



# FEDERAL REGISTER

---

Vol. 78

Thursday,

No. 100

May 23, 2013

---

Part V

## Department of Education

---

34 CFR Chapter II

Final Priorities, Requirement, Definitions, and Selection Criteria—Enhanced Assessment Instruments; Final Rule

Applications for New Awards; Enhanced Assessment Instruments Grants Program—Enhanced Assessment Instruments—Kindergarten Entry

Assessment Competition; Notice

**DEPARTMENT OF EDUCATION****34 CFR Chapter II**

[Docket ID: ED–2012–OESE–0033]

**Final Priorities, Requirement, Definitions, and Selection Criteria—Enhanced Assessment Instruments**

[CFDA Number: 84.368.]

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Final priorities, requirement, definitions, and selection criteria.

**SUMMARY:** The Assistant Secretary for Elementary and Secondary Education announces priorities, a requirement, definitions, and selection criteria under the Enhanced Assessment Instruments Grant program, also called the Enhanced Assessment Grants (EAG) program. The Assistant Secretary may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2013 and later years. We take this action to focus Federal financial assistance on the pressing need to improve the assessment instruments and systems used by States to accurately measure student academic achievement and growth under the Elementary and Secondary Education Act of 1965, as amended (ESEA).

**DATES:** These priorities, requirement, definitions, and selection criteria are effective June 24, 2013.

**FOR FURTHER INFORMATION CONTACT:** Erin Shackel, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W110, Washington, DC 20202. Telephone: (202) 453–6423 or by email: [Erin.Shackel@ed.gov](mailto:Erin.Shackel@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 EAG program is to enhance the quality of assessment instruments and systems used by States for measuring the academic achievement of elementary and secondary school students.

**Program Authority:** 20 U.S.C. 7301a. We published a notice of proposed priorities, requirements, definitions, and selection criteria (NPP) for this program in the **Federal Register** on January 25, 2013 (78 FR 5337). The NPP contained background information and our reasons for proposing the particular priorities, requirement, definitions, and selection criteria. In response to comments we received on the NPP, we have made

revisions to Priority 1—Kindergarten Entry Assessment (KEA priority), and selection criteria.

- We revised the KEA priority to require that the purpose of a KEA developed or enhanced under the priority is to provide valid, reliable, and fair information on each child’s learning and development across the essential domains of school readiness (as defined in this notice) at the time of entry into kindergarten. Correspondingly, we also revised paragraph (d) of the KEA priority and selection criterion (h), to reflect activities that we anticipate would be informed by the results of a KEA.

- We expanded the prohibition against inappropriate use of KEA results.

- We also revised the selection criterion to ask applicants to describe how a proposed KEA would be included as a component of a State’s student assessment system and to include references to “early learning practitioners,” “experts in early learning and development standards,” “Early Learning Advisory Councils” and “families” as examples of key stakeholders who may be involved in the development of a KEA.

*Public Comment:* In response to our invitation in the NPP, 26 parties submitted comments on the proposed priorities, requirement, definitions, and selection criteria. We group major issues according to subject. Generally, we do not address technical and other minor changes.

*Analysis of Comments and Changes:* An analysis of the comments and of any changes in the priorities, requirements, definitions, and selection criteria since publication of the notice of proposed priorities, requirements, definitions, and selection criteria follows.

**Priority 1—Kindergarten Entry Assessment**

*Comment:* Many commenters provided positive feedback about the potential of a Kindergarten Entry Assessment (KEA), as developed or enhanced according to the KEA priority, to improve instruction and children’s learning opportunities in the early years. All of these commenters expressed support for the KEA priority, stating that it would bring focus to the importance of early learning opportunities. Several commenters specifically agreed that valid and reliable assessments, such as those proposed under this priority, when used as one of multiple measures, help us know whether children are making progress and provide direction on how to improve instruction and information

regarding necessary teacher support. One commenter stated that new assessments for young children, such as the ones the KEA priority would support, are important, especially if they help young children attain the skills they need to learn how to read. One commenter noted that the KEA priority is a natural extension of the Department’s past programmatic funding of evidence-based early education interventions. One commenter indicated that the development or enhancement of KEAs would be a meaningful step toward improving assessment practices. One commenter applauded the Department’s timeliness in proposing the KEA priority, stating the field wants to work on efforts like those the KEA priority would support but that States do not have sufficient funds to do so.

*Discussion:* We agree with the commenters that the development or enhancement of a well-designed and properly implemented KEA, which the KEA priority would support, can help improve children’s learning outcomes. We also appreciate the commenters’ recognition of the multiple benefits that such a KEA can provide.

*Changes:* None.

*Comment:* Many commenters expressed concerns about three potential uses of assessment data and how the results of a KEA developed or enhanced under the KEA priority may or may not be appropriate for these uses.

First, many commenters articulated concerns that the KEA results would be used to evaluate the programs that children attend in the years prior to kindergarten. These commenters raised several different issues. A couple of commenters stated that while they believe that data resulting from the KEA would be beneficial to early childhood programs, the KEA should not be used as an accountability measure or a reason to stop funding specific early learning programs. Some commenters recommended that the priority explicitly state that KEA results not be used to penalize or remove funding from early learning programs. Some commenters stated that KEAs cannot be valid and reliable for the purposes of evaluating early childhood programs. One commenter stated that children are not randomly enrolled in early childhood programs and that this compromises the validity of KEA results for the purpose of evaluating the programs children attend. One commenter added that KEAs do not provide enough information to evaluate a program, and another said that proper evaluation of early childhood programs requires a more focused and higher

quality study. One commenter expressed concern that early learning programs would inappropriately change the work they do with children based on what the KEA assessed.

Second, many commenters expressed concern about the use of KEA results to evaluate staff effectiveness. One commenter expressed concern that, even though the NPP stated the Department does not intend to use existing selection criterion (b) with the KEA priority, States would use the KEA results to measure teacher effectiveness in the absence of a comprehensive teacher evaluation system. One commenter stated using the KEA as part of high-stakes testing would lead to “undue pressure on children.” Another commenter stated that test scores cannot be used to determine effectiveness of providers or teachers; and some other commenters added that results from the KEA should not be used to determine retention of, or incentives for, staff. One commenter stated that the Department clearly included in the proposed KEA priority that the results of the KEA may not be used to deny entry into kindergarten and suggested that the KEA priority also address other potential misuses of the KEA, such as teacher effectiveness evaluations. Another commenter recommended that misuses of the KEA results should be addressed in selection criterion (h)(4), which lists the intended uses of the data. One commenter offered that if a KEA developed or enhanced under the KEA priority is to be used for teacher evaluation, it must be designed to be valid and reliable for the purpose of evaluating teachers and that other measures such as reviews of a professional portfolio must be included in the teacher evaluation. Finally, one commenter stated that the uses of a KEA should be limited to the following: guiding instruction, promoting skills development, and closing learning gaps.

Third, many commenters supported the language in the KEA priority stating that a KEA developed or enhanced under the priority must not be used to prevent children’s entry into kindergarten. Several commenters stated concern that results from a KEA could be used to penalize children. Several commenters praised the Department’s inclusion of language stating that a KEA must not be used to prohibit entry into kindergarten.

*Discussion:* We appreciate these concerns but believe most of them are adequately addressed by the priority. A KEA developed or enhanced under the KEA priority would provide information on children’s learning and development at the time of kindergarten entry. Unless

the KEA were designed to measure growth over time, which is not part of selection criterion (h) regarding the KEA design, results could not be validly used as a single measure to evaluate the effectiveness of a program or staff.

Furthermore, as indicated in the proposed KEA priority, a KEA developed or enhanced under the priority must not be used to prevent children’s entry into kindergarten. We recognize that the results of a KEA should not be used to deny children’s entry into kindergarten and have included the language in the KEA priority prohibiting inappropriate uses of the KEA results for this reason.

In response to these comments and the next, which state that the Department has identified too many purposes that a KEA developed or enhanced under the KEA priority must meet, we have revised the purpose section of the priority to specify that a KEA must focus on one key purpose: providing valid, reliable, and fair information on each child’s learning and development at kindergarten entry.

We also have added to the KEA priority that a KEA developed or enhanced under this priority may not be used for purposes for which it has not been validated or as a single measure for high-stakes decisions. High-stakes decisions may include, but are not limited to, dismissal of or rewards for staff and closure of programs. However, we expect that the KEA will be part of a comprehensive assessment system, and a comprehensive assessment system may be used for various purposes and decisions.

*Changes:* We have revised the KEA priority to state that the purpose of a KEA developed or enhanced under this priority must be to provide valid, reliable, and fair information on each child’s learning and development across the essential domains of school readiness at the time of entry into kindergarten.

In addition, we have expanded the prohibition against inappropriate use of KEA results. The prohibition now states that a KEA developed or enhanced under this priority must not be used for purposes for which it has not been validated or as a single measure for high-stakes decisions.

The data section of the KEA priority and selection criterion (h) regarding KEA design have been revised to reflect activities that we anticipate would be informed by the results of a KEA. Paragraph (a)(2) of the proposed KEA priority is now integrated into selection criterion (h)(4)(iii). Proposed paragraph (a)(1) is now integrated into selection criterion (h)(4)(iv). And, finally,

proposed paragraph (a)(4) is now integrated into selection criterion (h)(4)(v).

*Comment:* Many commenters addressed the multiple purposes included in the proposed KEA priority. The commenters expressed concern that a KEA developed or enhanced under this priority would include too many purposes. Many of these commenters argued that too many purposes for the KEA would make the assessment invalid for many, if not all, of the required purposes. Several of these commenters recommended that we clarify the purpose(s) of the KEA to be developed under the priority. One commenter indicated that the proposed purposes for the KEA were clear.

*Discussion:* We agree with the commenters that the proposed priority included too many purposes for a KEA developed or enhanced using funds from this grant program. We are revising the KEA priority to provide that a KEA developed or enhanced under the priority must focus on the single purpose of providing, at the time of entry into kindergarten, valid, reliable and fair information on each child’s learning and development across the essential domains of school readiness. We also are revising paragraph (d) of the KEA priority and selection criterion (h), regarding KEA design, to reflect activities that we anticipate would be informed by the results of a KEA.

*Changes:* We have revised the language in the KEA priority and selection criteria by:

(1) Stating that the purpose of a KEA developed or enhanced under the priority must be to provide, at kindergarten entry, valid, reliable, and fair information on each child’s learning and development across the essential domains of school readiness;

(2) moving paragraph (a)(5) of the proposed KEA priority to paragraph (a)(2)(i) of the final KEA priority;

(3) moving paragraph (a)(3) of the proposed KEA priority to paragraph (d) of the KEA priority as well as to selection criterion (h)(4)(i);

(4) integrating proposed paragraph (a)(2) of the KEA priority into selection criterion (h)(4)(iii);

(5) integrating proposed paragraph (a)(1) of the KEA priority into selection criterion (h)(4)(iv);

(6) integrating proposed paragraph (a)(4) of the KEA priority into selection criterion (h)(4)(v); and

(7) removing proposed selection criterion (h)(4)(i).

*Comment:* One commenter recommended that we revise the priority to state one of the purposes of

a KEA is to close the achievement gap before children enter kindergarten.

*Discussion:* The Department is funding this priority to develop or enhance KEAs as part of an EAG competition because we believe that, over time, the KEA, when used as part of a comprehensive early learning assessment system (as defined in this notice), will provide data that inform State and local efforts to improve child learning outcomes and help close achievement gaps. We wish to focus on the purpose of a KEA providing, at kindergarten entry, valid, reliable, and fair information on each child's learning and development across the essential domains of school readiness; thus, we decline to make the change recommended by this commenter.

*Changes:* None.

*Comment:* One commenter asserted that passage of an amended Universal Prekindergarten Act must come before the creation of KEAs and that assessments must be administered to children and the results used in the years prior to kindergarten in order for the assessments to affect the learning and development of children.

*Discussion:* We agree that data obtained from assessments and screenings are helpful before kindergarten, and we believe that their use should be continued by early learning and development programs to identify special needs and guide children's learning and development. For example, it is particularly helpful to kindergarten programs when preschool programs use assessment tools to generate data and anecdotal information that can be shared about incoming students. While high-quality universal preschool would help to prepare children for success in school and in life, its absence does not negate the importance of the development and use of a KEA. Therefore, we do not believe that passage of an amended Universal Prekindergarten Act, or any other legislation calling for universal preschool, need be in place before assessments such as a KEA can be used to collect information about children's learning and development. Regardless of whether children attend preschool, knowing the status of children's learning and development when they enter kindergarten is important for helping to guide instruction for children and informing decision-makers on the allocation of resources.

*Changes:* None.

*Comment:* A few commenters suggested that we use a different term to refer to a KEA. One commenter expressed concern that the word "entry" in the title suggests that the

assessment could be used to deny or grant entry to kindergarten programs. Another commenter proposed not using the word "entry" so that a KEA also could be used for on-going formative assessment purposes. Finally, a third commenter suggested the terms "kindergarten preparedness assessment" or "kindergarten readiness assessment" as alternatives.

*Discussion:* While we appreciate the commenters' concerns and suggestions for alternate names, we do not agree to make the change. At this time, 14 States are currently receiving funding through Race to the Top—Early Learning Challenge (RTT—ELC), and KEAs were an element of that competition. Altering the Department's terminology could cause confusion in the field. Using the name "KEA" promotes consistency across Department programs.

As to denying admission to kindergarten, an assessment developed or enhanced under the KEA priority must be administered soon enough after a child's enrollment into kindergarten to achieve the purposes for which the assessment was developed. The KEA priority specifically prohibits a KEA from being used to prevent a child's entry into kindergarten.

*Changes:* None.

*Comment:* Some commenters asked if a one-time screening tool developed or enhanced under the KEA priority would be the most appropriate tool to meet the intended purpose of a KEA. These commenters recommended the use of the KEA as an on-going formative assessment.

*Discussion:* A KEA developed or enhanced under the KEA priority must provide information on each child's learning and development across the essential domains of school readiness at kindergarten entry. A KEA is merely one part of a comprehensive early learning assessment system; and we acknowledge the importance of the other components, including formative assessments (as defined in this notice), that are included in a comprehensive early learning assessment system.

Furthermore, the KEA priority does not prohibit the administration of the KEA multiple times during the year. For example, a grant applicant may propose to administer the KEA once soon enough after enrollment to achieve the purposes for which the assessment was developed; or plan to use the KEA, or elements of the KEA, multiple times throughout the kindergarten year. To preserve focus on the purpose of the KEA priority, and because we believe that the KEA can be part of on-going formative assessments, we decline to make the recommended changes.

*Changes:* None.

*Comment:* Many commenters addressed the type or form of the assessment that would be developed or enhanced under the KEA priority. Several commenters suggested that the priority emphasize formative assessments to strengthen and support instruction throughout the kindergarten year. One commenter suggested expanding the KEA priority to include formative assessments across infant, toddler, preschool, and kindergarten programs, as well as early elementary school grades. One commenter recommended expanding the KEA priority to include formative assessments for either ages three through five or kindergarten through third grade. One commenter suggested revising the proposed KEA priority to allow for the development of formative assessments that would produce data for multiple uses including: Enabling teachers to describe each child's progress in early learning programs or in kindergarten through third grade classrooms; illuminating the extent to which kindergarten through third grade strategies are successful in improving student performance over time; and allowing State policy leaders to understand the extent to which investments in different types of early care and education programs are associated with patterns of progress. One commenter suggested that a KEA developed or enhanced under the KEA priority could be administered multiple times throughout the kindergarten year to guide instruction.

*Discussion:* We agree that formative assessments are important and have defined a comprehensive early learning assessment system to include both formative assessments and a KEA. However, we have designed the KEA priority to focus on one part of a comprehensive early learning assessment system—specifically, an assessment at kindergarten entry. The skills and knowledge a KEA assesses at this early stage are the foundations for subsequent learning in a kindergarten through twelfth grade educational career. We note that the KEA priority does not prohibit an applicant from proposing to use the KEA multiple times throughout the kindergarten year, when useful and appropriate.

*Changes:* None.

*Comment:* One commenter suggested that we give priority to existing assessment tools or ongoing efforts to enhance or adapt existing assessment tools.

*Discussion:* The statutory purpose of the EAG program is to enhance the quality of assessment instruments and

systems used by States for measuring the academic achievement of elementary and secondary school students; and thus we focus the program activities, and the KEA priority, on student assessment. Applicants may propose to enhance existing tools, but we will not give such work any additional priority over proposals to develop new assessments or tools. To meet the KEA priority, existing assessment tools would need to be enhanced to meet all of the requirements of the KEA priority and would need to be made freely available per program requirements. While we understand the value of tools to improve teaching and learning, in light of the statutory program purpose and our efforts to strategically target resources, we decline to add a priority, revise the KEA priority, or award more points for the enhancement or adaption of tools beyond those described in the KEA priority.

*Changes:* None.

*Comment:* One commenter suggested expanding the KEA priority to support the development or enhancement of an assessment for students entering first grade. The commenter noted that such an expanded priority may be more relevant for States with laws defining the age in which compulsory education begins later than kindergarten.

*Discussion:* While assessments at every grade can be useful, the Department has chosen to develop a KEA priority because of the critical nature of this type of assessment in a comprehensive early learning assessment system. Though only eight States, the District of Columbia, and Puerto Rico require compulsory education beginning at age five ([www.ncsl.org/documents/educ/ECSCCompulsoryAge.pdf](http://www.ncsl.org/documents/educ/ECSCCompulsoryAge.pdf)), over 92 percent of five year-olds in the United States attend kindergarten ([www.census.gov/hhes/school/data/cps/2010/tables.html](http://www.census.gov/hhes/school/data/cps/2010/tables.html)). Therefore, all States can benefit from the data generated by a KEA. Additionally, due to limited resources available to the EAG program, we decline to expand the KEA priority.

*Changes:* None.

*Comment:* Several commenters did not support the proposed KEA priority for various reasons. One commenter questioned whether assessments developed according to the KEA priority would be useful for teachers in improving instruction. A couple of commenters stated that they did not believe KEAs developed or enhanced under this priority would be useful generally. One commenter expressed concern that KEA results would contribute to students with disabilities

being separated from other students and classes. One commenter stated that school-readiness benchmarks are artificial and do not take into account kindergarteners' development or growth in areas such as creativity, learning to share, taking turns, and being respectful. Finally, one commenter stated that the KEA would just be a standardized test for kindergartners.

*Discussion:* While we understand these concerns, we have designed the KEA priority in ways we believe will support the appropriate use of the assessments. The revised priority specifies that a KEA designed under this priority must provide valid, reliable, and fair information on each child's learning and development across the essential domains of school readiness, with each domain making a significant contribution to the overall comprehensive score. Part of a well-designed assessment is its ability to accommodate children across varying developmental levels and standardizing interpretation of results. We believe that appropriately using the results of a well-designed KEA will assist teachers in improving instruction for all children by including all developmental levels, children with disabilities, and English learners (as defined in this notice). The KEA must not be used to prevent children's entry into kindergarten and must not by itself be used to make high-stakes decisions.

*Changes:* None.

*Comment:* Several commenters stated they do not believe that investing in developing a KEA is a good use of funds. One commenter asserted that the results from KEAs would not be useful by the time the data generated by the KEA are available. One commenter stated that a KEA would disrupt the quality of education and that funds should be used for other educational purposes. The third commenter expressed concern that a KEA would generate a single ideal profile of "school readiness."

*Discussion:* Our goal for the KEA priority is to fund the development or enhancement of well-designed KEAs that will provide valid, reliable, and fair information on each child's learning and development across the essential domains of school readiness. When included as part of a comprehensive early learning assessment system, we believe that KEAs developed or enhanced under the KEA priority will provide data that can inform States' efforts to improve child learning outcomes and help close achievement gaps. Providing funding for the development of this tool is one way the Department is supporting quality

schools and instruction. In establishing this priority, we are responding to interest from the field for a KEA, as evidenced by the number of States that committed in their RTT-ELC applications to implement a statewide KEA.

Furthermore, we believe the KEA priority will produce useful data in a timely manner. In paragraph (d)(1) of the KEA priority, as well as selection criterion (h)(4)(i), we ask applicants to explain how the proposed KEA will produce data and information that may be used to guide individualized instruction for children enrolled in kindergarten and throughout the school year. Additionally, paragraph (b)(9) of the KEA priority requires that a KEA developed or enhanced under the priority be administered soon enough after a child's enrollment in kindergarten to achieve its purpose. In paragraph (b)(5) of the KEA priority, we ask applicants to design a KEA that will provide a summative assessment of each child's learning and development at kindergarten entry across the essential domains of school readiness. We believe that assessments of young children should address the full range of early learning and development; and accordingly have included, in the definition of "essential domains of school readiness," five domains adapted from the National Education Goals Panel (<http://govinfo.library.unt.edu/negp/reports/prinrec.pdf>), to provide a comprehensive interpretation of school readiness. Therefore, we disagree that the KEA would produce a single ideal of school readiness and accordingly decline to make any changes.

*Changes:* None.

*Comment:* One commenter noted that children's enrollment in kindergarten programs varies, such as from half-day to full-day or the number of school days in a year, and expressed concern that results from a KEA developed or enhanced under the KEA priority could be corrupted if linked to other summative assessment results at a future point in time.

*Discussion:* We agree that it would be improper to link results in this way. A KEA that would be developed or enhanced under the KEA priority would be an assessment given at the beginning of the kindergarten school year and must be aligned to early learning and development standards (as defined in this notice). Subsequent kindergarten assessments designed by States or groups of States should be aligned to kindergarten standards of those States. Since a KEA supported by the priority and an assessment at a later point in time would be aligned to different

standards, comparability of these assessments would be questionable. Considering that any assessment after kindergarten entry would be aligned to different content standards, the KEA developed or enhanced under the KEA priority would be a static assessment that does not measure progress on standards at higher grade levels.

*Changes:* None.

*Comment:* Several commenters discussed the importance of a KEA fitting within a more comprehensive assessment or educational system. A couple of these commenters added that KEAs developed or enhanced under the priority should be based on a broader set of factors, such as curriculum, instructional strategies, ongoing assessment, and professional development. One of these commenters also suggested awarding extra points to applicants that plan to develop a KEA based on such broader factors. Finally, one commenter expressed concern about uncoordinated policies and initiatives and noted that policies need to come together coherently in the classroom.

*Discussion:* We agree that KEAs developed or enhanced under the priority should be part of States' larger assessment and educational systems, and we added selection criterion (h)(10) to address this issue. In paragraph (b)(1) of the KEA priority, we require that a KEA developed or enhanced under the KEA priority be a component of a State's student assessment system, including a State's comprehensive early learning assessment system. We now go further and have added a similar factor to the KEA design selection criteria in order to award points based on the quality of an applicant's plans in this area. Finally, we note that other requirements and factors can support the integration of a KEA developed or enhanced under the priority into larger systems. For example, a KEA must be aligned with early learning and development standards (as defined in this notice) (KEA priority paragraph (b)(2)); and provide for broad reporting of results (KEA priority paragraph (d)(2) and selection criterion (h)(9)).

*Changes:* We have added factor (h)(10) to the KEA design selection criterion, which asks each applicant to describe how the KEA it proposes to develop or enhance will be included as a component of a State's, or States', student assessment systems, and how the KEA it proposes to develop or enhance will be included as a component of a State's, or States', comprehensive early assessment system (as defined in this notice), if a

comprehensive early learning assessment system exists.

*Comment:* None.

*Discussion:* In reviewing paragraph (b)(1) of the proposed KEA priority, which states that a KEA must be a component of a State's student assessment system, and its reference to "each State included in an application," we have determined that the language does not adequately distinguish between applicant States, consortium member States, and States that may be included in an application in another capacity (e.g., as a collaborating, non-governing, or observing State). As a result, we have revised this paragraph to provide clarification.

*Changes:* We have revised paragraph (b)(1) of the KEA priority to clarify that it applies to the applicant State and, if the State applies as part of a consortium, each State in the consortium in which a comprehensive early learning assessment system exists.

*Comment:* One commenter suggested adding language to the KEA priority design element and to factors in the KEA design selection criteria indicating that the KEA must be included in the continuous review and evaluation of the State longitudinal data system (SLDS) so that the early learning and development standards are both attainable and not pushed down from higher grades.

*Discussion:* We believe that early learning and development standards, as defined in this notice, reflect reasonable and attainable expectations for children. The levels of performance for the KEA would be based on those standards, not merely pushed down from higher grades. The Department is purposely giving flexibility to States to decide how they want to develop the assessment framework, and nothing prohibits an applicant from proposing what the commenters suggests.

*Changes:* None.

*Comments:* Many commenters expressed concern that most States do not have established standards for kindergarten through the early elementary grades that include all of the essential domains of school readiness and that such standards would need to be established before a KEA could be developed or enhanced. A couple of commenters suggested requiring an assurance or adding a requirement that States awarded a grant under this priority revise their standards in the early grades to include all of the essential domains of school readiness. One commenter stated that a KEA should not be developed or implemented until kindergarten standards covering all of the essential

domains of school readiness are established.

*Discussion:* Most States have early learning and development standards for the year prior to kindergarten that include all of the essential domains of school readiness.<sup>1</sup> The KEA, which must be aligned to the State's early learning and development standards, would be administered at the beginning of kindergarten and would not be designed to assess students' performance against kindergarten standards. Supporting the development of kindergarten through third grade standards that address all of the domains is beyond the scope of this priority, and we believe an assurance requiring States to revise their kindergarten or primary grade standards would be unnecessarily burdensome. Based on these considerations, we decline to make the changes requested.

*Changes:* None.

*Comment:* Many commenters agreed that the KEA should address multiple domains, not just the cognitive domain. They expressed concern that, without including multiple domains in the standards that are used to assess children at the end of kindergarten, teachers would focus on the cognitive domain, including literacy and mathematics, and minimize the other domains, such as social, emotional, and physical learning. One commenter pointed out that research links emotional competence to cognitive performance. Another commenter stated that a KEA addressing all of the essential domains will help move the emphasis in kindergarten through third grade beyond literacy and mathematics and provide a better connection to preschool programs.

*Discussion:* We agree, and this is why the priority requires that the early learning and development standards cover all of the essential domains of school readiness, not just the cognitive domain. As defined in this notice, these domains include: language and literacy development, cognition and general knowledge (including early mathematics and early scientific development), approaches toward learning, physical well-being and motor development (including adaptive skills), and social and emotional development. While the Department believes that all domains are important to learning and that the KEA must be aligned with early learning and development standards that address the essential domains of

<sup>1</sup> Barnett, W.S., Carolan, M.E., Fitzgerald, J., & Squires, J.H. (2011). *The state of preschool 2011: State preschool yearbook*. New Brunswick, NJ: National Institute for Early Education Research.

school readiness, supporting the development of kindergarten and primary grade standards that address all of these domains is beyond the scope of this program. We agree, however, that implementing a KEA addressing all of the essential domains will likely contribute to standards used for kindergarten through third grade that emphasize multiple domains.

*Changes:* None.

*Comment:* A couple of commenters suggested including additional areas in the essential domains of school readiness, specifically creative arts, social studies, and play. One commenter applauded the Department for requiring that the standards used for the KEA be aligned to the essential domains of school readiness.

*Discussion:* We do not believe that the suggested change is necessary. Our definition of the essential domains of school readiness is based on that of the National Education Goals Panel, which developed five domains that are widely accepted and utilized by the early learning field. Most States have already included these domains in their early learning and development standards. Moreover, the additional areas suggested by commenters are already included within the essential domains of school readiness. Specifically, creative arts expression is part of the Approaches to Learning domain, and social studies is part of the Cognition and General Knowledge domain. Play is not a domain but rather a method by which children learn. Finally, it is important to note that the KEA priority does not limit States from including additional domains.

*Changes:* None.

*Comment:* One commenter suggested we add the phrase “reasonable and attainable expectations” of what a child should know and be able to do in paragraph (b)(4) of the KEA priority. Another commenter expressed concern about standards being pushed down from higher grades rather than scaffolding the standards for each age group, as the commenter noted sound science would suggest be done.

*Discussion:* Our definition of early learning and development standards requires these standards to be a set of expectations, guidelines, or developmental milestones that, along with other specifications, describe what all children from birth to kindergarten entry should know and be able to do, and be appropriate for each age group (e.g., infants, toddlers, and preschoolers) rather than pushed down from kindergarten through twelfth grade. These standards must also be universally designed and

developmentally, culturally, and linguistically appropriate, including for English learners and for children with disabilities or developmental delays. The early learning and development standards are based on the essential domains of school readiness as adapted from the National Education Goals Panel. The levels of performance will be based on those standards. We believe that early learning and development standards that meet this definition would be reasonable and attainable expectations for all children and that it is not necessary to include the phrase suggested by the commenter.

*Changes:* None.

*Comment:* One commenter suggested that we require KEA administrators to be certified or credentialed early childhood educators with three or more years teaching experience.

*Discussion:* Paragraph (b)(11) of the KEA priority specifically requires that a KEA developed or enhanced under this priority be administered by a trained assessor or assessors. Beyond this requirement, we do not think it is appropriate to be more prescriptive in the qualifications that KEA administrators should meet and believe States are in the best position to make these decisions.

*Changes:* None.

*Comment:* A couple of commenters suggested revising the language of the KEA priority to emphasize that a KEA should be developed or enhanced in such a way that its administration does not burden teachers or unduly detract from instructional time. One of these commenters specifically suggested that we add this requirement to paragraph (b)(10) of the KEA priority.

*Discussion:* In paragraph (b)(13) of the KEA priority, we require that the development and implementation of the KEA be cost-effective; and in paragraph (b)(11) we require that the KEA be administered by a trained assessor. If States decide that having teachers conduct the assessments is burdensome or detracts from instructional time, they may use trained assessors other than the classroom teacher. Other States may see the value in having teachers work one-on-one with students in conducting assessments and not see it as a burden, but instead as a good use of classroom time.

*Changes:* None.

*Comment:* A couple of commenters applauded the Department for explicitly requiring the inclusion of English Learners and children with disabilities or developmental delays in paragraph (b) of the KEA priority.

*Discussion:* The Department agrees that assessments, such as a KEA, should

be designed to include all students, including English Learners and children with disabilities or developmental delays.

*Changes:* None.

*Comment:* One commenter suggested that the KEA priority include a focus on instruction for students with disabilities, including assessing the impact of instruction related to social emotional learning for students with disabilities.

*Discussion:* We believe the KEA priority adequately addresses the stated concerns. An assessment developed according to the KEA priority would be aligned to early learning and development standards that address the essential domains of school readiness. Social and emotional learning is one of the essential domains of school readiness, and paragraph (b)(5) of the KEA priority requires that a KEA provide a summative assessment of each child’s learning across these domains. In addition, paragraphs (b)(7) and (b)(8) of the KEA priority require that any KEA developed or enhanced under the priority be developed to include children with disabilities.

*Changes:* None.

*Comment:* A couple of commenters stated that research is needed to support work under the KEA priority. One of these commenters stated that the KEA priority gives appropriate attention to the need for adequate research-based early learning assessment practices. The other commenter stated that more research and guidance are needed in order for States to develop a KEA that would meet the requirements of the KEA priority.

*Discussion:* We agree that the design and development of a KEA should be research-based and believe that paragraph (c) of the KEA priority ensures this will occur. The National Research Council report on early childhood assessments, as referenced, provides a sufficient research base and guidance in order for States to develop a KEA that would meet the requirements of the KEA priority. In addition, the Department has provided funding for the Regional and National Comprehensive Centers, particularly the Center on Enhancing Early Learning Outcomes and the Center on Standards and Assessments Implementation, to provide technical assistance to States. The assistance includes support to States as they develop and implement early learning assessments such as the KEA. In light of this requirement and these resources, we decline to make changes.

*Changes:* None.

*Comment:* Several commenters expressed support for paragraph (c)(2) of the KEA priority that requires a KEA developed or enhanced under the KEA priority to be consistent with the recommendations of the National Research Council (NRC) report on early assessment. A couple of commenters recommended that, in addition to the NRC report, the KEA also be consistent with the recommendations in the National Association for the Education of Young Children's report "Developing Kindergarten Readiness and Other Large-Scale Assessment Systems" ([www.naeyc.org/files/naeyc/file/research/Assessment\\_Systems.pdf](http://www.naeyc.org/files/naeyc/file/research/Assessment_Systems.pdf)). Another commenter suggested that we add the National Academy of Science report, "Early Childhood Assessment: Why, What and How?" to the list of referenced reports. Another commenter suggested we revise the KEA priority to require that a KEA developed or enhanced under the priority be consistent with the Head Start Outcomes Framework.

*Discussion:* We agree that resources on good practices are helpful when developing or enhancing a KEA and comprehensive assessment system. As outlined in the NPP and included in the final priorities, requirement, definitions, and selection criteria in this notice, we require that KEAs developed or enhanced under this priority be consistent with the NRC guidelines in order to be consistent with the direction we received from Congress that States receiving grants under the RTT-ELC program provide an assurance that any use of early childhood assessments conform to the NRC report. We decline to require applicants to develop KEAs consistent with any other report without a similar directive from Congress.

While we consider the Head Start Outcomes Framework helpful in guiding instruction in Head Start classrooms, we believe, consistent with the requirements of the RTT-ELC program, that the KEA must be aligned with the State's early learning and development standards and that it would be a burden for States to align the KEA with both the State early learning and development standards and the Head Start Outcomes Framework. The early learning and development standards cover the essential domains of school readiness, are the standards used across early learning and development programs, and are sufficient to be the standards to which the KEA is aligned. Based on these considerations, we added additional language to paragraph (c)(2) of the KEA priority that the KEA must measure children's learning and development at kindergarten entry in

ways that are consistent with current research and best practices in the field.

*Changes:* We added language to paragraph (c)(2) of the KEA priority that the KEA must measure children's learning and development at kindergarten entry in ways that are consistent with current research and best practices in the field, which may include the resources the commenter has cited.

*Comment:* Several commenters suggested that the Department coordinate with the U.S. Department of Health and Human Services (HHS) on the application and the awarding of grants in competitions that use the KEA priority.

*Discussion:* The Department of Education and HHS have worked closely together over the last four years on the Early Learning Interagency Policy Board and in developing and implementing the RTT-ELC program. Much of the language used in the KEA priority was informed by the FY 2011 Notice Inviting Applications for the jointly administered RTT-ELC program. We will continue to work with HHS to support early learning, including, where appropriate, early learning efforts funded under an EAG priority.

*Changes:* None.

*Comment:* Many commenters expressed concern about possible misuses of the KEA results. One commenter expressed concern that potential uses of a KEA developed or enhanced under the KEA priority could be unfair to certain groups of students and warned about potential biases in a KEA and KEA results being misinterpreted and misused. One commenter stated that results should not be used to label children. Another commenter pointed to the limited value of a single point in time evaluation of students. One commenter expressed concern that excessive focus on testing can distort the education process. Another commenter suggested including safeguards against outcomes of narrow assessments, restricting innovation, and data driven curricula. Finally, a commenter expressed concern about possible misuses of the results of the KEAs and applauded the Department for including safeguard language.

*Discussion:* We agree with the commenters' concerns regarding fairness and in order to help ensure the misuses cited by commenters do not occur and to emphasize fairness, we are making several changes to the priority. We note that existing requirement (a), as well as selection criterion (d), require that the KEA developed under this priority be fair for its intended use. We are adding the word "fair" to paragraph

(a)(1) of the KEA priority, which was originally proposed as paragraph (d)(1). We are adding the word "fair" to paragraphs (a)(1), (c)(3), and (c)(4) of the KEA priority and to and selection criterion (h)(8). In addition, we note that the first paragraph of the KEA priority has been changed to state that the KEA should not be used for purposes for which it has not been validated or as a single measure for high-stakes decisions.

In response to the comment about the limited value of a single point in time evaluation, any assessment administered after kindergarten entry would need to focus on kindergarten standards. The KEA focuses on early learning standards.

*Changes:* We have revised paragraph (a)(1) of the KEA priority, which was originally proposed as paragraph (d)(1), to include the word "fair." We also have revised paragraphs (c)(3) and (c)(4) of the KEA priority and selection criterion (h)(8) to include the word "fair."

*Comment:* One commenter suggested that a KEA developed or enhanced under the KEA priority should be linked to early learning programs.

*Discussion:* We agree that there should be a link between a KEA developed or enhanced under the KEA and early learning programs. We have included a requirement in paragraph (b)(2) of the KEA priority that the KEA be aligned with a set of early learning and development standards. Further we require in the data section of the KEA priority, paragraph (d)(3), that the data generated be incorporated into the SLDS for each State (and the State's early learning data system if it is separate from its SLDS), consistent with requirements of Federal, State, and local privacy laws. We also require, in paragraph (e) of the KEA priority, that the KEA use approaches to assessment design and implementation (e.g., use of technology, assessment administration, scoring, and reporting) that facilitate the integration of the KEA into a State's student assessment system, including a State's comprehensive early learning assessment system if a comprehensive early learning assessment system exists.

Finally, in the KEA design selection criterion (h)(4), we require applicants to describe how the KEA will produce data and information that may be used to identify teacher professional development and support needs, as well as support State and local agencies in effectively targeting investments for early learning and development systems. As we believe these provisions help to ensure that KEAs developed under this priority will be adequately linked with early learning programs, we



decline to make the changes suggested by the commenter.

*Changes:* None.

*Comment:* One commenter stated that a KEA should include the continuum of a child's learning and development that is above or below typical growth and development at a particular chronological age.

*Discussion:* We agree with the comment and have already provided for this in paragraph (c)(4) of the KEA priority, which requires that a KEA developed or enhanced under the priority provide valid, reliable, and fair measures of children's learning and development across the performance spectrum. This would allow for variation in learning and development that is above or below typical growth and development at a particular chronological age.

*Changes:* None.

*Comment:* One commenter expressed concern that a KEA developed or enhanced under the priority might involve commercial or proprietary products in ways that may compel their use, restrict innovation, and limit State educational agency (SEA) access to, and choices among, assessments. This commenter recommended that the Department limit the involvement of commercial vendors in the development of KEAs by adding the phrase "commercially neutral" to paragraphs (a)(6) and (c)(4) of the KEA priority; paragraph (a) of the Early Learning Collaborative Efforts priority; requirement (i) in the definitions of "comprehensive early learning assessment system" and "formative assessment;" and selection criterion (h)(3). The commenter also suggested that a KEA supported by the priority should be built independent of any commercial product that currently exists.

*Discussion:* Any KEA developed or enhanced under the EAG program must meet all of the requirements outlined in the KEA priority, as well as any other requirements applicable to the program and competition. Any State or consortium of States awarded a grant will be responsible for ensuring that such requirements are met over the period of the grant. Though only SEAs, or consortia of SEAs, are eligible applicants, we acknowledge that applicants may contract with commercial vendors for goods and services that support the activities or products of this grant, provided they also comply with applicable State and local procurement laws. The Department does not wish to limit the resources available to SEAs in developing a KEA beyond the

requirements included in the priority, requirements that apply to EAGs, and any other requirements that we may apply to an EAG grant. Furthermore, as a general matter, program requirement (g) requires a grantee to make any assessments developed with funds from this competition freely available to States, technology platform providers, and others that request it for purposes of administering assessments. We intend to apply this requirement to any competition involving the KEA priority. We believe the requirements under the KEA priority and the additional program requirement regarding availability of products developed with grant funds provide adequate safeguards relative to the concerns expressed by the commenter, and we decline to make changes.

*Changes:* None.

*Comment:* Some commenters noted that children naturally learn at different paces and will exhibit different skills at kindergarten entry. Another commenter suggested that assessment takes away from natural discovery and passions of children.

*Discussion:* We agree that children's learning paces vary, and also believe that the results of a KEA developed or enhanced under this priority can help teachers individualize instruction by providing them with insight into each child's pace of learning. We also believe that the results of a KEA developed or enhanced under this priority can be helpful to teachers in thoughtfully and intentionally designing appropriate and engaging activities for children based on that knowledge. Paragraph (d)(1) of the KEA priority, (originally proposed as paragraph (a)(3)), requires that a KEA developed under this priority produce data and information that guides individualized instruction for children enrolled in kindergarten and throughout the school year. Because we believe the concerns are adequately addressed, we decline to make changes.

*Changes:* None.

*Comment:* One commenter recommended that States be required to describe a plan for working with schools, families, and community-level agencies, such as early childhood programs, to analyze KEA data.

*Discussion:* We agree that States should develop a plan for the use of data from a KEA developed or enhanced under the KEA priority. In selection criterion (h)(4), applicants must describe how the KEA will produce data and information that may be used to provide families with information about their children's learning and development based on the essential domains of school readiness and engage

them in the early learning of their children. Therefore, we do not believe that changes are necessary to address the commenter's concern.

*Changes:* None.

*Comment:* One commenter noted that KEAs can provide useful information to kindergarten teachers and encouraged the sharing of such information with early learning programs in order to promote programs' continuous improvement.

*Discussion:* We agree that KEA results can be used to support and improve teaching and learning. Paragraph (d)(2) of the KEA priority requires the KEA to be developed or enhanced to allow for such sharing, consistent with Federal, State, and local privacy laws. We believe this requirement addresses the concern expressed by the commenter and therefore decline to make any changes.

*Changes:* None.

*Comment:* Some commenters inquired about coordination among KEA grantees and existing assessment development activities. A few commenters asked questions about the relationship of the proposed KEA priority to the RTT-ELC grants. A couple of commenters asked how a State that has received a grant under the RTT-ELC program may participate in an EAG program grant. Another commenter encouraged the Department to use the priority to facilitate States' ability to learn from the results of RTT-ELC grants. One commenter suggested that the KEA priority be written to support existing KEA efforts, including efforts among States that have begun working together through the RTT-ELC program and other similar programs.

*Discussion:* We appreciate that RTT-ELC grantees and other States that have begun developing or implementing KEAs have valuable experience related to the development and implementation of KEAs as described in this priority. A State receiving funds under RTT-ELC is eligible to apply for an EAG program grant, and an RTT-ELC State may be able to receive funding under the EAG competition as part of a consortium in order to expand its RTT-ELC work to the States within the consortium.

However, we note that the Department is prohibited from funding duplicative activities, and grantees may not receive funding to support activities already supported through another grant.

*Changes:* None.

*Comment:* One commenter encouraged the Department to clarify the expected relationship between the KEA priority for the EAG program and other efforts such as the work of the two

consortia developing assessments under the Race-to-the-Top Assessment (RTTA) program.

*Discussion:* We agree that coordination across programs and consortia of States is important to ensure that assessment systems are coordinated and aligned in ways that best serve students. For this reason, we included in paragraph (b)(2) of the KEA priority a requirement that any KEA developed or enhanced under the priority be aligned with a set of early learning and development standards that are aligned with the State's kindergarten through third grade academic standards in, at a minimum, early literacy and mathematics. In addition, the program has an existing requirement that any grantee actively participating in any applicable technical assistance activities conducted or facilitated by the Department or its designees must coordinate with the RTTA program in the development of assessments under this program and participate in other activities as determined by the Department. We believe this requirement will help ensure that key assessment development efforts do not occur in isolation of one another.

*Changes:* None.

#### **Priority 2—Early Learning Collaborative Efforts Among States**

*Comment:* Several commenters expressed support for the Early Learning Collaborative Effort Among States priority. One commenter noted that the benefits of collaboration include States building on one another's experience and expertise; developing efficiencies in providing professional development support; containing costs; and facilitating implementation. A couple of commenters also emphasized that, in evaluating proposals, the quality of the assessment proposed by a consortium and the nature of a consortium need to be balanced against the size of the consortium.

*Discussion:* We appreciate the support the commenters expressed. Further, we have designed the selection criteria to identify the highest quality proposals and, as a result, do not believe additional changes are needed to the KEA or Early Learning Collaborative Efforts Among States priorities.

*Changes:* None.

*Comment:* One commenter suggested that, to promote collaboration among existing assessment consortia, such as those developing RTTA and EAG English language proficiency assessment systems (ELP), the Early Learning Collaborative Efforts Among States priority be revised to require applicants

to address how they would coordinate with existing State educational improvement efforts.

*Discussion:* As noted previously in our discussion of comments on the KEA priority, we agree that coordination across various development efforts is important to ensure that assessment systems are well coordinated. As also explained in the previous section, we have included a requirement that, when applied to a competition, requires any grantee to actively participate in any applicable technical assistance activities conducted or facilitated by the Department or its designees, coordinate with the RTTA program in the development of assessments under this program, and participate in other activities as determined by the Department. We believe this requirement will help ensure that key assessment development efforts do not occur in isolation.

*Changes:* None.

*Comment:* A couple of commenters raised questions about the three-State minimum for consortia under the Early Learning Collaborative Efforts Among States priority. One commenter asked if a single State could apply when the priority is used for a competition. Another commenter expressed concern that a priority that defines a consortium for the purposes of the priority as including a minimum of three States would discourage current two-State partnerships and their efforts to enhance and validate existing tools for broader use.

*Discussion:* Because of the complexity of developing or enhancing a KEA, multiple States collaborating with each other may yield better results than those undertaking this effort alone. States working in collaboration can build on each other's expertise and experience, and they can generate efficiencies in development, costs, implementation, and uses of results. For this reason, we strongly encourage consortia with multiple States, and therefore consider a consortium to be a group of three or more States, rather than just two States. In addition, data produced by a KEA administered across multiple States are more meaningful when the early learning and development standards are the same across States, and can provide a common framework for understanding the level of children's learning and development at kindergarten entry. Though we have included the Collaborative Efforts Among States priority, a single State may apply.

*Changes:* None.

*Comment:* One commenter questioned whether, given their governance structures, some States, at the time of

application, would be able to commit to the adoption of the common KEA developed under the grant and the set of early learning and development standards upon which the KEA is based.

*Discussion:* Requirements similar to this one have been included in competitions for RTTA grants and EAG-ELP grants, and there is no evidence that these requirements have been barriers for applicants. In addition, should this be a barrier, there are alternate ways for a State to participate in a grant other than as a consortium member. For example, a State may participate as a collaborator, and the applicant State or consortium may define what such collaboration means. Because of these options and the success of past collaborative efforts, we decline to make a change to this priority.

*Changes:* None.

*Comment:* One commenter expressed support for the language in the Early Learning Collaborative Efforts Among States priority that consortia adopt or propose a plan for all States in the consortium to adopt a set of early learning and development standards that, for at least the year prior to kindergarten entry, are substantially identical across all States in the consortium. However, this commenter expressed concern about whether there is enough time or sufficient resources for this adoption to be done in a meaningful way, including alignment to kindergarten through third grade standards, prior to KEA development. This commenter suggested States be given more time to develop standards as they implement this grant.

*Discussion:* We agree that the establishment of the early learning and development standards to which a KEA would be aligned is a critical first step in any successful KEA development collaboration. Under section 6112 of the ESEA, the purpose of the EAG program is the development and enhancement of assessment instruments, not the development of standards. Thus, program requirement (e) does not allow the use of program funds to support the development of standards. As specified in requirement (e), grantees must ensure that funds awarded under the EAG program are not used to support the development of standards. This prohibition includes the development of early learning and development standards under the KEA priority or standards under any other priority.

However, there are likely alignment activities that will be beneficial or necessary in order to develop a KEA that do not constitute standards development and would likely be

allowable under the EAG program. For example, an EAG grantee would not be allowed to use EAG funds to support an analysis of alignment of early learning and development standards across States in a consortium. However, a grantee would be allowed to use EAG funds to study the alignment of a KEA being developed or enhanced under an EAG to the early learning and development standards, and use funds to make revisions to the early learning and development standards if such a study indicates some revisions to the standards would strengthen the standards with respect to the assessment. In addition, an applicant may propose standards development activities as part of an EAG project, if the applicant also clearly provides for supporting those activities with non-EAG program funds.

We understand the commenters' concern that time be provided for a consortium to adopt a set of early learning and development standards that, for at least the year prior to kindergarten entry, are substantially identical across all States in the consortium. We will take this consideration into account when establishing periods of performance for grant competitions.

*Changes:* None.

#### **Requirements**

*Comment:* One commenter encouraged the appropriate sharing of information from KEAs in ways that protect the privacy of individual children and families.

*Discussion:* We appreciate the importance of protecting the privacy of individual children and families and believe the KEA priority, as written, adequately provides for such protections. States must follow Federal, State, and local privacy laws when reporting the results of any KEA and incorporating such data into a State's SLDS and early learning data system. We highlight these legal obligations by including them in the KEA priority. In addition, existing program requirement (c) requires that a grantee under this program develop a strategy to make sure student-level data that result from any assessments or other assessment-related instruments developed under a grant from this competition are available on an ongoing basis for research. Part of this strategy must be a plan to comply with Federal privacy laws, including the Family Educational Rights and Privacy Act (FERPA), as well as with State and local privacy laws.

*Changes:* None.

#### **Definitions**

*Comment:* One commenter suggested adding the phrase "reasonable and attainable expectations" to part (a) of the definition of early learning and development standards.

*Discussion:* We have used the same definition of early learning and development standards as that used in the RTT-ELC program. We have found that it meets the needs of the early learning field, and we believe early learning and development standards that meet our definition reflect reasonable and set attainable expectations for children and decline to make any changes.

*Changes:* None.

*Comment:* One commenter applauded us for basing the essential domains of school readiness definition on the recommendations of the National Education Goals Panel.

*Discussion:* We are pleased to use this definition as a consistent base for continuing the work already begun in the early learning community.

*Changes:* None.

*Comment:* One commenter suggested that the phrase "social and emotional" should be added to the definition of "screening measures." Another commenter suggested that the word "linguistically" be added to the phrase "age and developmentally" appropriate in the definition of "screening measures."

*Discussion:* The definition of "screening measures" is the same as that used for the RTT-ELC program. The definition of "screening measures" includes instruments that are used to identify children who may need follow-up services to address developmental, learning, or health needs in, at a minimum, a number of areas, including "behavior health," which we believe is inclusive of "social and emotional." Further, in the definition of "comprehensive early learning system" we specify that this "means a coordinated system of multiple assessments, each of which is valid and reliable for its specified purpose and for the population with which it will be used." For the assessment to be valid and reliable for the population it must include linguistically appropriate measures. We believe the definition addresses the commenters' concerns.

*Changes:* None.

*Comment:* One commenter suggested including a definition of "universal design." The commenter suggested using the definition of universal design for learning in the Higher Education Act.

*Discussion:* We agree a definition is necessary. We believe that assessments

incorporating universal design (as defined in this notice) principles increase the chance of obtaining valid test results for all students, including young children with disabilities or who may have disabilities not yet recognized because of the lack of educational experience or prior testing or evaluation. A fundamental principle of universal design in assessment is the precise definition of the competencies (test constructs) to be measured so as to minimize the effects of any factors not related to these competencies. Although the test constructs must be clearly defined, universal design permits the design, mode of presentation, and setting in which an assessment is given to vary according to the needs of students, so that the requirements for accommodations may be reduced. For very young children who have taken a unique initial assessment, the need for accommodations will not have been documented. Children with recognized disabilities should be provided accommodations to allow them to demonstrate their competencies, including accommodations or allowances in observational assessments.

We have included a definition of "universal design" in the priority. The commenter referred to the definition in the Higher Education Act, which was adapted from the Assistive Technology Act of 1998. However, the language used in the KEA priority, requirement, definitions, and selection criteria refers to "universal design," not "universal design for learning," as used in the Higher Education Act. Therefore, we have added the definition of "universal design" taken from section 3 of the Assistive Technology Act of 1998.

*Changes:* We have added the definition for "universal design" from the Assistive Technology Act of 1998, which reads: "The term 'universal design' means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies."

#### **Selection Criteria**

*Comment:* Many commenters wrote about professional development for teachers. Several commenters asked that professional development be required by the KEA priority. A couple of commenters suggested that data resulting from the KEA be used to direct professional development. One

commenter pointed out that the target audience for professional development should be kindergarten teachers and education providers in the years before and after kindergarten. One commenter asked if funds from an EAG award involving the KEA priority could be used for professional development. Multiple commenters recommended that an EAG award involving the KEA priority provide for the use of funds to support professional development for teachers on interpreting and using results. Finally, one commenter applauded our inclusion of selection criterion (e)(1).

*Discussion:* Selection criterion (e)(1) asks applicants to provide a plan for supporting teachers and administrators in implementing the assessments and for developing, in an ongoing manner, their professional capacity to use the assessments and results to inform and improve instructional practice. Pursuant to these selection criteria, applicants may include a plan to use EAG funds to support professional development on the implementation of the KEA and the use of the data. As a result, we decline to make changes or add language to the priority.

*Changes:* None.

*Comment:* One commenter suggested that we revise the KEA priority to require alignment between preschool and kindergarten assessments. Another commenter suggested that we add language to both the KEA priority and the selection criteria that would support alignment of preschool and kindergarten, as well as student transition from preschool to kindergarten.

*Discussion:* Assessments given in preschool ideally are aligned with States' high-quality early learning and development standards (as defined in this notice). We believe that requiring such alignment, however, is beyond the scope of the KEA priority. We note that the KEA priority requires KEAs developed or enhanced under it to be aligned with States' early learning and development standards, which are to be aligned with the States' kindergarten through third grade academic content standards in, at a minimum, early literacy and mathematics. We note that paragraph (b)(1) of the KEA priority requires that a KEA developed or enhanced under this priority be designed to be a component of a State's student assessment system including a State's comprehensive early learning assessment system for each State included in an application in which a comprehensive early learning assessment system exists. We agree with the commenters that this alignment

between preschool and kindergarten assessments must be more thoroughly thought through by applicants. Accordingly, we have added a factor to selection criterion (h) to further address this issue.

*Changes:* We have added (h)(10) to the KEA design selection criteria, that asks applicants to describe how a proposed KEA would be included as a component of a State's student assessment system, including a State's comprehensive early assessment system (as defined in this notice) for each State included in an application in which a comprehensive early learning assessment system exists.

*Comment:* A couple of commenters advocated for the inclusion of early childhood educators' input in the design of the KEA. One commenter specifically recommended requiring the involvement of the Early Learning Advisory Councils, which were established in the Head Start Act of 2007. One commenter stated that stakeholders should be engaged in the continuous review of and evaluation of the SLDS, the early learning comprehensive assessment system, and the early learning and development standards.

*Discussion:* The KEA development plan selection criterion (i)(1)(ii) asks applicants to list the types of personnel involved in each development phase and process. We agree that it would be best practice to include Early Learning Advisory Councils and other early learning coordinating bodies and resources as appropriate; however, we do not want to be overly prescriptive in this area. Though we do not want to prescribe for States the groups that must be involved in KEA development, we revised the list of examples of personnel in selection criterion (i)(1)(ii) to include "early learning practitioner" and "experts in early learning and development standards." We also included "Early Learning Advisory Councils" as an example of a key stakeholder in the same list of examples.

*Changes:* We have revised selection criterion (i)(1)(ii) to include references to "early learning practitioners," "experts in early learning and development standards," and "Early Learning Advisory Councils."

*Comment:* We received a number of comments about families' roles in the development, interpretation, and use of results from a KEA. One commenter suggested that the KEA priority require the information resulting from the KEA be provided to families in an accessible and transparent format, such as sharing information resulting from the KEA to families who do not speak or read

English. A couple of commenters suggested a grantee be required to do more than just provide information to the families of the children assessed but engage the families in using the data and in developing the KEA. One commenter recommended that we expand this priority to include family engagement in preparing children for school readiness.

*Discussion:* We agree with the commenters that providing KEA results to families is important in supporting children's learning and development. We also agree that information generated by the assessments should be accessible to families whose first language is not English. That is why selection criterion (h)(9) provides for the reports and interpretation guides that will be produced based on the assessments: the key data the guide will present; the guides' intended use; the guides' target audience (e.g., families, teachers, administrators, policymakers, and other stakeholders); and how presentation of the guide will be in an understandable and uniform format and, to the extent practicable, in a language that families can understand. With regard to the suggestion to include family engagement in the priority, the Department has provided in selection criterion (h)(4)(v) that we will consider how the KEA will produce data and information that may be used to provide families with information about their children's learning and development based on the essential domains of school readiness and engage families in the early learning of their children. Finally, we have included "families" as an example of key stakeholders in the types of personnel involved in each development phase and process of the KEA in selection criterion (i)(1)(ii).

*Changes:* We have added "families" as an example of key stakeholders involved in each development phase and process of the KEA in selection criterion (i)(1)(ii).

## Funding

*Comment:* One commenter asked for clarification on whether EAG funds may be used to strengthen standards or to work on standards alignment.

*Discussion:* The purpose of the EAG program, under section 6112 of the ESEA, is the development and enhancement of assessment instruments, not standards development. As specified in requirement (e), grantees must ensure that funds awarded under the EAG program are not used to support the development of standards. This prohibition includes the development of early learning and development

standards under the KEA priority or standards under any other priority. However, there are likely alignment activities that will be beneficial or necessary in order to develop a KEA that do not constitute standards development and would likely be allowable under the EAG program. For example, an EAG grantee would not be allowed to use EAG funds to support an analysis of alignment of early learning and development standards across States in a consortium prior to adoption. However, a grantee would be allowed to use EAG funds to study the alignment of a KEA being developed or enhanced under an EAG to the early learning and development standards. A grantee could also use funds to make revisions to the early learning and development standards if such a study indicates some revisions to the standards would strengthen the standards with respect to alignment to the assessment.

*Changes:* None.

*Final Priorities:*

*Priority 1—Kindergarten Entry Assessment.*

To meet this priority, an applicant must propose a project that supports the development or enhancement of a KEA that meets the following requirements:

(a) Purpose. The KEA must—

(1) Provide, at kindergarten entry, valid, reliable, and fair information on each child's learning and development across the essential domains of school readiness (as defined in this notice) with each domain making a significant contribution to the overall comprehensive score.

(2) Not be used—

(i) To prevent children's entry into kindergarten; or

(ii) For purposes for which it has not been validated or as a single measure for high-stakes decisions.

(b) Design. The KEA must—

(1) Be a component of a State's student assessment system, including, a State's comprehensive early learning assessment system (as defined in this notice) for the applicant State and, if the State applies as part of a consortium, each State in the consortium, in which a comprehensive early learning assessment system exists;

(2) Be aligned with a set of early learning and development standards (as defined in this notice);

(3) Measure the full range of learning and development across the essential domains of school readiness (as defined in this notice);

(4) Measure children's learning and development against a set of levels of performance where the levels of performance encompass descriptors of what a child knows and is able to do for

each level, are common statewide, and, if the applicant State applies on behalf of a consortium, are common across States in the consortium;

(5) Provide a summative assessment of each child's learning and development at kindergarten entry across the essential domains of school readiness (as defined in this notice);

(6) Be capable of assessing all children in the applicant State, and if the State applies as part of a consortium, all children in the consortium;

(7) Be developed consistent with universal design (as defined in this notice) principles to be accessible to all children, including children with disabilities or developmental delays and English learners (as defined in this notice);

(8) As needed, provide appropriate accommodations and supports for children with disabilities or developmental delays and English learners (as defined in this notice) (e.g., augmentative communication devices and assistive technologies);

(9) Be administered soon enough after a child's enrollment into kindergarten to achieve the purposes for which the assessment was developed, including the purpose specified in paragraph (a) of this priority;

(10) Use multiple methods (e.g., performance tasks, selected responses, observational ratings) to measure children's performance and development;

(11) Be administered by a trained assessor or assessors;

(12) Be designed to incorporate technology in the collection of student data and in the process of assessing children's performance on learning and development tasks; and

(13) Be cost-effective to administer, maintain, and enhance during and after the project period.

(c) Technical Quality. The KEA must measure children's learning and development at kindergarten entry in ways that—

(1) Are consistent with nationally recognized professional and technical standards for assessment;

(2) Are consistent with current research and best-practices in the field, and the recommendations of the National Research Council report on early childhood assessments;<sup>2</sup>

<sup>2</sup> National Research Council. (2008). *Early Childhood Assessment: Why, What, and How*. Committee on Developmental Outcomes and Assessments for Young Children, C.E. Snow and S.B. Van Hemel, Editors. Board on Children, Youth, and Families, Board on Testing and Assessment, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. Available at [www.nap.edu/catalog.php?record\\_id=12446](http://www.nap.edu/catalog.php?record_id=12446).

(3) Are valid, reliable, fair, and appropriate for their intended purposes;

(4) Provide a valid, reliable, and fair measure across the performance spectrum of each child's learning and development at kindergarten entry, including children with disabilities or developmental delays and English learners (as defined in this notice).

(d) Data. The KEA must produce data and information that—

(1) Can guide individualized instruction for children enrolled in kindergarten and throughout the school year;

(2) Can be reported to and easily understood and used by various stakeholders, including families, teachers, administrators, early learning providers, and policy-makers, consistent with requirements of Federal, State, and local privacy laws; and

(3) Can be incorporated into a State's longitudinal data system (SLDS) and a State's early learning data system (if it is separate from an SLDS), consistent with requirements of Federal, State, and local privacy laws.

(e) Compatibility. The KEA must use approaches to assessment design and implementation (e.g., use of technology, assessment administration, scoring, and reporting) that facilitate the integration of the KEA with a State's student assessment system, including a State's comprehensive early learning assessment system (as defined in this notice) for each State included in an application in which a comprehensive early learning assessment system exists.

*Priority 2—Early Learning*

*Collaborative Efforts Among States.*

To meet this priority, an applicant must—

(a) Include a minimum of three States in the consortium and propose developing or enhancing a common KEA for those States. An applicant will receive a greater number of points under this priority based on the extent to which it includes a greater number of States in its consortium;

(b) Adopt or propose a plan for all States in the consortium to adopt a set of early learning and development standards (as defined in this notice) that, for at least the year prior to kindergarten entry, are substantially identical across all States in the consortium;

(c) Adopt or propose a plan for all States in the consortium to adopt the common KEA; and

(d) Provide in the memorandum of understanding or other binding agreement executed by each State in the consortium an assurance that, as a condition of remaining in the consortium, the State will, no later than

the end of the project period, adopt the common KEA developed under this priority and the set of early learning and development standards (as defined in this notice) upon which the KEA is based. *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 Requirement:* The Assistant Secretary for Elementary and Secondary Education establishes the following requirement for the Enhanced Assessment Grants program. We may apply this requirement in any year in which a competition for program funds is held. An eligible applicant awarded a grant under this program must:

(i) Adopt and implement any assessments, other assessment-related instruments developed or enhanced under the proposed project, and any standards upon which they are based. In addition, if the applicant State applies as, or on behalf of a consortium of States, it must provide in any memorandum of understanding or other binding agreement executed by each State in the consortium an assurance that, to remain in the consortium, the State will adopt and implement any assessments or other assessment-related instruments developed or enhanced under the proposed project and any standards upon which they are based by the end of the project period.

*Final Definitions:* The Assistant Secretary for Elementary and Secondary Education establishes the following definitions for the Enhanced Assessment Grants program. We may apply one or more of these definitions

in any year in which a competition for program funds is held.

*Comprehensive early learning assessment system* means a coordinated and comprehensive system of multiple assessments, each of which is valid and reliable for its specified purpose and for the population with which it will be used, that organizes information about the process and context of young children's learning and development in order to help teachers make informed instructional and programmatic decisions and that conforms with the recommendations of the National Research Council report on early childhood assessments<sup>3</sup> by including, at a minimum: (a) Screening measures (as defined in this notice); (b) formative assessments; (c) measures of environmental quality (as defined in this notice); (d) measures of the quality of adult-child interactions (as defined in this notice); and (e) a kindergarten entry assessment (KEA).

*Early learning and development standards* means a set of expectations, guidelines, or developmental milestones that—

(a) Describe what all children from birth to kindergarten entry should know and be able to do and their dispositions toward learning;

(b) Are appropriate for each age group (e.g., infants, toddlers, and preschoolers); for English learners (as defined in this notice); and for children with disabilities or developmental delays;

(c) Cover all essential domains of school readiness (as defined in this notice);

(d) Are universally designed and developmentally, culturally, and linguistically appropriate; and

(e) Are aligned with the State's kindergarten through third grade academic standards in, at a minimum, early literacy and mathematics.

*English learner* means a child, including a child aged three and younger, who is an English learner consistent with the definition of a child who is "limited English proficient," as applicable, in section 9101(25) of the Elementary and Secondary Education Act of 1965, as amended.

*Essential domains of school readiness* means the domains of language and literacy development, cognition and

general knowledge (including early mathematics and early scientific development), approaches toward learning, physical well-being and motor development (including adaptive skills), and social and emotional development.

*Formative assessment* (also known as a classroom-based or ongoing assessment) means assessment questions, tools, and processes—

(a) That are—

(1) Specifically designed to monitor children's progress;

(2) Valid and reliable for their intended purposes and their target populations; and

(3) Linked directly to the curriculum; and

(b) The results of which are used to guide and improve instructional practices.

*Measures of environmental quality* means valid and reliable indicators of the overall quality of the early learning environment.

*Measures of the quality of adult-child interactions* means the measures obtained through valid and reliable processes for observing how teachers and caregivers interact with children, where such processes are designed to promote child learning and to identify strengths and areas for improvement for early learning professionals.

*Screening measures* means age and developmentally appropriate, valid, and reliable instruments that are used to identify children who may need follow-up services to address developmental, learning, or health needs in, at a minimum, the areas of physical health, behavioral health, oral health, child development, vision, and hearing.

*Universal design* means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies. This meaning is given to the term in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

*Final Selection Criteria:* The Assistant Secretary for Elementary and Secondary Education establishes the following selection criteria for the Enhanced Assessment Grant program. We may apply one or more of these selection criteria in any year in which a competition for program funds is held.

(h) *Kindergarten entry assessment design.*

The Secretary reviews each application to determine the extent to which the design of the eligible

<sup>3</sup> National Research Council (2008). *Early Childhood Assessment: Why, What, and How*. Committee on Developmental Outcomes and Assessments for Young Children, C.E. Snow and S.B. Van Hemel, Editors. Board on Children, Youth, and Families, Board on Testing and Assessment, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. Available at: [www.nap.edu/catalog.php?record\\_id=12446](http://www.nap.edu/catalog.php?record_id=12446).

applicant's proposed assessment is innovative, feasible, and consistent with the theory of action. In determining the extent to which the design has these attributes, the Department will consider—

(1) How the assessment will measure child performance and development against early learning and development standards (as defined in this notice);

(2) The steps proposed for ensuring that the assessment is aligned with the specific early learning and development standards on which the assessment is based;

(3) The extent to which data from the assessment can be incorporated into a State's longitudinal data system (SLDS) and a State's early learning data system (if it is separate from an SLDS) through the use of or connection to common data elements and definitions, such as the Common Education Data Standards (), consistent with requirements of Federal, State, and local privacy laws;

(4) How the KEA will produce data and information which may be used to—

(i) Guide individualized instruction for children enrolled in kindergarten and throughout the school year;

(ii) Identify teacher professional development and support needs;

(iii) Support programmatic decision-making at the school level for informing teaching, learning, and program improvement;

(iv) Support State and local agencies in effectively targeting investments for early learning and development systems serving children in the years before kindergarten; and

(v) Provide families with information about their children's learning and development based on the essential domains of school readiness (as defined in this notice) and engage them in the early learning of their children; and

(5) The number and types of items (e.g., performance tasks, selected responses, observational ratings) and the distribution of item types within the assessment, including the variation of the items and the rationale for using these item types and their distributions;

(6) The assessment's administration mode(s) (e.g., direct, observation, or administered using an electronic device), and the rationale for the mode(s);

(7) The methods for scoring child performance on the assessments, the estimated turnaround times for scoring, and the rationale(s) for these;

(8) The applicant's plan to set levels of performance for the assessment, where the levels of performance encompass descriptors of what a child knows and is able to do for each level,

and for how the applicant will meaningfully engage and solicit stakeholder input on the development of levels of performance that are valid, reliable, and fair for children's learning and development;

(9) The reports and interpretation guides that will be produced based on the assessments, and for each report and interpretation guide: the key data it will present; its intended use; its target audience (e.g., families, teachers, administrators, policymakers, and other stakeholders); and how its presentation will be in an understandable and uniform format and, to the extent practicable, in a language that families can understand; and;

(10) How the proposed KEA will be a component of a State's student assessment system, including, a State's comprehensive early learning assessment system (as defined in this notice) for each State included in an application in which a comprehensive early learning assessment system exists.

(i) *Kindergarten entry assessment development plan.*

The Secretary reviews each application to determine the extent to which the eligible applicant's plan for developing the proposed KEA will ensure that the assessments are ready by the end of the grant period for wide-scale administration in a manner that is timely, cost-effective, and consistent with the proposed design and incorporates a process for ongoing feedback and improvement. In determining the extent to which the assessment development plan has these attributes, the Department will consider—

(1)(i) The approaches for developing assessment items (e.g., evidence-centered design, universal design (as defined in this notice)), the rationale for using those approaches, and the development phases and processes to be implemented consistent with the approaches;

(ii) The types of personnel involved in each development phase and process (e.g., early learning practitioners, experts in early learning and development, expert in early learning and development standards, experts in the assessment of young children, content experts, assessment experts, experts in assessing children with disabilities or developmental delays and English learners, psychometricians, cognitive scientists, and other key stakeholders, including families and Early Learning Advisory Councils);

(2) The approach and strategy for designing and developing accommodations, accommodation policies, and methods for standardizing

the use of those accommodations for children with disabilities or developmental delays and English learners (as defined in this notice);

(3) The approach and strategy for ensuring scalable, accurate, and consistent scoring of items, including the approach and moderation system for any items not scored by machine and the extent to which teachers are trained and involved in the administration and scoring of assessments;

(4) The approach and strategy for developing the reporting system; and

(5) The overall approach to quality control, maintaining the integrity of the assessment process, field-testing assessment items, accommodations, scoring systems, and reporting systems, including, with respect to assessment items and accommodations, the use of representative sampling of all types of child populations, taking into particular account the full range of learning and development across the essential domains of school readiness (as defined in this notice), and including children with disabilities or developmental delays and English learners (as defined in this notice).

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 one or more of these priorities, 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 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 these final priorities, requirement, definitions, and selection criteria 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 have determined, also, 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.

*Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an

intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

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

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

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. 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: May 17, 2013.

**Deborah S. Delisle,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2013-12216 Filed 5-22-13; 8:45 am]

**BILLING CODE 4000-01-P**