals for all principal words and place a period at the end. Double space.]

Background:

[Place the background and rationale information in the Background section following the title, if any, of the priority and immediately preceding the text of the actual priority. The Background section should explain, in plain language that a non-expert can understand, the reasons for proposing this priority and provide the background information a reader needs to understand the major issues addressed by the priority. Do not repeat information included elsewhere in this notice. Indent the first sentence of each paragraph. Double space.]

Proposed Priority:

[Indent the first sentence of each paragraph. Double space. For assistance in developing a well-written priority, see the INTRODUCTION to this chapter [O.1].]

[O.11-2] APPENDIX 2

Format for Two or More Proposed Priorities  
with a Single Background Section

This notice contains [insert number; e.g., two]  
proposed priorities.

Background:

[If the background and rationale information applies to all of the proposed priorities, include this material in the Background section and insert that section before stating the titles and texts of the various priorities. The Background section should explain, in plain language that a non-expert can understand, the reasons for proposing these priorities and provide the background information a reader needs to understand the major issues addressed by the priorities. Do not repeat information included elsewhere in this notice. Indent the first sentence of each paragraph. Double space.]

Proposed Priority 1--[Title of the proposed priority].  
[Underline. Use initial capitals for all principal words and place a period at the end. Double space.]

[Indent the first sentence of each paragraph. Double space. For assistance in developing a well-written priority, see the INTRODUCTION to this chapter [O.1].]

Proposed Priority 2--[Title of the proposed priority].  
[Underline. Use initial capitals for all principal words and place a period at the end. Double space.]

[Indent the first sentence of each paragraph. Double space. For assistance in developing a well-written priority, see the INTRODUCTION to this chapter [O.1].]

[Continue this format for any additional proposed priorities.]

[O.11-3] APPENDIX 3

Format for Two or More Proposed Priorities  
with Separate Background Sections

This notice contains [insert number; e.g., two]  
proposed priorities.

[If the background and rationale information is different for each priority, place this material in a separate section for each priority, following the title and immediately preceding the text of the priority to which it relates.]

Proposed Priority 1--[Title of the proposed priority].  
[Underline. Use initial capitals for all principal words and place a period at the end. Double space.]

Background:

[The Background section should explain, in plain language that a non-expert can understand, the reasons for proposing this priority and provide the background information a reader needs to understand the major issues addressed by the priority. Do not repeat information included elsewhere in this notice. Indent the first sentence of each paragraph. Double space.]

Proposed Priority:

[Indent the first sentence of each paragraph. Double space. For assistance in developing a well-written priority, see the INTRODUCTION to this chapter [O.1].]

Proposed Priority 2--[Title of the proposed priority].  
[Underline. Use initial capitals for all principal words and place a period at the end. Double space.]

Background:

[Follow instructions for the Background section of Proposed Priority 1 above.]

Proposed Priority:

*[Follow instructions for Proposed Priority 1 above.]*

*[Continue this format for any additional proposed priorities.]*

[O.11-4] APPENDIX 4

Format for Proposed [Requirement] [Requirements]

PROPOSED [REQUIREMENT] [REQUIREMENTS]:

Background:

*[The Background section should explain, in plain language that a non-expert can understand, the reasons for proposing the requirement or requirements and provide the background information a reader needs to understand why the proposed requirement or requirements are necessary and appropriate. Do not repeat information included elsewhere in this notice. Indent the first sentence of each paragraph. Double space.]*

Proposed [Requirement] [Requirements]:

The Assistant Secretary [or title of other principal officer issuing this notice] proposes the following [requirement] [requirements] for this program. We may apply this requirement [one or more of these requirements] in any year in which this program is in effect.

*[Specify each requirement, but do not repeat any requirement included elsewhere in this notice or in the authorizing statute, applicable regulations, or EDGAR. Group related requirements. Use an underlined subheading with a colon for each requirement or group of requirements. Indent the first line of each paragraph. Double space.]*

[EXAMPLES:

Eligibility: To be considered for an award under this competition, an applicant LEA must not have received funds or services under this program in any previous fiscal year.

Funding Restrictions: If you are a grantee, you must use at least 7 percent of your grant funds for each year to support costs associated with local evaluation activities.]

[O.11-5] APPENDIX 5

Format for Proposed [Definition] [Definitions]

PROPOSED [DEFINITION] [DEFINITIONS]:

Background:

*[The Background section should explain, in plain language that a non-expert can understand, the reasons for proposing the definition or definitions and provide the background information a reader needs to understand why the proposed definition or definitions are necessary and appropriate. Do not repeat information included elsewhere in this notice. Indent the first sentence of each paragraph. Double space.]*

Proposed [Definition] [Definitions]:

The Assistant Secretary *[or title of other principal officer issuing this notice]* proposes the following definition *[definitions]* for this program. We may apply this definition *[one or more of these definitions]* in any year in which this program is in effect.

*[Put the terms to be defined in alphabetical order. Indent the first line of each definition. Do not include substantive requirements in a definition. Substantive requirements may be included as part of a proposed priority or in proposed requirements. Do not include terms that are defined in the authorizing statute, applicable regulations, or EDGAR. Underline the word or term you are defining; do not place it in quotation marks. Do not precede a definition by a number or letter paragraph designation. However, it may be necessary to identify subdivisions of a single definition by paragraph designations.]*

[EXAMPLES:

Arts educator means a teacher who works in music, dance, theater, media arts, or visual arts, including folk

arts.

Full-time student means a student who--

- (a) Is a degree candidate;
- (b) Carries a full course load; and
- (c) Is not employed for more than 20 hours a week.]



[O.11-6] APPENDIX 6

Format for Proposed Selection [Criterion] [Criteria]

PROPOSED SELECTION [CRITERION] [CRITERIA]:

Background:

*[The Background section should explain, in plain language that a non-expert can understand, the reasons for proposing the proposed selection criterion or criteria and provide the background information a reader needs to understand why the proposed selection criterion or criteria are necessary and appropriate. Do not repeat information included elsewhere in this notice. Indent the first sentence of each paragraph. Double space.]*

Proposed Selection Criterion [Criteria]:

The Assistant Secretary *[or title of other principal officer issuing this notice]* proposes the following selection criterion *[criteria]* for evaluating an application under this program. We may apply this criterion *[one or more of these criteria]* in any year in which this program is in effect. In the notice inviting applications or the application package or both we will announce the maximum possible points assigned to *[the]* *[each]* criterion.

*[It may be necessary to identify subdivisions of a criterion by paragraph designations. Indent the first sentence of each paragraph. Double space. Do not include points; instead, place those in the application notice or application package or both. Do not include selection criteria from the authorizing statute, applicable regulations, or EDGAR. However, EDGAR (34 CFR 75.210) offers a good example of how to organize selection criteria.]*

(a) [Title of first criterion.] [Text of criterion.  
Letter or number each paragraph. Indent the first sentence  
of each paragraph. Double space.]

(b) [Title of second criterion.] [Text of criterion.  
Letter or number each paragraph. Indent the first sentence  
of each paragraph. Double space.]

[Continue this format for any additional selection  
criteria.]

[Note: In designating paragraphs by letters or numbers,  
please follow the codification order of the Code of Federal  
Regulations; e.g.,

(a), (b), (c), etc.

(1), (2), (3), etc.

(i), (ii), (iii), etc.]

**[EXAMPLE:**

(a) Project design. The Assistant Secretary reviews  
each application to determine to what degree there is a  
clear description of how the objectives of the project  
relate to the purpose of the program.

(b) Plan of operation. The Assistant Secretary  
reviews each application to determine the extent to which--

(1) There is an effective plan of operation that  
ensures proper and effective administration of the project;

(2) The applicant's planned use of its resources and  
personnel is likely to achieve each objective; and

(3) The applicant describes how it will include

eligible project participants who have been traditionally underrepresented, such as--

- (i) Members of racial or ethnic minority groups;
- (ii) Women;
- (iii) Individuals with disabilities; and
- (iv) The elderly.]

**[O.12] EXAMPLE OF A NOTICE OF PROPOSED PRIORITIES,  
REQUIREMENTS, DEFINITIONS, AND SELECTION CRITERIA FOR  
A DISCRETIONARY GRANT PROGRAM**

[Note: This is a fictional notice provided as an example of Chapter O of the Department's Regulatory Quality Manual.]

4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Chapter II

RIN 1810-AE18

Proposed priority, requirements, definitions, and selection criteria--Models of Exemplary, Effective, and Promising Alcohol or Other Drug Abuse Prevention Programs on College Campuses

[CFDA Number: 84.184N.]

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Proposed priority, requirements, definitions, and selection criteria.

SUMMARY: The Assistant Deputy Secretary for Safe and Drug-Free Schools proposes a priority, requirements, definitions, and selection criteria under the Models of Exemplary, Effective, and Promising Alcohol or Other Drug Abuse Prevention Programs on College Campuses grant

competition. The Assistant Deputy Secretary may use the priority, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2008 and later years. The Assistant Deputy Secretary intends to use the priority, requirements, definitions, and selection criteria to provide Federal financial assistance to institutions of higher education (IHEs) with campus-based alcohol or other drug abuse prevention programs that the Department recognizes as exemplary, effective, or promising.

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

ADDRESSES: Address all comments about this notice to Richard Lucey, Jr., U.S. Department of Education, 400 Maryland Avenue, SW., room 3E335, Washington, DC 20202-6450.

If you prefer to send your comments by e-mail, use the following address: richard.lucey@ed.gov. You must include the term "Models of Exemplary, Effective, and Promising Alcohol or Other Drug Abuse Prevention Programs on College Campuses--Comments on FY 2008 Proposed Priority" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Richard Lucey, Jr.

Telephone: (202) 205-5471 or by e-mail:

richard.lucey@ed.gov.

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

SUPPLEMENTARY INFORMATION:

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

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from the proposed priority, requirements, definitions, and selection criteria. Please let us know of any further opportunities we should take to 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 all public comments about the proposed priority, requirements, definitions, and selection criteria in room 3E335, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. 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 purpose of this program is to identify and financially assist the enhancement of exemplary, effective, and promising campus-based alcohol or other drug abuse prevention programs; and to disseminate information about these programs to other colleges and universities where similar efforts may be adopted.

Program Authority: 20 U.S.C. 7131.

PROPOSED PRIORITY:

This notice contains one proposed priority.

Exemplary, Effective, and Promising Alcohol or Other  
Drug Abuse Prevention Programs on College Campuses.

Background:

Alcohol and other drug abuse among college students contributes to a number of academic, social, and health-related problems. According to recent findings from the "Monitoring the Future National Survey Results on Drug Use, 1975-2006," in 2006 approximately 40 percent of the Nation's college students engaged in heavy drinking (defined as five or more drinks in a row in the past two weeks). In addition, 34 percent of college students used an illicit drug in 2006.

Survey data from the Core Institute at Southern Illinois University Carbondale also illustrate the consequences of student drinking. For example, in 2006, as a result of drinking in the year before the survey, more than 32 percent of students reported that they had gotten into an argument or fight; 27 percent drove a car while under the influence; approximately 30 percent missed a class; and almost 16 percent were hurt or injured. Given these statistics, there is a national need to identify



exemplary, effective, and promising programs that reduce alcohol and other drug abuse among college students.

Proposed Priority:

Under this proposed priority the Department provides funding to IHEs that have implemented an exemplary, effective, or promising alcohol or other drug abuse prevention program on their campuses.

In its application, an IHE must--

(a) Describe the program that has for at least two full years been implemented on its campus, including the structure and content of the program, the student population that is targeted by the program, and any unique features of the program;

(b) Provide a detailed theoretical basis for the program's effectiveness;

(c) Provide data to demonstrate the program's impact on the target student population, including evidence of cognitive or behavioral changes, or both, among the target population; and

(d) Consent to a site visit to clarify information in the application and verify evaluation data.

Under this program, the Department recognizes an IHE as having an exemplary, effective, or promising program

based on the recommendation of the two peer reviewers who conduct the site visit. Therefore, note that the Department's selection of an IHE for a site visit does not ensure the Department's recognition of a program as exemplary, effective, or promising.

Recognition Types: Depending on the quality of data provided by the applicant and the recommendation of the site visitors, an applicant may earn one of three levels of recognition:

Level 1 is recognition as an exemplary program.

Level 2 is recognition as an effective program.

An IHE whose program is recognized as either exemplary or effective must--

(a) Within 30 days of receiving an award, submit to the Department a plan to disseminate information about its program to other IHEs;

(b) On approval by the Department, implement its dissemination plan; and

(c) Enhance and further evaluate its program during the project period.

Level 3 is recognition as a promising program. An IHE whose program is recognized as promising must--

(a) Within 30 days of receiving an award, submit to the Department a plan to enhance and further evaluate its program;

(b) On approval by the Department, implement its enhancement and evaluation plan; and

(c) Within 12 months of receiving the award, provide to the Department a report detailing the results of its evaluation.

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:

Background:

Applicants from prior competitions under this grant program and former grantees under the program have suggested that we clarify or modify certain application requirements. These include: eligibility requirements and funding limits for applicants.

We have carefully considered these suggestions and propose several new or modified program requirements.

Because the purpose of this grant program is to identify models of exemplary, effective, and promising alcohol or other drug abuse prevention programs on college campuses, we propose to limit the pool of eligible applicants to IHEs that offer at least an associate or baccalaureate degree. This would be consistent with the

eligibility restriction under the former Alcohol and Other Drug Prevention Models on College Campuses grant program.

To ensure the widest possible distribution of grants, we propose to establish a limitation on the eligibility of IHEs that are recognized for having an exemplary or effective program, and a separate limitation on the eligibility of IHEs that are recognized for having a promising program.

We also propose to limit the amount of funds available to an applicant that is recognized as having an exemplary, effective, or promising program. We believe that the identified maximum amounts are sufficient to cover project-related expenses during the project period.

Proposed Requirements:

The Assistant Deputy Secretary for Safe and Drug-Free Schools proposes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Eligible Applicants: IHEs that offer at least an associate or baccalaureate degree are eligible under this program.

Limitations on Eligibility:

(a) Exemplary or effective programs. An IHE that receives an award for an exemplary or effective program is eligible for another award after three years.

(b) Promising programs.

(1)(i) An IHE that receives an award for a promising program is eligible for a new award for that program when its current grant is no longer active.

(ii) A grant is considered active until the end of the grant's project period, including any extension of that period that extended the grantee's authority to obligate funds.

(2) If a program fails to achieve exemplary or effective status after a second designation as a promising program, the IHE is ineligible to reapply for that program for three years after its second grant is no longer active.

Funding Limits for Applicants:

(a) The maximum amount an applicant may receive for a program recognized as exemplary or effective is \$150,000 for a project period of 18 months, plus indirect costs.

(b) The maximum amount an applicant may receive for a program recognized as promising is \$100,000 for a project period of 12 months, plus indirect costs.

PROPOSED DEFINITIONS:

Background:

Three important terms associated with this program are not defined in section 4121 of the Elementary and Secondary Education Act of 1965, as amended.

Proposed Definitions:

The Assistant Deputy Secretary for Safe and Drug-Free Schools proposes the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

Exemplary program means a program that--

- (a) Has a strong theoretical base; and
- (b) Using a research design of the highest quality,

has a demonstrated effectiveness in--

- (1) Reducing alcohol or other drug abuse among college students; or
- (2) Reducing problems resulting from alcohol or other drug use among college students.

For purposes of this definition of the term "exemplary program"--

- (a) Research design of the highest quality--

(1) Means an experimental design in which students are randomly assigned to participate in a campus-based program being evaluated (treatment group) or not

participate in the campus-based program (control group);  
and

(2) Includes evaluation based on a quasi-experimental design if--

(i) Strong, experimentally determined evidence of the effectiveness of the program exists; and

(ii) The program is implemented on the applicant's campus with fidelity to the research;

(b) Demonstrated effectiveness means the difference in outcomes between the treatment group and the control group; and

(c) Quasi-experimental designs include several designs that attempt to approximate a random assignment design.

Effective program means a program that--

(a) Has a strong theoretical base; and

(b) Has been evaluated, using either an experimental or quasi-experimental research design, with the evaluation results suggesting effectiveness in--

(1) Reducing alcohol or other drug abuse among college students;

(2) Reducing problems resulting from alcohol or other drug use among college students;



- (3) Reducing risk factors;
- (4) Enhancing protective factors; or
- (5) Some combination of the results identified in paragraphs (b)(1) through (b)(4) of this definition.

Promising program means a program--

- (a) That has a strong theoretical base; and
- (b) For which evidence has been obtained, using limited research methods, that the program may--
  - (1) Reduce alcohol or other drug abuse among college students;
  - (2) Reduce problems resulting from alcohol or other drug use among college students;
  - (3) Reduce risk factors;
  - (4) Enhance protective factors; or
  - (5) Result in some combination of the results identified in paragraphs (b)(1) through (b)(4) of this definition.

Limited research methods means methods that include a before and after measurement of the effects of a treatment on a single subject or group of subjects.

PROPOSED SELECTION CRITERIA:

Background:

Since the original Alcohol and Other Drug Prevention Models on College Campuses grant competition in FY 1999, six additional competitions have been held (FY 2000, 2001, 2004, 2005, 2006, and 2007). Our experience with administering these competitions, including feedback from peer reviewers, applicants, and funded grantees, demonstrates the need to use program-specific selection criteria to (1) better recognize programs as exemplary, effective, or promising; and (2) better select applications for funding. We believe the following proposed selection criteria would contribute to our efforts to improve this grant program.

Proposed Selection Criteria:

The Assistant Deputy Secretary for Safe and Drug-Free Schools proposes the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria in any year in which this program is in effect. In the notice inviting applications or the application package or both we will announce the maximum possible points assigned to each criterion.

(a) Significance.

(1) The potential contribution of the program to the development and advancement of theory, knowledge, and practices in the field of study.

(2) The quality of the applicant's plan to disseminate the program in ways that will enable others to use the information or strategies, including evidence of the program's readiness for replication.

(b) Project Design.

(1) The extent to which the design of the program reflects up-to-date knowledge from research and effective practices.

(2) The extent to which the plan to enhance the program reflects up-to-date knowledge from research and effective practices.

(3) The extent to which the goals, objectives, and outcomes to be achieved by the enhancement to the program are clearly specified and measurable.

(c) Project Evaluation.

(1) The extent to which the evaluation data provide evidence of the effectiveness of the program in--

(i) Reducing the use of alcohol, other drugs, or both;

- (ii) Reducing problems resulting from the use of alcohol, other drugs, or both;
- (iii) Reducing risk factors;
- (iv) Enhancing protective factors; or
- (v) Some combination of the results identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this criterion.

(2) The extent to which the methods of evaluation used during the implementation of the program are likely to provide guidance about effective strategies suitable for replication or testing in other settings.

(3) The extent to which the methods of evaluation used during the enhancement of the program are likely to provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Final Priority, Requirements, Definitions, and Selection Criteria:

We will announce the final priority, requirements, definitions, and selection criteria in a notice in the Federal Register. We will determine the final priority, requirements, definitions, and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements,

definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

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

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise

interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

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

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

(1) Propose or adopt regulations only 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 this proposed priority and these proposed requirements, definitions, and selection criteria 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.

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 both 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.

*[Under revised requirements for NPPs, the program office would have included here a brief discussion of identifiable or measurable costs and benefits.]*



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

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

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). 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 Adobe 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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated:

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Deborah A. Price,  
Assistant Deputy Secretary for  
Safe and Drug-Free Schools.

[O.13] TEMPLATE FOR A NOTICE OF PROPOSED  
PRIORITIES, REQUIREMENTS, DEFINITIONS,  
OR SELECTION CRITERIA

*[Note to ED Program Offices: The following template contains the major headings a notice of proposed priorities, requirements, definitions, or selection criteria must include, but the template does not contain all of the headings or boilerplate text that must be included. Please consult the instructions in Chapter O to determine what additional content your notice must contain. Make sure any material you insert is not set in bold or italics.]*

4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Chapter [fill in number in Roman numerals]

*[If applicable]* RIN

Proposed *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [priority] [priorities]  
[requirement] [requirements] [definition] [definitions]  
[selection criterion] [selection criteria]--*[Name of Program. Fill in the name of the program or the name of the program, followed by two hyphens [--] and the name of the competition. Note: The number of characters, including spaces, must not exceed 200.]*

[CFDA Number [Numbers]:           ]

AGENCY: *[Name of Principal Office]*, Department of  
Education.

ACTION: Proposed *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria].

SUMMARY:

DATES:

ADDRESSES:

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION:

*[If applicable]* Executive Summary:

Purpose of This Regulatory Action:

Summary of the Major Provisions of This Regulatory

Action:

Costs and Benefits:

Invitation to Comment:

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 this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please

contact the person [persons] listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program:

Program Authority:

Applicable Program Regulations:

[If applicable] Public Participation [and Governmental Coordination]:

PROPOSED PRIORITY [PRIORITIES]:

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)).

*[If applicable]* PROPOSED REQUIREMENT [REQUIREMENTS]:

*[If applicable]* PROPOSED DEFINITION [DEFINITIONS]:

*[If applicable]* PROPOSED SELECTION CRITERION [CRITERIA]:

Final *[select appropriate term or terms from the following; use commas and insert "and" before the last word or words in your series:]* [priority] [priorities] [requirement] [requirements] [definition] [definitions] [selection criterion] [selection criteria]:

We will announce the final *[select appropriate term or terms]* in a notice in the Federal Register. We will determine the final *[select appropriate term or terms]* after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In

any year in which we choose to use this [one or more of these] *[select appropriate term or terms]*, we invite applications through a notice in the Federal Register.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this proposed regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). *[Continue as appropriate.]*

Intergovernmental Review:

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person [persons] listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). 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 Adobe 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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated:

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## Chapter J: HOW DO I PREPARE AN APPLICATION NOTICE FOR A DISCRETIONARY GRANT PROGRAM?

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(Revised, June 2016)

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## INTRODUCTION

This chapter contains instructions for preparing an application notice for a discretionary grant program, including cooperative agreements. The primary purpose of an application notice (sometimes referred to as a notice inviting applications (NIA) or a closing date notice) is to announce a deadline for applications for new awards, preferably under a single program.

### General Information

To announce a competition for new grant awards, our Department publishes an application notice in the Federal Register. We do not publish an application notice for noncompeting continuation awards because applicants for those awards are notified individually of deadlines and other procedural requirements.

We publish an application notice to--

- Notify potential applicants and other interested parties about the availability of new grant awards and establish a deadline date for the transmittal of applications; and
- Provide enough information to enable a potential applicant to decide whether to request an application package.

This chapter contains five sections: (1) this introduction, (2) instructions for preparing an application notice, (3) appendices containing materials you insert into the notice regarding funding priorities and the procedures for submitting applications electronically or by mail or hand delivery, (4) a sample application notice, and (5) an application notice template with minimal instructions.

### Requirements of Format, Style, and Standard Language

This chapter tells you what information you must include in an application notice and how you must present it. Included is standard language required by the Department or the Office of the Federal Register. The format described in this chapter conforms to the standard format--for Federal agencies that award discretionary grants, including cooperative agreements--prescribed by the Office of Management and Budget (OMB) in a final policy directive published in the Federal Register on June 23, 2003 (68 FR 37370).

The United States Government Printing Office (GPO) also mandates many of the style requirements in these instructions. The GPO Style Manual, which you can download in PDF, is available at the following Internet address:  
[www.gpoaccess.gov/stylemanual/browse.html](http://www.gpoaccess.gov/stylemanual/browse.html).

### Technical Requirements

- Double-space the notice.

- Use 12-point Courier New or Times New Roman font.
- Never type in bold or italics.
- Underline only as shown in the instructions.
- Except as otherwise indicated in the instructions, indent (five spaces) the first line of each paragraph of text.
- Indent the first line of any bullet five spaces and leave two spaces after the bullet. Do not use the automatic bulleting function in Microsoft Word.
- Leave a 1.5-inch margin on the left, a 1-inch margin on the right, and a 1-inch margin at the top and bottom.
- Justify the left margin only.
- Begin numbering at the center bottom of the first page in Arabic numerals ("1").
- Use initial capitals and underline the term Federal Register unless you are asking the Office of the Federal Register to compute a date, in which case type FEDERAL REGISTER in all capitals without underlining.

**Example:**

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

**Material inside Square Brackets**

In this chapter bold-faced, italicized material inside italicized square brackets *[ ]* is instructions to the drafter of the notice; do not include this material in your notice. The other material inside non-italicized square brackets [ ] is alternative wording intended for use, as appropriate, in your notice.

**Delegation of Authority and Referring to the Department**

Under a delegated authority a principal officer other than the Secretary (such as an Assistant Secretary or a Director of a principal office) signs an application notice. However, we recommend that you use the title of this principal officer only if the title is necessary (such as in the signature block). In keeping with the Presidential memorandum on "Plain Language in Governmental Writing," we prefer that you use the pronoun "we" or "us" in referring to the Department.

**Differences between an Application Notice and an Application Package**

The application notice and the application package are separate documents and should not be confused. As described below, the application notice is a simpler document and contains less information than the application package.

You publish an application notice in the Federal Register. You do not publish an application package in the Federal Register; rather, it is a separate document that you mail or make available electronically to potential applicants.

The application notice announces a competition for grant awards and establishes a deadline date for the transmittal of applications. It contains other information, including significant dates related to the competition, fiscal information, and estimates regarding the number and amount of awards.

**Note:** If you are referring in your application notice to a notice of final priorities, requirements, etc., we encourage you simply to reference these items, rather than repeat them, in the application notice.

The application package includes the forms that an applicant must submit and the instructions for completing and submitting those forms. At the discretion of your office, the package also may include program-related information such as definitions, selection criteria, and the backgrounds, as well as texts, of funding priorities that you previously published or that are derived from program regulations or statute. The package may contain a copy of the program regulations, if any; portions of the authorizing statute; and even a copy of the application notice.

As with other regulatory documents, you submit an application notice to the Division of Regulatory Services (DRS) of the Office of the General Counsel for clearance and publication in the Federal Register.

You do not submit an application package to DRS. Application packages must have the approval of OMB under the Paperwork Reduction Act of 1995 and must be in effect at least from the time the package is made available through the deadline date for the transmittal of applications. You obtain OMB approval of application packages and other information collections through the Regulatory Information Management Services of the Office of Management.

#### **For Further Information**

If you have questions regarding these instructions, please consult the Regulations Quality Officer or the Program Specialist for your program or document, both of whom are in DRS. The DRS telephone number is (202) 401-8300.

**INSTRUCTIONS FOR PREPARING AN APPLICATION NOTICE  
FOR A DISCRETIONARY GRANT PROGRAM**

4000-01-U

DEPARTMENT OF EDUCATION

Applications for New Awards; *[Fill in the name of the program or the name of the program followed by two hyphens [--] and the name of the competition (this is often the title of a priority, if a priority applies to this particular competition). Use initial capitals only; do not end with a period.]*

AGENCY: *[Name of Principal Office]*, Department of Education.

ACTION: Notice.

Overview Information:

*[Name of Program. Same as above--with name of competition, if applicable. Use initial capitals only; do not end with a period.]*

Notice inviting applications for new awards for fiscal year (FY) *[fill in year]*.

Catalog of Federal Domestic Assistance (CFDA) Number [Numbers]: *[Fill in the number or numbers, including suffix letter or letters, if any. We discourage use of a single notice for multiple competitions that are not under the same program].*

Dates:

Applications Available: *[Fill in date]. [Or insert the following instructions to the*

*Office of the Federal Register: [INSERT DATE OF PUBLICATION IN THE*

*FEDERAL REGISTER]. [Or] [INSERT DATE [add the appropriate number; e.g., 10]*

*DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].]*

*[If applicable]Deadline for Notice of Intent to Apply: [Fill in date]. [Or insert the*

*following instructions to the Office of the Federal Register: [INSERT DATE [add the*

*appropriate number; e.g., 10] DAYS AFTER DATE OF PUBLICATION IN THE*

*FEDERAL REGISTER].]*

*[If applicable]Deadline for Transmittal of Pre-Applications: [Fill in date]. [Or insert the following instructions to the Office of the Federal Register: [INSERT DATE [add the appropriate number; e.g., 10] DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].]*

*[If applicable]Date of Pre-Application Meeting: [Fill in date]. [Or insert the following instructions to the Office of the Federal Register: [INSERT DATE [add the appropriate number; e.g., 45] DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].]*

*Deadline for Transmittal of Applications: [Fill in date]. [Or insert the following instructions to the Office of the Federal Register: [INSERT DATE [add the appropriate number; e.g., 45] DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].]*

*[If 34 CFR part 79 applies to your program (see §79.3), exercise one of the following options for the Deadline for Intergovernmental Review. Note: This date must be 60 calendar days after the date for transmittal of applications. Please consider whether adding 60 days to the process is feasible under the timeline for this particular competition. If it is not, you may apply to the Office of Communications and Outreach for a partial or complete waiver of this standard 60-day period.]*

*[Option 1: If you are not waiving the standard 60-day intergovernmental review period, use the following:]*

*Deadline for Intergovernmental Review: [Fill in date]. [Or insert the following instructions to the Office of the Federal Register: [INSERT DATE [add 60 to the number of days you have asked the Office of the Federal Register to compute for the Deadline for Transmittal of Applications] DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].]*

*[EXAMPLE:*

*You have asked the Office of the Federal Register to compute the Deadline for Transmittal of Applications by inserting 45 days after the date of publication in the Federal Register. You are not waiving the standard 60-day intergovernmental review period. You would add 60 days to the original 45 days, insert here 105 as the number of days after the date of publication in the Federal Register, and, thus, insert the following instructions to the Office of the Federal Register: [INSERT DATE 105*

*DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]./*

*[Option 2: If you are partially waiving the standard 60-day intergovernmental review period, use the following:]*

*Deadline for Intergovernmental Review: [Fill in date]. [Or insert the following instructions to the Office of the Federal Register: [INSERT DATE [add the appropriate number—for example, 20—to the number of days you have asked the Federal Register to add in computing the Deadline for the Transmittal of Applications—for example, 45] DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]./*

**[EXAMPLE:**

*You have asked the Office of the Federal Register to compute the Deadline for Transmittal of Applications by inserting 45 days after the date of publication in the Federal Register. You are waiving the standard 60-day intergovernmental review period and allowing only 20 days for that review. You would add 20 to the original 45 days, insert here 65 as the number of days after the date of publication in the Federal Register, and, thus, insert the following instructions to the Office of the Federal Register: [INSERT DATE 65 DAYS AFTER DATE OF PUBLICATION IN*

*THE FEDERAL REGISTER]./*

*[Option 3: If you are completely waiving the standard 60-day intergovernmental review period, omit the heading Deadline for Intergovernmental Review and any date.]*

**Full Text of Announcement**

**I. Funding Opportunity Description**

**Purpose of Program:** *[Summarize the purpose of the program (not the priorities, if any) in one or two sentences. You do not have to repeat exactly the purpose stated in the authorizing statute or in any regulations for the program].*

*[Use the following heading and section only if you are basing this competition on a priority or priorities.]*

Priority [Priorities]: *[Here is where you insert any priorities you are including or referencing in this application notice. Instructions and formats for these priorities are in Appendices I through 8 to this chapter, as follows:*

*Appendix 1: General Instructions for Including Priorities in Application Notices*

*Appendix 2: Format for a Priority or Priorities from a Notice of Final Priority or Priorities Published Elsewhere in the Same Issue of the Federal Register*

*Appendix 3: Format for a Priority or Priorities from a Notice of Final Priority or Priorities Published in a Previous Issue of the Federal Register*

*Appendix 4: Format for a Priority or Priorities Selected from Regulations*

*Appendix 5: Format for a Priority or Priorities Selected from the Statute for This Program*

*Appendix 6: Format for an Invitational Priority or Invitational Priorities Published in This Notice and Not Included within Another Priority*

*Appendix 7: Format for a Priority or Priorities Established through a Waiver of Proposed Rulemaking under Section 437(d)(1) of the General Education Provisions Act (GEPA)*

*Note: If you are waiving proposed rulemaking under the Individuals with Disabilities Education Act, as amended (IDEA), please contact your Program Specialist for the appropriate format and language.*

*Appendix 8: Format for a Priority within Another Priority]*

*[If (a) you are using for this program or competition definitions or requirements--other than priorities or selection criteria--established through a notice subject to rulemaking (or for which you are waiving rulemaking under section 437(d)(1) of GEPA) and (b) you want to repeat (or must include) those definitions and requirements in this notice, place the definitions and requirements here. Use appropriate headings.]*

*[If you are repeating the definitions and requirements, use the exact language from the notice of final priority [priorities], requirement [requirements], etc.]*

*[If you are stating the definitions and requirements under a waiver of rulemaking, make sure they are clear and complete and include the requisite waiver language at the end of Appendix 7. Please note that selection criteria go in section V. 1. of this notice.]*



Program Authority: *[Fill in title number; e.g., 20] U.S.C. [fill in section number].*

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts *[list, as applicable]* 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. *[if applicable]* (d) The regulations for this program in 34 CFR part *[fill in part number]. [if applicable]* (e) The regulations in *[fill in chapter number; e.g., 34]* CFR part *[fill in any additional part number or numbers]. [if applicable]* (f) The notice of final *[choose the appropriate word or words (e.g., priority [priorities], requirement [requirements], etc.) to reflect the actual name of the notice to which you are referring]*, published elsewhere in this issue of the Federal Register *[or]* published in the Federal Register on *[insert date]* *([insert FR cite; e.g., 73 FR 64078])*.

*[If necessary, insert here any other information a reader must know about the applicability of EDGAR.]*

**Example 1:** *If Indian tribes are among two or more types of entities eligible for awards, write this:*

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Example 2:** *If institutions of higher education are among two or more types of entities eligible for awards, write this:*

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only./

## II. Award Information

**Type of Award:** *[State the type of award; e.g., discretionary grants or cooperative agreements or discretionary grants redistributed as fellowships to individual beneficiaries].*

**Estimated Available Funds:** *[Choose from one of the following three options, depending on the status of the Department's appropriations:]*

**[Option 1:** *Fill in dollar amount].*

*[or]*

**[Option 2:** *If the Administration has requested funds, but Congress has not yet approved the funds, use either of the following two paragraphs, as applicable.]*

The Administration has requested \$[fill in dollar amount] for new awards for this program for FY [fill in year]. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process *[insert, if applicable: before the end of the current fiscal year,]* if Congress appropriates funds for this program.

*[or]*

The Administration has requested \$[fill in dollar amount] for awards for the *[insert name of program]* program for FY [fill in year], of which we intend to use an estimated \$[fill in dollar amount] for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process *[insert, if applicable: before the end of the current fiscal year,]* if Congress appropriates funds for this program.

*[or]*

**[Option 3:** *If the Administration has not requested any funds, use the following paragraph:]*

The Administration's budget request for FY *[fill in year]* does not include funds for this program. However, we are inviting applications to allow enough time to complete the grant process *[insert, if applicable: before the end of the current fiscal year,]* if Congress appropriates funds for this program.

*[No matter which option you have selected, continue with the following material if there is a possibility that this program will use the funding slate from this grant competition to make awards in subsequent fiscal years:]*

Contingent upon the availability of funds and the quality of applications, we may make additional awards in [FY *[insert the subsequent fiscal year]*][subsequent years] from the list of unfunded applications from this competition.

Estimated Range of Awards: *[Fill in dollar amounts, unless the program intends to make only one award. In that case, omit the heading and do not fill in an amount.]*

Estimated Average Size of Awards: *[Fill in dollar amount, unless the program intends to make only one award. In that case, omit the heading and do not fill in an amount.]*

*[Unless otherwise required by the authorizing statute or regulations for this program, the following paragraph, Maximum Award, is optional. However, if you use it, you must enforce it. If you do not use it, omit the heading.]*

Maximum Award: We will reject any application that proposes a budget exceeding \$*[fill in maximum amount from Estimated Range of Awards]* for a single budget period of *[fill in number; e.g., 12]* months.

Estimated Number of Awards: *[Fill in number]*.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to *[fill in number]* months.

### III. Eligibility Information

1. Eligible Applicants: *[The list of eligible applicants must be consistent with the applicable statute and regulations.]*

2. a. Cost Sharing or Matching: *[If this program or competition requires cost sharing or matching, reference the applicable section of the program regulations or authorizing statute and other relevant information, as appropriate.]*

*[If this program or competition does not require cost sharing or matching, insert the following sentence:]*

This program [competition] does not require cost sharing or matching.

*[If this program or competition involves supplement-not-supplant requirements, insert the following:]*

b. Supplement-Not-Supplant: This program [competition] involves supplement-not-supplant funding requirements.

*[Insert here information on these requirements, including the appropriate regulatory or statutory reference. If there are no supplement-not-supplant requirements, omit this section and its title and do not place the letter a. in front of Cost Sharing or Matching.]*

*[If applicable:]* 3. Eligible Subgrantees: (a) Under 34 CFR 75.708(b) and (c) a grantee may award subgrants--to directly carry out project activities described in its application--to the following types of entities: *[list types of entities; e.g., local educational agencies, State educational agencies, institutions of higher education, nonprofit organizations]*.

(b) *[Select Option 1 or Option 2.]*

*[Option 1:]* The grantee may award subgrants to entities it has identified in an approved application.

*[Option 2:]* The grantee may award subgrants to entities it selects through a competition under procedures established by the grantee.

3. [4.] Other: *[If applicable, use this section to state any other eligibility criteria or to describe any other factors that would make a potential applicant otherwise ineligible. Also use this section to address any eligibility criteria for program participants (e.g., fellows) other than award recipients. You may reference applicable regulatory or statutory provisions without repeating them here. If this section does not apply, omit the heading.]*

#### IV. Application and Submission Information

1. Address to Request Application Package: *[Select the appropriate option to indicate how potential applicants can obtain an application package. You must include, at a minimum, a mailing address and a telephone number, and you must make provision for individuals who use a telecommunications device for the deaf (TDD) or a text telephone (TTY).]*

*[Option 1: Use the following paragraphs if the public can obtain the application package directly from the program office:]*

*[Insert name of person], U.S. Department of Education, 400 Maryland Avenue, SW.*

*[which includes Potomac Center Plaza], room [fill in room number and, if necessary,*

*building designation; e.g., 6126, Potomac Center Plaza], Washington, DC 20202 -[fill*

*in last four digits of ZIP Code]. Telephone: (202) [fill in number][.] [Optional:] [or by*

*email: [insert address, as in the following example: sally.rogers@ed.gov].]*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call *[include either of the following:]* [the TDD/TTY number at (202) *[fill in number].]* *[or, if a TDD/TTY number is not available, use the following:]* [the Federal Relay Service (FRS), toll free, at 1-800-877-8339.]

*[or]*

*[Option 2: Use the following paragraphs if your office is disseminating the application package for this program or competition through the Education Publications Center (ED Pubs) only. Your office remains the source for further information, but the contact for obtaining an application package is ED Pubs.]*

ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304.

Telephone, toll free: 1-877-433-7827. FAX: (703) 605-6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1-877-576-7734.

You can contact ED Pubs at its Web site, also: [www.EDPubs.gov](http://www.EDPubs.gov) or at its email address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov).

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number [numbers] *[fill in number or numbers, including suffix letter or letters, if any]*.

*[or]*

***[Option 3: Use the following paragraphs if your office is disseminating the application package for this program or competition through both ED Pubs and the Internet. Your office remains the source for further information, but the contact for obtaining an application package is ED Pubs and the Department's Web site.]***

You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *[insert address]*. To obtain a copy from ED Pubs, write, fax, or call: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1-877-433-7827. FAX: (703) 605-6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1-877-576-7734.

You can contact ED Pubs at its Web site, also: [www.EDPubs.gov](http://www.EDPubs.gov) or at its email address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov).

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number [numbers] *[fill in number or numbers, including suffix letter or letters, if any]*.

*[and]*

***[After selecting Option 1, 2, or 3 insert the following:]***

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) *[If you have selected Option 1, use the following:]* [by contacting the program contact person listed in this section.] *[If you have selected Option 2 or Option 3, use the following:]* [by

contacting the person or team listed under Accessible Format in section VIII of this notice.]

2. [2. a., if you use 2. b.] Content and Form of Application Submission:

Requirements concerning the content and form of an application, together with the forms you must submit, are in the application package for this program [competition].

*[If you provide information, other than dates (which appear elsewhere), regarding a notice of intent to apply, a pre-application, or both, place the heading and appropriate material here as follows:]*

Notice of Intent to Apply: *[Insert information]*.

Pre-Application: *[Insert information]*.

*[Page Limit: If your office decides to establish a page limit on applications, you may either recommend a page limit or make it mandatory. If you recommend the limit, you also may want to recommend standards for font size, margins, spacing, etc.; but you cannot require these standards. If the limit is mandatory, you may set your own standards for font size, margins, spacing, and whether all or certain portions of the application are subject to the page limit. You may also establish an equivalency standard.]*

*[The following example provides suggested page-limit language. This is only an example; accordingly, you may revise the language to meet the needs of your program or competition.]*

Example:

Page Limit: The application narrative *[optional: (Part III of the application)]* is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must [We recommend that you] limit the application narrative [Part III] to *[optional: the equivalent of]* no more than *[insert number]* pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. [An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.]

***[In the following paragraph, keep in mind that this is only an example and that the reference to part numbers is optional.]***

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative [Part III].

***[If your page limit is mandatory and includes specific standards for font size, etc., you must conclude this section with either of the following options:]***

**[Option 1:]**

We will reject your application if you exceed the page limit[.] ***[add the following if you provide for an equivalency standard: or if you apply other standards and exceed the equivalent of the page limit.]***

***[or]***

**[Option 2:]**

Our reviewers will not read any pages of your application that exceed the page limit[.] ***[add the following if you provide for an equivalency standard: or exceed the***



equivalent of the page limit if you apply other standards./

*[The following is optional:]*

b. Submission of Proprietary Information: Given the types of projects that may be proposed in applications for the *[name of program or competition]*, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define “business information” and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. §552, as amended).

*[State the reason an applicant may wish to request confidentiality of business information. For example: Because we plan to make successful applications available to the public, [or] Because, consistent with the process followed in the FY 2010 i3 competition, we plan to post on our Web site the application narrative sections of all Scale-up applications,]* you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under “Other Attachments Form,” please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

### 3. Submission Dates and Times:

Applications Available: *[Repeat here the information you provided for Applications Available in the Overview Information section of this notice].*

*[If applicable]*Deadline for Notice of Intent to Apply: *[Repeat here the information you provided for Deadline for Notice of Intent to Apply in the Overview Information section of this notice].*

*[If applicable]Deadline for Transmittal of Pre-Applications: [Repeat here the information you provided for Deadline for Transmittal of Pre-Applications in the Overview Information section of this notice].*

*[If applicable]Date of Pre-Application Meeting: [Fill in date and any instructions].*

*Deadline for Transmittal of Applications: [Repeat here the information you provided for Deadline for Transmittal of Applications in the Overview Information section of this notice].*

*[Select the appropriate option to indicate how an applicant must submit its application; e.g., electronically, by mail, etc. Resume with the final sentences for this section that appear after Option 3.]*

*[Option 1: If this program or competition accepts, but does not require, the electronic submission of applications through G5 or Grants.gov, insert the following:]*

Applications for grants under this program [competition] may be submitted electronically using [G5, the Department's grant management system, accessible through the Department's G5 site] [the Grants.gov Apply site (Grants.gov)], or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to Other Submission Requirements in section IV of this notice.

*[or]*

*[Option 2: If this program or competition requires the electronic submission of applications through G5 or Grants.gov, insert the following:]*

Applications for grants under this program [competition] must be submitted electronically using [G5, the Department's grant management system, accessible through the Department's G5 site] [the Grants.gov Apply site (Grants.gov)]. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic

submission requirement, please refer to Other Submission Requirements in section IV of this notice.

*[or]*

***[Option 3: If this program or competition does not accept the electronic submission of applications, insert the following:]***

Applications for grants under this program [competition] must be submitted in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application by mail or hand delivery, please refer to Other Submission Requirements in section IV of this notice.

***[Please note: No matter which option you have selected, among Options 1-3, continue with the following sentences:]***

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under For Further Information Contact in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

***[If applicable] Deadline for Intergovernmental Review: [Repeat here the information you provided for Deadline for Intergovernmental Review in the Overview Information section of this notice; that is, a specific date or instructions to the Office of the Federal Register to compute a date].***

4. Intergovernmental Review: This program [competition] is [is not] subject to Executive Order 12372 and the regulations in 34 CFR part 79. *[If this program or competition is subject to this Executive order, select one of the following options:]*

*[Option 1: If you are not partially or completely waiving the 60-day review period, add the following:]* Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program [competition].

*[Option 2: If you are partially waiving the 60-day review period, add the following:]* Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program [competition]. Please note that, under 34 CFR 79.8(a), we have shortened the standard 60-day intergovernmental review period in order to make an award [awards] by the end of FY *[fill in year]*.

*[Option 3: If you are completely waiving the 60-day review period, add the following:]* However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make an award [awards] by the end of FY *[fill in year]*.

5. Funding Restrictions: *[Use the following sentence if applicable:* We specify unallowable costs in 34 CFR *[fill in section number]*. *[The following sentence is required:]* We reference [additional] regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management: To do business with the Department of Education, you must--

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

- b. Register both your DUNS number and TIN with the System for Award Management (SAM), the Government's primary registrant database;
- c. Provide your DUNS number and TIN on your application; and
- d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: <http://fedgov.dnb.com/webform>. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is

correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at [www.SAM.gov](http://www.SAM.gov). To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: <http://www2.ed.gov/fund/grant/apply/sam-faqs.html>.

*[Add the following paragraph if this program or competition requires or accepts electronic submission of applications through Grants.gov:]*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: [www.grants.gov/web/grants/register.html](http://www.grants.gov/web/grants/register.html).

#### 7. Other Submission Requirements:

*[If this program or competition accepts, but does not require, the electronic submission of applications through G5, insert the material from Appendix 9. If this program or competition requires the electronic submission of applications through G5, insert the material from Appendix 10. If this program or competition accepts, but does not require, the electronic submission of applications through Grants.gov, insert the material from Appendix 11. If this program or competition requires the electronic submission of applications through Grants.gov, insert the material from Appendix 12. If this program or competition does not accept the electronic submission of applications, insert the material from Appendix 13.]*

#### V. Application Review Information

1. Selection Criteria: The selection criteria for this program [competition] are [in] [from] *[cite the appropriate section or sections of the program statute, program regulations, or EDGAR; or cite the notice of final priority [priorities], requirement [requirements], etc.]* and [are listed in the application package.] *[or]* [are as follows: *[list*

*each criterion with its title, any sub-criteria, and, if applicable, maximum possible points, weights, or percentages/.*]

2. Review and Selection Process: We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

*[Add if applicable:]* Additional factors we consider in selecting an application for an award are [in *[cite the appropriate section or sections of the program statute or regulations].*] *[or]* [as follows: *[list each additional factor; e.g., geographical distribution].*]

3. Risk Assessment and Special Conditions: Consistent with 2 CFR 200.205, before awarding grants under this program [competition] the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the

standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. Integrity and Performance System: If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards--that is, the risk posed by you as an applicant--before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

#### VI. Award Administration Information

1. Award Notices: If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.



If your application is not evaluated or not selected for funding, we notify you.

2. Administrative and National Policy Requirements: We identify administrative and national policy requirements in the application package and reference these and other requirements in the Applicable Regulations section of this notice.

We reference the regulations outlining the terms and conditions of an award in the Applicable Regulations section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. Reporting: (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to [www.ed.gov/fund/grant/apply/appforms/appforms.html](http://www.ed.gov/fund/grant/apply/appforms/appforms.html).

*[Optional:]*(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. Performance Measures: *[After consulting with Budget Service and your program attorney, insert information about performance measures for this program or competition.]*

5. Continuation Awards: In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

#### VII. Agency Contact [Contacts]

For Further Information Contact: *[Insert name of person]*, U.S. Department of Education, 400 Maryland Avenue, SW. *[which includes Potomac Center Plaza]*, room *[fill in room number and, if necessary, building designation; e.g., 11108, Potomac Center Plaza]*, Washington, DC 20202 -*[fill in last four digits of ZIP Code]*. Telephone: (202) *[fill in number]*[.] *[Optional:]* [or by email: *[insert address, as in the following example: cindy.cooley@ed.gov].*]

If you use a TDD or a TTY, call *[include either of the following:]* [the TDD/TTY number at (202) *[fill in number]*.] *[or, if a TDD/TTY number is not available, use the following:]* [the FRS, toll free, at 1-800-877-8339.]

## VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) [on request to the program contact person [persons] listed under For Further Information Contact in section VII of this notice.] *[or if this is an OSERS program, you may substitute the following, if appropriate:* [by contacting the Management Support Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5113, Potomac Center Plaza, Washington, DC 20202-2500. Telephone: (202) 245-7363. If you use a TDD or a TTY, call the FRS, toll free, at 1-800-877-8339.]]

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). 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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

*[Note: At least one line of text must appear on the page containing the signature of the Assistant Secretary or other authorized principal officer. Do not date this document. Type the name and title of the signing official in the following format.]*

Dated:

---

*[Insert Name of Authorizing Official],  
[Insert and underline Title of  
Authorizing Official].*

*[Example:*

---

John H. Jones,  
Assistant Secretary for Special Education and  
Rehabilitative Services.]

## APPENDICES

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## APPENDIX 1

### General Instructions for Including Priorities in Application Notices

*EDGAR (34 CFR 75.105) provides for three types of priorities: absolute, competitive preference, and invitational. The effect of each type of priority is different.*

*An absolute priority may include one or more competitive preference or invitational priorities, and a competitive preference priority may include one or more invitational priorities. The format for a notice including one or more priorities within another priority is provided in Appendix 8.*

*You cannot use an absolute or competitive preference priority in your application notice unless (1) the priority is authorized by statute or has been adopted according to rulemaking procedures (see 34 CFR 75.105); or (2) you are waiving proposed rulemaking under section 437(d)(1) of GEPA for the first competition under a new or substantially revised program authority.*

*Note: OSEP programs also may waive rulemaking with respect to certain competitions under the Individuals with Disabilities Education Act, as amended (IDEA).*

*An invitational priority is not subject to rulemaking, and you may announce it in your application notice without publishing a notice of proposed priority or a notice of final priority. The invitational priority can stand on its own or you can include it within an absolute or competitive preference priority.*

*The formats for priorities differ depending on the source of the priority or priorities. You can select priorities from five sources:*

- A notice of final priority or priorities that you are publishing in the same issue of the Federal Register as this application notice. (See Appendix 2)*
- A notice of final priority or priorities that you published previously in the Federal Register and that applies to the fiscal year in which this competition will occur. (See Appendix 3)*
- The regulations, if any, for this program. (See Appendix 4)*
- The statute authorizing this program. (See Appendix 5)*
- This application notice--*  
*--In the case of an invitational priority or priorities (see Appendix 6); or*

*--In the case of a waiver of proposed rulemaking under section 437(d)(1) of GEPA (see Appendix 7). In the case of a waiver of proposed rulemaking under IDEA, please contact your Program Specialist for the appropriate format and language.*

*Note: For the format for priorities selected from more than one source (e.g., from the program statute, regulations, or a previous issue of the Federal Register), please contact your Program Specialist.*

## APPENDIX 2

### **Format for a Priority or Priorities from a Notice of Final Priority or Priorities Published Elsewhere in the Same Issue of the Federal Register**

***[I. Introduction: Regardless of the type of priority, use this introduction:]***

This priority is [These priorities are] from the notice of final priority [priorities] for this program published elsewhere in this issue of the Federal Register.

***[II. Type of Priority: State the type of priority and select the appropriate paragraph, as follows:]***

***[If the priority or priorities are absolute, use this heading and paragraph. Then go to III. Text of Priority [Priorities]:]***

**Absolute Priority [Priorities]:** For FY [list fiscal year] [if applicable, insert the following: and any subsequent year in which we make awards from the list of unfunded applications from this competition], this priority is an absolute priority [these priorities are absolute priorities]. Under 34 CFR 75.105(c)(3) we consider only applications that meet [this priority] [one or more of these priorities] [these priorities].

***[If the priority or priorities are competitive preference and you award additional points, use this heading and paragraph. Then go to III. Text of Priority [Priorities]:]***

**Competitive Preference Priority [Priorities]:** For FY [list fiscal year] [if applicable, insert the following: and any subsequent year in which we make awards from the list of unfunded applications from this competition], this priority is a competitive preference priority [these priorities are competitive preference priorities]. Under 34 CFR 75.105(c)(2)(i) [if you award points depending on how well an application meets the priority or priorities, use this: we award up to an additional [fill in the number; e.g., 10] points to an application, depending on how well the application meets [this priority] [one or more of these priorities] [these priorities].] [or if you automatically award points to



*an application that addresses the priority or priorities, use this:* we award an additional [fill in the number; e.g., 10] points to an application that meets [this priority] [one or more of these priorities] [these priorities].]

*[If the priority or priorities are competitive preference and you do not award additional points, use this heading and paragraph. Then go to III. Text of Priority [Priorities]:]*

Competitive Preference Priority [Priorities]: For FY [list fiscal year] [if applicable, insert the following: and any subsequent year in which we make awards from the list of unfunded applications from this competition], this priority is a competitive preference priority [these priorities are competitive preference priorities]. Under 34 CFR 75.105(c)(2)(ii) we give preference to an application that meets [this priority] [one or more of these priorities] [these priorities] over an application of comparable merit that does not meet the [priority] [priorities].

*[If the priority or priorities are invitational, use this heading and paragraph. Then go to III. Text of Priority [Priorities]:]*

Invitational Priority [Priorities]: For FY [list fiscal year] [if applicable, insert the following: and any subsequent year in which we make awards from the list of unfunded applications from this competition], this priority is an invitational priority [these priorities are invitational priorities]. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority [these invitational priorities] a competitive or absolute preference over other applications.

*[III. Text of Priority [Priorities]: Regardless of the type of priority, if you are using all of the priorities from the notice of final priorities, you do not need to provide any further information here but you may want to list the titles of the priorities; if you are not using all of the priorities from the notice of final priorities, continue as follows:]*

This priority is [These priorities are]:

***[List each priority by title or number. Do not include any text.]***

## APPENDIX 3

### **Format for a Priority or Priorities from a Notice of Final Priority or Priorities Published in a Previous Issue of the Federal Register**

*[I. Introduction: Regardless of the type of priority, use this introduction:]*

This priority is [These priorities are] from the notice of final priority [priorities] *[or insert title of notice (e.g., notice of final priorities, requirements, etc.)]* for this program published in the Federal Register on *[fill in date]* (*[fill in FR citation; e.g., 73 FR 48346]*).

*[II. Type of Priority: State the type of priority and select the appropriate paragraph, as follows:]*

*[If the priority or priorities are absolute, use this heading and paragraph. Then go to III. Text of Priority [Priorities]:]*

Absolute Priority [Priorities]: For FY *[list fiscal year]* *[if applicable, insert the following:* and any subsequent year in which we make awards from the list of unfunded applications from this competition], this priority is an absolute priority [these priorities are absolute priorities]. Under 34 CFR 75.105(c)(3) we consider only applications that meet [this priority] [one or more of these priorities] [these priorities].

*[If the priority or priorities are competitive preference and you award additional points, use this heading and paragraph. Then go to III. Text of Priority [Priorities]:]*

Competitive Preference Priority [Priorities]: For FY *[list fiscal year]* *[if applicable, insert the following:* and any subsequent year in which we make awards from the list of unfunded applications from this competition], this priority is a competitive preference priority [these priorities are competitive preference priorities]. Under 34 CFR 75.105(c)(2)(i) *[if you award points depending on how well an application meets the priority or priorities, use this:* we award up to an additional *[fill in the number; e.g., 10]*

points to an application, depending on how well the application meets [this priority] [one or more of these priorities] [these priorities]./ *[or if you automatically award points to an application that addresses the priority or priorities, use this: we award an additional [fill in the number; e.g., 10] points to an application that meets [this priority] [one or more of these priorities] [these priorities].]*

*[If the priority or priorities are competitive preference and you do not award additional points, use this heading and paragraph. Then go to III. Text of Priority [Priorities]:]*

Competitive Preference Priority [Priorities]: For FY [list fiscal year] [if applicable, insert the following: and any subsequent year in which we make awards from the list of unfunded applications from this competition], this priority is a competitive preference priority [these priorities are competitive preference priorities]. Under 34 CFR 75.105(c)(2)(ii) we give preference to an application that meets [this priority] [one or more of these priorities] [these priorities] over an application of comparable merit that does not meet the [priority] [priorities].

*[If the priority or priorities are invitational, use this heading and paragraph. Then go to III. Text of Priority [Priorities]:]*

Invitational Priority [Priorities]: For FY [list fiscal year] [if applicable, insert the following: and any subsequent year in which we make awards from the list of unfunded applications from this competition], this priority is an invitational priority [these priorities are invitational priorities]. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority [these invitational priorities] a competitive or absolute preference over other applications.

*[III. Text of Priority [Priorities]: Regardless of the type of priority, continue as follows:]*

This priority is [These priorities are]:

*[Either (1) reference (and give readers sufficient information to identify, such as a heading, for example) each priority and inform readers with a Note at the end of the priority that the full text is included in the notice of final priority or priorities in the Federal Register notice and in the application package; or (2) repeat the full text of the priority exactly as it appeared in the notice of final priority or priorities. Do not place the text inside quotation marks. If the priority has a title, place the title on a separate line or lines; underline it; indent its first line; and place a period at the end. Begin the text with a new paragraph. Indent the first sentence of each paragraph. Do not include background or other supplemental material from the notice of final priority or priorities. Tell your readers they can find that material in the Federal Register notice.]*

## APPENDIX 4

### Format for a Priority or Priorities Selected from Regulations

***[I. Introduction: Regardless of the type of priority, use this introduction:]***

In accordance with 34 CFR 75.105(b)(2)(ii), this priority is [these priorities are] from regulations (34 CFR *[add section and paragraph reference; e.g., 328.3(a)(1)]*).

***[II. Type of Priority: State the type of priority and select the appropriate paragraph, as follows:]***

***[If the priority or priorities are absolute, use this heading and paragraph. Then go to III. Text of Priority [Priorities]:]***

Absolute Priority [Priorities]: For FY *[list fiscal year]* *[if applicable, insert the following: and any subsequent year in which we make awards from the list of unfunded applications from this competition]*, this priority is an absolute priority [these priorities are absolute priorities]. Under 34 CFR 75.105(c)(3) we consider only applications that meet [this priority] [one or more of these priorities] [these priorities].

***[If the priority or priorities are competitive preference and you award additional points, use this heading and paragraph. Then go to III. Text of Priority [Priorities]:]***

Competitive Preference Priority [Priorities]: For FY *[list fiscal year]* *[if applicable, insert the following: and any subsequent year in which we make awards from the list of unfunded applications from this competition]*, this priority is a competitive preference priority [these priorities are competitive preference priorities]. Under 34 CFR 75.105(c)(2)(i) *[if you award points depending on how well an application meets the priority or priorities, use this: we award up to an additional [fill in the number; e.g., 10] points to an application, depending on how well the application meets [this priority] [one or more of these priorities] [these priorities].]* *[or if you automatically award points to an application that addresses the priority or priorities, use this: we award an additional*

*[fill in the number; e.g., 10] points to an application that meets [this priority] [one or more of these priorities] [these priorities].]*

*[If the priority or priorities are competitive preference and you do not award additional points, use this heading and paragraph. Then go to III. Text of Priority [Priorities]:]*

Competitive Preference Priority [Priorities]: For FY *[list fiscal year]* *[if applicable, insert the following:* and any subsequent year in which we make awards from the list of unfunded applications from this competition/], this priority is a competitive preference priority [these priorities are competitive preference priorities]. Under 34 CFR 75.105(c)(2)(ii) we give preference to an application that meets [this priority] [one or more of these priorities] [these priorities] over an application of comparable merit that does not meet the [priority] [priorities].

*[If the priority or priorities are invitational, use this heading and paragraph. Then go to III. Text of Priority [Priorities]:]*

Invitational Priority [Priorities]: For FY *[list fiscal year]* *[if applicable, insert the following:* and any subsequent year in which we make awards from the list of unfunded applications from this competition/], this priority is an invitational priority [these priorities are invitational priorities]. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority [these invitational priorities] a competitive or absolute preference over other applications.

*[III. Text of Priority [Priorities]: Regardless of the type of priority, continue as follows:]*

This priority is [These priorities are]:

*[List each priority or activity as it appears in the applicable regulations. Do not place the text inside quotation marks. If the priority has a title, place the title on a separate line or lines; underline it; indent its first line; and place a period at the end. Begin the*

*text with a new paragraph. Indent the first sentence of each paragraph. Do not add extensive background or other supplemental material.]*



## APPENDIX 5

### Format for a Priority or Priorities Selected from the Statute for This Program

***[I. Introduction: Regardless of the type of priority, use the introduction from Option 1 or Option 2, as appropriate.]***

***[Option 1: If the statute specifies the actual priority or priorities, use this:]***

In accordance with 34 CFR 75.105(b)(2)(iv), this priority is [these priorities are] from section [give section number] of the [insert name of statute] (if available, give title number; e.g., 20) U.S.C. [give section number]).

***[Option 2: If you are basing the priority or priorities on allowable activities specified in the statute, use this:]***

In accordance with 34 CFR 75.105(b)(2)(v), this priority is [these priorities are] from allowable activities specified in the statute (see section [give section number] of the [insert name of statute] (if available, give title number; e.g., 20) U.S.C. [give section number]).

***[II. Type of Priority: State the type of priority and select the appropriate paragraph, as follows:]***

***[If the priority or priorities are absolute, use this heading and paragraph. Then go to III. Text of Priority [Priorities]:]***

***Absolute Priority [Priorities]:*** For FY [list fiscal year] [if applicable, insert the following: and any subsequent year in which we make awards from the list of unfunded applications from this competition], this priority is an absolute priority [these priorities are absolute priorities]. Under 34 CFR 75.105(c)(3) we consider only applications that meet [this priority] [one or more of these priorities] [these priorities].

***[If the priority or priorities are competitive preference and you award additional points, use this heading and paragraph. Then go to III. Text of Priority [Priorities]:]***

Competitive Preference Priority [Priorities]: For FY *[list fiscal year]* *[if applicable, insert the following:* and any subsequent year in which we make awards from the list of unfunded applications from this competition], this priority is a competitive preference priority [these priorities are competitive preference priorities]. Under 34 CFR 75.105(c)(2)(i) *[if you award points depending on how well an application meets the priority or priorities, use this:* we award up to an additional *[fill in the number; e.g., 10]* points to an application, depending on how well the application meets [this priority] [one or more of these priorities] [these priorities].] *[for if you automatically award points to an application that addresses the priority or priorities, use this:* we award an additional *[fill in the number; e.g., 10]* points to an application that meets [this priority] [one or more of these priorities] [these priorities].]

*[If the priority or priorities are competitive preference and you do not award additional points, use this heading and paragraph. Then go to III. Text of Priority [Priorities].]*

Competitive Preference Priority [Priorities]: For FY *[list fiscal year]* *[if applicable, insert the following:* and any subsequent year in which we make awards from the list of unfunded applications from this competition], this priority is a competitive preference priority [these priorities are competitive preference priorities]. Under 34 CFR 75.105(c)(2)(ii) we give preference to an application that meets [this priority] [one or more of these priorities] [these priorities] over an application of comparable merit that does not meet the [priority] [priorities].

*[If the priority or priorities are invitational, use this heading and paragraph. Then go to III. Text of Priority [Priorities].]*

Invitational Priority [Priorities]: For FY *[list fiscal year]* *[if applicable, insert the following:* and any subsequent year in which we make awards from the list of unfunded

applications from this competition/, this priority is an invitational priority [these priorities are invitational priorities]. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority [these invitational priorities] a competitive or absolute preference over other applications.

*[III. Text of Priority [Priorities]: Regardless of the type of priority, continue as follows:]*

This priority is [These priorities are]:

*[Under Option 1 describe each priority based on the applicable statute. For Option 2 state the priority based on the allowable activity or activities in the statute. Regardless of the option you use, do not place the text inside quotation marks and, if you use a title for the priority, place the title on a separate line or lines; underline it; indent its first line; and place a period at the end. Begin the text with a new paragraph. Indent the first line of each paragraph. Do not add extensive background or other supplemental material.]*

## APPENDIX 6

### Format for an Invitational Priority or Invitational Priorities Published in This Notice and Not Included within Another Priority

Under this competition we are particularly interested in applications that address the following priority [priorities].

Invitational Priority [Priorities]: For FY *[list fiscal year]* *[if applicable, insert the following: and any subsequent year in which we make awards from the list of unfunded applications from this competition/]*, this priority is an invitational priority [these priorities are invitational priorities]. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority [these invitational priorities] a competitive or absolute preference over other applications.

This priority is [These priorities are]:

*[Use a separate paragraph (or, depending on the length, separate paragraphs) for each priority. State the title, if any, of the priority (or, if there is more than one invitational priority, you may want to assign a number to each). If you use a title, place it on a separate line or lines; underline it; indent its first line; and place a period at the end. Then, beginning with a new paragraph, state any background material (this should be brief for an invitational priority) and the full text of the priority. Indent the first line of each paragraph.]*

## APPENDIX 7

### **Format for a Priority or Priorities Established through a Waiver of Proposed Rulemaking under Section 437(d)(1) of the General Education Provisions Act (GEPA)**

*[Section 437(d)(1) of GEPA permits you to waive proposed rulemaking for a priority or priorities that you are establishing for the first grant competition under a new or substantially revised program authority. That is, you may establish in this notice for the first time one or more absolute or competitive preference priorities that you have not published in a notice of proposed priority or priorities or that are not specified in the regulations or authorizing statute for this program.]*

*[I. Introduction: Regardless of the type of priority, use this introduction:]*

We are establishing this priority [these priorities] for the FY *[list fiscal year]* grant competition only *[if applicable, delete the word "only" and insert the following: and any subsequent year in which we make awards from the list of unfunded applications from this competition]*, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

*[II. Type of Priority: State the type of priority and select the appropriate paragraph, as follows:]*

*[If the priority or priorities are absolute, use this heading and paragraph. Then go to III. Text of Priority [Priorities]:]*

**Absolute Priority [Priorities]:** This priority is an absolute priority [These priorities are absolute priorities]. Under 34 CFR 75.105(c)(3) we consider only applications that meet [this priority] [one or more of these priorities] [these priorities].

*[If the priority or priorities are competitive preference and you award additional points, use this heading and paragraph. Then go to III. Text of Priority [Priorities]:]*

**Competitive Preference Priority [Priorities]:** This priority is a competitive preference priority [These priorities are competitive preference priorities]. Under 34 CFR 75.105(c)(2)(i) *[if you award points depending on how well an application meets the*

*priority or priorities, use this:* we award up to an additional *[fill in the number; e.g., 10]* points to an application, depending on how well the application meets [this priority] [one or more of these priorities] [these priorities]./ *for if you automatically award points to an application that addresses the priority or priorities, use this:* we award an additional *[fill in the number; e.g., 10]* points to an application that meets [this priority] [one or more of these priorities] [these priorities]./

*[If the priority or priorities are competitive preference and you do not award additional points, use this heading and paragraph. Then go to III. Text of Priority [Priorities]:]*

Competitive Preference Priority [Priorities]: This priority is a competitive preference priority [These priorities are competitive preference priorities]. Under 34 CFR 75.105(c)(2)(ii) we give preference to an application that meets [this priority] [one or more of these priorities] [these priorities] over an application of comparable merit that does not meet the [priority] [priorities].

*[III. Text of Priority [Priorities]: Regardless of the type of priority, continue as follows:]*

This priority is [These priorities are]:

*[For each priority include a title. Place the title on a separate line or lines; underline it; indent its first line; and place a period at the end. If necessary, include some minimal background material explaining why you are establishing this priority. Begin this background material with a new paragraph. Then, beginning with a new paragraph, state the specific text of the priority. Indent the first sentence of each paragraph.]*

*[IV. If this notice includes only priorities or selection criteria (or both) for which you are waiving rulemaking, insert the following rulemaking waiver language here. If you are (also) waiving rulemaking for definitions or other requirements, insert the following waiver language immediately before the heading Program Authority in section I of this notice.]*

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed *[choose from the following, as appropriate: priorities, selection criteria, definitions, other requirements.]* Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under section *[give section number]* of the *[insert name of statute]* *[if available, give title number; e.g., 20]* U.S.C. *[give section number]* and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the *[choose from the following, as appropriate: priority [priorities], requirement [requirements], definition [definitions], selection criterion [criteria]]* under section 437(d)(1) of GEPA. *[Choose from the following as appropriate: This priority, These priorities, This requirement, These requirements, This definition, These definitions, This selection criterion, These selection criteria,]* will apply to the FY *[fill in year]* grant competition only *[if applicable, delete the word "only" and insert the following: and any subsequent year in which we make awards from the list of unfunded applications from this competition/]*.

## APPENDIX 8

### Format for a Priority within Another Priority

*[This is the format for a notice that contains more than one type of priority. Use this format for one or more competitive preference priorities within an absolute priority (Option 1) or one or more invitational priorities within an absolute or competitive preference priority (Option 2).]*

#### *[Option 1:]*

*[I. Introduction. If you are placing one or more competitive preference priorities within an absolute priority, begin with the absolute priority, according to the appropriate instructions in Appendices 2 through 5 or Appendix 7. Then continue as follows:]*

Competitive Preference Priority [Priorities]: Within this absolute priority, we give competitive preference to applications that address the following priority [priorities].

This priority is [These priorities are] from *[Give source of and citation for the competitive preference priority or priorities; e.g., priorities published in the same issue of the Federal Register; priorities previously published in the Federal Register; priorities from regulations; priorities from the program statute; or priorities based on allowable activities in the program statute. If this competitive preference priority is from the same source as the absolute priority within which it appears, you need not include this paragraph. You can identify the source of both priorities in the introductory paragraph entitled Priorities.]*

*[If you are establishing the competitive preference priority or priorities under the waiver authority of section 437(d)(1) of GEPA, use this language:]*

We are establishing this priority [these priorities] for the FY *[list fiscal year]* grant competition only *[if applicable, delete the word “only” and insert the following: and any subsequent year in which we make awards from the list of unfunded applications from this competition]*, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

*[II. Type of Priority. Select the appropriate paragraph, as follows:]*

*[If you award additional points for this competitive preference priority, use the following paragraph. Then go to III. Text of Priority [Priorities]:]*



Under 34 CFR 75.105(c)(2)(i) *[if you award points depending on how well an application meets the priority or priorities, use this: we award up to an additional [fill in the number; e.g., 10] points to an application, depending on how well the application meets [this priority] [one or more of these priorities] [these priorities].] [or if you automatically award points to an application that addresses the priority or priorities, use this: we award an additional [fill in the number; e.g., 10] points to an application that meets [this priority] [one or more of these priorities] [these priorities].]*

*[If you do not award additional points for this competitive preference priority, use the following paragraph. Then go to III. Text of Priority [Priorities]:]*

Under 34 CFR 75.105(c)(2)(ii) we give preference to an application that meets [this priority] [one or more of these priorities] [these priorities] over an application of comparable merit that does not meet the [priority] [priorities].

*[III. Text of Priority [Priorities]: Continue as follows:]*

This priority is [These priorities are]:

*[If the priority or priorities are from a notice of final priority or priorities that was published in the Federal Register, either (1) reference (and give readers sufficient information to identify the priority or priorities, such as a heading, for example) each competitive preference priority and inform readers with a Note at the end of the priority that the full text is included in the notice of final priority or priorities in the Federal Register and in the application package; or (2) repeat the full text of the priority exactly as it appeared in the notice of final priority or priorities. Do not place the text inside quotation marks. If the priority has a title, place the title on a separate line or lines; underline it; indent its first line; and place a period at the end. Begin the text with a new paragraph. Indent the first sentence of each paragraph. Do not include background or other supplemental material from the notice of final priority or priorities. Tell your readers they can find that material in the Federal Register notice.]*

*[or]*

*[If the priority or priorities were selected from the regulations for this program, list each priority or activity as it appears in the applicable regulations. Do not place the text inside quotation marks. If the priority has a title, place the title on a separate line*

*or lines; underline it; indent its first line; and place a period at the end. Begin the text with a new paragraph. Indent the first sentence of each paragraph. Do not add extensive background or other supplemental material.]*

*[or]*

*[If the priority or priorities are based on the applicable statute or based on an allowable activity or allowable activities in the statute, describe each priority. Do not place the text inside quotation marks. If you use a title for the priority, place the title on a separate line or lines; underline it; indent its first line; and place a period at the end. Begin the text with a new paragraph. Indent the first line of each paragraph. Do not add extensive background or other supplemental material.]*

*[or]*

*[If you are establishing the priority or priorities under the waiver authority of section 437(d)(1) of GEPA, include a title for each priority. Place the title on a separate line or lines; underline it; indent its first line; and place a period at the end. If necessary, include some minimal background material explaining why you're establishing the priority. Begin this background material with a new paragraph. Then, beginning with a new paragraph, state the full text of the priority. Indent the first sentence of each paragraph.]*

*[or]*

**[Option 2:]**

***[I. Introduction. If you are placing one or more invitational priorities within an absolute or competitive preference priority, begin with the absolute or competitive preference priority, according to the appropriate instructions in Appendices 2 through 5 or Appendix 7. Then continue as follows:]***

Within this absolute [competitive preference] priority, we are particularly interested in applications that address the following invitational priority [priorities].

***[II. Type of Priority. Use this heading and paragraph. Then go to III. Text of Priority [Priorities]:]***

Invitational Priority [Priorities]: Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority [these invitational priorities] a competitive or absolute preference over other applications.

***[III. Text of Priority [Priorities]: Continue as follows:]***

This priority is [These priorities are]:

***[Use a separate paragraph (or, depending on the length, separate paragraphs) for each priority. State the title, if any, of the priority (or, if there is more than one invitational priority, you may want to assign a number to each). Place the title, if any, on a separate line or lines; underline it; indent its first line; and place a period at the end. Beginning with a new paragraph, state any background material (this should be brief for an invitational priority). Then, also beginning with a new paragraph, state the full text of the priority. Indent the first line of each paragraph.]***

## APPENDIX 9

### **Material To Be Inserted in Section IV. 7. Other Submission Requirements if This Program or Competition Accepts, but Does Not Require, Electronic Submission of Applications through G5**

*[Insert the following in the application notice if this program or competition accepts, but does not require, the electronic submission of applications through G5. Place this material after the heading IV. 7. Other Submission Requirements.]*

Applications for grants under this program [competition] may be submitted electronically or in paper format by mail or hand delivery.

#### **a. Electronic Submission of Applications.**

If you choose to submit your application to us electronically, you must use the G5 system, accessible through the Department's G5 site at: [www.G5.gov](http://www.G5.gov). While completing your electronic application, you will be entering data online that will be saved into a database. You may not email an electronic copy of a grant application to us.

Please note the following:

- Your participation in G5 is voluntary.
- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. G5 will not accept an application for this program [competition] after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the G5 Web site are 6:00 a.m. Monday until 9:00 p.m. Wednesday; and 6:00 a.m. Thursday until 3:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 3:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 9:00 p.m. on Wednesdays and 6:00

a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the G5 Web site.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information--Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- If you submit your application electronically, you must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (e.g., Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question--for example, the application narrative--is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF. *[Optional: [Additional, detailed information on how to attach files is in the application instructions.]]*

- Your electronic application must comply with any page-limit requirements described in this notice.

- Prior to submitting your electronic application, you may wish to print a copy of it for your records.

- After you electronically submit your application, you will receive an automatic acknowledgment that will include a unique PR/Award number for your application.

- Within three working days after submitting your electronic application--

- (1) Print SF 424 from G5;

- (2) The applicant's Authorizing Representative must sign this form *[or enter the name of your program-specific cover page]*;

- (3) Place the PR/Award number in the upper, right-hand corner of the hard-copy signature page of the SF 424; and

- (4) Fax the signed SF 424 to the Application Control Center at (202) 245-6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the G5 system is unavailable, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if--

- (1) You are a registered user of the G5 system, and you have initiated an electronic application for this competition; and

- (2) (a) G5 is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) G5 is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed under For Further Information Contact in section VII of this notice or (2) the e-Grants help desk at 1-888-336-8930. If G5 is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an email will be sent to all registered users who have initiated a G5 application.

Extensions referred to in this section apply only to the unavailability of the G5 system. If G5 is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application, on or before the application deadline date, in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. Submission of Paper Applications by Mail.

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education  
Application Control Center  
Attention: (CFDA Number *[fill in number, including suffix letter, if any]*)  
LBJ Basement Level 1  
400 Maryland Avenue, SW.  
Washington, DC 20202-4260

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the Secretary of the U.S.

Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. Submission of Paper Applications by Hand Delivery.

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education  
Application Control Center  
Attention: (CFDA Number *[fill in number, including suffix letter, if any]*)  
550 12th Street, SW.  
Room 7039, Potomac Center Plaza  
Washington, DC 20202-4260

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.



Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department--

(1) You must indicate on the envelope and--if not provided by the Department-- in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

## APPENDIX 10

### Material To Be Inserted in Section IV. 7. Other Submission Requirements if This Program or Competition Requires Electronic Submission of Applications through G5

*[Insert the following in the application notice if this program or competition requires electronic submission of applications through G5. Place this material after the heading IV. 7. Other Submission Requirements.]*

Applications for grants under this program [competition] must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

#### a. Electronic Submission of Applications.

Applications for grants under the *[Name of Program or Competition]*, CFDA number *[fill in number, including suffix letter or letters, if any]*, must be submitted electronically using the G5 system, accessible through the Department's G5 site at: [www.G5.gov](http://www.G5.gov). While completing your electronic application, you will be entering data online that will be saved into a database. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under Exception to Electronic Submission Requirement.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. G5 will not accept an application for this program [competition] after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

- The hours of operation of the G5 Web site are 6:00 a.m. Monday until 9:00 p.m. Wednesday; and 6:00 a.m. Thursday until 3:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 3:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 9:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the G5 Web site.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information--Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-

only, non-modifiable PDF (e.g., Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question--for example, the application narrative--is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF. *[Optional: [Additional, detailed information on how to attach files is in the application instructions.]]*

- Your electronic application must comply with any page-limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a unique PR/Award number for your application.
- Within three working days after submitting your electronic application--
  - (1) Print SF 424 from G5;
  - (2) The applicant's Authorizing Representative must sign this form *[or enter the name of your program-specific cover page]*;
  - (3) Place the PR/Award number in the upper, right-hand corner of the hard-copy signature page of the SF 424; and
  - (4) Fax the signed SF 424 to the Application Control Center at (202) 245-6272.
- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the G5 system is unavailable, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if--

(1) You are a registered user of the G5 system, and you have initiated an electronic application for this competition; and

(2) (a) G5 is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) G5 is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed under For Further Information Contact in section VII of this notice or (2) the e-Grants help desk at 1-888-336-8930. If G5 is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an email will be sent to all registered users who have initiated a G5 application. Extensions referred to in this section apply only to the unavailability of the G5 system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through G5 because—

- You do not have access to the Internet; or

- You do not have the capacity to upload large documents to G5;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: *[Insert name of person]*, U.S.

Department of Education, 400 Maryland Avenue, SW. *[which includes Potomac Center Plaza]*, room *[fill in room number and, if necessary building designation; e.g., 11108, Potomac Center Plaza]*, Washington, DC 20202–*[fill in last four digits of ZIP Code]*.  
FAX: (202) *[fill in number]*.

Your paper application must be submitted in accordance with the mail or hand-delivery instructions described in this notice.

b. Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education  
Application Control Center

Attention: (CFDA Number *[fill in number, including suffix letter, if any]*)  
LBJ Basement Level 1  
400 Maryland Avenue, SW.  
Washington, DC 20202-4260

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal

Service.

- (3) A dated shipping label, invoice, or receipt from a commercial carrier.

- (4) Any other proof of mailing acceptable to the Secretary of the U.S.

Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. Submission of Paper Applications by Hand Delivery.

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education  
Application Control Center  
Attention: (CFDA Number *[fill in number, including suffix letter, if any]*)

550 12th Street, SW.  
Room 7039, Potomac Center Plaza  
Washington, DC 20202-4260

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department--

(1) You must indicate on the envelope and--if not provided by the Department-- in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.



## APPENDIX 11

### **Material To Be Inserted in Section IV. 7. Other Submission Requirements if This Program or Competition Accepts, but Does Not Require, Electronic Submission of Applications through Grants.gov**

*[Insert the following in the application notice if this program or competition accepts, but does not require, the electronic submission of applications through Grants.gov. Place this material after the heading IV. 7. Other Submission Requirements.]*

Applications for grants under this program [competition] may be submitted electronically or in paper format by mail or hand delivery.

#### **a. Electronic Submission of Applications.**

We are participating as a partner in the Governmentwide Grants.gov Apply site.

*[Name of Program or Competition]*, CFDA number *[fill in number, including suffix letter or letters, if any]*, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at [www.Grants.gov](http://www.Grants.gov). Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

You may access the electronic grant application for *[Name of Program or Competition]* at [www.Grants.gov](http://www.Grants.gov). You must search for the downloadable application package for this program [competition] by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.326, not 84.326A).

Please note the following:

- Your participation in Grants.gov is voluntary.

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received--that is, date and time stamped by the Grants.gov system--after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program [competition] to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at [www.G5.gov](http://www.G5.gov). In addition, for specific guidance and procedures for

submitting an application through Grants.gov, please refer to the Grants.gov Web site at: [www.grants.gov/web/grants/applicants/apply-for-grants.html](http://www.grants.gov/web/grants/applicants/apply-for-grants.html).

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information--Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- If you submit your application electronically, you must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (e.g., Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the application narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF. *[Optional: [Additional, detailed information on how to attach files is in the application instructions.]]*

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. This notification indicates receipt by Grants.gov only, not receipt by the Department. Grants.gov will also notify you automatically by email if your application met all the Grants.gov validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by Grants.gov, the Department will retrieve your application from Grants.gov and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by Grants.gov, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through

Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726.

You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under For Further Information Contact in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. Submission of Paper Applications by Mail.

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education  
Application Control Center  
Attention: (CFDA Number *[fill in number, including  
suffix letter, if any]*)  
LBJ Basement Level 1  
400 Maryland Avenue, SW.  
Washington, DC 20202-4260

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the Secretary of the U.S.

Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. Submission of Paper Applications by Hand Delivery.

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education  
Application Control Center  
Attention: (CFDA Number *[fill in number, including suffix letter, if any]*)  
550 12th Street, SW.  
Room 7039, Potomac Center Plaza  
Washington, DC 20202-4260

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department--

(1) You must indicate on the envelope and--if not provided by the Department-- in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

## APPENDIX 12

### Material To Be Inserted in Section IV. 7. Other Submission Requirements if This Program or Competition Requires Electronic Submission of Applications through Grants.gov

*[Insert the following in the application notice if this program or competition requires the electronic submission of applications through Grants.gov. Place this material after the heading IV. 7. Other Submission Requirements.]*

Applications for grants under this program [competition] must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications.

Applications for grants under the *[Name of Program or Competition]*, CFDA number *[fill in number, including suffix letter or letters, if any]*, must be submitted electronically using the Governmentwide Grants.gov Apply site at [www.Grants.gov](http://www.Grants.gov). Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under Exception to Electronic Submission Requirement.



You may access the electronic grant application for *[Name of Program or Competition]* at [www.Grants.gov](http://www.Grants.gov). You must search for the downloadable application package for this program [competition] by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.326, not 84.326A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received--that is, date and time stamped by the Grants.gov system--after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements.

When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package

for this program [competition] to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at [www.G5.gov](http://www.G5.gov). In addition, for specific guidance and procedures for submitting an application through Grants.gov, please refer to the Grants.gov Web site at: [www.grants.gov/web/grants/applicants/apply-for-grants.html](http://www.grants.gov/web/grants/applicants/apply-for-grants.html).

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information--Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (e.g., Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question--for example, the application narrative--is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all

material as PDF files. The Department will not convert material from other formats to PDF. *[Optional: [Additional, detailed information on how to attach files is in the application instructions.]]*

- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. This notification indicates receipt by Grants.gov only, not receipt by the Department. Grants.gov will also notify you automatically by email if your application met all the Grants.gov validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by Grants.gov, the Department will retrieve your application from Grants.gov and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by Grants.gov, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your

responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov

System: If you are experiencing problems submitting your application through

Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726.

You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under For Further Information Contact in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if

you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: *[Insert name of person]*, U.S. Department of Education, 400 Maryland Avenue, SW. *[which includes Potomac Center Plaza]*, room *[fill in room number and, if necessary, building designation; e.g., 6126,*

*Potomac Center Plaza], Washington, DC 20202–[fill in last four digits of ZIP Code].*

FAX: (202) *[fill in number]*.

Your paper application must be submitted in accordance with the mail or hand-delivery instructions described in this notice.

b. Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education  
Application Control Center  
Attention: (CFDA Number *[fill in number, including suffix letter, if any]*)  
LBJ Basement Level 1  
400 Maryland Avenue, SW.  
Washington, DC 20202-4260

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the Secretary of the U.S.

Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. Submission of Paper Applications by Hand Delivery.

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education  
Application Control Center  
Attention: (CFDA Number *[fill in number, including suffix letter, if any]*)  
550 12th Street, SW.  
Room 7039, Potomac Center Plaza  
Washington, DC 20202-4260

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department--

(1) You must indicate on the envelope and--if not provided by the Department--in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

## APPENDIX 13

### **Material To Be Inserted in Section IV. 7. Other Submission Requirements if This Program or Competition Does Not Accept Electronic Submission of Applications**

*[Insert the following in the application notice if this program or competition does not accept the electronic submission of applications. Place this material after the heading IV. 7. Other Submission Requirements.]*

Applications for grants under this program [competition] must be submitted in paper format by mail or hand delivery.

#### **a. Submission of Applications by Mail.**

If you submit your application by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education  
Application Control Center  
Attention: (CFDA Number *[fill in number, including suffix letter, if any]*)  
LBJ Basement Level 1  
400 Maryland Avenue, SW.  
Washington, DC 20202-4260

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal

Service.

- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the Secretary of the U.S.

Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:



(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

**b. Submission of Applications by Hand Delivery.**

If you submit your application by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education  
Application Control Center  
Attention: (CFDA Number *[fill in number, including suffix letter, if any]*)  
550 12th Street, SW.  
Room 7039, Potomac Center Plaza  
Washington, DC 20202-4260

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department--

(1) You must indicate on the envelope and--if not provided by the Department--in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

## EXAMPLE OF AN APPLICATION NOTICE FOR A DISCRETIONARY GRANT PROGRAM

[Note: This is a **fictional** notice that complies with Chapter J of the Department's Regulatory Quality Manual.]

4000-01-U

DEPARTMENT OF EDUCATION

Applications for New Awards; School-Based Student Drug-Testing Programs

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice.

### Overview Information:

School-Based Student Drug-Testing Programs

Notice inviting applications for new awards for fiscal year (FY) 2009.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184D.

### Dates:

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

Deadline for Transmittal of Applications: [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Deadline for Intergovernmental Review: [INSERT DATE 105 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

### Full Text of Announcement

#### I. Funding Opportunity Description

Purpose of Program: The School-Based Student Drug-Testing Programs award grants to local educational agencies (LEAs) and public and private entities to develop and implement, or expand, school-based drug-testing programs for students.

Priorities: These priorities are from the notice of final priorities, requirements, and selection criteria for this program, published in the Federal Register on June 17, 2008 (73 FR 82835).

Absolute Priority: For FY 2009 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Mandatory Random and Voluntary Student Drug-Testing Programs.

Under this priority we provide Federal financial assistance to eligible applicants to develop and implement, or expand, school-based mandatory random or voluntary drug-testing programs for students in one or more grades 6 through 12. An applicant must limit to one or more of the following any drug-testing program the applicant proposes to conduct with funds awarded under this priority:

- (a) Students who participate in the school's athletic program.
- (b) Students who are engaged in competitive, extracurricular, school-sponsored activities.
- (c) A voluntary drug-testing program for students who, along with their parents or guardians, have provided written consent to participate in a random drug-testing program. An applicant that proposes voluntary drug testing for students who, along with

their parents or guardians, provide written consent, must not prohibit from participating in school or extracurricular activities students who do not consent.

Competitive Preference Priority: Within this absolute priority, we give competitive preference to applications that address the following priority.

Under 34 CFR 75.105(c)(2)(i) we award an additional 10 points to an application that proposes mandatory random drug testing in two or three schools or an additional 15 points to an application that proposes mandatory random drug testing in four or more schools.

This priority is:

National Evaluation of Mandatory Random Student Drug-Testing Programs.

Under this priority we provide Federal financial assistance to eligible applicants to develop and implement school-based mandatory random drug-testing programs for students in one or more grades from 6 through 12. Any drug-testing program conducted with funds awarded under this priority must be limited to one or more of the following:

- (a) All students who participate in the school's athletic program.
- (b) All students who are engaged in competitive, extracurricular, school-sponsored activities.

An applicant for this priority must propose drug testing in two or more schools within the same LEA that do not have an existing drug-testing program in operation. Drug testing must include, at a minimum, students in three or more grades from 9 through 12. In addition, an applicant for this priority must--

- (a) Not have a voluntary drug-testing component proposed as part of its program;

(b) Provide an assurance that the schools randomly assigned by the Department's national evaluator (the evaluator) to not begin mandatory random drug testing will not implement any drug-testing program for the duration of the national evaluation;

(c) Agree to cooperate with all data collection activities that the evaluator will conduct in all the participating schools; and

(d) Develop and implement mandatory random drug-testing policies and procedures to be carried out consistently in all schools the evaluator selects to implement drug testing.

At the time of the grant award, the evaluator randomly assigns the schools to either receive the intervention (mandatory random drug testing) or not receive the intervention (no mandatory random drug testing). The evaluator will collect outcome data in both sets of schools.

Application Requirements: The following requirements apply to all applications submitted under this competition:

(a) An applicant may not submit more than one application for an award under this program.

(b) An applicant may not have been the recipient or beneficiary of a grant in 2005 under the Department of Education Demonstration Grants for Student Drug-Testing competition.

(c) A non-LEA applicant must submit from an LEA a letter of agreement to participate.

(d) An applicant must provide a written assurance that, if it receives a grant, it will not use funds for the following purposes:

(1) Student drug tests administered under suspicion of drug use.

(2) Incentives for students to participate in programs.

(3) Drug treatment.

(4) Drug-prevention curricula or other prevention programs.

(e) An applicant must--

(1) Identify a target population and demonstrate a significant need for drug testing within the target population;

(2) Explain how the proposed drug-testing program will be part of an existing, comprehensive drug prevention program in the schools to be served;

(3) Provide a comprehensive plan for referring students who are identified as drug users through the testing program to a student assistance program, counseling, or drug treatment if necessary; and

(4) Provide a plan to ensure the confidentiality of drug-testing results, including a provision that prohibits the party conducting drug tests from disclosing to school officials any information about a student's use of legal medications.

Program Authority: 20 U.S.C. 7131.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations

in 34 CFR part 299. (c) The notice of final priorities, requirements, and selection criteria published in the Federal Register on June 17, 2008 (73 FR 82835).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

## II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: \$6,500,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: \$200,000-\$400,000.

Estimated Average Size of Awards: \$300,000.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

## III. Eligibility Information

1. Eligible Applicants: LEAs and public and private entities suitable to carry out the activities proposed in the application.

2. Cost Sharing or Matching: This program does not require cost sharing or matching.

3. Eligible Subgrantees: (a) Under 34 CFR 75.708(b) and (c) a grantee may award subgrants--to directly carry out project activities described in its application--to the following types of entities: LEAs and public and private entities suitable to carry out the activities proposed in the application.

(b) The grantee may award subgrants to entities it has identified in an approved application.

4. Other: (a) Participation by Private School Children and Teachers. An entity that receives a grant under the School-Based Student Drug-Testing Programs is required to provide for the equitable participation of private school children and their teachers or other educational personnel.

In order to ensure that grant program activities address the needs of private school children, the applicant must engage in timely and meaningful consultation with appropriate private school officials during the design and development of the program. This consultation must take place before the applicant makes any decision that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate.

Administrative direction and control over grant funds must remain with the grantee. (See section 9501, Participation by Private School Children and Teachers, of the Elementary and Secondary Education Act of 1965, as amended.)

(b) Maintenance of Effort. An LEA may receive a grant under the School-Based Student Drug-Testing Programs only if the State educational agency finds that the combined fiscal efforts per student or the aggregate expenditures of the agency and the State with respect to the provision of free public education by the agency for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year.



(c) Participation of Faith-based Organizations. Faith-based organizations are eligible to apply for grants under this competition provided they meet all statutory and regulatory requirements.

#### IV. Application and Submission Information

1. Address to Request Application Package: You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address:

[www.ed.gov/fund/grant/apply/grantapps/index.html](http://www.ed.gov/fund/grant/apply/grantapps/index.html).

To obtain a copy from ED Pubs, write, fax, or call: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1-877-433-7827. FAX: (703) 605-6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1-877-576-7734.

You can contact ED Pubs at its Web site, also: [www.EDPubs.gov](http://www.EDPubs.gov) or at its email address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov).

If you request an application package from ED Pubs, be sure to identify this program as follows: CFDA number 84.184D.

To obtain a copy from the program office, contact: Robyn Disselkoe or Sigrid Melus, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E259, Washington, DC 20202-6450. Telephone: (202) 260-3954 or by email: [OSDFSdrugtesting@ed.gov](mailto:OSDFSdrugtesting@ed.gov). If you use a TDD or TTY, call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting either of the program contact persons listed in this section.

2. Content and Form of Application Submission: Requirements concerning the content and form of an application, together with the forms you must submit, are in the application package for this program.

3. Submission Dates and Times:

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

Deadline for Transmittal of Applications: [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to Other Submission Requirements in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact either person listed under For Further Information Contact in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the

application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: [INSERT DATE 105 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

4. Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. Funding Restrictions: We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management: To do business with the Department of Education, you must--

- a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);
- b. Register both your DUNS number and TIN with the System for Award Management (SAM), the Government's primary registrant database;
- c. Provide your DUNS number and TIN on your application; and
- d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: <http://fedgov.dnb.com/wcbform>. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at [www.SAM.gov](http://www.SAM.gov). To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: <http://www2.ed.gov/fund/grant/apply/sam-faqs.html>.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: [www.grants.gov/web/grants/register.html](http://www.grants.gov/web/grants/register.html).

7. Other Submission Requirements: Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications.

We are participating as a partner in the Governmentwide Grants.gov Apply site. School-Based Student Drug-Testing Programs, CFDA number 84.184D, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at [www.Grants.gov](http://www.Grants.gov). Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

You may access the electronic grant application for School-Based Student Drug-Testing Programs at [www.Grants.gov](http://www.Grants.gov). You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.184, not 84.184D).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received--that is, date and time stamped by the Grants.gov system--after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at [www.G5.gov](http://www.G5.gov). In addition, for specific guidance and procedures for submitting an application through Grants.gov, please refer to the Grants.gov Web site at: [www.grants.gov/web/grants/applicants/apply-for-grants.html](http://www.grants.gov/web/grants/applicants/apply-for-grants.html).

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information--Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- If you submit your application electronically, you must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (e.g., Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question--for example, the application narrative--is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF. Additional, detailed information on how to attach files is in the application instructions.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking

number. This notification indicates receipt by Grants.gov only, not receipt by the Department. Grants.gov will also notify you automatically by email if your application met all the Grants.gov validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by Grants.gov, the Department will retrieve your application from Grants.gov and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by Grants.gov, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov

System: If you are experiencing problems submitting your application through

Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726.

You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.



If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact either person listed under For Further Information Contact in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

**b. Submission of Paper Applications by Mail.**

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your

application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education  
Application Control Center  
Attention: (CFDA Number 84.184D)  
LBJ Basement Level 1  
400 Maryland Avenue, SW.  
Washington, DC 20202-4260

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal

Service.

- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the Secretary of the U.S.

Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. Submission of Paper Applications by Hand Delivery.

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education  
Application Control Center  
Attention: (CFDA Number 84.184D)  
550 12th Street, SW.  
Room 7039, Potomac Center Plaza  
Washington, DC 20202-4260

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department--

(1) You must indicate on the envelope and--if not provided by the Department-- in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

#### V. Application Review Information

1. Selection Criteria: The selection criteria for this program are from the notice of final eligibility and application requirements, priorities, and selection criteria for this program published in the Federal Register on June 17, 2005 (70 FR 32835) and are listed in the application package.

2. Review and Selection Process: We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying

out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. Risk Assessment and Special Conditions: Consistent with 2 CFR 200.205, before awarding grants under this program [competition] the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. Integrity and Performance System: If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards--that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and

Integrity Information System (FAPIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

#### VI. Award Administration Information

1. Award Notices: If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. Administrative and National Policy Requirements: We identify administrative and national policy requirements in the application package and reference these and other requirements in the Applicable Regulations section of this notice.

We reference the regulations outlining the terms and conditions of an award in the Applicable Regulations section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. Reporting: (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to [www.ed.gov/fund/grant/apply/appforms/appforms.html](http://www.ed.gov/fund/grant/apply/appforms/appforms.html).

(c) The Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. Performance Measure: The Department has established the following Government Performance and Results Act of 1993 performance measure for the School-Based Student Drug-Testing Programs: The reduction of the incidence of drug use in the past month and past year. The Secretary has set an overall performance target that calls for a five percent annual decline in the prevalence of drug use by students in the target population.

This measure constitutes the Department's indicator of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to this measure in conceptualizing the approach and evaluation for its

proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting this measure.

5. Continuation Awards: In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Agency Contacts

For Further Information Contact: Robyn Disselkoe or Sigrid Melus, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E259, Washington, DC 20202-6450.

Telephone: (202) 260-3954 or by email: [OSDFSdrugtesting@ed.gov](mailto:OSDFSdrugtesting@ed.gov).

If you use a TDD or a TTY, call the FRS, toll free, at 1-800-877-8339.

## VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to either program contact person listed under For Further Information Contact in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). 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 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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

You can view this document in text or PDF at the following site, also:  
[www.ed.gov/programs/drugtesting/applicant.html](http://www.ed.gov/programs/drugtesting/applicant.html).

Dated: October 5, 2008.

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Dorothy A. Smith,  
Assistant Deputy Secretary for Safe and  
Drug-Free Schools.



## TEMPLATE FOR AN APPLICATION NOTICE

*[Note to ED Program Offices: The following template contains the major headings an application notice must include, but the template does not contain all of the boilerplate text that must be included. Please consult the instructions in Chapter J to determine what additional content your application notice must contain. Make sure any material you insert is not set in bold or italics.]*

4000-01-U

DEPARTMENT OF EDUCATION

Applications for New Awards; *[Name of Program]*

AGENCY: *[Name of Principal Office]*, Department of Education.

ACTION: Notice.

Overview Information:

*[Name of Program]*

Notice inviting applications for new awards for fiscal year (FY) *[insert]*.

Catalog of Federal Domestic Assistance (CFDA) Number [Numbers]:

Dates:

Applications Available:

Deadline for Transmittal of Applications:

*[If applicable]*Deadline for Intergovernmental Review:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program:

*[If applicable]*Priority [Priorities]:

Program Authority:

Applicable Regulations:

## II. Award Information

Type of Award:

Estimated Available Funds:

Estimated Range of Awards:

Estimated Average Size of Awards:

Estimated Number of Awards:

Project Period:

## III. Eligibility Information

1. Eligible Applicants:

2. a. Cost Sharing or Matching:

*[If applicable]* b. Supplement-Not-Supplant:

*[If applicable]* 3. Eligible Subgrantees:

*[If applicable]* [3.] [4.] Other:

## IV. Application and Submission Information

1. Address to Request Application Package:

2. [a.] Content and Form of Application Submission: *[Optional]* Page Limit:

*[Optional]* b. Submission of Proprietary Information:

3. Submission Dates and Times:

Applications Available:

Deadline for Transmittal of Applications:

*[If applicable]* Deadline for Intergovernmental Review:

4. Intergovernmental Review:

5. Funding Restrictions:

6. Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:

7. Other Submission Requirements:

V. Application Review Information

1. Selection Criteria:

2. Review and Selection Process:

3. Risk Assessment and Special Conditions:

4. Integrity and Performance System:

VI. Award Administration Information

1. Award Notices:

2. Administrative and National Policy Requirements:

3. Reporting:

4. Performance Measures:

5. Continuation Awards:

VII. Agency Contact [Contacts]

For Further Information Contact:

VIII. Other Information

Accessible Format:

Electronic Access to This Document:

Dated:



## Chapter E: HOW DO I PREPARE A PREAMBLE FOR FINAL REGULATIONS WITH A WAIVER OF PROPOSED RULEMAKING?

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(Revised, April 2011)

### E.1 Introduction

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## Chapter E

### HOW DO I PREPARE A PREAMBLE FOR FINAL REGULATIONS WITH A WAIVER OF PROPOSED RULEMAKING?

#### [E.1] Introduction

The following is the format for a preamble for final regulations for which the Department has waived proposed rulemaking.

**NOTE: THE DEPARTMENT MAY WAIVE RULEMAKING ONLY IN VERY LIMITED CIRCUMSTANCES. PLEASE CHECK WITH AN ATTORNEY IN THE DIVISION OF REGULATORY SERVICES (DRS) OF THE OFFICE OF THE GENERAL COUNSEL (OGC) TO DETERMINE WHETHER A WAIVER IS POSSIBLE FOR YOUR REGULATIONS.**

The primary purpose of a preamble to final regulations with a waiver is to explain to readers--in a clearly written, easy-to-understand manner without jargon--each of the following:

- What the Department is doing.
- Why we are doing this.
- What effect or effects we intend.
- Our justification for waiving proposed rulemaking.

In developing the preamble you must keep in mind--and provide information required by--a number of statutes, Executive orders, and other mandates. These include the Administrative Procedure Act (APA), the General Education Provisions Act (GEPA), the Paperwork Reduction Act of 1995, Executive Order 12866 ("Regulatory Planning and Review"), and the Presidential memorandum on "Plain Language in Government Writing." You should also be familiar with the National Education Goals and ED's Principles for Regulating (included in this manual). The effects of these documents and the information required by them are explained at appropriate places in these instructions.

Generally the Department develops and publishes final regulations following publication of a notice of proposed rulemaking (NPRM) and a period of public comment. There are exceptions, however, under which the Department may legally waive proposed rulemaking under either the APA, GEPA, or other statutes. If you need guidance in developing a preamble for final regulations for which the Department is not waiving proposed rulemaking and public comment, please see Chapter [D] of this manual.

This chapter includes six examples of waivers. Two factors may affect the required contents and format of the preamble: (1) the specific authority for the waiver; and (2) whether you invite public comment on the final regulations. If the particular document you are developing does not fit some element or section of these guidelines, please consult the Regulations Coordinator for this program or document in DRS.

The format for a preamble to final regulations includes the necessary information and, in some instances, standard language required by the Department or the Office of the Federal Register. See the Federal Register Document Drafting Handbook (DDH), October 1998 edition, Chapter 2 ("How do I write a document for the rules category?"). The DDH, which can be downloaded in Adobe Portable Document Format (PDF), is available at the following Internet address:

[www.archives.gov/federal-register/write/handbook](http://www.archives.gov/federal-register/write/handbook)

The United States Government Printing Office (GPO) also mandates many of the style requirements in these instructions. The GPO Style Manual, which can be downloaded in PDF, is available at the following Internet address:

[www.gpoaccess.gov/stylemanual/browse.html](http://www.gpoaccess.gov/stylemanual/browse.html)

We recommend that you keep notes as issues are raised, deliberated, and decided during the development of these final regulations. These notes can be very useful as you draft the preamble and explain to readers various options that we considered and the reasons for our decisions.

A well-written preamble can enhance the public's understanding of our regulatory and programmatic policies and initiatives. A clear preamble can, also, foster goodwill among our customers, aid compliance with necessary



requirements, and help avoid litigation.

Thus, it is essential that you think through your preamble carefully, see it through your readers' eyes, and structure it in a logical sequence so that it communicates clearly and effectively.

Technical requirements for the preamble:

- Double space the preamble.
- For font use 12-point Courier New.
- Never type in bold or italics.
- Except as otherwise indicated in these instructions, indent (five spaces) the first line of each paragraph of text.
- Leave a 1.5-inch margin on the left, a 1-inch margin on the right, and a 1-inch margin at the top and bottom.
- Justify the left margin only.
- Begin numbering at the center bottom of the first page in Arabic numerals ("1").
- In your text, if you use the term Federal Register, use initial capitals and underline the term. However, there is one exception to this: in the DATES section, if you are asking the Office of the Federal Register to compute a date, type FEDERAL REGISTER in all capitals and do not underline it (see [E.2] of this chapter).

If a principal officer other than the Secretary (such as an Assistant Secretary or a Director of a principal office) signs the document under a delegated authority, you have the choice of substituting the title of that officer wherever the word "Secretary" appears in these instructions or continuing to use the word "Secretary." Whatever choice you make, be consistent throughout the document; otherwise, you may confuse users of the regulations who may think that you intend a distinction. In keeping with the Presidential memorandum on plain language, the Department prefers that you use the pronoun "we" or "us" in referring to the Department.

The material inside the square brackets [ ] is instructions to the drafter of the preamble or alternative wording. The shaded, bold-faced letters and numbers inside the square brackets--e.g., [E.4]--are for purposes of reference and cross-reference for users of this manual; do not include them in your preamble.

**Please Note:** Some of the examples we use in this chapter are for purposes of illustration only and do not represent real programs or issues.

If you have questions regarding these instructions, please consult the Regulations Quality Officer or the Regulations Coordinator for this program or document, both of whom are in the Division of Regulatory Services (DRS) of the Office of the General Counsel (OGC). (The DRS telephone number is: (202) 401-8300.)

## Contents of Preamble

[E.2 Headings; Summary; Dates; Addresses]

4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Part[s] [fill in all affected part numbers]

RIN [Use the number from the Unified Agenda of Federal Regulatory and Deregulatory Actions. If no number has been assigned, and OMB will not review this document under Executive Order 12866, omit the number. Otherwise, request assignment of a number from your Regulations Coordinator in DRS.]

[Fill in the title of the regulations as it is or will be in the Code of Federal Regulations. Use initial capital letters only; do not end with a period; e.g., Disability and Rehabilitation Research: Rehabilitation Engineering Research Centers]

AGENCY: [Name of principal office; e.g., Office of Educational Research and Improvement], Department of Education.

ACTION: Final regulations. [or] [Final regulations with invitation to comment.] [Note: In identifying the type of document being presented, the Department uses "regulations" (in the plural) instead of the word "rule."]

SUMMARY: [100 words or less] [Make brief statements, in simple language, indicating (1) the action you are taking; (2) why you are taking the action; and (3) the intended effect of the action. If it is necessary to refer to an act of Congress, use a shorter, easily recognizable form (e.g., the Department of Education Appropriations Act, 1999), but do not give a legal citation. Although the Office of the Federal Register requires the "SUMMARY," this is not necessarily a summary as you might think of that term.

Rather, the sole purpose of this one-paragraph section is to respond to the three specified items. Confine your statement to these three matters and be concise.]

[EXAMPLE: The Secretary amends the regulations governing the Higher Education Programs in Modern Foreign Language Training and Area Studies. The Secretary issues the amendments in response to the President's Regulatory Reinvention Initiative. These final regulations change the names of the programs, remove obsolete references, modify the selection criteria, and make other technical changes.

DATES: [Select the appropriate paragraph from among the following four options:]

[Option 1: If these regulations are to take effect on a particular date, use this paragraph:]

These regulations are effective [insert date].

[or]

[Option 2: If these regulations are to take effect on the date of publication in the Federal Register because you are waiving the 30-day delayed effective date under 5 U.S.C. 553(d), use this paragraph:]

These regulations are effective (INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER).

[or]

[Option 3: If you are not waiving the 30-day delayed effective date under 5 U.S.C. 553(d), and these regulations do not contain information collection requirements; or if the regulations contain information collection requirements, and OMB has approved the requirements and assigned a control number, use this paragraph:]

These regulations are effective (INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER).

[or]

[Option 4: If these are final regulations that contain information collection requirements, and OMB has not yet approved the requirements and assigned a control number, use this paragraph:]

These regulations are effective (INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER).

However, affected parties do not have to comply with the information collection requirement[s] in §[§§][fill in section number[s]] until the Department of Education publishes in the Federal Register the control number[s] assigned by the Office of Management and Budget (OMB) to this [these] information collection requirement[s].

Publication of the control number[s] notifies the public that OMB has approved this [these] information collection requirement[s] under the Paperwork Reduction Act of 1995.

[If the Department is inviting public comments on these final regulations, add the following paragraph:]

We must receive your comments on or before (INSERT DATE [Note to program office: add the appropriate number to determine the length of the public comment period; e.g., 60] DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER).

[Use the ADDRESSES section if you are requesting public comments. Otherwise, skip the ADDRESSES section and proceed to FOR FURTHER INFORMATION CONTACT:]

ADDRESSES: Address all comments about these regulations to [name and full mailing address of person to whom comments

should be addressed, as follows:] [Name of person], U.S. Department of Education, [400 Maryland Avenue, SW.] [555 New Jersey Avenue, NW.] [or] [1990 K Street, NW.], room [fill in room number and, if necessary, building designation], Washington, DC [fill in the zip code: use 20202 for MD Ave., 20208 for NJ Ave., or 20006 for K St.]-[fill in last four digits of Zip Code]. If you prefer to send your comments through the Internet, you may address them to us at the U.S. Government Web site:

[www.regulations.gov](http://www.regulations.gov)

Or you may send your Internet comments to us at the following address:

[Insert the Internet address centered on a separate line as follows:]

[If you are using the Departmentwide Internet address, insert this:]

[comments@ed.gov](mailto:comments@ed.gov)

[Then add the following sentence:]

You must include the term [Note to Program Office: Insert the term of your choice; e.g., PWI] in the subject line of your electronic message.

[or]

[If you are not using the Departmentwide Internet address, insert the appropriate address, such as the address of the person in your office to whom the electronic comments are to be addressed, as in the following example:]

[jane.smith@ed.gov]

[If these final regulations contain information collection requirements and OMB has not yet approved the requirements and assigned a control number, use the following paragraph:]

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

[If you have included an ADDRESSES section and if the contact for further information is the same person you have listed in the ADDRESSES section, use the following:]

FOR FURTHER INFORMATION CONTACT: [Name of the individual listed in the ADDRESSES section of this preamble].

Telephone: (202) [fill in number] [.] [Optional:] [or via Internet: [insert address, as in the following example:]]

[george.jones@ed.gov]

If you use a telecommunications device for the deaf (TDD), you may call [include either of the following:] [the TDD number at (202) [fill in number].] [or, if a TDD number is not available, use the following:] [the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

[or]

[If you have not included an ADDRESSES section or if the contact for further information is not the same person you have listed in the ADDRESSES section, use the following:]

FOR FURTHER INFORMATION CONTACT: [Name, address, and telephone number of the person most knowledgeable about the regulations, as follows:] [Name of person], U.S. Department of Education, [400 Maryland Avenue, SW.] [555 New Jersey Avenue, NW.] [or] [1990 K Street, NW.], room [fill in room number and, if necessary, building designation], Washington, DC [fill in the zip code: use 20202 for MD Ave., 20208 for NJ Ave., or 20006 for K Street]-[fill in last four digits of Zip Code]. Telephone: (202) [fill in number] [.] [Optional:] [or via Internet: [insert address, as in the following example:]]

[george.jones@ed.gov]

If you use a telecommunications device for the deaf (TDD), you may call [include either of the following:] [the TDD number at (202) [fill in number].] [or, if a TDD number is not available, use the following:] [the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

[Whichever version of FOR FURTHER INFORMATION CONTACT you select, add the following:]

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under FOR FURTHER INFORMATION CONTACT.

SUPPLEMENTARY INFORMATION:



### [E.3 Invitation to Comment]

[If you are inviting public comments on these final regulations, add this section. Otherwise, omit all of [E.3]--including the following heading--and continue with [E.4].]

#### Invitation to Comment

Although the Secretary has decided to issue these final regulations without first publishing proposed regulations for public comment, we are interested in whether you think we should make any changes in these regulations. We invite your comments. We will consider these comments in determining whether to revise the regulations. [In addition, if appropriate, state any questions or issues on which we would particularly like comment.]

[Optional:] To ensure that your comments have maximum effect, we urge you to identify clearly the specific section or sections of the regulations that each of your comments addresses and to arrange your comments in the same order as the regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these regulations. Please let us know of any further opportunities we should take to 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 all public comments about these regulations in [give room number and street address], Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

[E.4 Supplementary Information--General]

[Using the format and instructions that follow, and in plain language that a non-expert can understand, explain the reasons for these regulations and their intended effects. The format and instructions will help you meet the requirements of the Administrative Procedure Act and other statutes and Executive orders that govern the rulemaking process.]

[Do not quote statutory or regulatory provisions; instead, summarize those provisions. Do not trace the history of the program or subject covered by the regulations. Rather, provide information a reader needs to know to understand the major issues presented in the regulations. Include the

following information in plain language and avoid jargon:

#### BACKGROUND

- [• This paragraph applies only to regulations implementing new statutory enactments. Include the full name of the Act, together with the Public Law number and the enactment date.

EXAMPLE: These regulations implement the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1998 (Pub. L. 105-332), enacted October 31, 1998.

- [• Taking into account the Department's Principles for Regulating, why is it necessary to regulate at all?
- [• Include a description of any coordination that has taken place between us and other governmental entities such as State, local, and tribal governments, as well as other Federal Departments and Agencies.

#### SIGNIFICANT REGULATIONS

[Select Option 1 or Option 2:]

[Option 1.]

We group major issues according to subject [add, if applicable: ", with appropriate sections of the regulations referenced in parentheses]. We discuss other substantive issues under the sections of the regulations to which they pertain.

[Option 2.]

We discuss substantive issues under the sections of the regulations to which they pertain.

[In either option, end the paragraph with the following

sentence, if applicable:] Generally, we do not address regulatory provisions that are technical or otherwise minor in effect.

[Use the following format for each major subject or each significant provision of these regulations:]

[Type flush left and underline:]

[Subject heading] [or] [\$ section number and heading]

[Then use the following underlined headings--typed flush left with initial capitals. For an example see [E.18].]

Statute: [If a statute requires, authorizes, or limits these regulatory provisions, summarize the relevant portion of the statute here and give its section number. Do not quote from the statute. Provide enough information so a reader will understand the effect of the statute on the regulations. If the Secretary is issuing this regulatory provision based on the Secretary's general authority to establish policy by regulating, omit this paragraph and its heading.]

Current Regulations: [If you are changing current regulations, summarize the current regulatory provisions here. Do not quote from the current regulations. Provide enough information so a reader will understand the changes in the new regulations. If there are no current regulations that relate to this subject or to this section of the new regulations, omit this paragraph and its heading.]

New Regulations: [Summarize the new regulatory provisions here. Do not quote from the new regulations.

[EXAMPLE: New §694.17 keeps the language in the current regulations, with some minor changes. In the priority for projects in Empowerment Zones or Enterprise Communities, the new regulations allow a priority for projects that serve a substantial number or percentage of students who

either reside in or attend a school in an Empowerment Zone or Enterprise Community. In addition, the priority for Partnerships that establish or maintain a financial assistance program that awards scholarships includes language that the scholarship program is to strengthen the early intervention components of the Partnership's GEAR UP project.]

Reasons: [Provide ED's reasons for issuing these regulatory provisions. Include the following information:]

[• Taking into account the Principles for Regulating, answer the following questions:

- [1. What is the issue that must be addressed by regulating?
- [2. Why is regulating necessary to address this issue?
- [3. What are the intended effects of regulating?
- [4. Why is this particular regulatory provision the best way of addressing the issue? What are the costs and benefits (both quantitative and qualitative) of this regulatory provision? (For examples, see [E.18]).
- [5. What policy alternatives did the Department (we) consider, if any, and why did we reject the alternatives? This discussion must include an assessment of the costs and benefits (both quantitative and qualitative) of these alternatives.
- [6. What other significant information, if any, is absolutely necessary to help readers understand these regulations? Do not repeat information included elsewhere in this SUPPLEMENTARY INFORMATION section.]

[E.5 [Reserved]]

[E.6 Executive Order 12866]

[If OMB intends to review these final regulations under Executive Order 12866, insert the following--to the extent accurate and appropriate--in addition to a substantive discussion assessing the costs and benefits at appropriate places in the preamble:]

Executive Order 12866

Potential costs and benefits

[Or, if you are including 2. Clarity of the Regulations, place a 1. in front of this heading as follows:]

1. Potential costs and benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program [these programs] effectively and efficiently.

[Use the following two sentences only if you select option 4 under [E.9):]

Elsewhere in this SUPPLEMENTARY INFORMATION section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits--both quantitative and qualitative--of this regulatory action, we have determined that the benefits justify the costs.

[Omit or revise the next paragraph if the regulations do not affect one or more of the following: State, local, or tribal governments.]

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

[either]

[Summarize the potential costs and benefits here, using the following introduction:]

Summary of potential costs and benefits

[Give sufficient details to satisfy the requirements of the Executive order. For an example, see [D.18].]

[or]

[Include the following statement:]

Elsewhere in this preamble we discuss the potential costs and benefits of these regulations under the following topics [headings]: [List topics or headings.]

[If you are inviting public comments on these final regulations, add the following section on "Clarity of the regulations." Otherwise, omit all of the section--including the heading--and continue with [E.7].]

2. Clarity of the regulations

Executive Order 12866 and the Presidential memorandum on "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 regulations easier to understand, including answers

to questions such as the following:

- Are the requirements in the regulations clearly stated?
- Do the regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, \$[fill in a sample section number and heading from these final regulations].)
- Could the description of the regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the regulations easier to understand? If so, how?
- What else could we do to make the regulations easier to understand?

Send any comments that concern how the Department could make these regulations easier to understand to the person listed in the ADDRESSES section of the preamble.

**[E.7 Waiver of Proposed Rulemaking]**



## Waiver of Proposed Rulemaking

[Select one of the following, if appropriate. If none of these examples seems to apply to your regulations, consult with an attorney in DRS.]

**[E.7-1 Waiver under section 437(d)(1) of the General Education Provisions Act:** Use the following if you are waiving proposed rulemaking under section 437(d)(1) of the General Education Provisions Act because these final regulations apply to the first grant competition of a new or substantially revised program:]

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, in order to make timely grant awards in fiscal year (FY) [insert year], the Secretary has decided to issue these final regulations without first publishing proposed regulations for public comment. These regulations will apply to the FY [insert year] grant competition only. The Secretary takes this action under section 437(d)(1) of the General Education Provisions Act.

[Add one of the following, if applicable:]

[either]

Elsewhere in this issue of the Federal Register, the Assistant Secretary is publishing a notice of proposed rulemaking for this program and offering interested parties an opportunity to comment. The proposed regulations, which are identical to these final regulations, would apply to

grant competitions under the program beginning in FY  
[insert next fiscal year].

[or]

At a later date the Assistant Secretary plans to publish a notice of proposed rulemaking for this program and offer interested parties the opportunity to comment. The proposed regulations would apply to grant competitions under the program beginning in FY [insert next fiscal year].

[E.7-2 Waiver under section 553(b) (A) of the Administrative Procedure Act (APA)--agency procedures: Use the following example--or an adaptation of this example--if you are waiving proposed rulemaking under section 553(b) (A) of the APA because these regulations include agency procedures only. Please remember, you must present a persuasive and legally sufficient rationale for waiving proposed rulemaking:]

[EXAMPLE:

[Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b) (A), the Secretary has determined that proposed rulemaking is not required.]

[E.7-3 Waiver under section 553(b) (A) of the APA--interpretative regulations: Use an adaptation of the following example if you are waiving proposed rulemaking

under section 553(b) (A) of the APA because these regulations are an interpretation only. Please remember, you must present a persuasive and legally sufficient rationale for waiving proposed rulemaking:]

[EXAMPLE:

[Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, under 5 U.S.C. 553(b) (A) the Secretary is not required to offer the public an opportunity to comment on an interpretative rule. These regulations advise the public of our interpretation of section 1112(c) (1) (H) of title I of the Elementary and Secondary Education Act of 1965, as amended. Therefore, under 5 U.S.C. 553(b) (A), the Secretary has determined that proposed rulemaking is not required.]

[E.7-4 Waiver under section 553(b) (B) of the APA-- impracticable: Use an adaptation of the following example if you are waiving proposed rulemaking under section 553(b) (B) of the APA because public comment on these regulations is impracticable. Please remember, you must present a persuasive and legally sufficient rationale for waiving proposed rulemaking:]

[EXAMPLE:

[Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these regulations are needed to make changes

suspending a deadline date and other requirements that cannot be met by potential applicants because of the Midwestern floods of 1993 in the States of Iowa, Illinois, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin. This emergency was recognized by a Presidential declaration of disaster. Therefore, under 5 U.S.C. 553(b)(B), the Secretary has determined that proposed rulemaking is impracticable and contrary to the public interest.]

**[E.7-5 Waiver under section 553(b)(B) of the APA--unnecessary:** Use the following example--or an adaptation of this example--if you are waiving proposed rulemaking under section 553(b)(B) of the APA because public comment on these regulations is unnecessary. Please remember, you must present a persuasive and legally sufficient rationale for waiving proposed rulemaking:]

**[EXAMPLE:**

[Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these regulations merely reflect statutory changes and remove obsolete regulatory provisions. The changes do not establish or affect substantive policy. Therefore, under 5 U.S.C. 553(b)(B), the Secretary has determined that proposed regulations are unnecessary and contrary to the public interest.]

[E.7-6 Waiver under other statutory authority: Use an adaptation of the following example if you are waiving proposed rulemaking under a statutory authority other than section 553 of the APA or section 437(d)(1) of the General Education Provisions Act. Please remember, you must present a persuasive and legally sufficient rationale for waiving proposed rulemaking:]

[EXAMPLE:

[Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, Pub. L. 103-66 requires the Secretary to publish a notice in place of regulations for the first year of the Direct Loan Program and exempts the contents of the notice from the rulemaking requirements of section 553 of the Administrative Procedure Act. Therefore, under Pub. L. 103-66, the Secretary publishes this notice without first publishing proposed regulations for public comment.]

[E.8 Regulatory Flexibility Act]

Regulatory Flexibility Act Certification

[If these regulations will have a significant economic impact on a substantial number of small entities, contact the Regulations Coordinator for this program. The coordinator will advise you on how to proceed. Otherwise, use the following statement for the certification:]

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

[Follow this statement with a brief explanation as in

these examples:

**[EXAMPLE 1:**

[Because these regulations affect only States and State agencies [or individuals], the regulations will not have an impact on small entities. States and State agencies [Individuals] are not defined as "small entities" in the Regulatory Flexibility Act.]

**[EXAMPLE 2:**

[The small entities that are affected by these regulations are small local educational agencies (LEAs) receiving Federal funds under this program. However, the regulations will not have a significant economic impact on the small LEAs affected because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations impose minimal requirements to ensure the proper expenditure of program funds.]

**[E.9 Information Collection Requirements]**

[The contents of this section will vary, depending on whether these regulations contain information collection requirements--such as application, reporting, disclosure, or recordkeeping requirements--whether the Department has published these requirements in a separate notice of information collection requirements, and whether OMB has approved the requirements and assigned a control number. These instructions provide four options.]

**Paperwork Reduction Act of 1995**

**[Option 1: Use the following if these regulations do not contain information collection requirements:]**



These regulations do not contain any information collection requirements.

[or]

[Option 2: Use the following if these regulations contain information collection requirements and OMB has approved the requirements and assigned a control number:]

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number[s] assigned to the collection[s] of information in these final regulations at the end of the affected sections[s] of the regulations.

[or]

[Option 3: Omit this section and its heading (Paperwork Reduction Act of 1995) if (1) these final regulations contain information collection requirements, (2) the Information Management Group in the Office of the Chief Information Officer (OCIO) has published these requirements in a separate notice of proposed information collection requirements, and (3) OMB has not yet approved the requirements and assigned a control number. In this case, you are covered by Option 4 of the DATES section of this preamble.]

[or]

[Option 4: Use the following if (1) these final regulations contain information collection requirements, (2) the Information Management Group in OCIO has not published these requirements in a separate notice of proposed information collection requirements, and (3) OMB has not yet approved the requirements and assigned a control number:]

Section[s] [give number[s]] contain[s] [an] information collection requirement[s]. As required by the

Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this [these] section[s] to the Office of Management and Budget (OMB) for its review.

[If you select Option 4, insert the following, combined into two or three paragraphs:

- [• A title for the collection of information.
- [• A summary of the collection of information.
- [• A description of the likely respondents; i.e., list the parties that would have to comply with the information collection requirements in these regulations (e.g., individuals or households; State, local, or tribal governments or agencies; businesses or other for-profit entities; Federal agencies or employees; nonprofit institutions; small businesses or organizations).
- [• A brief description of why we need this collection of information and how we plan to use it.
- [• The proposed frequency of response (e.g., annually, semi-annually).
- [• For each respondent an estimate of the total annual reporting and recordkeeping burden that will result from the collection of information. State the burden in terms of the estimated average burden hours per response (if necessary, state in terms of quarter hours using decimals; e.g., 2.75 hours, .5 hours, 1.25 hours).
- [• The estimated number of likely respondents.
- [• The estimated total annual reporting and recordkeeping burden hours (i.e., the estimated average burden hours per response multiplied by the estimated number of likely respondents).
- [• If we have requested or plan to request OMB to conduct its review on an emergency basis, the time period



within which we are requesting OMB to approve or disapprove the collection of information. NOTE: Approval under a request for review on an emergency basis is for 90 days only.]

[EXAMPLE 1:]

[Collection of Information: [Name of Program; e.g., State Adult Education Program--Special Projects]

[States are eligible to apply for grants under these regulations. The collection of information includes the following: assurances to meet certain statutory requirements; a description of each proposed project; specific information regarding each project (such as the need for the project, proposed collaboration with similar or related projects, criteria the State would use to measure progress and outcomes, data about persons the State proposes to serve); and information the State must include in an annual report to the Secretary. The Department needs and uses the information to make grants.

[Once each year, the State would collect and report all information except enrollment data. The State must collect the enrollment data once each semester (i.e., twice each year). We estimate annual reporting and recordkeeping burden for this collection of information to average 31 hours for each response for 54 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection of information. Thus, we estimate the total annual reporting and recordkeeping burden for this collection to be 1,674 hours.]

[EXAMPLE 2:

[Collection of Information: Use of Surplus Property

[These regulations would affect the following types of entities eligible to apply for surplus Federal real property for educational purposes: States, political subdivisions or instrumentalities of States, tax-supported institutions, nonprofit institutions, and any combinations of these types of entities. The collection of information includes a description of the applicant and the use for which the applicant intends the property. We need and use the information to determine an applicant's eligibility for the property and to increase the accountability of recipients.

[We collect information once only from each applicant. We estimate annual reporting and recordkeeping burden for this collection of information to average 28.5 hours for each response for 12 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Thus, we estimate the total annual reporting and recordkeeping burden for this collection to be 342 hours.

[Under 34 CFR 1320.11, we have requested OMB to conduct its review of this collection of information on an emergency basis. We have asked OMB to approve or disapprove the collection of information within 20 days of the publication of these regulations in the Federal Register.]

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the ADDRESSES [or] [FOR FURTHER INFORMATION] section of this preamble.

We consider your comments on this [these] proposed collection[s] of information in--

- Deciding whether the proposed collection[s] is [are] necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection[s], including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of

responses.

OMB is required to make a decision concerning the collection[s] of information contained in these regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. [Add the following sentence, if appropriate:] This does not affect the deadline for your comments to us on these final regulations.

**[E.10 Executive Order 12372]**

Intergovernmental Review

[Select one of the following options:]

**[Option 1.** Use the following if this program is subject to Executive Order 12372. This Executive order is applicable if any of the following applies:

- [•] The program is included on the list published in the Federal Register on May 25, 1990 (55 FR 21712).
- [•] The regulations for the program state that the program or activity is subject to 34 CFR part 79.
- [•] The program or activity currently has no regulations other than EDGAR.]

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.

[or]

[Option 2. Use the following if this program is not subject to Executive Order 12372.]

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

[or]

[Option 3. If the Secretary is exempting this program from Executive Order 12372, explain why the Secretary is exempting the program and provide a justification that meets one or more of the exceptions in 34 CFR 79.3(c) and (d).]

#### [E.11 Educational Impact]

[Include this section for regulations that apply in any way to institutions of higher education. These instructions provide two options.]

[Option 1: If public comments are being requested, use the following statement:]

#### Assessment of Educational Impact

The Secretary particularly requests comments on whether these regulations require transmission of information that any other agency or authority of the

United States gathers or makes available.

[or]

[Option 2: If public comments are not being requested on these final regulations, use the following:]

Assessment of Educational Impact

Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

**[E.12 Assessment of Federal Regulations and Policies on Families]**

[If these regulations would have a direct impact on families, contact the Regulations Coordinator in DRS assigned to this document.]

**[E.13 Executive Order 13132]**

[Use the following format for final regulations that have federalism implications (substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government):]

Federalism Summary Impact Statement

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the

distribution of power and responsibilities among the various levels of government. The final regulations in [identify the section or section numbers] have federalism implications, as defined in Executive Order 13132. We consulted with State and local elected officials who [provided comments] [did not provide comments] on these regulations.

[To the extent practicable and permitted by law, the Department of Education will not issue any regulations that have federalism implications and that either (1) impose substantial compliance costs on State and local governments and are not required by statute; or (2) preempt State law, unless--

[In the case of item (1), funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulations are provided by the Federal Government or the Department has consulted with State and local elected officials as provided in this document.

[In either (1) or (2), you must include in this Federalism Summary Impact Statement:

- [• A description of the extent of our prior consultation with State and local elected officials. (If applicable, include a statement that we (1) used ED Review, the biweekly electronic newsletter of ED's Office of Intergovernmental Affairs, to alert interested State and local elected officials of opportunities for consultation; or (2) used the listserv of ED's Office of Constituent Affairs to notify the National School Boards Association and others of opportunities for consultation. If these regulations identify any sections that have federalism implications and we have specifically invited input from State and local elected officials include:)]
- [• A summary of the nature of their concerns.
- [• A summary of our position supporting the need to issue



the regulations.

- [• A statement of the extent to which the concerns of State and local elected officials have been met.]

[If your final regulations have federalism implications you must provide this information under the heading, "Federalism Summary Impact Statement", even if the information is redundant with other information that appears elsewhere in the preamble.]

[Then use the following statement:]

Our Federalism official has certified to the Office of Management and Budget that we have complied with the requirements of E.O. 13132 for these regulations.

#### **[E.14 Electronic Versions of Documents]**

[Use the following:]

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at:

[www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). 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 Adobe 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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

[Optional:] You may also view this document in text [or PDF] at the following site:

[fill in your program's Web site, if any]

**[E.15 Information about the Catalog of Federal Domestic Assistance]**

(Catalog of Federal Domestic Assistance Number [fill in number and name of the program.] )

[or]

(Catalog of Federal Domestic Assistance Numbers: [fill in numbers as in this example: 84.233A Emergency Grants; 84.207A School Personnel Training Grants; 84.184A Demonstration Grants; and 84.184B Federal Activities Grants.] )

[or]

(Catalog of Federal Domestic Assistance Number does not apply.)

[or]

(Catalog of Federal Domestic Assistance Number has not been assigned.)

**[E.16 List of Subjects]**

List of Subjects in 34 CFR Part [fill in number]

[All preambles must contain an alphabetical list of subjects for each part of the Code of Federal Regulations contained in or amended by the document. The list is based on the Federal Register Index of Thesaurus Terms. Contact the DRS Regulations Coordinator for this program or document. The Coordinator will advise you on the preparation of the list of subjects.]

[If you are amending a part of the Code of Federal Regulations, repeat the entire list of subjects for that part even if the specific amendments in these final regulations do not refer to or directly relate to one or more of those subjects. You may add a new subject heading or new subject headings to the existing list of subjects for the part; however, the Office of the Federal Register has the discretion to adopt--or not adopt--any of the additions.]

[Indent the first item of the list, list horizontally in alphabetical order, begin each item with a capital letter, and separate items by commas. In final regulations containing information collection requirements under the Paperwork Reduction Act of 1995, include the following among the list of subjects: Reporting and recordkeeping requirements.]

[EXAMPLE:]

[Education, Education of individuals with disabilities, Education--research, Grant programs--education, Reporting and record keeping requirements, Teachers.]

[E.17 Signature Page]

[NOTE: At least one line of text must appear on the page containing the signature. Type the name and title of the signing official in the following format.]

[EXAMPLES:]

Dated:

Rod Paige,  
Secretary of Education.

[or]

John Doe,  
Assistant Secretary for  
Special Education and

Rehabilitative Services.

### *Examples*

#### **[E.18 Examples of Significant Regulations]**

##### **EXAMPLE 1:**

[The following is an example of significant regulations that is well-written and properly formatted. Please note that we have adapted certain facts to fit this example. For some programs it may be necessary for you to provide more quantitative analysis of costs and benefits than appears in this example. See EXAMPLES 2, 3, and 4.]

##### **\$694.07 Matching Requirements**

Statute: Under section 404C(b) of the HEA, the Secretary may not approve a GEAR UP plan unless the plan provides for the Partnership or State to supply matching funds. The Act specifies that the Partnership or State must provide--in cash or in kind--from State, local, institutional, or

private funds, at least 50 percent of the cost of the project. Section 404C(b) also authorizes the Secretary to modify, by regulation, the 50 percent requirement for Partnerships.

Current Regulations: The current regulations require a Partnership to (1) state in its application the percentage of the cost of the GEAR UP project that the Partnership will provide for each year from non-Federal funds; and (2) comply with the stated percentage for each year. The Partnership must provide at least 20 percent of the cost from non-Federal funds for every year of the project period and at least 50 per cent of the total cost over the full project period.

New regulations: The new regulations keep the requirement of a minimum non-Federal share of 50 percent of the total cost over the project period. However, the regulations allow an exception by permitting a match of not less than 30 percent of the cost for any Partnership that meets the following conditions:

- The Partnership has three or fewer institutions of higher education as members.
- The fiscal agent is (1) eligible to receive funds under Title V, Part B of Title III, or section 316 or 317 of the HEA; or (2) a local educational agency.

- The Partnership includes only participating schools with a 7<sup>th</sup> grade in which at least 75 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act.

- The Partnership includes only local educational agencies in which at least 50 percent of the enrolled students are eligible for free or reduced-price lunch under the National School Lunch Act.

Reasons: Generally the 50 percent matching requirement over the entire project period gives a Partnership broad flexibility in determining the amount the Partnership will supply in any given year during that period.

The success of any project depends in part on strong community support. Requiring a Partnership to provide 50 percent of the funds helps to ensure that the GEAR UP project has strong community support; that all members of the Partnership contribute to the project, in cash or in kind; and that the Partnership can be sustained, even after Federal funds are no longer available, through strong community partnerships and with support from all partners.

In the fiscal year 1999 competition the poorest and most rural communities that had applied were able to meet the 50 percent match. We were aware of a concern that the 50 percent match might preclude some of the poorest

communities from applying because they might not have the resources to meet the match. We examined a variety of options to address this possible problem.

One option was to waive the match. Another option was to establish a total minimum match of 20 percent for the full project period. We considered these options because of complaints that some colleges and universities, especially those that serve low-income students, were already burdened by matching requirements of other programs, even programs that permit flexibility to substitute in-kind services for dollars.

We concluded that a minimum total match of 20 percent for a complete project period was too low, and that other members of a Partnership could--and needed to--provide more. A Partnership does not need to use cash to meet the minimum match in the new provisions. Rather, the Partnership can meet the match through in-kind contributions; and this should alleviate any burden.

We also examined the following option: that the total minimum required match be 25 percent if a Partnership (1) served only elementary and secondary schools in which at least 50 percent of the enrolled students were eligible for free or reduced-price lunch under the National School Lunch Act; and (2) served only LEAs in which at least 50 percent

of the students enrolled were eligible for free or reduced-price lunch under the National School Lunch Act.

Another option we considered would have permitted the Secretary to give special consideration to a Partnership's required match either before the Partnership's application is approved or after we awarded a grant. For pre-approval special consideration, the Partnership would request a required match of less than 50 percent. Within 30 days of the application deadline, the Secretary would notify the Partnership as to whether the Secretary had granted the request.

Whether the request under this option was pre-approval or post-award, there would be two circumstances under which a Partnership could apply for special consideration:

(1) If an emergency--such as a natural disaster in the area where the Partnership was located--warranted a lower match.

(2) If the Partnership had systemic issues that could preclude its being able to meet the match. To qualify for a lower required match, the Partnership would have to show the following:

- That, in spite of its limited resources, it had an ongoing commitment to serving the educational needs of targeted students.



- That it had no access to adequate fiscal resources or that it was geographically isolated.

- That it was located in a geographic area in which at least 75 percent of the students were eligible for free or reduced-price lunch, or in which there was a high unemployment rate.

After carefully examining the various alternatives described here, we feel that the provision that appears in the new regulations is the best option available. We determined that-

- A waiver of the matching requirement would be too logistically burdensome, for both the Secretary and the applicant; and

- A minimum total matching requirement of 20 percent over the project period would be too low.

We feel that establishing a total minimum required match of 25 percent could allow too many applicants to take advantage of a reduced match. This could weaken projects. Also, it would require an increased Federal expenditure per project, resulting in the Department's funding fewer projects:

With regard to another of the options, we feel that an applicant's being able to request a lower match under certain circumstances would not be viable for a couple of

reasons. Because the criteria to qualify for the lower match were subjective and extremely detailed, both the applicant and the Department would have to spend significant amounts of time determining whether the applicant was, in fact, eligible for the lower match. In addition, this option would have required the Secretary to determine individually whether each applicant for a reduction qualified for the lower match.

We prefer an approach that provides a lower match for an easily definable group of applicants. This approach is less burdensome, both for applicants and for us, and still provides a lower match for applicants that need it most.

We considered expanding the group of institutions of higher education eligible for the lower match in the new regulations. The expanded group would have included institutions eligible to receive funds under all of Part A of Title III of the HEA, instead of those eligible under just section 316 or 317. However, we feel that the new regulations are sufficiently broad to allow a significant number of Partnerships to be eligible for the reduced match. We further believe that expanding the group of institutions eligible for the lower match would so broaden the exception as to turn it into the rule.

Section 694.07 of the new regulations modifies the

matching requirements for Partnerships. The regulations allow a Partnership to set its own matching level in any year, as long as it (1) states this percentage in its plan; (2) complies with the stated percentage for each year; and (3) contributes a total of 50 percent of the costs over the complete project period.

The regulations also allow a Partnership that meets certain, specified criteria to provide as low as 30 percent of the total project cost over the complete project period. This provision gives a qualifying Partnership--

- Greater flexibility in meeting matching requirements;
- The ability to reduce costs in any given year; and
- The ability to reduce costs over the total project period.

[The following EXAMPLES 2, 3, and 4 contain samples of quantitative analyses of costs and benefits that you might include in the "Reasons" section of Significant Regulations [E.4].]

EXAMPLE 2:

The changes to the financial responsibility regulations satisfy the same legal and policy objectives that the current regulations address. However, we believe that the changes more accurately measure the financial strength of an institution participating in a title IV, HEA program. The adoption of ratio analysis, together with the revised alternative means for demonstrating financial responsibility, minimizes the adverse economic impact on an entity that chooses this alternative.

We examined a number of other alternatives and rejected them because they would not have adequately discharged the Secretary's obligation under section 498(c) of the HEA to (1) determine the financial responsibility of a participating institution and (2) guard the Federal fiscal interest. These other alternatives would have--

- Established differing compliance or reporting requirements;
- Established timetables based on the size of the institution rather than the type of institution;

- Used performance standards rather than established baseline measures; or

- Exempted small entities from all or some of the regulations.

Further, we've determined that there are no other significant alternatives that would satisfy the same legal and policy objectives while minimizing the economic impact. We've based our determination, in part, on the extensive consultation that we and KPMG performed with a variety of entities--both small and large--in developing these revisions.

#### EXAMPLE 3:

Based on the U.S. Small Business Administration Size Standards, we've determined that these regulations will affect a lender with assets below \$100,000,000.

The two provisions we discussed under the preceding section of the regulations affect this type of small entity, as well as a large lender. The first provision offers a positive economic benefit by providing a lender additional flexibility for regulatory compliance. This provision does not impose a significant adverse economic impact.

The second provision imposes minor economic costs by requiring a lender to modify two letters that the lender

must send to delinquent borrowers. However, we've determined that the additional costs will not have a significant adverse economic impact.

The provisions protect the Federal fiscal interest, as well as the interests of the borrowers under the programs.

EXAMPLE 4:

Our analysis estimates that 456 to 625 for-profit entities and 18 to 80 nonprofit entities might not initially pass the new standards (to demonstrate financial responsibility) even though these institutions might have passed the current standards. We've derived these estimates from information used in the KPMG study. The study had selectively included a number of schools with a demonstrated lack of financial responsibility, so the projections in our analysis may overstate the expected number of institutions in this category.

In establishing a new standard for determining financial responsibility, we've tried to lessen any adverse effects. Thus, we've included in the regulations an alternative means for demonstrating financial responsibility. The alternative allows a participating institution to use current standards to demonstrate responsibility for fiscal years before the effective date of these new regulations.

An institution not able to comply with the standards following this transition period would experience an adverse economic impact from the new regulations. We discuss elsewhere in this preamble the relative economic costs this type of institution may face if we require it to post a letter of credit. Because the new regulations provide a better measure of an institution's financial responsibility, we believe it is necessary to impose these additional costs on an institution that is unable to adjust its operations to meet these ratios. Failure by the institution to meet the ratios indicates a heightened risk to students and taxpayers.

The adverse economic impact that some institutions may experience is balanced by the positive economic impact that we anticipate other entities will experience. This positive impact results from our use of the tests to better judge financial responsibility. We estimate, for example, that 138 to 369 small entities that failed the existing tests will pass the new tests because the regulations determine financial responsibility by blending more information into a composite score. An institution with resources that we did not adequately measure under the current regulations will save the expense of pursuing alternative demonstrations of financial responsibility.





## Chapter D: HOW DO I PREPARE A PREAMBLE FOR FINAL REGULATIONS?

(Revised, March 2013)

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## [D.1] INTRODUCTION

Final regulations establish or amend regulations to implement a statute, an Executive order, or a court ruling. Specifically, the Department uses final regulations to establish requirements that it is codifying in title 34 of the Code of Federal Regulations (CFR). The Department publishes final regulations in the Federal Register.

A final regulations document consists of two sections: (1) a preamble that introduces and summarizes the document, describes the regulations, and shows compliance with various Executive orders and other governmentwide requirements; and (2) the new or amended regulatory provisions that will appear in the CFR.

This chapter contains instructions for preparing the preamble for final regulations. If you are preparing a preamble for a notice of proposed rulemaking (NPRM), use the instructions in Chapter B. If you are waiving proposed rulemaking and public comment under the Administrative Procedure Act (APA) or the General Education Provisions Act (GEPA), use the instructions in Chapter E. If you are preparing a notice of final priorities (NFP), which the Department uses to establish priorities, requirements, definitions, and selection criteria that it does not codify in the CFR, use the instructions in Chapter P.

This chapter contains four sections: (1) this introduction; (2) instructions for preparing a preamble for final regulations; (3) appendices containing examples of how to summarize and discuss in final regulations public comments made in response to an NPRM; and (4) a preamble template that contains minimal instructions.

The primary purpose of a preamble for final regulations is to explain to readers--in a clearly written, easy-to-understand manner without jargon--each of the following:

- What regulations we are establishing.
- Why we are establishing these regulations.
- What effect or effects these regulations are intended to have.

### General Information

Except under certain conditions, if you want to establish regulations that you seek to codify in the CFR, you must have published an NPRM in the Federal Register and requested public comment on the proposed regulations.

Following the publication of an NPRM and the review of the public comments received on the NPRM, you must publish final regulations in order to implement or otherwise use any of the provisions of the regulations. In the preamble for final regulations, you summarize substantive comments you received, discuss those comments, and inform readers whether you have made any significant changes in the regulations as a result of those comments.

In developing the preamble for final regulations, you must keep in mind--and provide information required by--a number of statutes, Executive orders, and other mandates. These include the APA, the GEPA, the Paperwork Reduction Act of 1995 (PRA), Executive Order (E.O.) 12866 ("Regulatory Planning and Review"), E.O. 13563 ("Improving Regulation and Regulatory Review"), and the Presidential memorandum "Plain Language in Government Writing." These instructions are designed to help you comply with these requirements. You should also be familiar with the Department's Principles for Regulating, which are included at the beginning of this Regulatory Quality Manual.

In developing your final regulations it is essential that you consult with key offices and individuals both within and outside of the Department and rely on their expertise. Within the Department, these offices include the program attorney in the Office of the General Counsel (OGC); Budget Service; and Privacy, Information and Records Management Services (PIRMS) in the Information Collection

Clearance Division (ICCD) of the Office of Management and Budget Service is responsible for preparing the Regulatory Impact Statement (i.e., the cost-benefit analysis) and the Regulatory Flexibility Act Certification section. ICCD is responsible for preparing Information Collection Requests and for compliance with the PRA.

Outside of the Department, the Office of Management and Budget (OMB) typically reviews the Department's final regulations to determine if they are "significant regulatory actions," as that term is defined in Executive Order 12866. If OMB determines that final regulations are a significant regulatory action, OMB will formally review the document to ensure that it contains all of the appropriate information specified in that Executive order and in Executive Order 13563, including an assessment of costs and benefits.

As you develop a preamble for final regulations, we recommend that as issues are raised, deliberated, and decided, you keep notes and copies of all resources and references used to inform the decision. Resources, such as studies and specific data, will become part of the rulemaking record. Notes can be very useful as you draft the preamble and explain to readers the various options we considered and the reasons for our decisions.

### **Well-Written Preambles**

A well-written preamble will enhance the public's understanding of our regulatory and programmatic policies and initiatives. A clear preamble will also foster goodwill among our customers, aid in compliance with requirements, and help avoid litigation. Ultimately a well-written preamble enhances the mission of the Department.

Thus, it is essential that you think through your preamble carefully, consider it from your readers' perspective, and structure it in a logical sequence so that it is clear and effective. Your explanation of the NPRM's background, development, and key provisions should be thorough and stated as simply, clearly, and concisely as possible. This material should be comprehensible to the

general public, not just to "persons in the field." Do not use jargon.

#### Differences between Final Regulations and an NPRM

Several features of the preamble for final regulations differ from the preamble for the NPRM, including the following:

- A summary and discussion of comments received during the public comment period, together with a description of any changes made as a result of public comment or departmental review since publication of the NPRM.

- Sections concerning information collection requirements, if any.

- Omission of some statements that were required in the NPRM (e.g., the Regulatory Flexibility Act certification if the final regulations do not have a significant economic impact on a substantial number of small entities).

- Dropping the use of the conditional, subjunctive mood (not yet an accomplished fact) that characterized proposed actions that "would" have a certain result and replacing it with the indicative mood (stating a fact) showing that the Secretary or other issuing principal officer "announces," "publishes," or "issues," for example. Also, although it is generally only speculative to suggest that the final regulations "will" have a certain effect, it is not unreasonable to suggest that they are "likely to," "designed to," or "intended to" have certain results.

Although each program office may choose a user-friendly approach that is most helpful for its particular customers, you do not need to repeat in the preamble for final regulations much of the explanatory material from the SUPPLEMENTARY INFORMATION section of the preamble for the NPRM. Generally a cross-reference to the NPRM will do.

If, however, the final regulations contain significant changes from the NPRM, you must fully describe and justify each change according to the requirements of the APA and E.O. 12866 just as you addressed each major provision in

the preamble of the NPRM (see Chapter B: How Do I Prepare a Preamble for a Notice of Proposed Rulemaking?).

In the preamble for final regulations, the PRA does not require the Department to ask for additional public comment concerning information collection requirements that were addressed in the NPRM. However, if there are significant changes from the NPRM, the Department should determine on a case-by-case basis whether it would be good public policy to solicit additional public comment on the changes.

### **Requirements of Format, Style, and Standard Language**

This chapter tells you what information you must include in a preamble for final regulations and how you must present it. Included is standard language required by the Department, the Office of the Federal Register (OFR), or OMB.

OFR publishes the Federal Register Document Drafting Handbook (DDH), which is intended to help agencies create and submit documents that comply with OFR's requirements. The DDH is available at the following Internet address: [www.archives.gov/federal-register/write/handbook](http://www.archives.gov/federal-register/write/handbook).

Chapter 2 ("How do I write a document for the rules category?") of the DDH provides additional guidance for drafting a preamble for final regulations.

The United States Government Printing Office (GPO) also mandates many of the style requirements in these instructions. The GPO Style Manual, which you can download in Adobe Portable Document Format (PDF), is available at the following Internet address: [www.gpoaccess.gov/stylemanual/browse.html](http://www.gpoaccess.gov/stylemanual/browse.html).

The examples used throughout this chapter and its appendices are fictional. They are intended for purposes of illustration only and may not correspond exactly to portions of documents or citations as published.

## Technical Requirements

- Double-space the preamble.
- Leave a 1.5-inch margin on the left, a 1-inch margin on the right, and a 1-inch margin at the top and bottom.
- Justify the left margin only.
- Except as otherwise indicated in the instructions, indent (five spaces) the first line of each paragraph of text.
- Use 12-point Courier New font.
- Begin numbering at the center bottom of the first page in Arabic numerals ("1").
- Never type in bold.
- Italics may be indicated by italicizing or underlining the text.
- Underline only as shown in the instructions.
- Indent the first line of any bullet five spaces and leave two spaces after the bullet. Do not use the automatic bulleting function in Microsoft Word.
- Use initial capitals and underline the term Federal Register unless you are asking OFR to compute a date, in which case type FEDERAL REGISTER in all capitals without underlining.
- Place instructions to OFR inside non-italicized brackets and capitalize all letters.

### Example:



DATES: We must receive your comments on or before [INSERT DATE *[insert number of days for the comment period; e.g., 30]* DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

#### Material inside Square Brackets

In this chapter bold-faced, italicized material inside italicized square brackets [ ] is an instruction to the drafter of the notice; do not include this material in your preamble.

The shaded, bold-faced letters and numbers inside the italicized brackets--e.g., [D.4] or [D.4-1]--are for purposes of reference and cross-reference for users of this manual; do not include them in your preamble.

The other material inside non-italicized square brackets [ ] is alternative wording intended for use, as appropriate, in your preamble.

#### Delegation of Authority and Referring to the Department

Under a delegated authority, a principal officer other than the Secretary, such as an Assistant Secretary or a Director of a principal office, may sign final regulations. However, we recommend that you use the title of this principal officer only if the title is necessary (such as in the signature block). In keeping with the Presidential memorandum "Plain Language in Government Writing," we prefer that you use the pronoun "we" or "us" in referring to the Department.

#### For Further Information

If you have questions regarding these instructions, please consult the Regulations Quality Officer or the Regulations Program Specialist for your program or document, both of whom are in the Division of Regulatory Services (DRS), Office of the General Counsel. Telephone: (202) 401-8300.

## INSTRUCTIONS FOR PREPARING A PREAMBLE FOR FINAL REGULATIONS

### [D.2 Headings; Summary; Dates; For Further Information]

4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Part [Parts] [Fill in all affected part numbers.]

RIN [Use the same number used in the notice of proposed rulemaking (NPRM).]

[Docket ID [Insert the Docket ID from the Federal Docketing Management System (FDMS). Consult DRS on how to obtain this number.]]

[Fill in the title of the regulations as it is or will be in the Code of Federal Regulations. The number of characters, including spaces, may not exceed 200. Use initial capital letters only; do not end with a period; e.g., Disability and Rehabilitation Research; Rehabilitation Engineering Research Centers]

AGENCY: [Name of principal office; e.g., Office of Postsecondary Education], Department of Education.

ACTION: Final regulations. [Note: In identifying the type of document being presented, the Department uses "regulations" (in the plural) instead of the word "rule."]

SUMMARY: [In 100 words or less, describe, in plain language, (1) the action you are taking; (2) why you are taking the action; and (3) the intended effect of the action. Unless there have been significant changes in the reasons for or effect of these regulations since publication of the NPRM, this paragraph should be identical to the summary in the NPRM with appropriate changes in wording; e.g., The Secretary amends the regulations governing . . . (rather than: The Secretary proposes to amend the regulations governing).]

[Example:

SUMMARY: The Secretary amends the regulations governing the Higher Education Programs in Modern Foreign Language Training and Area Studies. The Secretary issues the amendments in response to the President's Regulatory Reinvention Initiative. These final regulations change the names of the programs, remove obsolete references, modify the selection criteria, and make other technical changes.]

DATES: [Select the appropriate paragraph from among the following three options:]

[Option 1: If these regulations are to take effect on a particular date, use this paragraph:

These regulations are effective [insert date].]

[Option 2: If these regulations do not contain information collection requirements; or if the regulations contain information collection requirements, and OMB has approved the requirements and assigned a control number since publication of the NPRM, use this paragraph:

These regulations are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].]

[Option 3: If these are final regulations that contain information collection requirements, and OMB has not yet approved the requirements and assigned a control number, use this paragraph:

These regulations are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

However, affected parties do not have to comply with the

information collection requirement [requirements] in § [§§]  
[fill in section number [numbers]] until the Department of  
Education publishes in the Federal Register the control  
number [numbers] assigned by the Office of Management and  
Budget (OMB) to this [these] information collection  
requirement [requirements]. Publication of the control  
number [numbers] notifies the public that OMB has approved  
this [these] information collection requirement  
[requirements] under the Paperwork Reduction Act of 1995.]  
FOR FURTHER INFORMATION CONTACT: *[Insert name of person or  
persons]*, U.S. Department of Education, *[select one of the  
following addresses:]* [400 Maryland Avenue, SW. *[which  
includes Potomac Center Plaza (PCP)]*] [555 New Jersey  
Avenue, NW.] *[or]* [1990 K Street, NW.], room *[fill in room  
number and, if necessary, building designation; e.g.,  
11108, PCP]*, Washington, DC *[fill in ZIP Code.. Use 20202  
for Maryland Avenue, 20208 for New Jersey Avenue, or 20006  
for K Street]-[fill in last four digits of ZIP Code]*.  
Telephone: (202) *[fill in number]* [.] *[Optional:]* [or by  
email: *[insert address, as in the following example:  
george.jones@ed.gov]*.]

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call *[include either of the following:]* [the TDD/TTY number at (202) *[fill in number].]* *[or, if a TDD/TTY number is not available, use the following:]* [the Federal Relay Service (FRS), toll free, at 1-800-877-8339.]

### ***[D.3 Supplementary Information]***

#### **SUPPLEMENTARY INFORMATION:**

##### ***[D.3-1 Executive Summary]***

*[Under Executive Order 13563, "Improving Regulations and Regulatory Review," OMB has determined that the preamble for a lengthy or complex rule, both proposed and final, should include an executive summary.*

*The Department has decided that final regulations that are 100 or more typed pages, double-spaced, or that are identified as "economically significant" under Executive Order 12866 must contain an executive summary. Generally the maximum length of the summary should be three to four, double-spaced pages.*

*If your NPRM contained an executive summary, and you have not made any significant changes in these final regulations, you may copy the executive summary from the NPRM. Be sure to change the conditional, subjunctive mood of verbs (e.g., Don't say "The regulations would require an SEA to report," etc.; instead say "The regulations require an SEA to report," etc.)*

*If you have made significant changes in these final regulations that affect your executive summary, rewrite the summary as necessary and include the following:]*

## Executive Summary:

Purpose of This Regulatory Action: [Include a short statement of the need for this regulatory action and how the action will meet this need. Much of this material is in the SUMMARY section near the beginning of this preamble. Pertinent material may also be in section [D.3-2] (Supplementary Information--General). To offer readers a fuller discussion of the purpose, refer them to section [D.3-2], if appropriate. Include a succinct statement of the legal authority, explaining in brief the legal authority at the end of the table of contents for these final regulations, as well as any other reference to the legal authority elsewhere in this preamble; e.g., if applicable, section [D.4] (Public Comment).]

Summary of the Major Provisions of This Regulatory Action: [Describe clearly and separately each major provision, together with a brief justification. Much of this material is in section [D.3-2]. If applicable, you may also find material in section [D.4]. To offer readers a fuller discussion of the major provisions, refer them to these sections of your preamble.]

Costs and Benefits: [Summarize costs and benefits based on material in section [D.5] (Executive Orders 12866 and 13563). If these final regulations are economically significant, consult with Budget Service and include a brief assessment of costs and benefits, both quantitative and qualitative. To offer readers a fuller discussion of costs and benefits, refer them to section [D.5] and section [D.6] (Regulatory Flexibility Act).]

[D.3-2 Supplementary Information--General]

[This section should be written in plain language to inform readers who may not be experts in the subject of these regulations. Except as otherwise noted, it is not necessary to repeat information covered in the NPRM.]

Include the following information in plain language and avoid jargon:

- For regulations implementing new statutory enactments, include the full name of the Act, together with the Public Law number and the enactment date. Unless this information has changed since publication of the NPRM, repeat the language of the NPRM, changing only the conditional mood of verbs.]

[Example:

These regulations implement the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1998 (Pub. L. 105-332), enacted October 31, 1998.]

[• Reference the NPRM as follows:]

On [date] the Secretary published a notice of proposed rulemaking (NPRM) for [this program] [this part] [this amendment] [etc.] in the Federal Register ([volume number] FR [page number]).

[• If the NPRM included a discussion of the major issues, state this and, if it would be helpful, provide a summary and reference the appropriate page numbers. If the discussion in the NPRM was brief, you may repeat it. Otherwise, just provide the summary and reference.]

[Example:

In the preamble of the NPRM, we discussed on pages 47398 and 47399 the major changes proposed in that document

to improve the due diligence provisions in the FFEL Program. These included the following:

- Amending §682.404(a)(2)(ii) to require a guaranty agency to offer preclaims assistance to a lender no later than the 75th day of delinquency.
- Amending §682.410(b)(2) to require a guaranty agency to assess a defaulted borrower the same amount of collection charges assessed by the Department for loans held by the Department.
- Amending §682.410(b)(6)(vii) to require a guaranty agency to initiate wage garnishment proceedings if a borrower has sufficient income.
- Amending §682.413(b) to expand the possible remedial action available to the Secretary if a guaranty agency fails to meet the requirements of §682.410 to include mandatory assignment of FFEL loans to the Department at the Secretary's discretion.]

*[• The instruction in the following paragraph is optional. We recommend that you follow this instruction unless the Analysis of Comments and Discussion in this preamble is relatively brief (e.g., five typed pages or fewer) so that a reader does not have to go through many pages to find any significant changes between the NPRM and these final regulations or to discover that there are no significant differences:*



State any significant differences between the NPRM and these final regulations. This could include a summary (one or two sentences) of significant changes resulting from public comments and any other major significant changes since publication of the NPRM; or you could simply state in one or two sentences--to alert readers--that these final regulations contain one [several] significant change [changes] from the NPRM and that we fully explain this change [these changes] in the Analysis of Comments and Changes elsewhere in this preamble.]

[or]

[If there have been no substantive differences between the NPRM and these final regulations, use one of the following, as appropriate:]

There are no differences between the NPRM and these final regulations.

[or]

Except for minor [editorial] [technical] [editorial and technical] revisions, there are no differences between the NPRM and these final regulations.

[• Add any other significant information that is absolutely necessary to help readers understand these regulations. Do not repeat information included elsewhere in this SUPPLEMENTARY INFORMATION section. Do not repeat or provide a lengthy summary of the statute or these final regulations.]

[Example:

Note to potential applicants: The Act specifies that a grantee progressively share the costs of its federally

assisted project. Thus, in order to participate in this program, you must provide an assurance that, if you receive a grant under the program, you will contribute an increasing, specified percentage of the costs each year of the project. This contribution ranges from 30 percent the first year to 50 percent the third and final year. In the preamble of the NPRM, we fully explained the rationale for the specific percentages established by the Secretary in these regulations.]

#### [D.4 Public Comment]

*[The contents of this section will vary, depending on whether you received any comments, whether the comments were substantive, whether changes resulted solely from intradepartmental review rather than--or in addition to--public comment, etc. The instructions on this page and on the next several pages provide three options.]*

*[Option 1: If you received substantive comments from the public or substantive comments from the public and through intradepartmental review, use the instructions and boilerplate language in [D.4-1 Response to Substantive Comments].]*

*[Option 2: If (a) you received no comments, no substantive comments, or no comments to which the Department must respond, and (b) you've made no substantive changes to the text of the NPRM--other than dropping the word "proposed" and the conditional, subjunctive mood (e.g., "would") and any similar references, and purely technical edits--use the instructions and boilerplate language in [D.4-2 No Changes to the NPRM].]*

[Option 3: If (a) you received no comments, no substantive comments, or no comments to which the Department must respond, but (b) you've made substantive changes to the text of the NPRM solely as a result of intradepartmental review since publication of the NPRM, use the instructions and boilerplate language in [D.4-3 Changes to the NPRM Based Solely on Intradepartmental Review].]

[D.4-1 Response to Substantive Comments]

[Use the following if you received substantive comments from the public or substantive comments from the public and through intradepartmental review.]

Public Comment: In response to our invitation in the NPRM, [insert number] [or, in place of an absolute number, use a descriptive adjective; e.g., several, many, more than 25, more than 100, more than 300] parties submitted comments on the proposed regulations.

[Use any of the following sentences that applies to the way in which you've organized this section:]

[We group major issues according to subject.] [We discuss [other] substantive issues under the title [number] of the item to which they pertain.] Generally, we do not address technical and other minor changes.

[As an alternative, you may wish (1) to address the most important of these suggested changes, (2) to list without discussion other suggested changes that the law does not authorize you to make, or (3) to do both. If you choose any of these alternatives, change the introductory language accordingly.]

[Note: It may not be necessary to respond to comments that do not express a view on the substance of the regulations. Please feel free to consult your program attorney or an attorney in DRS for guidance on whether a response is necessary.]

[Type flush left. Fill in section number and heading if the heading is the exact section heading in the NPRM. See [D.15-2], Example 3. If the heading is not taken directly from the NPRM, fill in a created heading for the subject matter or section; then, in parentheses, fill in the appropriate section number [numbers]. See [D.15-2], Examples 1 and 2.]

Analysis of Comments and Changes: An analysis of the comment [comments] and of any changes in the regulations since publication of the NPRM follows [is published as an appendix at the end of these final regulations].

[Note: Use an appendix if your analysis exceeds 10 typed pages. See [D.15].]

Comment [Comments]: [In discussing the comment [comments], follow this guidance:

- Describe the substantive and major issues raised by each commenter to allow the reader to understand the basis for the commenter's concerns and what changes the commenter requested.

- Discuss similar comments under a single "Comments" heading.

- Avoid quoting from the NPRM.

- In summarizing the comments, paraphrase rather than quote the exact wording of the comment or changes requested, unless a quotation is absolutely necessary to understand the comment.

- Do not use quotation marks in describing any changes that you make.

- Double space.]

[Example:

DO WRITE: Comment: One commenter recommended that we amend the regulations to provide that before the Secretary issues a final denial of further funding, the Secretary offer a grantee a chance to show that its actions advanced the purpose of the program.

DO NOT WRITE: Comment: One commenter recommended that "a new paragraph (e) be added to §987.66 to read as follows:  
'(e) Before the Secretary takes final action terminating further funding to a project, the Secretary advises the grantee that the grantee may demonstrate to the Secretary that its penalized actions advanced the purpose of the program.'"]

[Note: If you base the discussion of a change on intradepartmental review that did not result from public comment, leave this Comment section blank except for the word: None.]

[Example:

Comment: None.]

Discussion: [Describe the considerations relevant to the Department's decision to make changes (or not to make changes) in the proposed regulations. Include information and analysis that responds to the concerns raised in the comments. The summary of the comments and this discussion, taken together, must be adequate to inform a reader of the major issues and alternatives you considered and why you decided to make changes (described under the next heading) or to make no changes.

- If OMB will review these final regulations under E.O. 12866, also assess costs and benefits affecting your decision to make changes or not to make changes.

- Do not describe the actual changes in this Discussion.

- Do not use quotations.

- Double space.

- If your changes have resulted from the Department's own review of the NPRM, this Discussion alone must provide the information necessary to justify the changes.]

[Note: It is not necessary to attribute to the Secretary (or other principal officer issuing these final regulations) the Department's analysis of public comments.]

[Example:

DO WRITE: Discussion: While NIDRR agrees with the commenter that there is a need for research about strategies and assistive devices to enhance the functional and community participation outcomes for individuals with multiple sclerosis, NIDRR does not believe that it is

necessary to revise the regulations to address this specific need. Applicants under this program already have flexibility to choose the types of interventions they propose to identify, or to develop and evaluate. Assistive devices are one specific type of intervention that could be examined under the program.

DO NOT WRITE: Discussion: NIDRR does not believe that it is necessary to revise the regulations to address this specific need.]

Changes:

- [• *If you've not made changes, write: None.*
- *If you've made changes, describe them. Do not use quotation marks.*
- *Do not add further analysis of why you are making changes. Analysis belongs under the heading Discussion.*
- *Double space.]*

[Example:

DO WRITE: Changes: We have revised \$987.66. Before issuing a final denial of further funding, the Secretary gives the grantee an opportunity to show that its actions were consistent with the purpose of the program.

DO NOT WRITE: Changes: The Secretary has revised \$987.66 by adding a new paragraph (e) to read as follows: "(e) Before the Secretary takes final action terminating further funding to a project, the Secretary advises the grantee that the grantee may demonstrate to the Secretary that its penalized actions advanced the purpose of the program."]

***[D.4-2 No Changes to the NPRM]***

*[Use the following paragraph if: (1) you didn't receive comments, you didn't receive substantive comments, or you didn't receive comments to which the Department must respond and (2) you've not made any substantive changes since you published the NPRM:]*

Public Comment: In response to our invitation in the NPRM, [we did not receive any comments] [we did not receive any substantive comments] on the proposed regulations.

***[D.4-3 Changes to the NPRM Based Solely on Intradepartmental Review:]***

*[Use the following if: (1) you didn't receive comments, you didn't receive substantive comments, or you didn't receive any comments to which the Department must respond but (2) as a result of the Department's own review, you've made substantive changes since you published the NPRM:]*

Public Comment: In response to our invitation in the NPRM, [we did not receive any comments] [we did not receive any substantive comments] on the proposed regulations.



However, as a result of our further review of the proposed regulations since publication of the NPRM, we have made [a change] [changes] as follows:

Analysis of Comments and Changes:

Comment: None.

Discussion: [Describe the considerations relevant to the Department's decision to make changes in the proposed regulations, as applicable. Because there is no Comment, this Discussion alone must provide the information necessary to justify your changes. If OMB will review these final regulations under E.O. 12866, include an assessment of costs and benefits in justifying our decision to make changes. However, do not describe or quote the actual changes in this Discussion.]

[Example:

Discussion: In reviewing proposed \$392.11 further, NIDRR has decided that limiting the activities of the program to assistive technology is too restrictive because it would not allow applicants to focus on the range of technology developed by entities receiving NIDRR funding.]

Changes:

- Describe the changes. Do not use quotation marks.
- Do not add further analysis of why you are making changes. Analysis belongs under the heading Discussion.
- Double space.]

[Example:

Changes: As a result of our further review, we have revised \$392.11 by deleting the list of technology activities. We have clarified the language to indicate that the Center's original research and development must concentrate on no more than three technology activities that are the focus of current NIDRR technology grantees. Information on technology research currently funded by NIDRR can be found at [www.naric.com/research/pd/priority.cfm](http://www.naric.com/research/pd/priority.cfm).]

[D.5 Executive Orders 12866 and 13563]

Executive Orders 12866 and 13563

[D.5-1 Regulatory Impact Analysis]

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

*[Under Executive Order 12866, OMB formally reviews all regulatory actions that are deemed either "significant" or "economically significant." If the Department believes that final regulations are neither significant nor economically significant under the Executive order, the Department--through DRS--requests a significance determination from OMB. If OMB agrees that the regulatory action is not significant, it does not review the final regulations under Executive Order 12866.]*

*[If these final regulations are not significant, add the text from [D.5-1-1]. If these final regulations are*

*significant, add the text from [D.5-1-2]. If these final regulations are economically significant, add the text from [D.5-1-3].]*

**[D.5-1-1 If these final regulations are not significant]**

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these 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." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these final 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 the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

*[Use the next paragraph if the final regulations do not affect any of the following: State, local, or tribal governments. If one or more of those levels of government are affected, revise the statement accordingly.]*

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

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

*[If there are identifiable or measurable costs and benefits, include a brief discussion here.]*

*[If these final regulations do not include any information collection requirements, omit the next sentence:]*

Elsewhere in this section, under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

***[D.5-1-2 If these final regulations are significant]***

This final regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these 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." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."



We are issuing these final 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 the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

***[Use the next paragraph if the final regulations do not affect any of the following: State, local, or tribal governments. If one or more of those levels of government are affected, revise the statement accordingly.]***

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

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

*[Insert discussion of the potential costs and benefits, which may include a discussion of net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.]*

*[If these final regulations do not include any information collection requirements, omit the next sentence:]*

Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

*[D.5-1-3 If these final regulations are economically significant]*

This final regulatory action will have an annual effect on the economy of more than \$100 million because *[briefly explain why]*. Therefore, this final action is "economically significant" and subject to review by OMB under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this final regulatory action and have determined that the benefits justify the costs.

We have also reviewed these 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." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these final 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 the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

*[Use the next paragraph if these final regulations do not affect any of the following: State, local, or tribal governments. If one or more of those levels of government are affected, revise the statement accordingly.]*

We also have determined that this regulatory action does not unduly interfere with State, local, or tribal

governments in the exercise of their governmental functions.

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

*[Insert substantive discussion of costs and benefits. You must discuss this with Budget Service, which prepares this section of the preamble. If the Regulatory Impact Analysis contains charts or graphs or is particularly lengthy, you should consider placing it in an appendix and simply referencing it here.]*

*[If these final regulations do not include any information collection requirements, omit the next sentence:]*

Elsewhere in this section, under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

#### Accounting Statement

As required by OMB Circular A-4 (available at [www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf)), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. This table provides our best estimate of the changes in annual monetized transfers as a result of these

final regulations. Expenditures are classified as transfers from [insert entities from which the transfers are made; e.g., the Federal Government, SEAs, LEAs, IHEs, financial aid recipients] to [insert entities to which the transfers are made; e.g., the Federal Government, SEAs, LEAs, IHEs, financial aid recipients].

Accounting Statement Classification of Estimated Expenditures [in millions]

Category	Transfers
Annualized Monetized Transfers	\$(insert amount)
From Whom to Whom?	from [insert the term you used in the preceding paragraph]  to [insert the term you used in the preceding paragraph]

[D.6 Regulatory Flexibility Act]

Regulatory Flexibility Act

[In developing the NPRM the issuing office determined--in consultation with Budget Service--whether the proposed regulations would have a significant economic impact on a substantial number of small entities. If so, the issuing office prepared and summarized an initial regulatory flexibility analysis in the preamble to the NPRM. In that

case, it is necessary to prepare a final regulatory flexibility analysis and include a summary here.

If, however, the Secretary certified in the NPRM that the proposed regulations would not have a significant economic impact on a substantial number of small entities and there has not been public comment challenging that conclusion or other information that would change the Department's decision, omit this section and its heading in these final regulations.]

#### [D.7 Information Collection Requirements]

[The contents of this section will vary, depending on whether these regulations contain information collection requirements and whether OMB has approved the requirements and assigned a control number. These instructions provide three options.]

#### Paperwork Reduction Act of 1995

[Select one of the following three options:]

[Option 1: If these regulations contain information collection requirements--such as application, reporting, or recordkeeping requirements--and OMB has approved the requirements and assigned a control number since publication of the NPRM, use the following:

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number [numbers] assigned to the collection [collections] of information in these final regulations at the end of the affected section [sections] of the regulations.]

[Option 2: If these are final regulations--other than final regulations for which rulemaking is being waived--that contain information collection requirements and OMB has not yet approved the requirements and assigned a control number, omit the heading of this section and any text. We cover the provision of the Paperwork Reduction Act of 1995 requiring the Department to transmit the affected sections to OMB for review under Option 3 of the DATES section of this preamble.]

[Option 3: If these regulations do not contain information collection requirements, use the following:]

These regulations do not contain any information collection requirements.

[D.8 Intergovernmental Review: Executive Order 12372]

[Select one of the following three options:]

[Option 1: If the NPRM stated that this program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79, omit this section and its heading in these final regulations.]

[Option 2: If this program is subject to Executive Order 12372, the wording of this next section should be identical to the wording in the NPRM, as follows:

#### Intergovernmental Review

This program is [These programs are] subject to the requirements of 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 [these programs].]

**[Option 3: If the Secretary has exempted this program from Executive Order 12372, the wording of this section should be identical to the wording in the NPRM. Explain why the Secretary has established this exemption and provide a justification that meets one or more of the exceptions in 34 CFR 79.3(c) or (d).]**

#### **[D.9 Educational Impact]**

**[Include this section for regulations that apply in any way to institutions of higher education. Select one of the following three options.]**

**[Option 1: If the NPRM included a request for comments under this heading, use the following, if accurate:**

#### **Assessment of Educational Impact**

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not

require transmission of information that any other agency or authority of the United States gathers or makes available.]

***[Option 2: If the NPRM did not contain this specific request for comments, use the following paragraph only, if accurate:***

Assessment of Educational Impact

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.]

***[Option 3: If you have received comments in response to the request in the NPRM, use the following paragraph and contact the Regulations Program Specialist in DRS for this program or document for the appropriate language to insert after this paragraph:]***

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. ***[Insert appropriate language.]***

***[D.10 Federalism: Executive Order 13132]***

*[If the preamble for the NPRM included a section under the heading Federalism, use the following in this preamble for the final regulations:]*

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

In the NPRM we identified a specific section [specific sections] that may have federalism implications and encouraged State and local elected officials to review and provide comments on the proposed regulations. In the Public Comment section of this preamble, we discuss any comments we received on this subject.

**[D.11 Accessible Format; Electronic Access]**

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person [one of the program

contact persons] listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). 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 Adobe 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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**[Optional:]** You may also view this document in text [or PDF] at the following site: **[Fill in your program's Web site.]**

**[D.12 Information about the Catalog of Federal Domestic Assistance]**

(Catalog of Federal Domestic Assistance Number [fill in number and name of the program])

[or]

(Catalog of Federal Domestic Assistance Numbers: [fill in numbers and names; e.g., 84.233A Emergency Grants; 84.207A School Personnel Training Grants; 84.184A Demonstration Grants; and 84.184B Federal Activities Grants])

[or]

(Catalog of Federal Domestic Assistance Number does not apply.)

[or]

(Catalog of Federal Domestic Assistance Number has not been assigned.)

**[D.13 List of Subjects]**

*[All preambles must contain an alphabetical list of subjects for each part of the CFR contained in or amended by the document. The list is based on the Federal Register Thesaurus of Indexing Terms at [www.archives.gov/federal-register/cfr/thesaurus.html](http://www.archives.gov/federal-register/cfr/thesaurus.html). Prepare a separate list for each part. Unless there have been significant changes to these regulations since publication of the NPRM, this list should be identical to the list in the NPRM. Otherwise, contact the Regulations Program Specialist in DRS for this program or document.]*

*If you are amending a part of the CFR, repeat the entire list of subjects for that part even if the specific amendments in these final regulations do not refer to or*

directly relate to one or more of those subjects. You may add a new subject or new subjects to the existing list for the part; however, OFR has the discretion to adopt--or not adopt--any of the additions.

Indent the first item of the list, list horizontally in alphabetical order, begin each item with a capital letter, and separate items by commas. In final regulations containing information collection requirements under the Paperwork Reduction Act of 1995, include the following among the list of subjects: Reporting and recordkeeping requirements.]

[If your final regulations include or amend only one part of the CFR, use the following heading:]

List of Subjects in 34 CFR Part [fill in number]

[Example:

Education, Education of individuals with disabilities, Education--research, Grant programs--education, Reporting and recordkeeping requirements, Teachers.]

[or]

[If your final regulations include or amend more than one part of the CFR, use the general heading "List of Subjects" followed by separate identifications of each affected part and list of subjects.]

[Example:

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant

programs--education, Loan programs--education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 602

Colleges and universities, Reporting and recordkeeping requirements.

34 CFR Part 603

Colleges and universities, Vocational education.]

**[or]**

***[If your final regulations include or amend two or more parts of the CFR, and if two or more parts contain identical lists of subjects, you may combine those.]***

**[Example:**

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs--education, Loan programs--education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Parts 602 and 604

Colleges and universities, Reporting and recordkeeping requirements.

**[D-14 Signature Page]**

[Note: At least one line of text must appear on the page containing the signature. Type the name and title of the signing official in the following format:]

[Examples:

Dated:

---

Arne Duncan,  
Secretary of Education.

[or]

---

Alexa Posny,  
Assistant Secretary for  
Special Education and  
Rehabilitative  
Services.]



## **D.15 APPENDICES**

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D.15-1 Placing Analysis of Comments and Changes in an Appendix at the End of These Final Regulations

D.15-2 Examples of Analysis of Comments and Changes

*[D.15-1 Placing Analysis of Comments and Changes in an Appendix at the End of These Final Regulations]*

*[If you publish the analysis of comments and changes as an appendix at the end of these final regulations, use the following heading, including the note:]*

APPENDIX

Analysis of Comments and Changes

Note: The following appendix will not appear in the Code of Federal Regulations.

*[Follow instructions and boilerplate language beginning with the heading Analysis of Comments and Changes under [D.4-1].]*

[D.15-2 Examples of Analysis of Comments and Changes]

[Example 1:

*This is an example of a succinct summary of comments and discussion of a single-paragraph regulatory provision that we have not changed as a result of those comments. Because individual paragraphs within sections generally do not have headings, the regulations writer created the heading in this example to indicate to readers the subject of the provision.]*

Indirect costs (\$345.30(b)(14))

Comments: Commenters asked for more guidance on the implementation of the 10 percent cap on indirect costs. The commenters asked whether the cap applies to the lead agency, the lead agency's subcontractors, or a combination of both.

A subcontractor under this program commented that it had negotiated an agreement, as a lead agency, with another U.S. agency to allocate 12.6 percent of its grants to indirect costs. The commenter suggested, therefore, that the final regulations allow indirect costs for subcontractors to be limited to an agreed-upon indirect cost rate, rather than leave the rate to the lead agency to determine.

Discussion: As explained in the preamble of the NPRM,

the amount of indirect costs may not exceed 10 percent of the total amount of the grant (section 102(e)(22) of the Act). Also, the preamble stated (page 40689) that the State and the subcontractor or subgrantee must negotiate the indirect cost rate.

The clarifying language used in the preamble of the NPRM is confusing because there is no authority requiring a State to negotiate an indirect cost rate with a subcontractor or subgrantee. Rather, we strongly encourage States to negotiate indirect cost rates. We do not regulate on this issue because the Act leaves the apportionment of the indirect cost rate to the discretion of States, and States should have the flexibility to negotiate these rates.

Changes: None.

[Example 2:

*This is an example of a lengthier regulatory provision that elicited extensive comments and discussion and that resulted in changes being made in the final regulations. As in the first example, the regulations writer created a heading to indicate to readers the subject of the provision.]*

Purposes of the program (§345.2)

Comments: Commenters stated that the proposed §345.2 omitted two purposes pertaining to Federal policy, as contained in sections 2(b)(2) and (3) of the Act. The commenters recommended that we include all purposes of the Act.

Discussion: The proposed regulations included only those purposes in section 2(b)(1) of the Act because section 102(e)(7) of the Act specifically requires a State to assure that it will carry out activities to meet the purposes in section 2(b)(1). Sections 2(b)(2) and (3) also contain important purposes. However, these sections authorize, but do not require, grantees to carry out activities to accomplish these purposes. Therefore, the regulatory provision that lists allowable program activities should also include a reference to the purposes in sections 2(b)(2) and (3).

Changes: We have added the purposes in sections 2(b)(2) and (3) of the Act to §345.2. In addition, we have added a new §345.20(b)(4) to reflect that States may carry out activities that accomplish the purposes in sections 2(b)(2) and (3). We have amended all cross-references to reflect these changes.

[Example 3:

We excerpted this example from the Analysis of Comments and Changes of a lengthy regulatory section that elicited extensive comments and discussion. These comments resulted in changes in the final regulations. Unlike Example 2, this section involved many provisions. Thus, a number of the comments were sufficiently different to warrant separate presentation and discussion. Also, unlike Examples 1 and 2, the heading used in this analysis was the actual section heading in the published NPRM.]

Analysis of Comments and Changes

\* \* \* \* \*

\$668.83 Emergency action.

\* \* \* \* \*

Comment: A commenter objected that the regulations do not:

(1) guarantee the institution a right to present evidence and argument at a show-cause meeting; (2) allocate the burden of proof between the institution and ED; (3) articulate the standards an institution must meet to show that an emergency action was unwarranted; or (4) prescribe the standard of proof that applies in determining whether the Department should withdraw the emergency action.

Discussion: The emergency action itself is a preliminary and provisional remedy. The statute plainly does not require that we conduct the show-cause meeting as a formal administrative hearing. Thus, there is no need for us to

apply requirements of formal proceedings. The only thing the statute specifies is that the school has the ultimate burden of proof--that is, of showing cause why the Department's emergency action is not warranted. With regard to other aspects of a show-cause meeting, it is up to the official conducting the meeting to set the rules on a case-by-case basis.

In practice we have permitted an institution to include in its show-cause presentation whatever evidence and argument the institution wished to produce. This has been subject only to the relative informality and brevity with which we conduct the show-cause meeting. The meetings may be, but are not always, transcribed. The show-cause official may require individuals who want to present oral statements to do this under oath.

In the notice of emergency action that the initiating official sends to an institution, the official describes the grounds for the action in sufficient detail to allow the institution to respond meaningfully to the charges. The notice also describes the standards an institution must meet: that the described acts or omissions on which we based the emergency action did not occur, or that the particular restrictions imposed by emergency action are not



necessary to prevent misuse of title IV, HEA program funds.

These standards come from the statute.

Changes: We have revised the regulations to state that an institution has the right at a show-cause meeting to present evidence and argument to support its challenge to the emergency action. However, this is subject to the authority of the show-cause official to restrict or exclude material he or she considers irrelevant.

We have revised the regulations further to provide particular examples of conduct that--in addition to obvious examples of misconduct (such as theft, embezzlement, and false determination of student eligibility)--we consider to cause misuse and loss of title IV, HEA program funds. The revised regulations also provide that the institution bears the burden of persuading the show-cause official that the violations of HEA requirements and expected loss of funds on which we based our action did not occur, are no longer occurring and will not recur, or can be prevented reliably by an alternative restriction or procedure.

[D.16] TEMPLATE OF A PREAMBLE FOR FINAL REGULATIONS

4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Part [Parts] *[Fill in the part number or numbers]*

RIN

[Docket ID]

*[Fill in the title of the regulations]*

AGENCY: *[Name of principal office]*, Department of Education.

ACTION: Final regulations.

SUMMARY:

DATES: These regulations are effective *[insert date or instructions to the Office of the Federal Register]*.

FOR FURTHER INFORMATION CONTACT: *[Insert contact information]*

If you use a telecommunications device for the deaf (TDD)  
or a text telephone (TTY), call . . . .

SUPPLEMENTARY INFORMATION:

*[If applicable]* Executive Summary:

Purpose of This Regulatory Action:

Summary of the Major Provisions of This Regulatory Action:

Costs and Benefits:

*[Supplementary Information—General. Reference the NPRM. Reference or summarize the discussion and the major issues. State any significant differences between the NPRM and these final regulations.]*

Public Comment:

*[If applicable]* Analysis of Comments and Changes:  
omment *[Comments]*:

Discussion:

Change [Changes]:

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). . . .

*[If applicable]* Accounting Statement

*[If applicable]* Regulatory Flexibility Act

Paperwork Reduction Act of 1995

*[If applicable]* Intergovernmental Review

*[If applicable]* Assessment of Educational Impact

*[If applicable]* Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. . . .

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person [one of the program contact persons] listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). 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 Adobe 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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Number [Numbers] . . . .  
.)

List of Subjects

Dated:

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**Chapter B: HOW DO I PREPARE A PREAMBLE FOR A  
NOTICE OF PROPOSED RULEMAKING?**

(Revised, December 2012)

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## (B.1) INTRODUCTION

A notice of proposed rulemaking (NPRM) is a document that the Department publishes in the Federal Register. Through an NPRM the Department proposes to establish or amend regulations to implement a statute, an Executive order, or a court ruling. Specifically, the Department uses an NPRM to propose requirements that it intends to codify in title 34 of the Code of Federal Regulations (CFR).

An NPRM consists of two sections: (1) a preamble that introduces and summarizes the document, describes the proposed regulations, and shows compliance with various Executive orders and other governmentwide requirements; and (2) the proposed new or amended regulatory provisions that will appear in the CFR.

This chapter contains instructions for preparing the preamble for an NPRM. If you are preparing a preamble for final regulations, use the instructions in Chapter D or Chapter E, as appropriate. If you are preparing a notice of proposed priorities (NPP), which the Department uses to establish priorities, requirements, definitions, and selection criteria that it does not codify in the CFR, use the instructions in Chapter O.

This chapter contains four sections: (1) this introduction; (2) instructions for preparing a preamble for an NPRM; (3) appendices containing additional materials you include in a preamble; and (4) a template of a preamble that contains minimal instructions.

The primary purpose of a preamble for an NPRM is to explain to readers--in a clearly written, easy-to-understand manner without jargon--each of the following:

- What regulations we are proposing.
- Why we are proposing these regulations.
- What effect or effects these regulations are intended to have.

### General Information

Except under certain conditions, if you want to

establish regulations that you seek to codify in the CFR, you must request public comment on them by publishing an NPRM in the Federal Register.

Note that you do not request public comment on, or publish an NPRM for, requirements that are drawn directly from an authorizing statute; program regulations; a notice of final priorities, requirements, definitions, or selection criteria (NFP) that has been published in the Federal Register; or the Education Department General Administrative Regulations (EDGAR).

In developing the preamble you must keep in mind--and provide information required by--a number of statutes, Executive orders, and other mandates. These include the Administrative Procedure Act (APA), the General Education Provisions Act (GEPA), the Paperwork Reduction Act of 1995 (PRA), Executive Order 12866 ("Regulatory Planning and Review"), Executive Order 13563 ("Improving Regulation and Regulatory Review"), and the Presidential memorandum "Plain Language in Government Writing." These instructions are designed to help you comply with these requirements. You should also be familiar with the Department's Principles for Regulating, which are included at the beginning of this Regulatory Quality Manual.

In developing your NPRM it is essential that you consult with key offices and individuals both within and outside of the Department and rely on their expertise. Within the Department, these offices include the program attorney; Budget Service; and Privacy, Information and Records Management Services in the Office of Management (PIRMS), Information Collection Clearance Division (ICCD). Budget Service is responsible for preparing the Regulatory Impact Statement (i.e., the cost-benefit analysis) and the Regulatory Flexibility Act Certification section. ICCD is responsible for preparing Information Collection Requests and for compliance with the PRA.

Outside of the Department, the Office of Management and Budget (OMB) typically reviews the Department's NPRMs to determine if they are "significant regulatory actions," as that term is defined in Executive Order 12866. If OMB determines that an NPRM is a significant regulatory action, OMB will formally review the document to ensure that it contains all of the appropriate information specified in that Executive order, including an assessment of costs and



benefits.

As you develop a preamble to an NPRM, we recommend that as issues are raised, deliberated, and decided, you keep notes and copies of all resources and references used to inform the decision. Resources, such as studies and specific data, will become part of the rulemaking record. Notes can be very useful as you draft the preamble and explain to readers the various options we considered and the reasons for our decisions.

Following the publication of an NPRM and the review of the public comments received on the NPRM, you must publish final regulations in order to implement or otherwise use any of the provisions of the regulations.

#### Well-Written Preambles

A well-written preamble will enhance the public's understanding of our regulatory and programmatic policies and initiatives. A clear preamble will also foster goodwill among our customers, aid in compliance with requirements, and help avoid litigation. Ultimately a well-written preamble enhances the mission of the Department.

Thus, it is essential that you think through your preamble carefully, consider it from your readers' perspective, and structure it in a logical sequence so that it is clear and effective. Your explanation of the NPRM's background, development, and key provisions should be thorough and stated as simply, clearly, and concisely as possible. This material should be comprehensible to the general public, not just to "persons in the field." Do not use jargon.

#### Requirements of Format, Style, and Standard Language

This chapter tells you what information you must include in a preamble to an NPRM and how you must present it. Included is standard language required by the Department, the Office of the Federal Register (OFR), or OMB.

OFR publishes the Federal Register Document Drafting Handbook (DDH), which is intended to help agencies create and submit documents that comply with OFR's requirements.

The DDH is available at the following Internet address:  
[www.archives.gov/federal-register/write/handbook](http://www.archives.gov/federal-register/write/handbook).

Chapter 1 ("How do I write a document for the proposed rules category?") of the DDH provides additional guidance for drafting a preamble to an NPRM.

The United States Government Printing Office (GPO) also mandates many of the style requirements in these instructions. The GPO Style Manual, which you can download in Adobe Portable Document Format (PDF), is available at the following Internet address:  
[www.gpoaccess.gov/stylemanual/browse.html](http://www.gpoaccess.gov/stylemanual/browse.html).

The examples used throughout this chapter and its appendices are fictional. They are intended for the purpose of illustration only and may not correspond exactly to portions of documents or citations as published.

#### Technical Requirements

- Double-space the preamble.
- Leave a 1.5-inch margin on the left, a 1-inch margin on the right, and a 1-inch margin at the top and bottom.
- Justify the left margin only.
- Except as otherwise indicated in the instructions, indent (five spaces) the first line of each paragraph of text.
- Use 12-point Courier New font.
- Begin numbering at the center bottom of the first page in Arabic numerals ("1").
- Never type in bold or italics.
- Underline only as shown in the instructions.
- Indent the first line of any bullet five spaces and leave two spaces after the bullet. Do not use the automatic bulleting function in Microsoft Word.
- Use initial capitals and underline the term Federal

Register unless you are asking OFR to compute a date, in which case type FEDERAL REGISTER in all capitals without underlining.

- Place instructions to OFR inside non-italicized brackets and capitalize all letters.

Example:

DATES: We must receive your comments on or before [INSERT DATE *[insert number of days for the comment period; e.g., 30]* DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Material inside Square Brackets

In this chapter bold-faced, italicized material inside italicized square brackets [ ] is an instruction to the drafter of the notice; do not include this material in your preamble.

The shaded, bold-faced letters and numbers inside the italicized brackets--e.g., [B.6] or [B.6-1]--are for purposes of reference and cross-reference for users of this manual; do not include them in your preamble.

The other material inside non-italicized square brackets [ ] is alternative wording intended for use, as appropriate, in your preamble.

Delegation of Authority and Referring to the Department

Under a delegated authority, a principal officer other than the Secretary, such as an Assistant Secretary or a Director of a principal office, may sign an NPRM. However, we recommend that you use the title of this principal officer only if the title is necessary (such as in the signature block). In keeping with the Presidential memorandum "Plain Language in Government Writing," we prefer that you use the pronoun "we" or "us" in referring to the Department.

For Further Information

If you have questions regarding these instructions, please consult the Regulations Quality Officer or the Regulations Program Specialist for your program or document, both of whom are in the Division of Regulatory Services (DRS), Office of the General Counsel. Telephone: (202) 401-8300.

INSTRUCTIONS FOR PREPARING A PREAMBLE  
FOR A NOTICE OF PROPOSED RULEMAKING

[B.2 Headings; Summary; Dates; Addresses; For Further  
Information]

4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Part [Parts] [Fill in all affected part numbers.]

RIN [Use the number from the Unified Agenda of Federal  
Regulations and Deregulatory Actions. If a number has not  
been assigned, DRS will supply the number.]

[Docket ID [Insert the Docket ID from the Federal Docketing  
Management System (FDMS). Consult DRS on how to obtain  
this number.]]

[Fill in the title of the regulations as it is or would  
appear in the CFR. Note: The number of characters,  
including spaces, may not exceed 200. Use initial capital  
letters only; do not end with a period; e.g., Graduate  
Assistance in Areas of National Need]

AGENCY: [Name of principal office; e.g., Office of Special  
Education and Rehabilitative Services; or Office of  
Postsecondary Education], Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: [In 100 words or less, describe, in plain  
language, (1) the action you are taking; (2) why you are  
taking the action; and (3) the intended effect of the  
action. If it is necessary to refer to an act of Congress,  
use a shorter, easily recognizable form (e.g., the  
Department of Education Appropriations Act, 2009), but do  
not give a legal citation. Although OFR requires the  
"SUMMARY," this is not necessarily a summary as you might  
think of that term. Rather, the sole purpose of this  
one-paragraph section is to respond to the three specified  
items. Confine your statement to these three matters and

*be concise.]*

*[Example:]*

SUMMARY: The Secretary proposes to amend the regulations governing institutional eligibility and the Secretary's recognition of accrediting agencies. The Secretary proposes to amend these regulations to implement changes to the Higher Education Act of 1965, as amended (HEA), resulting from the enactment of the Higher Education Reconciliation Act of 2005 (HERA) and the Higher Education Opportunity Act (HEOA). These proposed regulations would update, clarify, and improve the current regulations.]

DATES: We must receive your comments on or before [INSERT DATE *[insert the appropriate number of days to determine the length of the public comment period; e.g., 60]* DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*[If this NPRM also announces a public meeting or public meetings, use the following:]*

We will hold [a public meeting] [or] [[number; e.g., three] public meetings] about these proposed regulations on the following dates: *[List date, time or times, and city for each meeting on a separate line and number each date if more than one; e.g.,*

1. September 7, 2010, 9:30 a.m. to 5:00 p.m.,  
Philadelphia, PA.

2. September 16, 2010, 9:30 a.m. to 5:00 p.m. and 7:00 p.m. to 9:30 p.m., Denver, CO.

3. October 5, 2010, 9:30 a.m. to 5:00 p.m., Los Angeles, CA.]

Additional information for individuals with disabilities is in the Public Meeting[s] section under Invitation to Comment [see [B.3-2]] elsewhere in this preamble.

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

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to the site?"

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about these proposed regulations, address them to *[insert name of person]*, U.S.

Department of Education, [select one of the following addresses:] [400 Maryland Avenue, SW. [which includes Potomac Center Plaza (PCP)]] [555 New Jersey Avenue, NW.] [or] [1990 K Street, NW.], room [fill in room number and, if necessary, building designation; e.g., 6126, PCP], Washington, DC [fill in ZIP Code. Use 20202 for Maryland Avenue, 20208 for New Jersey Avenue, or 20006 for K Street]-[fill in last four digits of Zip Code].

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

[If this NPRM announces a public meeting or public meetings, use the following:]

The [public meeting] [or] {[number; e.g., three] public meetings] about these proposed regulations will be held at the following location [locations]: [List the city and then the place and full address for each meeting on a separate line, and number each address if you are announcing more than one meeting.]

[Example:

1. Philadelphia--Ramada Inn (Meadows Ballroom,



Sections A & B), 76 Industrial Highway, Essington, PA.

2. Denver--Main Post Office Building (2nd Floor Auditorium, Room 269), 1823 Stout Street, Denver, CO.

3. Los Angeles--Hyatt Regency Los Angeles, 711 South Hope Street, Los Angeles, CA.]

Additional information for individuals with disabilities is in the Public Meetings section under Invitation to Comment [see [B.3-2]] elsewhere in this preamble.

FOR FURTHER INFORMATION CONTACT: [Insert name of person or persons], U.S. Department of Education, [select one of the following addresses:] [400 Maryland Avenue, SW. [which includes Potomac Center Plaza (PCP)]] [555 New Jersey Avenue, NW.] [or] [1990 K Street, NW.], room [fill in room number and, if necessary, building designation; e.g., 11108, PCP], Washington, DC [fill in ZIP Code. Use 20202 for Maryland Avenue, 20208 for New Jersey Avenue, or 20006 for K Street]-[fill in last four digits of ZIP Code].

Telephone: (202) [fill in number][.] [Optional:] [or by email: [Insert address, as in the following example: cindy.cooley@ed.gov].]

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call [include either of the following:] [the TDD/TTY number at (202) [fill in

number].] [or, if a TDD/TTY number is not available, use the following:] [the Federal Relay Service (FRS), toll free, at 1-800-877-8339.]

[B.3 Supplementary Information]

SUPPLEMENTARY INFORMATION:

[B.3-1 [If applicable] Executive Summary]

[Under Executive Order 13563, "Improving Regulations and Regulatory Review," OMB has determined that the preamble for a lengthy or complex rule, both proposed and final, should include an executive summary.

The Department has decided that an NPRM that is 100 or more typed pages, double-spaced, or that is identified as "economically significant" under Executive Order 12866 must contain an executive summary. Generally the maximum length of the summary should be three to four, double-spaced pages. If this document must contain an executive summary, place the summary here and include the following:]

Executive Summary:

Purpose of This Regulatory Action: [Include a short statement of the need for this regulatory action and how the action will meet this need. Much of this material is in the SUMMARY section near the beginning of this preamble. Pertinent material may also be in section [B.3-4] (Background). To offer readers a fuller discussion of the purpose, refer them to section [B.3-4], if appropriate. Include a succinct statement of the legal authority, explaining in brief the legal authority at the end of the table of contents for the NPRM, as well as any other reference to the legal authority elsewhere in this preamble; e.g., if applicable, in the justification for a major provision in section [B.3-8] (Significant Proposed Regulations).]

Summary of the Major Provisions of This Regulatory

Action: [Describe clearly and separately each major provision, together with a brief justification. Much of this material is in section [B.3-8]. If applicable, you

may also find material in section [B.3-7] (Summary of Proposed Changes). To offer readers a fuller discussion of the major provisions, refer them to these sections of your preamble.]

Costs and Benefits: [Summarize costs and benefits based on material in section [B.4-1] (Regulatory Impact Analysis). If this NPRM is economically significant, consult with Budget Service and include a table summarizing the assessment of costs and benefits, both quantitative and qualitative. This material is included in section [B.4-1-3]. To offer readers a fuller discussion of costs and benefits, refer them to the Regulatory Impact Analysis and related materials.]

[B.3-2 Invitation to Comment]

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. [Optional sentence:]

To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and 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 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. 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 Department's

programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in [insert room number and street address], Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. 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 regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person [one of the persons] listed under FOR FURTHER INFORMATION CONTACT.

[B.3-3 [If applicable] Public Meetings]

*[If this NPRM is announcing one or more public meetings, use one of the following paragraphs:]*

Assistance to Individuals with Disabilities at the Public Meeting [Meetings]: The meeting site is [The meeting sites are] accessible to individuals with disabilities. If you

will need an accommodation or auxiliary aid to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an accessible format), please contact the person [one of the persons] listed under FOR FURTHER INFORMATION CONTACT at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested accommodation or auxiliary aid because of insufficient time to arrange it.

[or]

*[Use the following paragraph if a sign language interpreter will be present at the meeting site or sites:]*

Assistance to Individuals with Disabilities at the Public Meeting [Meetings]: The meeting site is [The meetings sites are] accessible to individuals with disabilities, and a sign language interpreter [sign language interpreters] will be available. If you will need an accommodation or auxiliary aid other than a sign language interpreter in order to participate in the meeting (e.g., other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in accessible format), please contact the person [one of the persons] listed under FOR FURTHER INFORMATION CONTACT at least two weeks before the scheduled meeting date.

Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested accommodation or auxiliary aid because of insufficient time to arrange it.

[B.3-4 Background]

*[Provide the general background for these proposed regulations. Do not trace the history of the program or subject to be covered by the regulations. Rather, provide information a reader needs to know to understand the major issues presented in the proposed regulations.]*

[Example:

Background

The Secretary proposes to amend §§8.1 through 8.3 of title 34 of the Code of Federal Regulations (CFR). The regulations in 34 CFR part 8 pertain to production of information in response to demands in judicial or administrative proceedings. We are proposing these amendments to require that former Department employees follow the same set of prescribed instructions and procedures that are required of current employees, with respect to the production and disclosure of material or information acquired during the performance of the former employee's official duties.]

[B.3-5 [If applicable] Public Participation]

Public Participation

[Describe any public participation in the development of these proposed regulations (e.g., hearings or notices requesting suggestions in advance of developing the regulations; use of electronic bulletin boards, Internet, teleconferences, or other electronic communications; etc.). Also include a description of any coordination that has taken place between us and other governmental entities, such as State, local, and tribal governments, as well as other Federal departments and agencies.]

[B.3-6 [If applicable] Negotiated Rulemaking]

Negotiated Rulemaking

[If the development of these proposed regulations involved negotiated rulemaking, see Appendix 1 and insert appropriate material here. Otherwise omit heading.]

[B.3-7 [If applicable] Summary of Proposed Changes]

[For a complex or lengthy NPRM (e.g., more than 15 pages of significant proposed regulations under section [B.3-7]), summarize the key proposed changes here.]

[Example:

Summary of Proposed Changes

These proposed regulations would address program integrity issues by--

- Requiring institutions to develop and follow procedures to evaluate the validity of a student's high school diploma if the institution or the Secretary has reason to believe that the diploma (1) is not valid or (2) was not obtained from an entity that provides secondary school education;

- Expanding eligibility for title IV, HEA program assistance to students who demonstrate they have the

ability to benefit by satisfactorily completing six credits of college work, or the equivalent amount of coursework, that are applicable toward a degree or certificate offered by an institution;

- Amending and adding definitions of terms related to ability-to-benefit testing, including "assessment center," "independent test administrator," "individual with a disability," "test," "test administrator," and "test publisher"; and

- Consolidating into a single regulatory section the approval processes for ability-to-benefit tests developed by test publishers and States.]

#### [B.3-8 Significant Proposed Regulations]

##### Significant Proposed Regulations

[Select Option 1 or Option 2:]

##### [Option 1:]

We group major issues according to subject [add if applicable: [, with appropriate sections of the proposed regulations referenced in parentheses]]. We discuss other substantive issues under the sections of the proposed regulations to which they pertain.]

##### [Option 2:]

We discuss substantive issues under the sections of the proposed regulations to which they pertain.]



[In either option, end the paragraph with the following sentence, if applicable:] Generally, we do not address proposed regulatory changes that are technical or otherwise minor in effect.]

[The following instructions for preparing the Significant Proposed Regulations section of the preamble will help you meet the requirements of the APA and other statutes and Executive orders that govern the rulemaking process. We first provide a recommended format that is designed to ensure that you (1) structure your discussion in an easily readable format and (2) meet the test of a full discussion of issues and the reasons for the proposed regulatory provision.]

[Recommended Format for Significant Proposed Regulations Discussions:]

Use the following format for each major subject or each significant provision of these proposed regulations:]

[Type flush left and underline:]

[Subject heading] [or] [Section [insert section number and heading]]

[Then use the following underlined headings--typed flush left with initial capitals. See Example 1 in Appendix 2 [B.14-2].]

Statute: [If a statute requires, authorizes, or limits the proposed regulatory provision, summarize the relevant portion of the statute here and give its section number. Do not quote from the statute. Provide enough information for a reader to understand the effect of the statute on the proposed regulations.]

If the authorizing statute does not address this issue or if the Secretary is proposing this regulatory provision based on the Secretary's general statutory authority under the Department of Education Organization Act or the GEPA to issue regulations, use the following:

Statute: The [insert law] does not directly address

[insert description of the issue we are seeking to address by the proposed regulatory provision]. The Secretary has the authority to regulate [fill in the name of the program or its subject matter] under 20 U.S.C. 1221e-3 and 3474.

Current Regulations: [If you are proposing a change to current regulations, summarize the current regulatory provision here. Do not quote from the current regulations. Provide enough information for a reader to understand the changes in the proposed regulations that you describe in the next section. If there are no current regulations that relate to this subject or to this section of the proposed regulations, write: None.]

Proposed Regulations: [Summarize the proposed regulatory provision here. Do not quote from the proposed regulations.]

Reasons: [Provide the Department's reasons for proposing this regulatory provision. Taking into account our Principles for Regulating, answer the following questions:

1. What is the issue that must be addressed by regulating?
2. Why is regulating necessary to address this issue?
3. What are the intended effects of regulating?
4. Why is this particular regulatory provision the best way of addressing the issue?
5. If appropriate, what policy alternatives did the Department consider, if any, and why did we reject the alternatives?
6. What other significant information, if any, is absolutely necessary to help readers understand this proposed regulatory provision?

Note that while we strongly recommend this format, you may find that it is not the most effective way for you to describe proposed regulations and the reasons for regulating. In this case, you have some flexibility in how you structure your discussion provided that--

- You clearly identify the proposed regulatory provision and whether it is an amendment of a current regulatory

provision. This requires you to identify the numbers of both the proposed provision and the current provision;

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- To the extent appropriate, you link the proposed regulatory provision to its authorizing statute;
- You provide the Department's reasons for proposing this regulatory provision, taking into account our Principles for Regulating; and
- You use a consistent format throughout this section of the preamble.

See Example 2 in Appendix 2 [B. 14-2], which uses a more fluid discussion of a proposed regulatory provision, but also contains a full discussion of issues and the reasons for the proposed provision.]

#### [B.4 Executive Orders 12866 and 13563]

##### Executive Orders 12866 and 13563

#### [B.4-1 Regulatory Impact Analysis]

##### Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment,

public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

*[Under Executive Order 12866, OMB formally reviews all regulatory actions that are deemed either "significant" or "economically significant." If the Department believes that an NPRM is neither significant nor economically significant under the Executive order, the Department--through DRS--requests a significance determination from OMB. If OMB agrees that the regulatory action is not significant, it does not review the NPRM under Executive Order 12866.]*

*If this NPRM is not significant, add the text from [B.4-1-1]. If this NPRM is significant, add the text from [B.4-1-2]. If this NPRM is economically significant, add the text from [B.4-1-3].]*

*[B.4-1-1 If this NPRM is not significant]*

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

We have also reviewed these 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 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 regulations 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 these proposed regulations are consistent with the principles in Executive Order 13563.

*[Use the next paragraph if the proposed regulations would not affect any of the following: State, local, or tribal governments. If one or more of those levels of government are affected, revise the statement accordingly.]*

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

*[If there are identifiable or measurable costs and benefits, include a brief discussion here].*

*[If this NPRM does not include any information collection requirements, omit the next sentence:]*

Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

*[B.4-1-2 If this NPRM is significant]*

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

We have also reviewed these 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 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 regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

*[Use the next paragraph if the proposed regulations would not affect any of the following: State, local, or tribal governments. If one or more of those levels of government are affected, revise the statement accordingly.]*

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 both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory

requirements and those we have determined as necessary for administering the Department's programs and activities.

*[Insert discussion of the potential costs and benefits, which may include a discussion of net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.]*

*[If this NPRM does not include any information collection requirements, omit the next sentence:]*

Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

*[B.4-1-3 If this NPRM is economically significant]*

This proposed regulatory action will have an annual effect on the economy of more than \$100 million because *[briefly explain why]*. Therefore, this proposed action is "economically significant" and subject to review by OMB under section 3(f)(1) of Executive Order 12866. 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 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." 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 regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

*[Use the next paragraph if the proposed regulations would not affect any of the following: State, local, or tribal governments. If one or more of those levels of government are affected, revise the statement accordingly.]*

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 this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

*[Insert substantive discussion of costs and benefits. You must discuss this with Budget Service, which prepares this section of the preamble. If the Regulatory Impact Analysis contains charts or graphs or is particularly lengthy, you should consider placing it in an appendix and simply referencing it here.]*

*[If this NPRM does not include any information collection requirements, omit the next sentence:]*

Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

#### Accounting Statement

As required by OMB Circular A-4 (available at [www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf)), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the changes in annual monetized transfers as a result of these proposed regulations. Expenditures are classified as transfers from *[insert entities from which the transfers are made; e.g., the Federal Government, SEAs, LEAs, IHEs, financial aid recipients]* to *[insert entities to which the transfers are made; e.g., the Federal Government, SEAs, LEAs, IHEs, financial aid recipients]*.

#### Accounting Statement Classification of Estimated Expenditures [in millions]

Category	Transfers
Annualized Monetized Transfers	\$(insert amount)
From Whom To Whom?	from [insert the term you used in the preceding paragraph] to [insert as the term you used in the preceding paragraph]

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#### [B.4-2 Clarity of the Regulations]

##### 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? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, *\$(fill in a sample section number and heading from this NPRM),*)

- 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 these proposed regulations easier to understand, see the instructions in the ADDRESSES section.

#### [B.5 Regulatory Flexibility Act]

##### Regulatory Flexibility Act Certification

*[The issuing office must determine, in consultation with Budget Service, whether these proposed regulations would have a significant economic impact on a substantial number of small entities. If yes, Budget Service prepares an initial regulatory flexibility analysis. Include it here. If the proposed regulations would not have a significant economic impact on a substantial number of small entities, use the following statement for the certification:]*

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

*[Follow this statement with a brief explanation as in these examples.*

Example 1:

Because these proposed regulations would affect only States and State agencies [individuals], the proposed regulations would not have an impact on small entities. State and State agencies [individuals] are not defined as "small entities" in the Regulatory Flexibility Act.

Example 2:

The U.S. Small Business Administration Size Standards define institutions as "small entities" if they are for-profit or nonprofit institutions with total annual revenue below \$5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. These proposed regulations would affect institutions of higher education that meet this definition; therefore, these proposed regulations would affect small entities, but they would not have a significant economic impact on these entities.

The proposed regulations would benefit both small and large institutions, including those that qualify as small entities, by reducing to three years from five the length of time that institutions must keep records relating to their administration of title IV, HEA programs.

The proposed regulations also would reduce burden on



these institutions by providing, to the extent possible, a common record-keeping period for all programs. The proposed regulations would allow these institutions to satisfy recordkeeping requirements under various electronic formats. Thus, small entities would experience regulatory relief and a positive economic impact as a result of these proposed regulations.]

[B.6 Information Collection Requirements]

Paperwork Reduction Act of 1995

[Follow the instructions in [B.6-1] or [B.6-2], as appropriate. Make sure to consult with ICCD to determine whether--and to what extent--these proposed regulations are subject to the Paperwork Reduction Act of 1995 (PRA). The PRA defines a collection of information to mean the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions regardless of the form or format used (44 U.S.C. 3502(3)(A)). It is important to note that OMB considers that a "collection of information" may implicitly or explicitly include related collection of information requirements (5 CFR 1320.3(c)(1)).]

[B.6-1 If this NPRM does not contain information collection requirements]

[If these proposed regulations do not contain information collection requirements--such as application, reporting, disclosure, or recordkeeping requirements--use the following:]

These proposed regulations do not contain any information collection requirements.

[or]

[B.6-2 If this NPRM contains information collection

requirements]

[If these proposed regulations contain information collection requirements--such as application, reporting, disclosure, or recordkeeping requirements--use the following:]

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Section [give number] contains an information collection requirement. [Sections [give numbers] contain information collection requirements.] Under the PRA the Department has submitted a copy of this section [these sections] to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information

collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations we will display the control number [numbers] assigned by OMB to any information collection requirement [requirements] proposed in this NPRM and adopted in the final regulations.

*[For each proposed information collection, insert the following, combined into two or three paragraphs. The information is available in the supporting statement for the information collection request prepared for the proposed regulation:*

- *A title for the collection of information, including the regulatory provision under which the collection would be made. If the collection is confined to one section of the NPRM, this title could be the title and number of that section. If the collection covers several sections, you could create a generic heading for the title.*

- *A summary of the collection of information.*

- *A description of the likely respondents; i.e., list the parties that would have to comply with the information collection requirements in these proposed regulations (e.g., individuals or households; State, local, or tribal governments or agencies; businesses or other for-profit entities; Federal agencies or employees; nonprofit institutions; small businesses or organizations).*

- *A brief description of why we need this collection of information and how we plan to use it.*

- *The proposed frequency of response (e.g., annually,*

semiannually).

- For each respondent an estimate of the total annual reporting and recordkeeping burden that would result from the collection of information. State the burden in terms of the estimated average burden hours per response (if necessary, state in terms of quarter hours using decimals; e.g., 2.75 hours, 0.5 hours, 1.25 hours).

- The estimated number of likely respondents.

- The estimated total annual reporting and recordkeeping burden hours among all respondents (i.e., the estimated average burden hours per response multiplied by the estimated number of likely respondents).

- If we have requested or plan to request OMB to conduct its review on an emergency basis, the time period within which we are requesting OMB to approve or disapprove the collection of information. Note: If OMB approves a request for review on an emergency basis and approves the collection of information, the maximum time in which OMB may approve the collection is 180 days.]

[Example:

Section 668.55--Updating information.

Proposed §668.55 would require an applicant to update all changes in dependency status that occur throughout the award year, including changes in the applicant's household size and the number of those household members attending postsecondary educational institutions. An institution uses this information in determining the amount of an applicant's financial assistance. We estimate that 1,530,000 individuals would update their household size or the number of household members attending postsecondary

educational institutions and that, on average, reporting would take 5 minutes (0.08 hours) per individual, increasing burden by 122,400 hours.

We estimate that proprietary institutions would receive updated household size or the updated number of household members attending postsecondary educational institutions from 566,100 applicants. We estimate that each updated record would take 10 minutes (0.17 hours) to review, thereby increasing burden by 96,237 hours. We estimate that private nonprofit institutions would receive updated household size or the updated number of household members attending postsecondary educational institutions from 459,000 applicants. We estimate that each updated record would take 10 minutes (0.17 hours) to review, thereby increasing burden by 78,030 hours. We estimate that public institutions would receive updated household size or the updated number of household members attending postsecondary educational institutions from 504,900 applicants. We estimate that each updated record would take 10 minutes (0.17 hours) to review, thereby increasing burden by 85,833 hours.

Collectively, we estimate that burden would increase for individuals and institutions for reporting updated household size and updated number of household members

attending postsecondary educational institutions by 382,500 hours under OMB Control Number 1845-0041, of which 122,400 hours is for individuals and 260,100 hours is for institutions.]

*[After you have fully described and discussed each section or provision that contains an information collection requirement, summarize all of these in a chart, as in this Example:]*

Collection of Information

<u>Regulatory section</u>	<u>Information collection</u>	<u>OMB Control Number and estimated burden (change in burden)</u>
\$668.55	This proposed regulatory provision would require an institution to report to the Secretary via the Central Processing System all updated applicant data resulting from verification.	OMB 1845-0041. The burden would increase by 382,500 hours.]

*[Regardless of your substantive discussion of the information collections in the NPRM, insert the following:]*

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB,

Attention: Desk Officer for U.S. Department of Education.  
Send these comments by email to OIRA\_DOCKET@omb.eop.gov or  
by fax to (202) 395-6974. You may also send a copy of  
these comments to the Department contact named in the  
ADDRESSES section of this preamble.

We have prepared an Information Collection Request  
(ICR) for this collection [these collections]. In  
preparing your comments you may want to review the ICR,  
which is available at [www.reginfo.gov](http://www.reginfo.gov). Click on  
Information Collection Review. This proposed collection  
is [These proposed collections are] identified as proposed  
collection [collections] *[fill in collection number or  
numbers]*.

We consider your comments on this proposed collection  
[these proposed collections] of information in--

- Deciding whether the proposed collection is [the  
proposed collections are] necessary for the proper  
performance of our functions, including whether the  
information will have practical use;
- Evaluating the accuracy of our estimate of the  
burden of the proposed collection [collections], including  
the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of  
the information we collect; and

- Minimizing the burden on those who must respond.

This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

[Select Option 1 or Option 2:]

[Option 1:]

OMB is required to make a decision concerning the collection [collections] of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This does not affect the deadline for your comments to us on the proposed regulations.]

[Option 2:] If you are requesting an expedited review by OMB of the information collection or collections in this NPRM, substitute the following for the preceding paragraph. However, please be advised that OMB approves the use of emergency processing on a very limited basis and requires that items submitted for emergency processing under the PRA meet one or more of the following criteria: (1) public harm is reasonably likely to occur if normal clearance processes are followed; (2) an unanticipated event has occurred; or (3) the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is likely to cause a statutory or court-ordered deadline to be missed. FIRMS must obtain permission from OMB before attempting to exercise emergency clearance procedures under the PRA.



Under 5 CFR 1320.13 we have requested OMB to conduct its review of this collection [these collections] of information on an emergency basis. We have asked OMB to approve the collection [collections] of information within [number; e.g., 30] days after publication of these proposed regulations in the Federal Register. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by [INSERT DATE [number; e.g., 20] DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This does not affect the deadline for your comments to us on the proposed regulations.]

**[B.7 Intergovernmental Review: Executive Order 12372]**

[Before drafting the next section, you must determine whether Executive Order 12372 applies to the program or programs that would be regulated under this NPRM. Select Option 1, Option 2, or Option 3, as appropriate.]

[Option 1: Use the following if the program or programs are subject to Executive Order 12372. The Executive order is applicable if--

- The regulations for the program state that the program is subject to 34 CFR part 79; or

- The program currently has no regulations other than EDGAR and the program is not excluded under 34 CFR 79.3(c) or (d).]

Intergovernmental Review

This program is [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 this program [these programs].

[Option 2: Use the following if the program or programs are not subject to Executive Order 12372.]

This program is [These programs are] not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

[Option 3: If the Secretary is proposing to exempt this program from Executive Order 12372, explain why the Secretary is proposing the exemption and provide a justification that meets one or more of the exceptions in 34 CFR 79.3(c) or (d).]

[B.8 Educational Impact]

[Use the following paragraph for proposed regulations that would apply in any way to institutions of higher education:]

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e-4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that

any other agency or authority of the United States gathers or makes available.

**[B.9 Executive Order 13132]**

*[Use the following paragraph for proposed regulations that may have federalism implications (substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government):]*

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations in *[identify the section or section numbers]* may have federalism implications. We encourage State and local elected officials to review and provide comments on these proposed regulations.

**[B.10 Accessible Format; Electronic Access]**

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on

request to the person [one of the persons] listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at:

[www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). 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 Adobe 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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

[Optional:] You may also view this document in text [or PDF] at the following site: [Fill in your program's Web site.].

[B.11 Information about the Catalog of Federal Domestic Assistance]

(Catalog of Federal Domestic Assistance Number [fill in number and name of the program])

[or]

(Catalog of Federal Domestic Assistance Numbers: [fill in numbers and names; e.g., 84.233A Emergency Grants; 84.207A School Personnel Training Grants; 84.184A Demonstration Grants; and 84.184B Federal Activities Grants])

[or]

(Catalog of Federal Domestic Assistance Number does not apply.)

[or]

(Catalog of Federal Domestic Assistance Number has not been assigned.)

#### [B.12 List of Subjects]

(All preambles must contain an alphabetical list of subjects for each part of the CFR contained in or amended by this document. The list is based on the Federal Register Thesaurus of Indexing Terms at [www.archives.gov/federal-register/cfr/thesaurus.html](http://www.archives.gov/federal-register/cfr/thesaurus.html). If you have questions, contact the DRS Regulations Program Specialist for this program or document.

If you are amending a part of the CFR, repeat the entire list of subjects for that part even if the specific amendments in this NPRM do not refer to or directly relate to one or more of those subjects. You may add a new subject or new subjects to the existing list for the part; however, OFR has the discretion to adopt--or not adopt--any of the additions.

Indent the first item of the list, list horizontally in alphabetical order, begin each item with a capital letter, and separate items by commas. In NPRMs containing information collection requirements under the PRA, include the following among the list of subjects: Reporting and

recordkeeping requirements.]

[If your NPRM includes or amends only one part of the CFR, use the following heading:]

List of Subjects in 34 CFR Part [fill in number]

[or]

[If your NPRM includes or amends more than one part of the CFR, use the general heading "List of Subjects" followed by separate identifications of each affected part and list of subjects. Example:

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 602

Colleges and universities, Reporting and recordkeeping requirements.

34 CFR Part 603

Colleges and universities, Vocational education.]

[or]

[If your NPRM includes or amends two or more parts of the CFR, and if two or more parts contain identical lists of subjects, you may combine those. Example:

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Parts 602 and 604

Colleges and universities, Reporting and recordkeeping requirements.

[B.13 Signature Page]

[Note: At least one line of text must appear on the page containing the signature of the Secretary or other authorized principal officer. Do not date this document. Type the name and title of the signing official in the following format:]

Dated:

[Insert Name of Authorizing Official],  
[Insert and underline Title of  
Authorizing Official].

[Examples:

Arne Duncan,  
Secretary of Education.

[or]

Alexa Posny,  
Assistant Secretary for  
Special Education and  
Rehabilitative  
Services.]

[B.14] APPENDICES

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[B.14-1] APPENDIX 1

Negotiated Rulemaking

*[If the development of these proposed regulations involved negotiated rulemaking, insert the following information, as appropriate:*

*Cite the legal authority for this negotiated rulemaking. Give the background, the terms, and any special conditions. State the number of committees involved and the reasons for establishing each. For each committee, list the name of each negotiator--and alternate, if applicable--and the name of the agency, institution, or organization he or she represented.*

*Here is a fictional example of the type of material you should include:]*

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary, before publishing any proposed regulations for programs authorized by title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from individuals and representatives of groups involved in, or affected by, the proposed regulations, the Secretary must subject the proposed regulations to a negotiated rulemaking process.

All proposed regulations that the Department publishes must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the

agreements. Further information on the negotiated rulemaking process may be found at:  
[www.ed.gov/policy/highered/leg/hea08/index.html](http://www.ed.gov/policy/highered/leg/hea08/index.html).

On September 8, 2008, the Department published a notice in the Federal Register (73 FR 51990) announcing our intent to establish negotiated rulemaking committees to develop proposed regulations to implement the changes made to the HEA by the HEOA.

On December 31, 2008, the Department published a notice in the Federal Register (73 FR 80314) announcing our intent to establish five negotiated rulemaking committees to prepare proposed regulations, including a committee on accreditation issues. The notice informed the public that because HEOA made many changes that needed to be implemented through negotiated rulemaking, not all provisions would be addressed during this round of committee meetings. For membership on the committees, the notice requested nominations of individuals who could represent the interests significantly affected by the proposed regulations and who had demonstrated expertise or experience in the relevant subjects under negotiation.

The Accreditation Committee met in three sessions to develop proposed regulations: session 1, March 4-6, 2009; session 2, April 21-23, 2009; and session 3, May 18-19,

2009. This NPRM proposes regulations relating to accreditation that were discussed by the committee.

The Department developed a list of proposed regulatory changes from advice and recommendations submitted by individuals and organizations in testimony to the Department in a series of public hearings held on--

September 19, 2008, at Texas Christian University in Fort Worth, Texas;

September 29, 2008, at the University of Rhode Island in Providence, Rhode Island;

October 2, 2008, at the Pepperdine University in Malibu, California; and

October 8, 2008, at the U.S. Department of Education in Washington, DC.

In addition, the Department accepted written comments on possible regulatory changes submitted directly by interested parties and organizations. All regional meetings and a summary of all comments received orally and in writing are posted as background material in the Regulations.gov docket and may also be accessed at [www.ed.gov/HEOA](http://www.ed.gov/HEOA). Staff within the Department also identified issues for discussion and negotiation.

The Accreditation Committee was made up of the following members:

Michal McLean, Accrediting Commission of Career Schools and Colleges of Technology, and Thomas Chung (alternate), Accrediting Council for Continuing Education and Training.

David White, Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges, and Angela Wilson (alternate), Commission on Colleges, Southern Association of Colleges and Schools.

Susan Taylor, The National League for Nursing Accrediting Commission, and Anna Hess (alternate), Association of Specialized and Professional Accreditors.

Miriam Loring, Nebraska Coordinating Commission for Postsecondary Education, and Jerry Brooks (alternate), New Hampshire Postsecondary Education Commission.

Stan Eirinberg, University of North Carolina, and Ken Fuller (alternate), Eastern Illinois University.

Amelia Finamore, Georgetown University, and Sandy Newman (alternate), National Association of Independent Colleges and Universities.

Robert Brown, Kaplan Higher Education, and Fred Cohen (alternate), DeVry Inc.

Lynn Young, California Community Colleges, and Jacob Alexander (alternate), American Association of Community Colleges.

Mary Smith, Capella Education Company, and Donald Vincent (alternate), Washington State University.

Patricia Depew, Johnson C. Smith University, and Adam Basil (alternate), University of the Sacred Heart.

Kendra Miller, University of Arizona, and Peter Small (alternate), Mesabi Range College.

William Godlove, American Council on Education, and Kelly Bunk (alternate), American Council on Education.

Mary Doe, U.S. Department of Education.

The committee's protocols provided that it would operate by consensus, which meant unanimous agreement; that is, there was no dissent by any member. Under the protocols, if the committee reached final consensus on all issues, the Department would use the consensus language in the proposed regulations, and members of the committee and the organizations whom they represented would refrain from commenting negatively on the package, unless the protocols permitted this.

During its meetings, the committee reviewed and discussed drafts of proposed regulations. At the final meeting in May 2009, the committee reached consensus on all of the proposed regulations in this NPRM.

More information on the work of this committee may be found at:

[www.ed.gov/policy/highered/reg/hearulemaking/2009/accreditation.html](http://www.ed.gov/policy/highered/reg/hearulemaking/2009/accreditation.html).

(B.14-2) APPENDIX 2

Examples of Discussions under Significant Proposed Regulations

[The following are fictional examples of well-written and properly formatted discussions of significant proposed regulations. Each example meets the test of a full discussion of issues and the reasons for the proposed regulatory provision.

Example 1 uses the Statute/Current Regulations/Proposed Regulations/Reasons format.

Example 2 uses a more fluid discussion of the proposed regulations but also contains a full discussion of issues and the reasons for the proposed regulatory provisions.

Note: For some programs, such as Federal Student Aid programs, it may be necessary for you to provide more quantitative analysis of costs and benefits than appears in this example. (See Appendix 3.)]

[Example 1:

Section 694.07 Matching Requirements

Statute: Under section 404C(b) of the HEA, the Secretary may not approve a GEAR UP plan unless the plan provides for the Partnership or State to supply matching funds. The HEA specifies that the Partnership or State must provide--in cash or in kind--from State, local, institutional, or private funds, at least 50 percent of the cost of the project. Section 404C(b) of the HEA also authorizes the Secretary to modify, by regulation, the 50 percent requirement for Partnerships.

Current Regulations: The current regulations require a Partnership to (a) state in its application the percentage of the cost of the GEAR UP project that the Partnership will provide for each year from non-Federal funds; and (b) comply with the stated percentage for each year. The Partnership must provide at least 20 percent of the cost from non-Federal funds for every year of the project period and at least 50 per cent of the total cost over the full project period.

Proposed Regulations: The proposed regulations would keep the requirement of a minimum non-Federal share of 50 percent of the total cost over the project period. However, the proposed regulations would allow an exception by permitting a match of not less than 30 percent of the cost for any Partnership that meets the following conditions:

(a) The Partnership has three or fewer institutions of higher education as members.

(b) The fiscal agent is (1) eligible to receive funds under title V, Part B of title III, or section 316 or 317 of the HEA; or (2) a local educational agency.

(c) The Partnership includes only participating schools with a seventh grade in which at least 75 percent of the students are eligible for free or reduced-price



lunch under the National School Lunch Act.

(d) The Partnership includes only local educational agencies in which at least 50 percent of the enrolled students are eligible for free or reduced-price lunch under the National School Lunch Act.

Reasons: The committee [Note: In this example, a negotiated rulemaking committee developed the proposed regulations] agreed that, generally, the 50 percent matching requirement over the entire project period gives a Partnership broad flexibility in determining the amount the Partnership will supply in any given year during that period.

The success of any project depends in part on strong community support. Requiring a Partnership to provide 50 percent of the funds helps to ensure that the GEAR UP project has strong community support; that all members of the Partnership contribute to the project, in cash or in kind; and that the Partnership can be sustained, even after Federal funds are no longer available, through strong community partnerships and with support from all partners.

The Department noted that the poorest and most rural communities that had applied were able to meet the 50 percent match in the fiscal year 1999 competition. Several other negotiators, however, felt that the 50 percent match

precluded some of the poorest communities from applying because they would not have the resources to meet the match. The committee discussed a variety of options to address this problem.

One negotiator suggested a waiver of the match. If that would not be possible, the negotiator suggested a total minimum match of 20 percent for the full project period. The negotiator was concerned that many colleges and universities, especially those that serve low-income students, were already burdened by matching requirements of other programs, even programs that permit flexibility to substitute in-kind services for dollars.

Several other negotiators, including the Department, felt that a minimum total match of 20 percent for a complete project period was too low and that other members of a Partnership could--and needed to--provide more. These negotiators stressed that a Partnership would not need to use cash to meet the minimum match in the proposed regulations. Rather, the Partnership could meet the match through in-kind contributions; and this should alleviate the burden.

Some negotiators presented another option: that the total minimum required match be 25 percent if a Partnership (a) served only elementary and secondary schools in which

at least 50 percent of the enrolled students were eligible for free or reduced-price lunch under the National School Lunch Act; and (b) served only LEAs in which at least 50 percent of the students enrolled were eligible for free or reduced-price lunch under the National School Lunch Act.

A third option presented to the committee would have permitted the Secretary to give special consideration to a Partnership's required match either before the Partnership's application is approved or after we awarded a grant. For pre-approval special consideration, the Partnership would request a required match of less than 50 percent. Within 30 days of the application deadline, the Secretary would notify the Partnership as to whether the Secretary had granted the request.

Whether the request under this third option was pre-approval or post-award, there would be two circumstances under which a Partnership could apply for special consideration:

(a) If an emergency--such as a natural disaster in the area where the Partnership was located--warranted a lower match.

(b) If the Partnership had systemic issues that could preclude its being able to meet the match. To qualify for a lower required match, the Partnership would have to show

all of the following--

(1) That in spite of its limited resources, it had an ongoing commitment to serving the educational needs of targeted students;

(2) That it had no access to adequate fiscal resources or that it was geographically isolated; and

(3) That it was located in a geographic area in which at least 75 percent of the students were eligible for free or reduced-price lunch, or in which there was a high unemployment rate.

The negotiators stated that the provision that appears in the proposed regulations was the best option available. Several negotiators stated that--

(i) A waiver of the matching requirement would be too logistically burdensome, for both the Secretary and the applicant; and

(ii) A minimum total matching requirement of 20 percent over the project period would be too low.

Negotiators also did not agree to the second option--a total minimum required match of 25 percent--because they felt it could allow too many applicants to take advantage of a reduced match. This could weaken projects. Also, it would require an increased Federal expenditure per project and result in the Department's funding fewer projects.

Negotiators felt that the third option--an applicant's being able to request a lower match under certain circumstances--would not be viable for two reasons. Because the criteria to qualify for the lower match were subjective and extremely detailed, both the applicant and the Department would have to spend significant amounts of time determining whether the applicant was, in fact, eligible for the lower match. In addition, this option would have required the Secretary to determine individually whether each applicant for a reduction qualified for the lower match.

Negotiators, including the Department, preferred an approach that provided a lower match for an easily definable group of applicants. Negotiators felt that this approach would be less burdensome, both for applicants and for the Department, and would still provide a lower match for applicants that needed it most.

One negotiator argued that the group of institutions of higher education eligible for the lower match in the proposed regulations should be expanded to include institutions eligible to receive funds under all of Part A of title III of the HEA instead of just sections 316 and 317.

Other negotiators, including the Department, felt that

the proposed regulations were sufficiently broad to allow a significant number of Partnerships to be eligible for the reduced match. They further believed that expanding the group of institutions eligible for the lower match would so broaden the exception as to turn it into the rule.

Section 694.07 of the proposed regulations would modify the matching requirements for Partnerships. The proposed regulations would allow a Partnership to set its own matching level in any year, as long as it (1) states this percentage in its plan; (2) complies with the stated percentage for each year; and (3) contributes a total of 50 percent of the costs over the complete project period.

The proposed regulations would also allow a Partnership that meets certain specified criteria to provide as little as 30 percent of the total project cost over the complete project period. This provision would give a qualifying Partnership--

- (a) Greater flexibility in meeting matching requirements;
- (b) The ability to reduce costs in any given year; and
- (c) The ability to reduce costs over the total project period.]

[Example 2:

States' Sovereign Immunity and Positive Efforts to Employ  
and Advance Qualified Individuals with Disabilities  
(\$300.177)

We propose to amend \$300.177, which concerns States' sovereign immunity, by adding a new provision relating to States' and LEAs' obligations to make positive efforts to employ and advance qualified individuals with disabilities. Specifically, we propose to redesignate current \$300.177(a) through (c) as \$300.177(a)(1) through (a)(3) and add a new paragraph (b).

The new paragraph would reflect section 606 of the Act, which provides that the Secretary will ensure that each grant recipient under the IDEA makes positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under the IDEA. Thus, the new paragraph (b) would provide that any recipient of assistance under Part B of the Act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act. These programs might include the special education programs of an SEA or LEA or the State-wide assessment program of an SEA that is using IDEA funds to develop assessments for children with disabilities.

Representation by Non-Attorneys in Due Process Hearings

{§300.512}

Section 615(h) (1) of the Act provides that any party to a hearing conducted under Part B of the IDEA has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities. This statutory provision is reflected in current §300.512(a) (1).

Both the Act and its implementing regulations are silent on the issue of whether non-attorneys who have special knowledge of, or expertise in, the problems of children with disabilities may represent parties at IDEA due process hearings. However, as indicated in an April 8, 1981, letter from Theodore Sky, Acting General Counsel of the Department of Education, to the Honorable Frank B. Brouillet, the Department previously interpreted section 615(h) of the Act and implementing regulations to mean that attorneys and lay advocates may perform the same functions at due process hearings.

One commenter, in responding to the June 21, 2005, NPRM, requested that the Department amend the regulations to state explicitly that a parent has the right to be represented by a non-attorney at an IDEA due process



hearing. The Department believes that some clarification is warranted because the IDEA is silent regarding the representational role of non-attorneys at IDEA due process hearings.

In the absence of statutory or regulatory language, at least one court concluded that State laws regulating the practice of law and prohibiting representation by lay advocates in due process hearings do not conflict with the IDEA. (In re Arons, 756 A.2d 867 (Del. 2000), cert. denied sub nom, Arons v. Office of Disciplinary Counsel, 532 U.S. 1065 (2001).)

Given that the language of the Act and regulations is not clear, we are persuaded now that this position best reflects an appropriate regard for the principle of Federal-State comity. We believe that the regulations should respect the interests that States have in regulating the practice of law so as to protect the public and ensure the appropriate administration of justice. Therefore, we propose to change the Department's earlier interpretation of section 615(h) of the Act and the regulations regarding representation of parents by non-attorneys in due process hearings, and amend the regulations in current §300.512(a)(1) accordingly.

Specifically, current §300.512(a)(1), which concerns a parent's right to be accompanied and advised by counsel and by other individuals with special knowledge of or training in the problems of children with disabilities, would be amended to specify that a parent's right to be represented by non-attorneys at due process hearings is determined by State law. We believe alerting parents that State laws affect whether they can be represented in a due process hearing by a non-attorney advocate should reduce future litigation of this issue. The proposed change also is consistent with the Department's general position to provide flexibility to States where the IDEA is silent or where State law does not conflict with the Act.

Because this proposed change would directly reverse a prior interpretation that the Department authoritatively adopted and consistently followed, and because the June 21, 2005, NPRM did not indicate that we were considering any change, we are now proposing that a parent's right to be represented by non-attorneys at a due process hearing must be determined under State law.

Note that this change would not prevent parents from representing themselves in due process hearings or during court proceedings under the IDEA. In Winkelman v. Parma City School District (550 U.S. 516, 127 S. Ct. 1994 (2007))

the Supreme Court held that parents can prosecute IDEA claims on their own behalf without being represented by an attorney. The proposed regulatory change would not affect this holding.]

[B.14-3] APPENDIX 3

Examples of "Reasons" Sections with Quantitative Analysis  
of Costs and Benefits

*[The following fictional examples contain the types of materials you might include as quantitative analysis of costs and benefits in the "Reasons" section of Significant Proposed Regulations [B.3-7].]*

[Example 1:

Reasons: The proposed changes to the financial responsibility regulations would satisfy the same legal and policy objectives that the current regulations address. However, we believe that the proposed changes would more accurately measure the financial strength of an institution participating in a title IV, HEA program. The adoption of ratio analysis, together with the revised alternative means for demonstrating financial responsibility, would minimize the adverse economic impact on an entity that chose this alternative.

We examined a number of other alternatives and rejected them because they would not have adequately discharged the Secretary's obligation under section 498(c) of the HEA to determine the financial responsibility of a participating institution and guard the Federal fiscal interest. These other alternatives would have--

(1) Established differing compliance or reporting requirements;

(2) Established timetables based on the size of the institution rather than the type of institution;

(3) Used performance standards rather than established baseline measures; or

(4) Exempted small entities from all or some of the regulations.

Further, we have determined that there are no other significant alternatives that would satisfy the same legal and policy objectives while minimizing the economic impact. We have based our determination, in part, on the extensive consultation that we and KPMG performed with a variety of entities--both small and large--in developing these proposed revisions.]

[Example 2:

Reasons: Based on the U.S. Small Business Administration Size Standards, we have determined that these proposed regulations would affect a lender with assets below \$100,000,000.

The two provisions discussed under the preceding section would affect both this type of small entity and a large lender. The first provision could offer a positive economic benefit by providing a lender additional flexibility for regulatory compliance. This provision would not impose a significant adverse economic impact.

The second provision would impose minor economic costs by requiring a lender to modify two letters that the lender must send to delinquent borrowers. However, we have determined that the additional costs would not have a significant adverse economic impact.

The proposed provisions would protect the Federal fiscal interest and the interests of the borrowers under the programs.]

[Example 3:

Reasons: Our analysis estimates that 456 to 625 for-profit entities and 18 to 80 nonprofit entities might not initially meet the proposed standards, even though they might have met the current standards. We have derived these estimates from information used in the KPMG study. The study had selectively included a number of schools with a demonstrated lack of financial responsibility, so the projections in our analysis may overstate the expected number of institutions in this category.

In proposing a new standard for determining financial responsibility, we have tried to lessen any adverse effects. Thus, we have included in the proposed regulations an alternative means for demonstrating financial responsibility. The alternative would allow a participating institution to use current standards to

demonstrate responsibility for fiscal years before the effective date of the proposed regulations.

An institution not able to comply with the proposed standards following this transition period would experience an adverse economic impact from the proposed regulations. We discuss elsewhere in this preamble the relative economic costs this type of institution may face if we require it to post a letter of credit.

Because the proposed regulations provide a better measure of an institution's financial responsibility, we believe it is necessary to impose these additional costs on an institution that is unable to adjust its operations to meet these ratios. Failure by the institution to meet the ratios indicates a heightened risk to students and taxpayers.

The adverse economic impact that some institutions may experience is balanced by the positive economic impact that we anticipate other entities would experience. This positive impact would result from our use of the proposed tests to better judge financial responsibility.

We estimate, for example, that 138 to 369 small entities that failed the existing tests would pass the new tests because the proposed regulations would determine financial responsibility by blending more information into

a composite score. An institution with resources that we did not adequately measure under the current regulations would save the expense of pursuing alternative demonstrations of financial responsibility.]



**[B.15] TEMPLATE OF A PREAMBLE FOR AN NPRM**

4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Part [Parts] *[Fill in the part number or numbers]*

RIN

*[Docket ID]*

*[Fill in the title of the regulations]*

AGENCY: *[Name of principal office]*, Department of  
Education.

ACTION: Notice of proposed rulemaking.

SUMMARY:

DATES: We must receive your comments on or before [INSERT  
DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL  
REGISTER].

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

• Federal eRulemaking Portal: Go to  
[www.regulations.gov](http://www.regulations.gov) to submit your comments electronically.  
Information on using Regulations.gov, including

instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to the site?"

- Postal Mail, Commercial Delivery, or Hand Delivery:

If you mail or deliver your comments about these proposed regulations, address them to . . . .

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://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: *[Insert contact information]*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call . . . .

SUPPLEMENTARY INFORMATION:

*[If applicable]* Executive Summary:

Purpose of This Regulatory Action:

Summary of the Major Provisions of This Regulatory Action:

Costs and Benefits:

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. *[Optional sentence:]*

To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and 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 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. 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 Department's programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in *[room number and street address]*, Washington, DC, between 8:30 a.m. and 4:00 p.m. Washington, DC time, Monday through Friday of each week except Federal holidays. 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 regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person [one of the persons] listed under FOR FURTHER INFORMATION CONTACT.

Background

[If applicable] Public Participation

[If applicable] Negotiated Rulemaking

[If applicable] Summary of Proposed Changes

Significant Proposed Regulations

Statute:

[If applicable] Current Regulations:

Proposed Regulations:

Reasons:

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). . . .

[If applicable] Accounting Statement

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. . . .

Regulatory Flexibility Act Certification

Paperwork Reduction Act of 1995

Intergovernmental Review

[If applicable] Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e-4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

[If applicable] Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations in *[identify the section or section numbers]* may have

federalism implications, as defined in Executive Order 13132. We encourage State and local elected officials to review and provide comments on these proposed regulations.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the person [one of the persons] listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at:

[www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). 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 Adobe 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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department. (Catalog of Federal Domestic Assistance Number [Numbers] .

. . .)

List of Subjects

Dated:

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connectED Home > ED's Principles for Regulating

## ED's Principles for Regulating

### ED's Principles for Regulating

Through consistent application of the following principles, we have eliminated unnecessary regulations and identified situations in which major programs could be implemented without regulations or with limited regulatory action.

In deciding when to regulate, we consider the following:

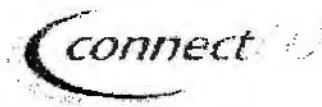
- Whether regulations are essential to promote quality and equality of opportunity in education.
- Whether a demonstrated problem cannot be resolved without regulation.
- Whether regulations are necessary to provide a legally binding interpretation to resolve ambiguity.
- Whether entities or situations subject to regulation are similar enough that a uniform approach through regulation would be meaningful and do more good than harm.
- Whether regulations are needed to protect the Federal interest; that is, to ensure that Federal funds are used for their intended purpose, and to eliminate fraud, waste, and abuse.

In deciding how to regulate, we are mindful of the following principles:

- Regulate no more than necessary.
- Minimize burden to the extent possible, and promote multiple approaches to meeting statutory requirements if possible.
- Encourage coordination of federally funded activities with State and local reform activities.
- Ensure that the benefits justify the costs of regulating.
- To the extent possible, establish performance objectives rather than specify compliance behavior.
- Encourage flexibility, to the extent possible and as needed to enable institutional forces to achieve desired results.

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# United States Department of Education Regulatory Quality Manual

Division of Regulatory Services  
Office of the General Counsel

Introduction (12/03) – *omitted per discussion*

ED's Principles for Regulating (12/11)

Chapter A: How Do I Prepare a Regulatory Action Memorandum Transmittal or a Notice of Proposed Rulemaking? (06/02) – *omitted per discussion*

Chapter B: How Do I Prepare a Preamble for a Notice of Proposed Rulemaking? (12/11)

Chapter C: How Do I Prepare a Regulatory Action Memorandum Transmittal or Final Regulations? (06/02) – *omitted per discussion*

Chapter D: How Do I Prepare a Preamble for Final Regulations? (02/13)

Chapter E: How Do I Prepare a Preamble for Final Regulations with a Waiver of Proposed Rulemaking? (04/11)

Chapter F: How Do I Prepare Words of Issuance, Headings, Tables of Contents, Authority Citations, and Amendatory Language for Proposed or Final Regulations? (06/02) – *omitted per discussion*

Chapter G: How Do I Prepare the Texts of Proposed or Final Regulations for Direct Grant Programs? (06/02) – *omitted per discussion*

Chapter H: How Do I Prepare the Texts of Proposed or Final Regulations for State Administered Programs? (06/02) – *omitted per discussion*

Chapter I: How Do I Announce a Competition for New Grant Awards? (06/02) – *omitted per discussion*

Chapter J: How Do I Prepare an Application Notice for a Discretionary Grant Program? (06/16)

Chapter K: [This chapter is reserved for future use.]

Chapter L: [This chapter is reserved for future use.]

Chapter M: [This chapter is reserved for future use.]

Chapter N: [This chapter is reserved for future use.]

Chapter O: How Do I Prepare a Notice of One or More Proposed Principles, Definitions, or Selection Criteria for a Discretionary Grant Program? (08/12)

Chapter P: How Do I Prepare a Notice of Intent (NOI) for a Discretionary Grant Program? (06/01/11)

Chapter Q: [This chapter is reserved for future use.]

Chapter R: How Do I Prepare a Notice of Final Results for a Discretionary Grant Program? (06/01/11) -omitted per discussion

Chapter S: [This chapter is reserved for future use.]

Chapter T: [This chapter is reserved for future use.]

Chapter U: [This chapter is reserved for future use.]

Chapter V: How Do I Prepare a Submission Form for Executive Order 12866? (06/01/11) -omitted per discussion

Chapter W: What Writing Style Do I Follow in Drafting My Document? (This chapter is being rewritten.)

Chapter X: [This chapter is reserved for future use.]

Chapter Y: [This chapter is reserved for future use.]

Chapter Z: [This chapter is reserved for future use.]

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# A Guide to the Information Collection Clearance Process

Version 8.1

Office of Management  
Chief Privacy Office  
Information Collection Clearance Division

May 2016

## PREFACE

The ED PRA Guide is a living document and as such is subject to change. This document should be reviewed at least every year by the applicable manager in order to maintain its relevancy and updated when appropriate.

- Version 8.0.

Please refer to the “Department Revision History” table below.

Version Number	Date	Document Revision History
8.0	September 2015	Changes to reflect the Departmental Directive, OM: 6-103
8.1	April 2016	Changes to reflect 508 compliance

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## 1. Introduction

The Paperwork Reduction Act (PRA) of 1995 (Public Law 104-13) took effect on October 1, 1995, replacing the Paperwork Reduction Act of 1980 (as amended in 1986). As a result of this reauthorization, the Office of Management and Budget (OMB) published proposed changes to 5 CFR 1320 in a *Notice of Proposed Rulemaking* on June 8, 1995, and published a final rule on August 29, 1995. This rule interprets the PRA and provides specific mandatory compliance guidelines for federal agencies. In essence, the PRA and supporting rules dictate that each agency ensure that the collection of information imposes the smallest possible burden on the public, is not duplicated elsewhere, has practical utility, and is necessary to satisfy statutory requirements or other substantial governmental needs.

The Chief Privacy Officer (CPO), Information Collection Clearance Division (ICCD) within the Department of Education's (ED) Office of Management (OM) has the responsibility to support all ED divisions in complying with the PRA and associated OMB rules. CPO/ICCD serves as the liaison between OMB and ED Principal Offices (POs) for information collection reviews.

### 1.1 Background

The Paperwork Reduction Act requires each federal agency to obtain OMB approval of its information collection activities and paperwork control functions. Collecting information means obtaining or soliciting information from 10 or more members of the public within any 12-month period, by or for a federal agency using identical questions or reporting or recordkeeping requirements, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. Examples of information collections include surveys, questionnaires, performance reports, grant applications, focus groups, website collection, telephone interviews, and other types of documents. An agency may not initiate a collection activity without first obtaining OMB approval of the collection and then displaying a current, valid OMB control number, expiration date, and burden statement on the approved collection instrument. OMB approval is obtained via the Information Collection Request (ICR) process. An ICR consists of a group of documents prepared by an ED PO which is then submitted to ICCD electronically to the [ICRSubmissions@ed.gov](mailto:ICRSubmissions@ed.gov) mailbox. After ICCD completes their review of the information collection, ICCD submits the collection to OMB to complete the approval process.

### 1.2 Purpose/Scope

This Guide is developed so that POs can comply with the PRA information collection clearance process. As part of the PRA ICRs are developed and submitted to the OMB for review and approval. The purpose of this Guide is to assist POs in developing an ICR and understanding the requirements and procedures for submitting an ICR via the [ICRSubmissions@ed.gov](mailto:ICRSubmissions@ed.gov) mailbox. This Guide applies to all ED employees or contractors who develop any information collection

activity or PRA document, geared towards 10 or more respondents, which the public is required to complete or report back to ED.

### 1.3 References

Several websites and documents are directly referenced in this guide to provide additional information about the information collection clearance process. Some of these are listed below and hyperlinked to provide direct access. (To access these documents, hold down the 'Ctrl' key and select the link using your mouse.)

- [Information Collection Clearances Division Forms](#) web site - sponsored by ICCD contains forms and documents (*including this one*) that pertain to the information collection clearance process.
- [An electronic copy of the Paperwork Reduction act can be found here - http://www.reginfo.gov/public/reginfo/prd.pdf](#) and [5 CFR 1320 may be found here.](#)
- Departmental Directive, OM:6-103, Information Collection Activities and Burden Control

### 1.4 Contacts

The key stakeholders in the information collection clearance process are the following:

- PO ICR Developer(s) (may be known as the Program Sponsor(s))
- Information Collection Coordinator (ICC)
- Portfolio Managers (in ICCD)
- Office of General Counsel (OGC)
- Office of Planning, Evaluation, and Policy Development (OPEPD), and
- Office of Management and Budget (OMB) Desk Officer

POs that develop information collection activities are required to work closely with their ICC and the agency's PRA office. Information collection training is essential when PO staff or a PO ICR Developer(s) is creating an information collection that will need PRA clearance and ultimately OMB approval. The PO is responsible for submitting the ICR to the [ICRSubmissions@ed.gov](mailto:ICRSubmissions@ed.gov) mailbox according to the procedures provided in this guide. OGC and OPEPD are part of the internal review, whether related to regulatory documents or policy issues. ICCD has agency authority to review the ICR and submit to OMB upon internal approval. OMB reviews and issues a Notice of Action (NOA) for each ICR.

The PO ICR Developer(s) (or Program Sponsor (s)) is responsible for:

- Ensuring that the information collected is of sufficient value to warrant the burden on the public.
- Developing the information collection request package, including all supporting documents.
- Submitting the package through the PO ICC to ICCD via the [ICRSubmissions@ed.gov](mailto:ICRSubmissions@ed.gov) mailbox.



- Ensuring that the OMB approval number and expiration date (if required) are on the collection form or instrument along with the public burden notice that includes the calculation of the estimated time it will take the respondent to prepare and provide the information requested.
- Notifying the ICC if the collection ceases to be necessary or is no longer to be used prior to the expiration date.
- Adhering to the duties specified in the Administrative Communications Systems (ACS) Departmental Directive, OM:6-103, Information Collection Activities and Burden Control.

For more information on agency roles and responsibilities, please refer to the ACS Departmental Directive.

Most POs have an ICC who is the overall coordinator between the PO ICR Developer and the Portfolio Manager in the PRA office. [A current listing of the agency's ICCs is available here.](#)

## 2. PRA Definitions

Table 1: Key PRA Definitions

Term	Definition
<b>Collection of information</b>	"means...the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public, of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. A collection of information may be in any form or format, including the use of report forms; application forms; schedules; questionnaires; surveys; reporting or recordkeeping requirements; contracts; agreements; policy statements; plans; rules or regulations; planning requirements; circulars; directives; instructions; bulletins; requests for proposal or other procurement requirements; interview guides; oral communications; posting, notification, labeling, or similar disclosure requirements; telegraphic or telephonic requests; automated, electronic, mechanical, or other technological collection techniques; standard questionnaires used to monitor compliance with agency requirements; or any other techniques or technological methods used to monitor compliance with agency requirements."
<b>Burden</b>	"means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency, including reviewing instructions; developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information; ...processing and maintaining information; ...disclosing and providing information; ...completing and reviewing the collection of information; and transmitting, or otherwise disclosing the information."
<b>Person</b>	"means an individual, partnership, association, corporation (including operations of government-owned contractor-operated facilities), business trust, or legal representative, an organized group of individuals, a state, territorial, tribal, or local government or branch thereof, or a political subdivision.... [Ten or more "persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonably be expected to transmit the collection of information during that period.... For the purposes of this definition..."persons" does not include employees of the respondent acting within the scope of their employment, contractors engaged by a respondent for the purpose of complying with the collection of information, ...or current employees of the Federal government (including military reservists and members of the National Guard while on active duty) when acting within the scope of their employment, but it does include retired and other former Federal employees.

## 3. Creating an Information Collection Request (ICR)

The ICR Developer needs to consider the following items prior to creating an ICR:

- What type of ICR needs to be developed?
- What is the timeline for a regular ICR (non-rulemaking)?
- What is required for an ICR?
- What is required for a rulemaking ICR?
- What is the timeline for a rulemaking ICR?
- Other items to consider (Checklist, ICR required components, etc.)
- A Certification Form

### 3.1 ICR Types

The process of submitting an ICR depends on the type of information collection request. There are several different types of information collection requests. Therefore, the PO ICR Developer(s) should first determine what type of information collection request needs to be developed. To help explain the process, we have focused on the most common ICR types, new, extension, revision, but describe as well as other ICR types. These types of requests apply to information collections such as grants, performance reports, studies, surveys, evaluations, regulations, generic grant applications, discretionary grants, and customer satisfaction surveys and focus groups.

#### **New**

A new information collection is initiated by a statute, regulation, Executive Order, or a PO initiative originating from new needs, priorities, plans, and recommendations from other agencies, external groups, and/or State or Federal advisory committees.

Please note when a “new” information collection is submitted to ICCD, it will not have an OMB number assigned to the collection. Once OMB approval is given, a specific OMB number will be assigned to the collection.

#### **Extension**

Extensions are requested to extend an information collection’s expiration date for an additional period of time (e.g., three years). An extension is a renewal activity where there are no substantive changes (referred to as non-substantive changes) to a currently approved information collection activity. An extension also includes no changes or minimal changes if there is a change in burden hours resulting from an adjustment to the number of respondents or response outside the control of the agency. (An extension would not be used if the burden change was due to a program change that is generated by an agency).

#### **Revision**

A revision is a substantive change to a currently approved information collection activity. It usually involves a change to the estimated annual burden hours as a result of a change to the program requiring the collection. For example, if additional questions are added to or deleted from a form, or additional information is required by the PO, the information collection should be categorized as a revision.

(Both extended and revised collections will be submitted to ICCD using the approved OMB number previously assigned to the collection).

#### **Discontinuation (OMB Form 83-D)**

Discontinuations occur when an information collection becomes obsolete before the expiration date of the assigned OMB control number. OMB must be formally notified of the discontinuation BEFORE the collection expires. A collection should never be allowed to expire without submitting an official discontinuation request.

### **Reinstatements**

A reinstatement occurs when the PO decides to resubmit a collection for clearance that has previously expired or been officially discontinued by ED. A reinstatement ICR can be submitted either with or without changes from the previous collection. Reinstatement requests will be submitted to ICCD using the same OMB number that was previously assigned to the collection when it was active.

### **Non-material or non-substantive change (OMB Form 83-C)**

A non-material or non-substantive change is a request for a change to a collection that does not require public notification in the *Federal Register*. These changes usually involve cosmetic or technical changes to a form or clarification changes. When there are increases and decreases in burden hours or responses, a request should be submitted. If there are pen and ink changes, those do not require OMB review.

### **Emergency clearance of a new ICR**

Emergency clearance submissions are for ICRs that cannot go through the normal information collection process and must meet at least one of the three statutory conditions listed below to obtain approval. This type of clearance is limited to rare circumstances and those special circumstances must be discussed and approved by OMB **before** the emergency clearance can be officially submitted to OMB. An emergency clearance cannot be used because ED failed to plan enough time for the ICR process.

OMB will grant emergency clearance ONLY under the following conditions:

- Harm to the public may occur otherwise
- An unanticipated event has occurred beyond the control of the Department (such as a recent enactment of the law), or
- A regular clearance is likely to cause a statutory or court-ordered deadline to be missed

Consult with your Portfolio Manager as soon as possible if you believe an emergency clearance is necessary.

### **Emergency Extension (OMB Form 83-E)**

Emergency extensions are used to continue an approved collection beyond the current expiration date. Subsequent requests for emergency extensions will not be approved.

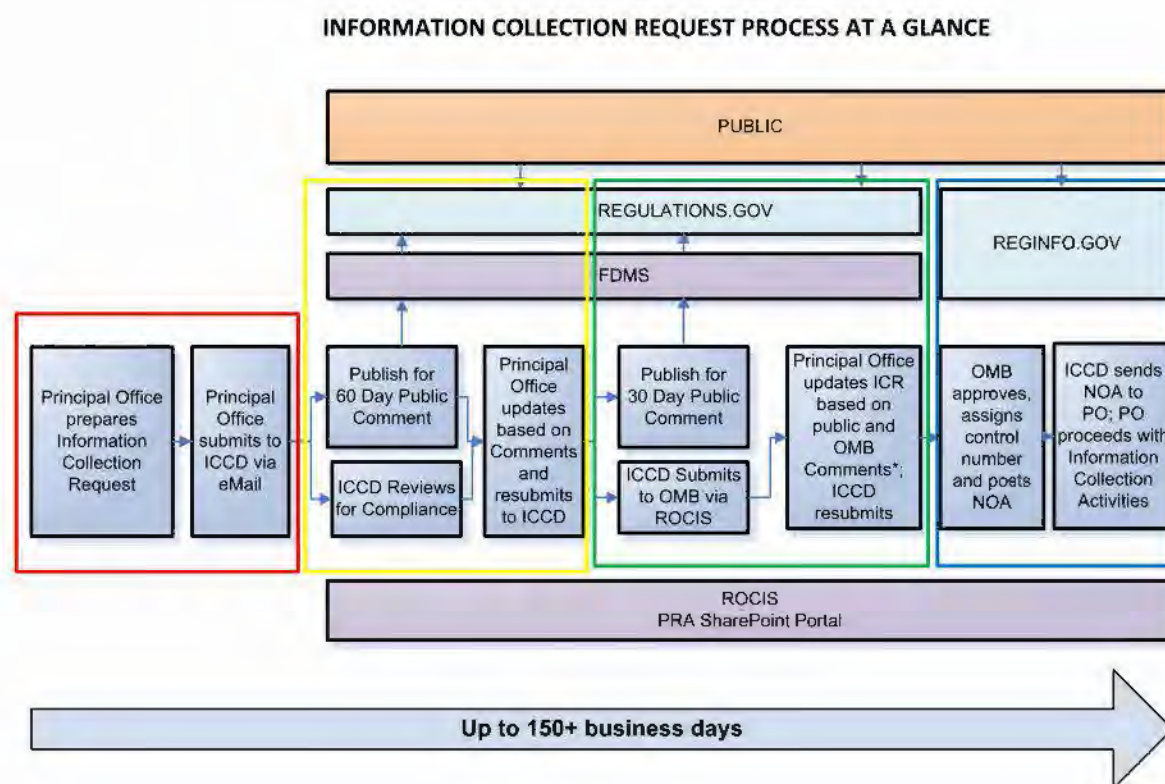
Emergency extension requests are strongly discouraged. OMB rarely grants an EE. ED must supply OMB with a strong justification for them to consider this an option. The requirement to

renew a collection should be determined sufficiently far in advance so that it should never be necessary for the program offices to request an emergency extension. Consult with your Portfolio Manager as soon as possible if you believe an emergency extension is necessary. EE example: ICR will expire prior to the final rule. If PO needs the current ICR to extend several months until final rule is published, then an EE may be necessary.

### 3.2 ICR Timeline with Non-Rulemaking

The review of an information collection request usually takes **180 or more** days. PO ICR Developer(s) are encouraged to develop ICRs at least 210 days in advance to allow time for unexpected delays and comments.

*Figure 1- ICR Process At a Glance*



### 3.3 Required ICR Components for Non-Rulemaking Requests

A non-rulemaking Information Collection Request (ICR) must include a set of documents that describe what information is needed, why it is needed, how it will be collected, and how much collecting the information will cost the respondents and the government. Specifically, an ICR should include the following:



- IC Data Forms, Part 1 and Part 2 (previously known as OMB Form 83-I). Electronic copies of the [forms and its instruction are here.](#)
- Supporting Statement Part A and B (as applicable). An electronic copy of [the Supporting Statement is available here.](#)
- Information collection instrument (s) (data collection activities) for which you are seeking OMB approval
- A Certification Form (digital version). (By signing the digital version, the PO certifies that the collection of information encompassed by this request complies with 5 CFR 1320.9 and related provisions of 5 CFR 1320.8(b)(3) including appropriate input from all agency offices, such as OPEPD and OGC, who are affected by and involved with collecting the required data from the public. POs must ensure that all policy issues are addressed prior to submittals (e.g., any policy issues with grant applications) so the ICR is ready for public viewing.) (Note: Date is automatically placed on form once signed digitally). An electronic copy of [the Certification Form is available here.](#)

Note: In most cases, an information collection request may contain additional documents. (See Appendix B for all information collection request required components).

### 3.3.1 Completing IC Data Forms, Parts 1 and 2

IC Data Forms Parts 1 and 2 capture the data that are necessary for describing the ICR. The data supplied in Parts 1 and 2 will be used by the PO ICC(s)/ICCD Portfolio Managers to review the ICR and ensure it has been prepared appropriately and for reporting purposes.

#### *IC Data Form - Part 1:*

ICR types such as New, Revision, Extension, Nonmaterial Change (OMB 83-C), Generic IC, and Reinstatements with or without change must use Part 1 to initiate the ICR review and submission process to ICCD via the [ICRSubmission@ed.gov](mailto:ICRSubmission@ed.gov) mailbox.

[Part 1 instructions are available here.](#)

Tips for completing some of the items on the form are presented below.

- Title:

Provide the official title of the information collection request. Be as specific as possible to distinguish this collection request from others and enable text searches on titles.

The title in Part 1 must match the title used for the Federal Register notices.

- Abstract:

An abstract should briefly state the purpose and use of the collection. Note that abstracts are used for public comment notices and must be grammatically correct and tell “a story” to the reader. Consider the following questions when preparing an abstract:

- What is the ICR about?
- How will it be used?
- If the ICR is a revision, how has it changed?

For terms of acronyms, provide the term first, followed by its acronym so the reader understands what the acronym represents. Also, run a spell check for the narrative portions of the form.

The abstract in Part 1 must match the abstract used for the Federal Register notices.

#### Summary of Burden Table:

ICR annual burden hours should be shown. The annual burden hours must match the Supporting Statement question A-12.

NOTE: The annualized cost to respondents related to burden hours may be described in the Supporting Statement question A-12. However, this IS NOT the annualized cost burden figure we want placed in the ICR Summary of Burden worksheet table. (The types of costs discussed in A-12 include costs such as wage costs related to burden hours spent responding to the information collection and these types of respondent costs would NOT be costs entered in the IC Data Form Part 1 burden table discussed below.

#### Annual Cost Burden to respondents:

The Annual Cost Burden figure that should be placed in the ICR Summary of Burden Table related to cost estimates to respondents (or record keepers) results from two components: 1) a total capital and start-up cost, and 2) a total operation and maintenance and purchase of services component.

Most information collections submitted to ICCD will have \$0 start up or operational costs associated with them. (However, if there are these types of costs, they should be discussed in the Supporting Statement question A-13. If you report postage related costs in the Supporting Statement A-13, you will still keep the annual respondent cost calculation section of Part 1 at \$0.)

(Remember - do not include the cost of any hour burden shown in the Supporting Statement questions A-12 and A-14 in the Summary of Burden Table.)

Short Statement: (This will be used for the Information Collection Budget (ICB) Report to OMB.)

Make sure the statement is detailed but short and concise. Also, make sure the short statement is considered ready for inclusion in the Information Collection Budget (ICB) Report to OMB. For example, if there are changes, make sure the statement includes the reason(s) for the program change(s) or adjustment(s). To be ICB ready, use the word “program change” or “adjustment” in your explanation and provide the change in burden hours.

The short statement in Part 1 must match the short statement used for the ICB Report to OMB.

Please note that the short statement doesn’t need to match question A-15 of the supporting statement. You can shorten the statement as long as it is consistent with what is being said in A-15 but it should be concise and to the point.

Attachments:

**ICR files that ARE NOT burden related data collection instruments should be attached to Part 1.** Examples of the files to be attached here would include supporting statements, regulations, memoranda, the Certification Form and other supplemental forms that are not burden related. The actual data collection instruments that relate to burden will be attached within Part 2. See instructions below.

#### *IC Data Form – Part 2:*

A copy of the instructions [for the Part 2 Form may be found here](#). Below are some tips for completing some of the items on the form.

Instruments:

Information collection instruments (which are also referred to as ICs) may be in any form or format. For example, ICs may be presented as reports, applications, schedules, questionnaires, surveys, reporting or recordkeeping requirements, and regulations (which are used if there is no form or instrument).

An instrument (also known as an IC) can have up to four (4) Part 2 work sheets since NO instrument may have more than one (1) affected public value. (See below Affected Public choices per IC):

- Affected Public choices per IC - Federal Government, Individuals or households, Private Sector, and State, Local or Tribal Governments.
- Obligation to respond choices per IC – voluntary, obtain or retain benefits, or mandatory.

Burden Detail Table:



If you have more than one affected public, for each Part 2 form, ONLY enter the total number of annual burden hours and annual responses associated with the Affected Public choice for the IC.

Keep the annual respondent cost calculation section of Part 2 as \$0 even if you reported postage-related cost shown in A13 of the supporting statement. There will be few (if any) ICs that would have costs entered in Part 2 of the form.

Attachments:

**ONLY attach burden related data collection instruments, instructions, and Standard Forms document to Data Form Part 2.**

Standard Forms: some ED grant programs ICR components are called Standard Forms. Certain Standard Forms are required in order to submit new, renewal, and discretionary grant applications. Standard Forms should be separated from the application, presented in a separate document, and then uploaded under “Add Instrument.”

Examples of Standard Forms that need to be included in OMB clearance for a grant application information collection request are:

- Budget Information Form (ED 524)
- General Education Provisions Act (GEPA) Section 427 Statement
- Certifications and Assurances
- Assurances- (Standard Form 424B or 424D)
- Certification Regarding Lobbying (ED Form 80-0013), rev. 3/2004; (formerly titled “Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters, and Drug-Free Workplace)
- Disclosure of Lobbying Activities (Standard Form LLL), if applicable

This list is also available in this Handbook, Appendix B, and ICR Required Components/Grants.

ICCD accepts the Data 1 and Data 2 forms separately or as one combined document.

**Attach all Part 2 forms manually to your submission email or the forms should be attached as components to the Part 2 form.**

**NOTE: If a user does not have Adobe Standard as a minimum, they will not be able to attach files within the Data 1 or Data 2 forms and must use the Version 2 of the Data 1 and Data 2 forms available on [https://\(put correct link here\)](https://(put correct link here)). If you must use Version 2 of Data 1 and Data 2 forms, then ALL supporting documents must be attached to your ICR submission email annually.**

**Submitting your ICR once you have completed IC Data Form Part 1 and Part 2:**

To submit an ICR, PO ICC(s) opens Data Form Part 1, scroll down to “Submission Sections” to locate the “PO/Comments/Action” row. Here, PO ICC(s) enters comments for review to Portfolio Manager, and then clicks the “Submit” button in the same row. (Refer to Section 3.4 for more specific details on the submission of an ICR to ICCD through the [ICRSubmissions@ed.gov](mailto:ICRSubmissions@ed.gov) mailbox.)

Remember that all ICR files that are not related to burden hours are attached to Part 1. \*And all Part 2 forms that should be submitted as components of the complete ICR are attached manually.

\*Remember that: a minimum of Adobe Standard is required on your computer in order to attached files(s) within the Data 1 or Data 2 forms. If you do not have this software, [Version 2 of the Data 1 and 2 may be found here.](#) All supporting documents should be attached to your ICR submission email manually.

### **3.3.2 Completing the Supporting Statement Parts A and B**

The purpose of the Supporting Statement is to substantiate and justify the information collection request. When the PO ICR Developer(s) prepares an information collection request, all ICRs must include Part A of the Supporting Statement. ICRs developed for administering statistical information collections must also include Part B of the Supporting Statement. Here are some tips for completing the Supporting Statement Part A.

#### ***Supporting Statement Part A (#1):***

Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Specify the review type of the collection (new, revision, extension, reinstatement with change, reinstatement without change). If revised, briefly specify the changes. If a rulemaking is involved, make note of the sections or changed sections, if applicable.

#### ***Federal Register Notices - Supporting Statement Part A (#8)***

The Supporting Statement should indicate that the 60-day and 30-day notices will be published for the ICR. As applicable, state that the Department has, or will, published the 60 and 30 Federal Register notices as required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to the 60-day notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost (if any) and hour burden. If a significant number of comments are received during the 60 day comment period, the comments and responses to the comments can be loaded as a supplemental document in a separate file. The PO should provide consultations they have had with their respondents. It is highly recommended to consult with respondents prior to the next submission for ways to reduce burden, content, etc. and provide updates on activities based on the consultations every 3 years.



### Incentives – Supporting Statement Part A (#9)

Applicable to collections involving studies, evaluations, surveys, case studies and censuses.

Since OMB questions the use and amounts of incentives often, it is highly recommended for POs to find creative ways to increase response rates without the use of incentives. If incentives are necessary, then the PO must include a strong and meaningful justification for the use of incentives. Include why a given amount is necessary for this collection and include successful examples of the use of the incentives, if possible. Collections that have had incentives approved in the past must justify the continued use of the incentives when they resubmit the collections to OMB for renewal or revision. The PO should follow established incentive guidelines from their PO.

### Confidentiality – Supporting Statement Part A (#10)

Applicable to collections if Personal Identification Information (PII) is being collected, and to collections involving studies, evaluations, surveys, case studies and censuses:

The PO must provide the legal basis for assuring confidentiality for the data they are collecting, and need to include the legal citation for ensuring this confidentiality. If there is no legal basis for assuring confidentiality, then programs must not guarantee confidentiality. IES uses their ESRA authority for confidentiality language and OPEPD follows the standard language (which has been agreed upon with OMB). If other offices plan to collect PII or confidential data, please follow the standard language and/or consult with your ICC or ICCD Portfolio Manager if unsure. Confidentiality language (including the legal citation) must also be included on any correspondence such as consent forms, solicitation letters, brochures, and notification letters that are sent to the respondents.

If PII is collected, then the PO must cite the Privacy Act as well as the legal basis for collecting that data. If a Privacy Act statement is provided to respondents due to collecting PII, there must be an associated System of Records Notice (SORN) published in the *Federal Register*. If no SORN has been completed, one must be started right away since from the development stage to the approval and publication of the SORN in the FR can take as much time as the ICR clearance process itself. [The Privacy Act Directive is available here.](#)

### Burden Hour calculations – Supporting Statement A (#12)

It is important for PO ICR Developer(s) to provide a table that gives the number of respondents, responses, time/response, and number of times collected annually for each instrument. OMB is interested in the average annual burden hour figure – so the number of years that you are requesting clearance for must be taken into consideration in these calculations. There will often be more complex cases, for example, when instruments are used a different number per year, or biennially instead of annually. In these cases, a detailed table is an invaluable aid to figure out the annual burden hours as well as an aid to assist you with completing the IC Data Form, Part 2.

### Recruitment – Supporting Statement Part A (#12):

The PO must include recruitment as part of its collection. If recruitment has not been previously approved by OMB, then any contact with respondents in order to recruit them prior to receiving OMB approval for a collection is in violation of the PRA.

#### Program adjustments or changes - Supporting Statement Part A (#15)

The PO must describe and explain program changes or adjustments (if any). Generally, adjustments in burden result from re-estimating burden and/or from economic phenomenon outside of an agency's control (e.g., correcting a burden estimate or an organic increase or decrease in the size of the reporting universe). Program changes result from a deliberate action that materially changes a collection of information and generally are the result of a new statute or a new agency action (e.g., changing a form, revising regulations, redefining the respondent universe). Burden from a new collection is considered a program change rather than an adjustment.

#### *Supporting Statement Part B:*

##### Focus Groups – Supporting Statement Part B

There is no exemption for focus groups in the PRA. When you think of a focus group, you typically think of each person in the group being asked the same questions. However, OMB also considers it to be a focus group if you are asking for the same or similar information from the members of the group. If you have a focus group with nine or less participants within a 12 month period, you do not need to get this cleared by OMB. However, if you have a focus group with 10 or more individuals, this falls under the PRA and you must get approval from OMB for the information you are collecting from this group. Additionally, if an agency has three focus groups of nine persons (in a 12 month period), and identical or similar information is being asked from each of the groups, then the PRA applies because you have more than nine people in total.

##### Response Rates - Supporting Statement Part B (#3)

OMB will generally not approve any response rate lower than 80% for studies, surveys or evaluations. The PO must explain how they will maximize the response rate and what approaches are taken for non-response. If the collection is a renewal or a revision, they need to show OMB that they are doing everything they can to maintain the high level of response.

For those instances where an 80% response rate is not feasible (e.g. R&D studies) you must explain what methods you will use to maximize response rates and, if necessary, address non-response bias.

#### **3.3.3 Completing Instruments:**

An information collection instrument is the physical media used to collect information from the public. All ED public-use forms are subject to PRA requirements.



Instruments may include and are not limited to:

- Forms;
- Questionnaires;
- Interview questions;
- Regulations;
- Phone surveys; and
- Electronic forms.

When PO ICR Developer(s) prepare their information collection instrument(s), their aim should be to limit the content of the required information to only those pieces of data that are absolutely necessary to complete the objectives of the program. Designing a well thought out form at the beginning of the ICR process makes the subsequent steps easier.

Before an information collection instrument is submitted to ICCD, the PO ICR Developer(s) must ensure that each information collection instrument displays the following required information:

- OMB number and expiration date (a brand new ICR OMB #: 18xx-New; expiration date: xx/xx/xxxx)
- Reasons for collection
- How information is used
- Average burden estimate
- Obligation to respond
- Nature and extent of confidentiality
- Public protection
- The Public Burden Statement

For more information on the PRA requirement for an instrument, please refer to “*Paperwork Reduction Act Forms Checklist (5CFR 1320.8(b))*”

### 3.4 Submitting Information Collection Request

Not all information collection request submissions follow the same steps. To help explain the process, we have focused on the submission steps for new, extension, and revision request types. Reinstatements with/without change follow similar submission steps as those for a new information collection request except that reinstatement requests use the OMB ICR reference number previously assigned by OMB to the collection. In general, reinstatements are used when the information collection has been discontinued previously but needs to be renewed to be used again.

Please note that the ICR types such as New, Revision, Extension, Nonmaterial Change (OMB 83-C), Generic IC, and Reinstatements with or without change must use IC Data Forms Part 1 and Part 2 to initiate the ICR submission to ICCD via the [ICRSubmission@ed.gov](mailto:ICRSubmission@ed.gov) mailbox.

## New ICR Clearance Submission Steps

The process for obtaining OMB approval will take a minimum of five (5) months. For new collection (s) that involves forms or employs statistical methods, additional time is required. Further, internal agency procedures will likely require additional steps. Therefore, the PO ICC(s) and PO ICR Developer(s) are responsible for ensuring that sufficient time is allocated to the task to obtain timely approval. [The standard ICR process forms are available here.](#)

ICR preparation in-house (allow 2 months for this phase):

-210 days before new ICR is needed.	-180 days before new ICR is needed.	-150 days before new ICR is needed (5 months).
If a new information collection is necessary, the PO ICR Developer(s), in consultation with the PO ICC, should begin developing the information collection request. This is also a good time to consult with other offices regarding the development of the ICR. Please note that it may take more time for the development of some ICRs.	We strongly suggest that POs involve the Office of Planning, Evaluation, and Policy Development (OPEPD) – Internal Office (IO), Policy and Program Studies Service (PPSS)/Budget Service (BS), and/or OGC during the early stages of development of a new ICR – if these offices have an interest in the policy issues or the budget issues relating to the collection of data from the public. This allows any comments or concerns to be addressed early in the development phase. ICCD does send the new collections to OPEPD and BS for review when the collection has been submitted to us - but at this point in the clearance cycle it is difficult to get anything major changed. It is strongly recommended to include these offices early on and make sure that any issues they might have are addressed to prevent delays or other issues.	All new collections must be submitted to ICCD to initiate the ICR clearance process.  The ICR review clearance process begins when the PO submits a new information collection request 150 days (5 months) prior to obtaining OMB approval.

Once all of the necessary ICR components are completed including the signed certification form, the PO ICR Developer(s) should:

- Email the ICR to any necessary internal offices for review. You should include the IC Data Form Part 1, with the ICR documents attached to the Part 1 Form as appropriate, and the Data Form Part 2, with the IC documents attached to the Part 2 Form as appropriate.
- Contact the PO ICC for a thorough review of the ICR. If the PO ICC approves the ICR then the ICC submits the collection to the [ICRSubmissions@ed.gov](mailto:ICRSubmissions@ed.gov) mailbox. (An email will alert the PO of the ICR submission via Outlook.)

Please note that there are two ways to submit the ICR to ICCD through [ICRSubmissions@ed.gov](mailto:ICRSubmissions@ed.gov) mailbox:

1. In the Data Form Part 1, click the “Submit” button at the bottom of the form. (If using this submission method, - then please attach the Data Form Part 2 manually.)

2. Send to: [ICRSubmission@ed.gov](mailto:ICRSubmission@ed.gov). (If using this submission method – please attached the Data Forms Parts 1 and 2, and any other components manually.)

When an ICR is submitted to ICCD via [ICRSubmission@ed.gov](mailto:ICRSubmission@ed.gov) mailbox, please include the following information:

- In the “Subject” line - The OMB number (e.g., 1840-1234) and the request type (i.e., Revision, Reinstatement, Change, etc.)
  - In the email – The ICR Title, PO and the PO ICR Developer(s) contact name and telephone number.
- 
- At the time the 60-day notice is published in the *Federal Register*, the ICCD posts the ICR components in the related docket on the Regulations.gov site. The Portfolio Manager will forward a copy of the 60-day notice publication to the PO contact name (as it appears under “Office Contacts/Primary Contact” - in Part I) with a cc: to the PO ICC for filing. **The publication of the 60 day FR notice officially starts the 60 day comment period.**
  - If the ICR receives public comments during the 60-day public comment period, then comments or number of comments received may be referenced in item #8 of the Supporting Statement Part A. If multiple public comments are received, a separate file should be prepared containing a Response Summary for the comments. If no comments are received at the end of the 60-day comment period, then #8 of the Supporting Statement must indicate that no comments were received. Additionally, the Supporting Statement should indicate that the 30-day notice will be published for the ICR.
  - There may also be internal ED comments received for the information collection. Responses to those comments must be prepared by the PO and submitted to the internal commenters. Internal comments and responses **do not** go in the Supporting Statement Part A. Changes to the ICR due to internal comments received can be incorporated in the revised documents that are uploaded.
  - The PO ICR Developer(s) should notify the PO ICC to review the updates prior to submitting any changes back to ICCD. If the ICC approves the updates, then the ICC, Program Sponsor or Developer should inform the ICCD Portfolio Manager, via email, that all revisions and changes have been made and that the information collection is ready for review. The PO should also request a 30-day *Federal Register* notice for the ICR. After the Portfolio Manager has signed off on the revisions, the ICCD Director/Deputy Director will review the ICR and provide any comments to the Portfolio Manager. All comments by ICCD management on the ICR must be resolved prior to a 30-day *Federal Register* notice publication.
  - ICCD will sign and send a 30-day notice to the *Federal Register* for publication. Upon publication in the *Federal Register*, ICCD will submit the ICR to OMB via ROCIS,



certifying that the collection of information complies with 5 CFR 1320.9. Once submitted to OMB, ED cannot make any further changes or revisions to the ICR.

- After receiving the clearance request, OMB is required by law to allow 30 days for additional public comment (s). However, OMB requires a total of at least 60 days (including the 30 days required by law) to review the package. It is not unusual for OMB to extend the review period past the 60-day mark.
- During OMB's review, ED may be called upon to answer questions and provide additional information on the ICR
- Once OMB completes its review, it will issue a Notice of Action (NOA), stating its decision on the information collection request. As the approval authority for all information collection requests, OMB may approve the collection, request amendments to the proposed collection, or disapprove the collection altogether. According to the PRA, the standard period of approval for requests is three years from the date of approval.
- The PO ICR Developer(s) must read the NOA thoroughly for accuracy. If there are any discrepancies or disagreement with OMB's "terms of clearance," then the PO should contact the Portfolio Manager immediately. Any issues should be addressed and resolved within two weeks of the publication of the NOA unless a timeframe is specified.
- The PO is responsible for ensuring that the OMB control number and expiration date are displayed on the collection instrument.

#### *Extension ICR Clearance Submission Steps*

The process for obtaining OMB approval will take a minimum of five (5) months. The PO ICC is responsible for monitoring the inventory of existing information collections for their program offices. The PO ICR Developer(s) determines whether the information collections will be allowed to expire, or if renewal of the information collection is necessary. (See Standard ICR Process Flow.) As with all renewals of an ICR, whether an Extension, Revision or Reinstatement, the PO must retrieve the previous NOA to ensure all terms of clearance (if from the last submission) are addressed with the current ICR.

An information collection should not expire without submitting a formal discontinuation, also known as an OMB83 D. The PO ICC must ensure that a request for discontinuation is properly submitted to the ICCD Portfolio Manager **prior to the scheduled expiration date**.

**Note to PO ICR Developer(s):** Extension requests should be submitted to OMB a minimum of two (2) months prior to the OMB-assigned expiration date [See 5 CFR 1320.10(e)(1)(ii)]. Please work closely with the PO ICC(s) to meet this time requirement. It is strongly recommended for



the PO ICCs to work with ICCD Portfolio Managers to initiate a 60-day *Federal Register* notice published by no later than 150 days prior to the existing collection's expiration date.

Extension ICR Preparation (allow 2 months for this phase):

210 days before the extension ICR is needed – [reference the expiring collections report]:	-180 days before the ICR begins.	-150 days before the ICR begins (5 months).
<p>Each month, the ICCD PM sends a report to the PO ICC(s) with a list of information collections that are scheduled to expire within the next 210 days. POs must submit a Discontinuation or renew their ICR prior to the expiration date.</p> <p>For information collections that require renewal, the ICC must notify the appropriate program PO ICR Developer(s) and staff within their agency that it is time to begin the renewal process for an existing collection.</p>	<p>The program PO ICR Developer(s) and staff in consultation with the PO ICC should begin preparing the information collection request.</p>	<p>An extension request must be submitted to ICCD to initiate the ICR submission.</p> <p>An ICR submission begins when the PO submits a renewal information collection request 150 days (5 months) prior to the expiration date of the currently approved collection in order to obtain OMB approval on the renewal request for a maximum of three more years.</p>

Once all of the necessary ICR components are completed including the signed certification form, the PO ICR Developer(s) should:

- Email the ICR to any necessary internal offices for review. You should include the IC Data Form Part 1, with the ICR documents attached to the Part 1 Form as appropriate, and the Data Form Part 2, with the IC documents attached to the Part 2 Form as appropriate.
- Contacts the PO ICC for a thorough review of the ICR. If the PO ICC approves the ICR then the ICC submits the collection to the [ICRSubmissions@ed.gov](mailto:ICRSubmissions@ed.gov) mailbox. (An email will alert the PO of the ICR submission via Outlook).

Please note that there are two ways to submit the ICR to ICCD through [ICRSubmissions@ed.gov](mailto:ICRSubmissions@ed.gov) mailbox:

1. In the Data Form Part 1, click the "Submit" button at the bottom of the form (if using this submission method – then please attach the Data Form Part 2 manually to the email.)
2. Send to: [ICRSubmission@ed.gov](mailto:ICRSubmission@ed.gov). (If using this submission method – then please attached the Data Forms (Parts 1 and 2), and any other components manually.)

When an ICR is submitted to ICCD via [ICRSubmission@ed.gov](mailto:ICRSubmission@ed.gov) mailbox, please include the following information:

- In the email "Subject" line - The OMB number (e.g., 1840-1234) and the request type (i.e., Extension, Revision, Reinstatement, Change, etc.)

- In the email - The ICR **Title**, PO and the PO ICR Developer(s) contact name and telephone number.

At the time the 60-day notice is published in the *Federal Register*, the ICCD posts the ICR components in the related docket on the Regulations.gov site. The Portfolio Manager will forward a copy of the 60-day notice publication to the PO contact name (as it appears under "Office Contacts/Primary Contact" - in Part 1) with a cc: to the PO ICC for filing. **The publication of the 60 day FR notice officially starts the 60 day comment period.**

#### Next Steps in ICCD

If the ICR receives public comments during the 60-day public comment period, then comments or number of comments received may be referenced in item #8 of the Supporting Statement Part A. If multiple public comments are received, then a separate file should be prepared containing a Response Summary for the comments. If no comments are received at the end of the 60-day comment period, then item #8 of the Supporting Statement must indicate that no comments were received. Additionally, the Supporting Statement should indicate that the 30-day notices will be published for the ICR.

There may also be internal ED comments received for the information collection. Responses to those comments must be prepared by the PO and submitted to the internal commenters. Internal comments and responses **do not** go in the Supporting Statement Part A. Changes to the ICR due to internal comments received can be incorporated in the revised documents are uploaded.

The PO ICR Developer(s) should notify the PO ICC to review the updates prior to submitting any changes back to ICCD. If the ICC approves the updates, then the ICC, Program Sponsor or Developer should inform the ICCD Portfolio Manager, via email, that all revisions and changes have been made and that the information collection is ready for review. The PO should also request a 30-day *Federal Register* notice for the ICR. After the Portfolio Manager has signed off on the revisions, the ICCD Director/Deputy Director will review the ICR and provide any comments to the Portfolio Manager. All comments by ICCD management on the ICR must be resolved prior to a 30-day *Federal Register* notice publication.

ICCD will sign and send a 30-day notice to the *Federal Register* for publication. Upon publication in the *Federal Register*, ICCD will submit the ICR to OMB via ROCIS, certifying that the collection of information complies with 5 CFR 1320.9. Once submitted to OMB, ED cannot make any further changes or revisions to the ICR.

After receiving the clearance request, OMB is required by law to allow 30 days for additional public comment (s). However, OMB requires a total of at least 60 days (including the 30 days required by law) to review the package. It is not unusual for OMB to extend the review period past the 60-day mark.

During OMB's review, ED may be called upon to answer questions and provide additional information on the ICR.



Once OMB completes its review, it will issue a Notice of Action (NOA), stating its decision on the information collection request. As the approval authority for all information collection requests, OMB may approve the collection, request amendments to the proposed collection, or disapprove the collection altogether. According to the PRA, the standard period of approval for requests is three years from the date of approval.

The PO ICR Developer(s) must read the NOA thoroughly for accuracy. If there are any discrepancies or disagreement with OMB's "terms of clearance," then the PO should contact the Portfolio Manager immediately. Any issues should be addressed and resolved within two weeks of the publication of the NOA unless a timeframe is specified.

- The PO is responsible for ensuring that the OMB control number and expiration date are displayed on the collection instrument.

### *Revision ICR Clearance Submission Steps*

The process for obtaining OMB approval will take a minimum of five (5) months. The PO ICC is responsible for monitoring the inventory of existing information collections for their program office. The PO ICR Developer(s) determines whether the information collections will be allowed to expire, or if revision of the information collection is necessary. An explanation of the change/revision must be included in the Supporting Statement Part A, and a brief statement in the "Abstract".

An information collection should not expire without submitting a formal discontinuation, also known as an OMB83 D. The PO ICC must ensure that a request for discontinuation is properly submitted to the ICCD Portfolio Manager **prior to the scheduled expiration date**.

Revision requests should be submitted to OMB two (2) months prior to the OMB-assigned expiration date. [See 5 CFR 1320.10(e)(1)(ii).] Please work closely with your PO ICC(s) to meet the time requirement. It is strongly recommended for the PO ICC to work with ICCD Portfolio Managers to initiate a 60-day *Federal Register* notice published by or no later than 150 days prior to the existing collection's expiration date.

ICR Preparation (allow 2 months for this phase):

-210 days before approval is needed - (reference the expiring collections report):	-180 days before the revision IC begins.	-150 days before the IC begins (5 months).
<p>Each month, the ICCD PM sends a report to the ICCs with a list of information collections that are scheduled to expire within the next 210 days. As stated above, the process for obtaining OMB approval takes a minimum of five months. Depending on internal agency procedures, the PO ICR Developer(s) will likely need to begin the clearance process before the ICCD PM sends the report of expiring collections to the PO ICC(s).</p> <p>For information collections that require renewal (revision), the PO ICC must notify the appropriate program PO ICR Developer(s) and staff within their agency that it is time to begin the revision process.</p>	<p>The program PO ICR Developer(s) and staff in consultation with the PO ICC should begin preparing the revised information collection request.</p>	<p>A revised ICR must be submitted to ICCD to initiate review process.</p>

#### Submission Instructions:

Once all of the necessary ICR components are completed including the signed certification form, the PO should:

- Email the ICR to any necessary internal offices for review. You should include the IC Data Form Part 1, with the ICR documents attached to the Part 1 Form as appropriate, and the Data Form Part 2, with the IC documents attached to the Part 2 Form as appropriate.
- Contacts the PO ICC for a thorough review of the ICR. If the PO ICC approves the ICR then the ICC submits the collection to the [ICRSubmissions@ed.gov](mailto:ICRSubmissions@ed.gov) mailbox. (An email will alert the PO of the ICR submission via Outlook).

Please note that there are two ways to submit the ICR to ICCD through [ICRSubmissions@ed.gov](mailto:ICRSubmissions@ed.gov) mailbox:

1. In the Data Form Part 1, click the “Submit” button at the bottom of the form (if using this submission method – then please attach the Data Form Part 2 manually to the email.)
2. Send to: [ICRSubmission@ed.gov](mailto:ICRSubmission@ed.gov). (If using this submission method – then please attached the Data Forms (Parts 1 and 2), and any other components manually.)

When an ICR is submitted to ICCD via [ICRSubmission@ed.gov](mailto:ICRSubmission@ed.gov) mailbox, please include the following information:

- In the email “Subject” line - The OMB number (e.g., 1840-1234) and the request type (i.e., Extension, Revision, Reinstatement, Change, etc.)
- In the email - The ICR **Title**, PO and the PO ICR Developer(s) contact name and telephone number.

At the time the 60-day notice is published in the *Federal Register*, the ICCD posts the ICR components in the related docket on the Regulations.gov site. The Portfolio Manager will forward a copy of the 60-day notice publication to the PO contact name (as it appears under “Office Contacts/Primary Contact” - in Part 1) with a cc: to the PO ICC for filing. **The publication of the 60 day FR notice officially starts the 60 day comment period.**

If the ICR receives public comments during the 60-day public comment period, then comments or number of comments received may be referenced in item #8 of the Supporting Statement Part A. If multiple public comments are received, then a separate file should be prepared containing a Response Summary for the comments. If no comments are received at the end of the 60-day comment period, then item #8 of the Supporting Statement must indicate that no comments were received. Additionally, the Supporting Statement should indicate that the 30-day notices will be published for the ICR.

There may also be internal ED comments received for the information collection. Responses to those comments must be prepared by the PO and submitted to the internal commenters. Internal comments and responses **do not** go in the Supporting Statement Part A. Changes to the ICR due to internal comments received can be incorporated when the revised documents are uploaded.

The PO ICR Developer(s) should notify the PO ICC to review the updates prior to submitting any changes back to ICCD. If the ICC approves the updates, then the ICC, Program Sponsor or Developer should inform the ICCD Portfolio Manager, via email, that all revisions and changes have been made and that the information collection is ready for review. The PO should also request a 30-day *Federal Register* notice for the ICR. After the Portfolio Manager has signed off on the revisions, the ICCD Director/Deputy Director will review the ICR and provide any comments to the Portfolio Manager. All comments by ICCD management on the ICR must be resolved prior to a 30-day *Federal Register* notice publication.

ICCD will sign and send a 30-day notice to the *Federal Register* for publication. Upon publication in the *Federal Register*, ICCD will submit the ICR to OMB via ROCIS, certifying that the collection of information complies with 5 CFR 1320.9. Once submitted to OMB, ED cannot make any further changes or revisions to the ICR.

After receiving the clearance request, OMB is required by law to allow 30 days for additional public comment (s). However, OMB requires a total of at least 60 days (including the 30 days required by law) to review the package. It is not unusual for OMB to extend the review period past the 60-day mark.

During OMB’s review, ED may be called upon to answer questions and provide additional information on the ICR.



Once OMB completes its review, it will issue a Notice of Action (NOA), stating its decision on the information collection request. As the approval authority for all information collection requests, OMB may approve the collection, request amendments to the proposed collection, or disapprove the collection altogether. According to the PRA, the standard period of approval for requests is three years from the date of approval.

The PO ICR Developer(s) must read the NOA thoroughly for accuracy. If there are any discrepancies or disagreement with OMB's "terms of clearance," then the PO should contact the Portfolio Manager immediately. Any issues should be addressed and resolved within two weeks of the publication of the NOA unless a timeframe is specified

The PO is responsible for ensuring that the OMB control number and expiration date are displayed on the collection instrument.

### 3.4.1 Clearance Submission Steps for Other Types of ICRs

#### Discontinuation (OMB 83D) Clearance Submission Steps

The process for obtaining OMB approval to discontinue a collection may take about a month, but no less than 10 business days. A request for a discontinuation, referred to as an OMB 83D, is submitted when the PO wishes to discontinue a currently approved ICR that is no longer needed or about to expire. Such a request is necessary in order to allow a collection of information to officially expire.

Please note that a PRA violation will apply if information continues to be collected after the expiration date.

When the PO ICR Developer(s) determines that an on-going information collection will be discontinued, the PO ICR Developer(s) should submit an OMB83-D request via their ICC to the [ICRSubmissions@ed.gov](mailto:ICRSubmissions@ed.gov) mailbox. All discontinuation requests must be submitted to ICCD to initiate the process.

Discontinuation Request - allow 1 month to obtain OMB approval of an 83-D request:

-7 days (1 week) before an 83D request is created.	< 3 days before an 83D request is submitted to ICCD.	>10 Business days (2 weeks) before OMB approval on an 83D request.
PO ICR Developers determine if an on-going information collection is to be discontinued. They should then inform their ICCs that they will request an 83D for the ICR.	PO ICR Developer(s) complete OMB83-D and contact their ICCs to review and comment on the request. All discontinuation requests must be submitted to ICCD to initiate the process.	<p>The ICCD PM reviews the 83D request.</p> <p>If ICCD approves the request, ICCD submits it to OMB via ROCIS.</p> <p>On the date ICCD submits an 83D request submits to OMB, OMB has 10 business days (2 weeks) to conclude the request for discontinuation.</p>

When completing the OMB 83-D form, the below key steps are to follow:

- The PO ICR Developer must include a justification for the discontinuation on the form.
- The Developer must also make sure the form is signed by an authorized PO official.
- Once the Developer considers the form complete, the Developer should contact the PO ICC for a thorough review and comment of the request form.
- If the PO ICC approves the request form, then the ICC submits it to ICCD via the [ICRSubmissions@ed.gov](mailto:ICRSubmissions@ed.gov) mailbox.

Once ICCD reviews and approves the request form, ICCD submits it to OMB via ROCIS.

### Non-Substantive Change (OMB-83C) Clearance Submission Steps

The process for obtaining OMB approval for a nonmaterial or non-substantive change to an ICR may take about a month, but no less than 10 business days. A nonmaterial or non-substantive change usually involves a cosmetic or technical change, or a clarification change. For an ICR that requires a nonmaterial or non-substantive change, an OMB 83-C form is used to request the change. Please note that a change sheet cannot be used to change an expiration date.

Allow 1 month to obtain OMB approval of an 83-C request:

-7 days (1 week) before an 83C request is created.	< 3 days before an 83C request is submitted to ICCD.	>10 business days (2 weeks) before OMB approval on an "83C" request.
PO ICR Developer(s) identify a non-material change to an existing information collection that does not require public notification in the <i>Federal Register</i> notice.	PO ICR Developer(s) provide justification for the change. All 83Cs must be signed and submitted to ICCD via ICR mailbox to initiate the non-substantive change request process.	ICCD reviews and approves a Change request.  If ICCD approves the Change request, it is submitted to OMB by ICCD via ROCIS.  Upon submission, it starts the 10 business days (2 weeks) at OMB until review is concluded.

The PO ICR Developer(s) must complete the Data Form Part 1 and the OMB 83-C form, for the request. When completing the OMB 83-C form, the PO ICR Developer must provide the reason for the change in the "Other" section of the form. In addition, any change in burden needs to be provided in the columns. Note: Most changes do not have burden associated with them, so the fields in the columns may stay "blank." Documents that show non-substantive changes (e.g., documents with tracked changes), may be attached. Clean versions of any revised documents that were previously approved must be attached. The Developer must also make sure the form is signed by an authorized PO official. e previously approved must be attached.

Once all the necessary 83-C components are completed, the PO ICR Developer(s) should contact the PO ICC for a thorough review and comment of the request documents, including the Data Form Part 1, OMB 83-C Form and any attachments. If the PO ICC approves the request documents, then the ICC submits the documents to ICCD via the [ICRSubmissions@ed.gov](mailto:ICRSubmissions@ed.gov) mailbox.

Once ICCD reviews and approves the change request, ICCD submits it to OMB via ROCIS.

### Emergency IC Clearance Submission Steps

Please note that emergency submissions are rare and are only granted by OMB once a strong written justification is provided that meets one of three PRA exceptions:

- harm to the public might occur otherwise
- An unanticipated event has occurred beyond the control of the Department, or
- A regular clearance is likely to cause a statutory or court-ordered deadline to be missed.

If accepted, OMB will approve an emergency ICR for up to 6 months (the maximum time period). The timeline for review and approval varies for each emergency ICR. It is based on the justification for approval, the urgency, and its priority, among other factors. Most emergency ICRs take 30 days for OMB's approval so estimate a week or two prior to that time to submit to ICCD. As a result, the PO should be in constant contact with ICCD regarding the schedule and the progress of the ICR.

The PO ICR Developer(s) should involve the ICCD Portfolio Manager, OGC, Budget, and OPEPD contacts prior to the official submittal of the emergency collection to prevent any delays. There may be internal agency procedures that will likely require additional steps. Therefore, the PO ICR Developer(s) and the PO ICC(s) are responsible for ensuring that sufficient time is allocated to the task to obtain timely approval.



Allow 2 months to obtain OMB approval of an Emergency ICR:

60 days before an emergency clearance IC created:	45 days before the emergency /60-day <i>Federal Register</i> notice is initiated:	30 days before an emergency clearance submits to OMB:
<p>The PO submits a written memorandum, addressed to ED's Desk Officer at OMB prior to the emergency ICR submittal.</p> <p>In the memo, justify why the clearance should be treated as an emergency, and state the consequences if normal processing procedures were followed. One of the three PRA categories this request falls under to meet the PRA requirements should be referenced. State the OMB approval date (you must give OMB a minimum of 21 days [3 weeks] for its approval. The 21 days count should start from the date the ICR is officially submitted to OMB by ICCD. This is normally on the same day an emergency/60-day <i>Federal Register</i> notice publishes.) There are rare exceptions that may require OMB approval less than 21 days; these usually involve White House initiatives, Secretary top priorities and recent statute requirements.</p> <p>The initial unassigned OMB memorandum requesting the emergency clearance (with the justification) is sent to ICCD Portfolio Manager by the PO ICC(s) via email attachment.</p> <p>ICCD Portfolio Manager sends the unsigned memorandum to the ED's OMB Desk Officer informally via email attachment.</p> <p>In about 1 week, ICCD Portfolio Manager should hear back from the OMB Desk Officer to either to go ahead and submit the emergency information collection request to OMB, or deny the request with comments.</p>	<p>The PO ICR Developer(s) has received all the PO senior officers sign-off including the OGC program attorney.</p> <p>It is recommended that the PO ICR Developer(s) also provides the opportunity to other offices such as the Office of Planning, Evaluation, and Policy Development (OPEPD) – Policy and Program Studies Service (PPSS)/Budget Service (BS) to review and provide comment(s) on the proposed emergency information collection request.</p> <p>Upon OMB's acceptance of an emergency clearance request, the ICR Developer completes the emergency submittal to the ICC with the signed memorandum.</p> <p>The PO ICCs send an emergency information collection clearance request to ICCD Portfolio Manager via <a href="mailto:ICRSubmissions@ed.gov">ICRSubmissions@ed.gov</a> mailbox to initiate an emergency/60-day <i>Federal Register</i> notice. If the PO does not require a 60-day notice added to the emergency notice, they need to inform the ICCD Portfolio Manager at the time of submittal.</p>	<p>ICCD initiates an emergency/60-day <i>Federal Register</i> notice (it takes 4 days to publish after it is sent to the <i>Office of the Federal Register</i> (OFR) by ICCD. All Emergency clearance requests must be submitted to ICCD via <a href="mailto:ICRSubmissions@ed.gov">ICRSubmissions@ed.gov</a> mailbox to initiate the ICR review process (the PO provides up to 1 week for ICCD review of an emergency clearance request package). Upon the emergency/60-day FRN publication, the ICCD submits the emergency clearance request to OMB.</p>

Please note that when the PO ICR Developer(s) request a specific OMB approval date in the memorandum, they should calculate a minimum of 21 days (3 weeks) for OMB to review, and make a final decision about the request.

This request can only receive a **6-month approval (maximum term)**. **Inform your ICCD Portfolio Manager if the collection will be continued after the emergency expiration date. A regular information collection request (i.e., non-emergency ICR) must be submitted soon after the emergency approval to ensure that the information collection will not expire.** For the regular ICR, after the initial 60-day public comment period, an additional public comment

period will be required (e.g., 30-days) before OMB approves the collection request for three more years.

**For information collections that will not be needed beyond the emergency clearance period, the ICC must ensure that a request for discontinuation is properly submitted to the ICCD prior to the scheduled expiration date.** Failure to notify OMB before the expiration date that a collection is no longer needed and that re-approval will not be requested will be considered by OMB a violation of the PRA.

### Emergency Extension (EE) Clearance Submission Steps

An Emergency Extension (EE) request is approved by OMB from 3 months to 1 year (in rare cases). A 60-day *Federal Register* notice must be in place for public comments prior to an EE initiation. Please note that EE requests are rare and have to fall under extreme exceptions beyond ED's control for OMB to approve.

Allow 2 months to obtain OMB approval of an EE request:

-60-30 days (1 month) before an EE request is submitted to ICCD.	30-21 days (1 week) before an EE request is submitted to ICCD.	21-14 days before OMB approval is received for an EE request.
When the PO ICR Developer(s) finds out an on-going information collection needs an emergency extension request, they should verify that the information collection is running a 60-day <i>Federal Register</i> notice for public comment, and if not, contact the PO ICC to start on as soon as possible.	The PO ICR Developer(s) provides justification for the EE. The Developer asks their ICCs to review and comment on the EE. If the ICC approves the EE request, the ICC will submit it to ICCD. Any EE must be submitted to ICCD to initiate the EE request submission.	ICCD reviews and approves an EE request.  If ICCD approves the EE request, they submit it to OMB via ROCIS.  On the date the EE request submits to OMB by ICCD, it starts the 10 business days (2 weeks) at OMB before OMB concludes the request.

Once the PO ICR Developer(s) has prepared a justification for the EE and verifies that a 60-day *Federal Register* notice is open for public comment, the PO ICR Developer(s) should contact the PO ICC approves the request, then the ICC submits it to ICCD via the [ICRSubmissions@ed.gov](mailto:ICRSubmissions@ed.gov) mailbox.

Once ICCD reviews and approves the EE request, ICCD submits it to OMB via ROCIS.

## 4. Generic Clearances and Generic Information Collections Requests

Generic clearances allow the POs to add and remove individual Generic Information Collections (Generic ICs) to a Master Generic Information Collection Request (Gen ICR) without completing the Federal Register notice requirements for each Generic IC. Therefore, the Federal Register notice is only required when submitting a renewal for the Generic ICR (once every three years). This reduces the timeline for obtaining approval from OMB for an individual



Generic IC to weeks instead of months. The process for obtaining OMB approval will take a minimum of 5-10 business days, dependent on the generic clearance.

#### 4.1 Master Generic Information Clearance Requests (Gen ICRs)

Master Generic Information Collection Requests are referred to as Generic ICRs or Gen ICRs.

When preparing a Gen ICR, the PO ICR Developer(s) should complete:

- The same steps as a “New” non-rulemaking information collection type, Supporting Statement Part A.
- Supporting Statement Part B (required only when information collections employ statistical methods.)

A Gen ICR is treated the same as a regular ICR that requires two *Federal Register* notices. After the Gen ICR is approved by OMB, a PO can submit individual Generic ICs for a shorter turnaround time.

**Exercise caution when calculating the burden associated with the generic clearance. The approved burden (per the NOA) acts as a ceiling on the sum of the total burden allowed by all Information Collections (ICs) that can be added to the Gen ICR. Individual IC burden is deducted from the total sum each time a new IC is submitted. The total burden for the Gen ICR cannot be changed without going through the renewal process for the Gen ICR or through a change request.**

#### 4.2 New Generic Information Collection (Gen IC)

When creating a new generic IC (Gen IC) that the PO ICR Developer(s) intend to add to an existing generic ICR (Gen ICR), the Developer(s) must:

- Complete the Data Form Part 1.
- Provide the new Information Collection Instrument (s).
- Calculate the annual responses and burden imposed by the new Information Collection Instrument (s).
- Make sure that the annual burden imposed by the new Information Collection instrument (s) is included in the justification or template.
- Include the abbreviated justification or template, according to the generic clearance guidelines, and any other supplemental documents (e.g., letters, emails, etc. that could pertain to the specific Gen IC).
- Contact the PO ICC for a thorough review and comment of the generic IC request. If the PO ICC approves the request, then the ICC submits it to ICCD via [ICRSubmissions@ed.gov](mailto:ICRSubmissions@ed.gov). No FR notices are required for individual Gen ICs.
- The ICCD will then review the request. If the ICCD has no comments, then the ICCD submits the generic request to OMB via ROCIS.

The burden associated with the new generic IC will not be added to the total burden of the associated Generic Clearance. When creating new generic ICs, the total of their burden must not be greater than the total burden available for the master generic ICR. The Data Forms Parts 1 and 2 are completed for Gen ICs. The burden and documents pertaining to the individual Gen IC are included as part of the submission. All other fields are retained from the original master generic ICR fields.

## 5. Proposed/Final Rulemaking ICR

As part of the Information Collection clearance process, the public is given a chance to comment on the proposed collections of information, but because ICRs associated with rulemaking already have a *Federal Register* requirement, the Information Collection clearance process will differ slightly. There are two types of rulemaking ICRs: proposed and final.

For additional information on the rulemaking process, refer to the Regulatory Quality Manual (RQM) for step-by-step guidelines.

### Proposed Rulemaking

A proposed rulemaking is a rule that has yet to be enacted by the regulating agency. When a Notice of Proposed Rulemaking (NPRM) is sent from the Office of the General Counsel/Division of Regulatory Services (OGC/DRS) to POs for comments, a ICCD Portfolio Manager will review all sections of the rule/regulations. However, the PM must pay special attention to those sections that contain data requirements. The language for the Paperwork Reduction Act portion of a proposed rulemaking preamble must specify:

- The paperwork sections
- The title and description of the regulations
- The public reporting and recordkeeping burden hours and frequency
- Where the public can submit comments
- The comment period

Following the RQM guidelines for preambles will aid the PO when developing the regulation.

### ICRs with Proposed Rulemaking

Information collection requests associated with a rule also require approval from OMB, and therefore must go through the ICR process. The process for submitting an ICR related to proposed rulemaking is basically the same as the “New ICR Clearance Steps” in this document, except that **it is essential that the publication of the proposed rule and the submission of the request be coordinated.**

When the PO ICR Developer(s) develops the rulemaking ICR clearance for OMB approval, there are a few areas to consider when following process steps of the “New IC Clearance Steps” in this document:

- An ICR related to a rule follows the NPRM timeline.
- The 60-day and 30-day notices in the *Federal Register* are not necessary, since the NPRM satisfies these requirements. For additional information on the rulemaking process and step-by-step guidelines for regulatory documents, refer to the Regulatory Quality Manual (RQM).
- The ICR related to a proposed rulemaking must be submitted to ICCD at least two (2) weeks before the estimated NPRM publication timeline. (This allows the ICCD time to assist the PO ICR Developer(s) in correcting any last minute deficiencies in the ICR prior to its submission to OMB.)
- ICCD submits the rulemaking ICRs to OMB on the same date the NPRM publishes in the *Federal Register*. In some cases, OMB may request ED to submit the ICR prior to the proposed rulemaking publication. If this request is made, the collection files are sent to OMB informally, via email. **Please note that it is extremely important that the PO alerts ICCD about the anticipated publication so ICCD can submit the ICR to OMB on the same day the proposed regulation publishes.** The PO should be in contact with both OGC and ICCD during this time.
- The PO ICR Developer(s) must check the appropriate stage of rulemaking and enter the RIN number in Part 1.
- The PO ICR Developer(s) includes a copy of the NPRM with the ICR submission.
- Information collection requests involving proposed rulemaking must include the following information in the Supporting Statement, Part A:

#1 – Justification: list and describe the paperwork sections, making note of any new and changed sections.

#8 - *Federal Register* notices: since the 60-day and 30-day notices are satisfied by the NPRM, use similar language as the quoted boilerplate language: “The proposed regulations were developed through the Negotiated Rulemaking process . . . The comment period for the information collection package will run concurrently with the Notice of Proposed Rulemaking.”

#12 – The PO is strongly encouraged by OMB to include a burden table when completing the proposed rulemaking ICR. The burden in the Supporting Statement must correspond with the burden in the preamble of the regulation.

#15 – Describe the reason for the program change when the proposed regulation increases or decreases burden.

- ICCD uploads the rulemaking related ICR components on to the regulations.gov site manually under the DRS assigned Docket ID when the NPRM FR notice publishes. This process of manually uploading the collection files to the regulations.gov site makes the rulemaking information collection request components available to the public.
- The ICR with Proposed Rulemaking may receive a Notice of Action (NOA) from OMB stating “*Comments Filed and Continue*” at the end of the comment period. This means OMB has received, reviewed filed public comments during the comment period of the

NPRM and will not act on the collection until the paperwork sections become effective at the Final Regulations stage.

On the day the proposed rule publishes, ICCD submits the Information Collection Request (ICR) associated with the proposed rule to OMB via ROCIS. A 30-day public comment period begins for the information collection in the proposed rule. The ICR is available to view by the public on the [reginfo.gov](http://reginfo.gov) and [regulations.gov](http://regulations.gov) websites.

After 30 days, OMB can conclude on the ICR, however, OMB rarely does conclude on the ICR at this point. It usually provides Comment and File action “comments” on the ICR and tells the Department to re-submit the ICR before publishing the final rule.

## Final Rulemaking

Final regulations establish or amend regulations to implement a statute, an Executive order, or a court ruling. Specifically, the Department uses final regulations to establish requirements that it is codifying in title 34 of the Code of Federal Regulations (CFR). The clearance procedures for final rules are similar to those for NPRMs. While an NPRM provides the public with an opportunity to comment during a comment period, a final rule will identify any substantive issues based on those comments from the public. The final rule will include the agency’s response to the comments (in response to the NPRM). Draft final rule language needs to be reviewed and approved by the ICCD PM before it is published.

POs should reference the RQM for the appropriate preamble language of a final regulation. **If OMB has pre-approved the collection of information prior to the publication of the final rule, the PRA section of the preamble should state that OMB has approved the information collection and cite the OMB control number and expiration date.**

## ICR with Final Rulemaking

When the final rule has been finalized prior to publication, the ICCD will submit a revised ICR for the final rule to OMB via ROCIS. In this case, **the PO should not include any final rule regulatory language in the Supporting Statement of the ICR since the final has not been published in the *Federal Register*. It is pertinent to discuss all processes with OGC/DRS, CPO/ICCD and OMB.** In other situations, OMB may pre-approve the collection at the NPRM stage when no substantive comments are received during this phase **and** no changes are anticipated for the instrument.

Note: ICRs with rules are linked to the associated docket on regulation page of [regulations.gov](http://regulations.gov). OGC/DRS originates the dockets for these regulations which are linked to the ICR so the public can view the two related dockets in [regulations.gov](http://regulations.gov).

## Interim Final Rule

An interim rulemaking generally results from clarifying legal standing of a rule that it is codifying in title 34 of the Code of Federal Regulations (CFR). Interim rule clearance procedures



and OMB actions are similar to the actions discussed for final rules. However, interim final rules are limited to the followings:

- Upon the interim final rule publication, the regulation has immediate legal effect.
- No proposed rule [NPRM].
- As with proposed rules, the PRA preamble section of the notice should include language for both the direct final or interim rule indicating the following:

Persons are not required to comply with the information collection requirements until approved by OMB, and

OMB's decision on the ICR will be published in the *Federal Register*.

- As with final rules, agencies have the option of conducting the E.O. 12866 and PRA reviews simultaneously.

Please note that the POs should consult with their OGC program attorney for guidance on their particular situation.

## ICR with Interim Final Rule

The clearance procedures for ICRs associated with interim final rules are similar to those for final rules, with a few key differences:

- Even if the collection package is submitted to OMB at the time the draft interim final rule is submitted to OMB, the collection is generally not approved at the time of interim final rule publication.
- As with final rules, ED has the option of conducting the E.O. 12866 and PRA reviews at the same time or during the same period of time.
- As with proposed rules, the interim final rule PRA preamble section must contain -

The paperwork sections

The title and description of the regulations

The public reporting and recordkeeping burden hours and frequency

Where the public can submit comments

The comment period

- ED issues a final rule later to respond to the public comments from the interim final rule, announce OMB's action, and address any public comments received under the PRA.

When preparing an ICR package, the process is similar to the collection that is associated with the NPRM.

An information collection request should be submitted to ICCD about two weeks prior to the date that OGC/DRS send the draft interim final rule to OMB. This will allow the PO ICR Developer(s) and ICCD time to work on any deficiencies in the ICR.

ICCD submits an ICR to OMB (or could submit earlier) on the same date DRS sends the draft interim final rule to OMB. (Sometimes ICCD will send it to OMB earlier in order to give OMB ample time to review it with the draft interim final rule.)

After the ICR is submitted to OMB under the PRA, and once OMB has taken action, ED must publish a final rule notice in the *Federal Register* announcing OMB's action and addressing any public comments received during the interim final rule.

### ICR with Regulatory Documents other than NPRMs (i.e. notices of proposed priorities)

When PO ICR Developer(s) submits a regulatory document to OGC/DRS, OM/CPO will review and comment on the document through the internal departmental review process:

- The PO prepares the regulatory document and submits it to OGC/DRS for internal clearance. PO must first obtain proper approvals within their office to start the internal clearance.
- OGC/DRS will circulate the document to all departmental offices. As part of the review process, OM/CPO will review the document. OM/CPO provides concurring or non-concurring decisions on the document or provides comments if it does not concur.
- PO ICR Developer(s) provides the ICR, as necessary, to ICCD prior to the internal clearance of the regulatory document. The ICCD PM will have enough time to perform a full review of the information collection request without delaying the regulatory process.

If the regulatory document relates to an approved information collection request and there are no substantive changes, then OM/CPO concurs. If the regulatory document relates to an unapproved information collection request, or if the document contains requirements not already approved, then OM/CPO will not concur and will request the PO to submit an information collection request to OM/CPO immediately. However, if the notices of proposed requirements are requesting specific recommendations or feedback from the public for the formulation of an application or other data instrument (not the general request for comments), then this notice may be published as is. An information collection request does not need to be submitted to ICCD until the PO has received comments from the public. Based on those comments, the PO should be able to develop the application for the new program and then submit the complete information collection request to ICCD.

If a PO plans to publish a notice of proposed requirements, they must clearly state the department's intentions under the PRA portion of the preamble. The PO may identify the proposed requirements, or state that the notice contains information collection requirements. In this case, an ICR must be submitted and approved by OMB prior to publication of this type of notice.

*Table 3* provides a list of regulatory document types and associated publication timing.



**Table 3: Regulation Types and Publication Schedule**

Type	Publication schedule
<b>NPRM's, NPPs and notices of proposed requirement or criteria seeking public comment</b>	Usually published simultaneously with the submittal of the ICR to OMB.
<b>Notices of proposed requirements</b>	If the document relates to an unapproved ICR, the PO ICR Developer(s) submits an ICR to ICCD immediately. The ICR must obtain OMB approval prior to the notice publication. Please note that when an information collection request is submitted to OMB; the timing of the submission depends on the nature of the notice.
<b>Notices requesting recommendations or feedback</b>	If the notice is seeking recommendation or feedback from the public for the formulation of an application, then this notice may be published – with or without an OMB approved ICR.  However, if the POs have received comments from the public and based on those comments it has developed the application for the new program, then the PO submits completed information collection request to ICCD. The ICR must obtain OMB approval prior to publishing the notice.
<b>Application Notices</b>	Published after OMB approves the ICR.
<b>Final Regulation</b>	OMB reviews the final rule via the DRS process. The ICR is submitted to OMB for review/approval at the same time. Once OMB approves the final rule for publication, the ICR is approved and the final rule is published in the <i>Federal Register</i> .

## 6. Information Collection Budget (ICB)

The Information Collection Budget (ICB) represents an effort by OMB to account for and control the total burden that the federal government is placing on the public. A report on the department's burden reduction initiatives and any PRA violations is submitted to OMB annually for inclusion in OMB's Information Collection Budget (ICB) Report to Congress. In preparation for this report to OMB, ICCD asks the PO ICC(s) on a semi-annual basis to submit a listing of

any significant burden hour reductions expected for the remainder of the current fiscal year as well as provide any new information collection requests or burden reduction initiatives anticipated for the upcoming fiscal year. Receiving this semiannual burden reduction update from the PO ICC(s) not only helps ICCD with their planning efforts but also provides much of the information needed for the annual OMB data call. When the actual data call is received from OMB, ICCD will notify the PO ICC(s) if additional information is required for the ICB Report.

The ICB Report also cites any PRA violations committed by individual federal agencies during the fiscal year. Those agencies cited with violations must explain or justify extenuating circumstances to OMB in order to have the violations removed before the report goes to Congress.

NOTE: If you are interested in viewing ED's [latest ICB Report, click here.](#)

Additionally, OMB's annual publication of the ICB Report to Congress, which includes all federal agency burden reduction activities, can be found on [OMB's website.](#)

## 7. Connection to other ED Functions

It is the responsibility of each PO to ensure that information collection requests have gone through necessary internal reviews and have met proper Department requirements prior to submission to ICCD. These requirements include: compliance with Records Management, Privacy Impact Assessments, Systems Of Records Notices (SORN), 508 Compliance, Statistical Surveys, Race and Ethnicity, the Data Inventory, etc. For more information, please refer to the ACS Directive ([link](#)).

If a PO plans to collect, retrieve and use information on an individual that will contain his or her name or other personally identifiable information, please refer to Appendix C for the Privacy Act and its relationship with information collection.

## 8. Other Considerations

- Forms management  
The Department's Forms Management Program ensures that internal and public use forms used by ED to conduct agency business meet the requirements of the Paperwork Reduction Act, Section 504 of the Rehabilitation Act of 1974, and protects sensitive personally identifiable information. For more information about the program, please contact the Forms Management Team via email at [ICDockgetmgr@ed.gov](mailto:ICDockgetmgr@ed.gov).
- The Family Educational Rights and Privacy Act (FERPA) and its relationship with ICRs

FERPA protects the privacy of student education records in a variety of settings: K-12, higher education, childhood programs that involve sharing student level data, further, if you collect or use personally identifiable information from education records. For more information regarding FERPA relationship to an information collection request, please contact the FPCO staff.

- Records management

POs must consider record management with any record. The Federal Record Act imposes records management responsibilities on all employees to organize, maintain, and disposition their records. For more information on records retention and disposition schedules, please contact the records management staff.

- The Privacy Act and its relationship with ICRs

The Privacy Act of 1974 (as amended) may also apply to the activities undertaken on social media platforms, and individuals should consult the ED Privacy Office. For more information regarding the Privacy Act of 1974 (the collection, use, and protection of personally identifiable information) relationship to an information collection request, please contact the PA staff. Additionally, please find the Privacy Act and its relationship with ICRs in this document, Appendix C. or contact ED's Privacy team.

- Social Media

No PRA implications if POs request general solicitation/feedback from the public. All other questions – that require specific data or specific questions would fall under PRA. For more information on social media, web-based interactive technologies, and the Paperwork Reduction Act is available at: [provide the link] Link to Social media guidance.

- Section 508

If the dissemination of information in an accessible manner constitutes an undue burden on the Agency, the Agency is required to make the information available in alternative formats for individuals with disabilities. A link to the Section 508 guidance is at: [provide the link]. All forms must be 508 compliant.

- Race and Ethnicity

All information collections are compliant with OMB's guidance on Race and Ethnicity [<http://www.whitehouse.gov/omb/fedreg/1997> Standards and the Final Guidance on Maintaining, Collecting, and Reporting Racial and Ethnic Data to the U.S. Department of Education, which was published on October 19, 2007 (72 FR 59266)]



## Appendix A: Acronyms

ACS	Administrative Communications System
CPO	Chief Privacy Officer
DRS	Division of Regulatory Services
ED	Department of Education
IC	Information Collection
ICB	Information Collection Budget
ICC	Information Collection Coordinator
ICCD	Information Collection Clearance Division
ICR	Information Collection Request
NCES	National Center for Education Statistics
NOA	Notice of Action
NPP	Notice of Proposed Priority
NPRM	Notice of Proposed Rulemaking
OGC	Office of the General Counsel
OIRA	Office of Information and Regulatory Affairs
OM	Office of Management
OMB	Office of Management and Budget
OPEPD	Office of Planning, Evaluation and Policy Development
PIA	Privacy Impact Assessment
PII	Personally Identifiable Information
PM	Portfolio Manager
PO	Principal Office
PRA	Paperwork Reduction Act
RISC	Regulatory Information Service Center
ROCIS	RISC and OIRA Consolidated Information System
SORN	System of Records Notice

## Appendix B: Information Collection Request Required Components

The ICR and Streamlined Components are provided in the sections below for the following: Grants, Performance Reports, Studies/Surveys/Evaluations, Reports/Other Data Instruments, Generic Grant Application (1894-0006), Streamlined Process for Discretionary Grants (1894-0001), Customer Satisfaction Surveys and Focus Groups (1800-0011/1845-0045/1880-0542), Fast Response Survey System (FRSS) 1850-0733, NCES Cognitive, Pilot and Field Tests (1850-0803).

### REGULAR ICRs

#### Grants

- Data 1 and 2 Forms
- Signed Certification
- Supporting Statement
- Public Burden Notice
- Closing Date Notice (with or without priorities)
- Program Statute (as appropriate)
- Instructions for Application Abstract
- Instructions for Application Narrative (with Evaluation Language)
- Instructions for Transmitting Applications
- Application Checklist
- All required forms and accompanying instructions listed below:
  - Title Page Form – Application for Federal Education Assistance (ED 424)
  - Budget Information Form (ED 524)
  - General Education Provisions Act (GEPA) Section 427 Statement
  - Certifications and Assurances
    - Assurances- (Standard Form 424B or 424D)
    - Certification Regarding Lobbying (ED Form 80-0013), rev. 3/2004; (formerly titled “Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters, and Drug-Free Workplace)
    - Disclosure of Lobbying Activities (Standard Form LLL), if applicable
- Instructions for Executive Order 12372 (if applicable)
- Single Point of Contact List (if applicable)

**NOTE: Applications should be separated into 2 parts due to the design of OMB’s ROCIS system. Place the application portion in one file and the standard forms in another separate file.**

If your grant contains information requirements, this should also be included in the information collection request. The [grants website](#) contains all current standard forms.

### **Performance Reports**

- Signed Certification
- Supporting Statement
- Program Regulations (if none, use EDGAR)
- "Dear Colleague" Letter
- Instructions (including a burden statement) and a program specific performance report (if other than the ED Form 524-B, Grant Performance Report)

**NOTE: The standard 524-B has overall clearance for the agency and POs do not need to obtain OMB clearance if using the 524-B form (with no modifications).**

An electronic copy of [ED Form 524-B and other standard forms are available here.](#)

**If the 524-B is revised in any way or a program uses its own program specific performance report, it must be approved by OMB. If the 524-B is revised for program purposes, please omit the ED Form number since it will not be considered the approved ED Form 524-B.**

### **Studies/Surveys/Evaluations**

- Data Parts 1 and 2
- Signed Certification
- Supporting Statement (Part A and B)
- All letters, recruitment materials, brochures or other informational documents must be provided with the ICR.
- If there are plans for incentives, the incentive plan must be included. Pilot test and field test results should also be included, if applicable.
- Instructions and Data Instrument. A Public Burden Notice should be included on the first page of each data collection instrument or instructions.
- **Instruments (such as surveys or protocols) should be separated into separate files for ROCIS.** Recruitment and notification letters may be combined into one file.

### **Reports/Other Data Instruments**

- Data Parts 1 and 2
- Signed Certification
- Supporting Statement
- Regulations (if applicable)
- "Dear Colleague" Letter or letters, as applicable
- Instructions and Data Instrument (including a Public Burden Notice on the first page of each data collection instrument or instructions)

## STREAMLINED or GENERIC IC Requests

## STREAMLINED or GENERIC IC Requests

### Generic Grant Application (1894-0006)

This is a streamlined process for clearing grant applications including new or existing discretionary grants. **There are no comment periods for individual grant applications since the Master Plan provided the public with an opportunity to comment.** Attached to that plan were the entire EDGAR menu criteria and all standard forms. Programs seeking clearance from OMB for a generic grant application must provide the following:

- Data Parts 1 and 2 of the IC Data Form;
- A change sheet (OMB83-C). *NOTE: When submitting these requests, please create a new version from the latest version of 1894-0006.*
- Include the title of the grant and CFDA#, number of responses, hours/response and total burden hours.
- A draft closing date notice.

**No additional forms are allowed under this process.** Programs should follow the regulatory guidelines for closing date notices and e-grant guidelines. [Please obtain the current standard forms from the Grants website here.](#)

Grant programs with notices of priorities must continue to go through the OGC/DRS process. Grant applications with notices of priorities under this generic application format may be cleared through this process.

**It is important to remember that only one 1894-0006 collection may be under review at OMB at one time – so timing and scheduling your submission is important.**

Requests processed under #1894-0006 are submitted as a Gen IC. This allows the burden to draw down from the overall annual total already approved under the three year generic ICR. POs will need to account for the individual responses and hours on a Change Worksheet (OMB83-C) which is added to the currently approved total under 1894-0006. Once ICCD enters this Gen IC in ROCIS, OMB has 10 days for review and approval. **Please involve your ICCD/PM, OGC and OPEPD contacts prior to your official submittal.** POs must ensure ALL policy issues are resolved prior to submittal. Coordination with all contacts is essential will prevent unnecessary delays.

### Streamlined Process for Discretionary Grants (1894-0001)

This streamlined process reduces the clearance process for ALL DISCRETIONARY GRANT application packages by 60 days. **The first 60-day Federal Register comment period is eliminated under this process, and only a 30-day notice is published prior to submitting the information collection request to OMB.** Programs seeking clearance from OMB for a discretionary grant must provide the following:

- *Data Part 1, specify this request as "regular" and check the box for streamlined process. Provide a statement to the abstract under Part A number 10 such as, "This discretionary grant falls under the Streamlined Clearance Process for Discretionary Grant Information Collections, 1894-0001;"*
- *Data Part 2*
- *Separate the program specific application portion into one file document and all standard instructions and forms into another file document to satisfy ROCIS requirements.*

Upon approval, OMB will send ED a Notice of Action providing notice of the approval. **Programs requesting OMB clearance to fall under the generic grant application must contain no more than the following:**

- Burden Statement on Cover Page
- OMB Control Number 1894-0001 (to be used by all grants under the generic plan)
- Closing Date Notice (with or without priorities)
- Program Statute (as appropriate)
- Instructions for Application Abstract
- Instructions for Application Narrative (use of EDGAR Selection Criteria or statutory language that is verbatim to the statute)
- **\*\*EVALUATION INFORMATION SHOULD BE INCLUDED\*\***
- Instructions for Transmitting Applications
- Application Checklist
- All required forms and accompanying instructions listed below:
  - ❑ Title Page Form – Application for Federal Education Assistance (ED 424)
  - ❑ Budget Information Form (ED 524)
  - ❑ General Education Provisions Act (GEPA) Section 427 Statement
  - ❑ Certifications and Assurances
    - Assurances-Non-Construction Programs (Standard Form 424B)
  - ❑ Certification Regarding Lobbying (ED Form 80-0013), rev. 3/2004; (formerly titled "Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters, and Drug-Free Workplace)
  - ❑ Disclosure of Lobbying Activities (Standard Form LLL), if applicable

**No additional forms such as program-specific performance data forms are allowed under this process.** Programs should follow the regulatory guidelines for closing date notices and e-grant guidelines. You can obtain [the current standard forms from the Grants website](#).

**NOTE: Please involve your ICCD/PM, OGC and OPEPD contacts prior to your official submittal of the collection.** POs must ensure ALL policy issues are resolved prior to submittal. This will prevent any unnecessary delays and will help ED to obtain approval in 60 days. OCFO/GPOS is provided the opportunity to review discretionary grants for comment within 2-3 days. Once comments are addressed, ICCD will forward the information collection request to OMB via ROCIS, which starts their 60-day approval process.



If your discretionary grant contains a proposed rule, it will need to follow the regulatory process, and the comment period is combined within the preamble of the proposed rule.

**Customer Satisfaction Surveys and Focus Groups (1800-0011, 1845-0045 and 1880-0542).**

Because OMB has approved ED's generic information collection for the Customer Satisfaction Survey Master Plan (OMB control number 1800-0011, 1845-0045 and 1880-0542 requests), individual customer surveys do not follow the regular clearance process. Instead, **OMB approves customer surveys that adhere to the Survey Master Plan in approximately 10 calendar days for 1800-0011 and 1845-0045, and a 5-day turnaround for 1880-0542.** The Generics are for departmental use. The 1845-0045 Generic is for FSA use and no notices are required.

Guidelines:

- 1800-0011/1845-0045

This generic clearance for ED customer satisfaction focus groups and surveys is approved under the following conditions: 1) ED shall use the generic clearance to collect customer satisfaction data (via surveys and focus groups) where the agency seeks to gather information for general service improvement, not for publication or for the purpose of informing significant policy or resource allocation decisions. 2) Focus groups should be of limited size and scope. 3) For individual surveys or focus groups, ED shall submit a generic IC in ROCIS along with an abbreviated supporting statement in the template that has been agreed to by OMB and Education. This statement shall include all relevant information, including a statement of need, intended use of information, description of respondents, information collection procedures, expected response rate, justification for incentive, and estimated burden. 4) OMB will respond with clearance or questions within 10 working days.

- 1880-0542:

OMB approves this collection for a period of three years. To request approval of information collections under this generic approval, the agency must do the following:

- 1) Unless an agency is using multiple modes of collection (e.g., paper forms and electronic submissions), provide a Generic Clearance Submission Template for each Instrument;
- 2) If the agency is using multiple modes of collection (e.g., paper forms and electronic submissions), the same Generic Clearance Submission Template may be used for both instruments;
- 3) Each Generic Clearance Submission Template must be uploaded as a Supplementary document using a naming convention that allows the public to identify the associated instrument;
- 4) Submit no more than five Generic Submission Templates with each request.

Customer satisfaction surveys should be free of controversial issues, and have limited and well-defined burden.

When submitting the Gen IC, a PO must include the following:

- Data Part 2;
- The completed customer survey template;
- The customer survey, focus group protocol, or other.

**There should be a template for each survey provided.** Please view the template for all required details. An electronic copy of the [generic clearance template is available here](#).

#### **Fast Response Survey System (FRSS). 1850-0733**

This streamlined process for FRSS surveys applies to NCES. When submitting an FRSS survey, NCES must submit the following:

- *Data Part 2.*
- *An abbreviated justification for the survey including the statistical methodology.*
- *The survey(s) (with the burden statement included),*
- *Any necessary supplemental attachments for this FRSS.*

**NOTE: A 30-day notice will be prepared and sent to the *Federal Register* to start the comment period.**

#### **System Clearance for NCES Cognitive, Pilot and Field Tests (1850-0803)**

This streamlined process for cognitive, pilot and field tests applies to NCES. **It is tailored towards cases with up to 500 respondents. Therefore, any collections where more than 500 responses are anticipated would not be eligible for this special system clearance.** NCES must secure agreement with OMB two weeks prior to submittal to use this generic clearance process. No notices are required. NCES must submit the following:

- Data Part 2.
- An abbreviated justification for the request including the burden and statistical methodology. It is a good idea to follow the same format as previous versions of approved NAEP requests (also known as individual ICs). Refer to “Helpful tips on the preparation of collections with Studies, Evaluations and Surveys” for additional guidance.
- The cog lab, pilot or field test instrument(s) with the Public Burden Notice included. Once reviewed by ICCD within a few days, and once comments are addressed, this Gen IC request will be forwarded to OMB.
- Any necessary supplemental attachments for this request.

**NOTE: it is important to remember that only one 1850-0803 collection can be under review at OMB at one time – so timing and scheduling your submission is important.**

## Appendix C: The Privacy Act and Its Relationship with ICRs

If a PO plans to collect, retrieve and use information on an individual that will contain his or her name or other personally identifiable information, the Privacy Act of 1974, as amended, requires that the PO publish a system of records notice in the *Federal Register* for public comment. Identifying particulars include an individual's name, home address, SSN, etc. To learn more about the Privacy Act and its requirements, please visit the [Privacy Act website](#). In addition, please contact ED's Privacy Advocate when completing a System of Records Notice (SORN) or considering a Privacy Impact Assessment (PIA).

**It is extremely important to begin the process of drafting the System of Records Notice prior to the information collection request submittal.** In some cases, the SORN can take many months, considering the internal clearance process. Before the Department maintains a system of records, it must publish the System of Records Notice in the *Federal Register* for public comment, transmit a Privacy Act report to Congress and OMB for their evaluation of the probable or potential effect of the proposal on the privacy rights of individuals, and obtain OMB's approval of the information collection request. **NOTE: If OMB has not approved the System of Records Notice and PIA, (even if they have been published in the Federal Register), no personal data can be collected for the information collection – despite the fact that OMB may have already approved the collection.**

### Privacy Impact Assessments

A Privacy Impact Assessment (PIA) is required under Section 208 of the E-Government Act of 2002 before:

- (1) developing or procuring IT systems or projects that collect, maintain, or disseminate information in identifiable form from or about members of the public, or
- (2) initiating, consistent with the Paperwork Reduction Act, a new electronic collection of information in identifiable form for 10 or more persons (excluding agencies, instrumentalities or employees of the federal government).

Information is in identifiable form if the information in the IT system or online

- (i) directly identifies an individual (e.g. name, address, social security number or other identifying number or code, telephone number, e-mail address, etc.) or
- (ii) by which the agency intends to identify specific individuals by other data elements, i.e., indirect identification.

A PO should create the PIA at the IT development stage so that the potential impact of the system on an individual's privacy rights can be identified and evaluated at the initial stages of the system's development. A PO should create a PIA when it begins to develop a new or significantly modify an IT system or information collection request. OMB has issued detailed guidance on the requirements of the PIA entitled "OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002," M-03-22, (September 26, 2003). [It can be accessed on the Internet at: http://www.whitehouse.gov/omb/memoranda/m03-22.html](http://www.whitehouse.gov/omb/memoranda/m03-22.html)

The OMB guidance details when to conduct and update the PIA, the contents of the PIA (e.g., the areas that PIAs must analyze and describe), and the specific details required in the PIA, as well as requirements for review and publication of the PIA.