

DEPARTMENT OF EDUCATION (ED)

Statement of Regulatory Priorities

I. Introduction

We support States, local communities, institutions of higher education, and others in improving education nationwide and in helping to ensure that all Americans receive a quality education. We provide leadership and financial assistance pertaining to education at all levels to a wide range of stakeholders and individuals including State educational agencies, early childhood programs, elementary and secondary schools, institutions of higher education, vocational schools, nonprofit organizations, members of the public, and many others. These efforts are helping to ensure that all students will be ready for college and careers, and that all students have an open path towards postsecondary education. We also vigorously monitor and enforce the implementation of Federal civil rights laws in education programs and activities that receive Federal financial assistance, and support innovation and research, evaluation, and dissemination of findings to improve the quality of education.

Overall, the programs we administer will affect nearly every American during his or her life. Indeed, in the 2009-2010 school year about 50 million students will attend an estimated 100,000 elementary and secondary schools in approximately 13,900 public school districts, and about 19 million students will enroll in degree-granting postsecondary schools. All of these students may benefit from some degree of financial assistance or support from the Department.

In developing and implementing regulations, guidance, technical assistance, and approaches to compliance related to our programs, we are committed to working closely with affected persons and groups. Specifically, we work with a broad range of interested parties and the general public including parents, students, and educators; State, local, and tribal governments; and neighborhood groups, schools, colleges, rehabilitation service providers, professional associations, advocacy organizations, businesses, and labor organizations.

We also continue to seek greater and more useful public participation in our rulemaking activities through the use of transparent and interactive rulemaking procedures and new technologies. If we determine that it is necessary to develop

regulations, we seek public participation at all key stages in the rulemaking process. We invite the public to submit comments on all proposed regulations through the Internet or by regular mail.

To facilitate the public's involvement, we participate in the Federal Docketing Management System (FDMS), an electronic single Governmentwide access point (www.regulations.gov) that enables the public to submit comments on different types of Federal regulatory documents and read and respond to comments submitted by other members of the public during the public comment period. This system provides the public the opportunity to submit a comment electronically on any notice of proposed rulemaking or interim final regulations open for comment, as well as read and print any supporting regulatory documents.

We are continuing to streamline information collections, reduce the burden on information providers involved in our programs, and make information easily accessible to the public.

II. Regulatory Priorities

A. *American Recovery and Reinvestment Act of 2009*

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA), historic legislation designed to stimulate the economy, support job creation, and invest in critical sectors, including education. The ARRA lays the foundation for education reform by supporting investments in innovative strategies that are most likely to lead to improved results for students, long-term gains in school and school system capacity, and increased productivity and effectiveness.

The ARRA provides funding for several key formula and discretionary grant programs for which the Department will be issuing final regulatory requirements in the next several months. These programs are as follows:

1. *Investing in Innovation Fund.* The Investing in Innovation Fund, established under section 14007 of the ARRA, provides \$650 million to support (a) local educational agencies (LEAs), and (b) nonprofit organizations in partnership with one or more LEAs or a consortium of schools. The purpose of the program is to provide competitive grants to applicants with strong track records in improving student achievement, in

order to expand what works and invest in promising practices that significantly improve student achievement in kindergarten through grade 12, as well as help close achievement gaps, decrease drop-out rates, increase high school graduation rates, and improve the effectiveness of teachers and school leaders.

2. *School Improvement Grants.* In conjunction with Title I funds for school improvement reserved under section 1003(a) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), School Improvement Grants under section 1003(g) of the ESEA are used to improve student achievement in Title I schools identified for improvement, corrective action, or restructuring in order to enable those schools to make adequate yearly progress and exit improvement status. Appropriations for School Improvement Grants have grown from \$125 million in fiscal year (FY) 2007 to \$546 million in FY 2009. The ARRA provides an additional \$3 billion for School Improvement Grants in FY 2009. The Department is finalizing requirements that will govern the total \$3.546 billion in FY 2009 school improvement funds. This unprecedented investment of Federal money has the potential to support implementation of fundamental changes needed to turn around some of the Nation's lowest-achieving schools.

3. *Teacher Incentive Fund.* The Teacher Incentive Fund, established in 2006, supports performance-based teacher and principal compensation systems in high-need schools, primarily through grants to school districts and consortia of school districts. The combined ARRA and FY 2009 appropriation for this program is approximately \$300 million.

B. *Elementary and Secondary Education Act of 1965, as Amended*

We look forward to congressional reauthorization of the ESEA that will build on many of the reforms States and LEAs will be implementing under the ARRA grant programs described above. As necessary, we intend to amend current regulations to reflect the reauthorization of this statute. In the interim we may propose other amendments to the current regulations.

C. *Student Aid and Fiscal Responsibility Act of 2009*

We expect Congress to enact, and appropriate funds for, several components of the President's education

agenda. The House passed H.R. 3221, the Student Aid and Fiscal Responsibility Act of 2009, in September, and the Senate is expected to move similar legislation this year. If the legislation is passed, we expect to propose regulations in the coming months to implement it.

New Programs: The new programs included in the House bill that would require regulations include the following:

- *The College Access and Completion Fund*, to build a Federal-State-local partnership to improve college success and completion, particularly for students from disadvantaged backgrounds.
- *The American Graduation Initiative*, to promote innovations and reforms in our nation's community colleges, including modernization of community college facilities and the development of online educational resources.
- *The Early Learning Challenge Fund*, to provide competitive grants to States for the development of statewide infrastructure of integrated early-learning supports and services for children from birth through age 5.

Student Loans: H.R. 3221 would also enact the President's proposal to originate 100 percent of new student loans under the Direct Loan program, under which the Federal Government provides capital for student loans. The bill would terminate the origination of loans under the Federal Family Education Loan program, under which the Federal Government currently guarantees loans made by the private sector. This bill also includes a proposal to transform the current Perkins Loan program from a separate program of revolving funds based at individual institutions of higher education into a subset of the Direct Loan program.

D. Higher Education Opportunity Act

The Higher Education Opportunity Act (HEOA), enacted on August 14, 2008, amended and extended the Higher Education Act of 1965 (HEA). During the coming year, we plan to amend our regulations to address several key issues, including issues related to program integrity and foreign schools. As necessary we may also amend our regulations for several discretionary grant programs to reflect changes made by the HEOA.

Unless subject to an exemption, regulations to carry out changes to the student financial aid programs under Title IV of the HEA must generally go

through the negotiated rulemaking process.

E. Individuals with Disabilities Education Act

We plan to issue final regulations implementing changes to the Part C program—the early intervention program for infants and toddlers with disabilities—under the IDEA.

F. Family Educational Rights and Privacy Act

Given the President's emphasis on improving the collection and use of data as a key element of educational reform, we are reviewing the Family Educational Rights and Privacy Act of 1974 (FERPA) and its implementing regulations to ensure that States are able to effectively establish and expand robust statewide longitudinal data systems while protecting student privacy. If necessary, we will amend our current FERPA regulations.

G. Other Potential Regulatory Activities

Congress may take up legislation to reauthorize the Adult Education and Family Literacy Act (AEFLA) (Title II of the Workforce Investment Act of 1998) and the Rehabilitation Act of 1973. The Administration is working with Congress to ensure that any changes to these laws (1) improve the State grant and other programs providing assistance for adult basic education under the AEFLA and for vocational rehabilitation and independent living services for persons with disabilities under the Rehabilitation Act of 1973; and (2) provide greater accountability in the administration of programs under both statutes. Changes to our regulations may be necessary as a result of the reauthorization of these two statutes.

III. Principles for Regulating

Over the next year, other regulations may be needed because of new legislation or programmatic changes. In developing and promulgating regulations we follow our Principles for Regulating, which determine when and how we will regulate. 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:

- 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 so diverse that a uniform approach through regulation does more harm than good.
 - 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 when possible.
- Encourage coordination of federally funded activities with State and local reform activities.
- Ensure that benefits justify costs of regulation.
- To the extent possible, establish performance objectives rather than specify compliance behavior.
- Encourage flexibility, to the extent possible, so institutional forces and incentives achieve desired results.

ED—Office of Elementary and Secondary Education (OESE)

PROPOSED RULE STAGE

37. • TEACHER INCENTIVE FUND—PRIORITIES, REQUIREMENTS, DEFINITIONS, AND SELECTION CRITERIA

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 111–5; ESEA title V, part D, subpart 1 (20 USC 7243); PL 111–8, division F, title III

CFR Citation:

None

Legal Deadline:

None

Abstract:

The Secretary proposes priorities, requirements, definitions, and selection

criteria for the Teacher Incentive Fund, which supports performance-based teacher and principal compensation systems in high-need schools, primarily through grants to school districts and consortia of school districts.

Statement of Need:

The proposed priorities, requirements, definitions, and selection criteria are needed to implement the TIF program and to conduct a competition to award funds under this program.

Summary of Legal Basis:

American Recovery and Reinvestment Act of 2009, PL 111-5.

Alternatives:

The Department is still developing this proposed rule; our discussion of alternatives will be included in the notice of proposed priorities, requirements, definitions, and selection criteria.

Anticipated Cost and Benefits:

Estimates of the costs and benefits are currently under development and will be published in the proposed rule.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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ED—OESE

FINAL RULE STAGE

38. • SCHOOL IMPROVEMENT GRANTS—NOTICE OF PROPOSED REQUIREMENTS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009; TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

20 USC 6303(g)

CFR Citation:

None

Legal Deadline:

None

Abstract:

The Secretary has proposed requirements for School Improvement Grants authorized under section 1003(g) of title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA), and funded through both the Department of Education Appropriations Act, 2009, and the American Recovery and Reinvestment Act of 2009. The proposed requirements would define the criteria that a State educational agency (SEA) must use to implement the statutory priority that the SEA award school improvement funds to local educational agencies (LEAs) with the lowest-achieving title I schools that demonstrate (a) the greatest need for the funds and (b) the strongest commitment to use those funds to provide adequate resources to their lowest-achieving title I schools to raise substantially the achievement of their students. The proposed requirements also would require an SEA to give priority, through a waiver under section 9401 of the ESEA, to LEAs that wish to serve the lowest-achieving secondary schools that are eligible for, but do not receive, title I funds. The proposed requirements would require an SEA to award school improvement funds to eligible LEAs in amounts sufficient to enable the targeted schools to implement one of four specific proposed interventions.

Statement of Need:

The proposed requirements are needed to implement the School Improvement Grants program in a manner that the Department believes will best enable the program to achieve its objective of supporting comprehensive and effective efforts by LEAs to overcome the challenges faced by low-achieving schools that educate concentrations of children living in poverty.

Summary of Legal Basis:

20 USC 6303(g).

Alternatives:

A likely alternative to promulgation of the proposed requirements would be for the Secretary to allocate the FY 2009 school improvement funds without setting any regulatory requirements governing their use. Under such an alternative, States and LEAs would be required to meet the statutory requirements, but funds likely would not be targeted to the very lowest-achieving schools and LEAs would likely not use all the funds for activities most likely to result in a real turn-around of those schools and significant improvement in the educational outcomes for the students they educate.

Anticipated Cost and Benefits:

The Department believes that the proposed requirements will not impose significant costs on States, LEAs, or other entities that receive school improvement funds. These proposed requirements would drive school improvement funds to LEAs that have the lowest-achieving schools in amounts sufficient to turn those schools around and significantly increase student achievement. They would also require participating LEAs to adopt the most effective approaches to turning around low-achieving schools. In short, the Department believes that the proposed requirements would ensure that limited school improvement funds are put to their optimum use—that is, that they would be targeted to where they are most needed and used in the most effective manner possible. The benefits, then, would be more effective schools serving children from low-income families and a better education for those children.

The Department believes that the State and local costs of implementing the proposed requirements (including State costs of applying for grants, distributing the grants to LEAs, ensuring compliance with the proposed requirements, and reporting to the

Department; and LEA costs of applying for subgrants and implementing the interventions) will be financed through the grant funds. The Department does not believe that the proposed requirements would impose a financial burden that States and LEAs would have to meet from non-Federal sources.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	08/26/09	74 FR 43101
NPRM Comment Period End	09/25/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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ED—Office of Innovation and Improvement (OII)

PROPOSED RULE STAGE

39. • INVESTING IN INNOVATION—PRIORITIES, REQUIREMENTS, DEFINITIONS, AND SELECTION CRITERIA**Priority:**

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 111-5

CFR Citation:

None

Legal Deadline:

None

Abstract:

The Secretary of Education proposes priorities, requirements, definitions, and selection criteria under the Investing in Innovation Fund, authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5). These priorities, requirements, definitions, and selection criteria are intended to support the efforts of local educational agencies and nonprofit organizations that have strong records of improving student achievement to develop, implement, evaluate, and replicate innovative programs and practices.

Statement of Need:

These proposed priorities, requirements, definitions, and selection criteria are needed to implement the Investing in Innovation Fund and to conduct a competition to award funds under this program.

Summary of Legal Basis:

American Recovery and Reinvestment Act of 2009, PL 111-5.

Alternatives:

The Department considered a variety of possible priorities, requirements, definitions, and selection criteria before deciding to propose those included in the notice. The proposed priorities, requirements, definitions, and selection criteria are those that the Department believes best capture the purposes of the program while clarifying what the Secretary expects the program to accomplish and ensuring that program activities are aligned with Departmental priorities. The proposals would also provide eligible applicants with flexibility in selecting activities to apply to carry out under the program.

Anticipated Cost and Benefits:

The Department believes that the proposed priorities, requirements, definitions, and selection criteria would result in selection of high-quality applications to implement activities that are most likely to have a significant national impact on educational reform and improvement. Through these proposals, the

Department seeks to provide clarity as to the scope of activities we expect to support with program funds and the expected burden of work involved in preparing an application and implementing a project under the program. The pool of possible applicants is very large; during school year 2007-08, 9,729 LEAs across the country (about 65 percent of all LEAs) made adequate yearly progress. Although not every one of those LEAs would necessarily meet all the eligibility requirements, the number of LEAs that would meet them is likely to be in the thousands.

The Department believes that the costs imposed on applicants by the proposed priorities, requirements, definitions, and selection criteria would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by applicants. The costs of carrying out activities would be paid for with program funds and with matching funds provided by private-sector partners. Thus, the costs of implementation would not be a burden for any eligible applicants, including small entities.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/09	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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