

■ 2. Add § 334.285 to read as follows:

**§ 334.285 York River and the Naval Weapons Station Yorktown-Cheatham Annex, Yorktown, Virginia; danger zone.**

(a) *The area.* The waters within an area beginning at mean high water on the shore at the facility located at latitude 37°17'33.10" N, longitude 76°36'19.06" W; then northeast to a point in the York River at latitude 37°18'36.65" N, longitude 76°34'39.01" W; thence south, southeast to latitude 37°17'59.37" N, longitude 76°34'13.65" W; then southwest to a point on the shore located at latitude 37°17'26.75" N, longitude 76°36'14.89" W.

(b) *The regulations.* (1) Vessels and persons may transient this area at any time. No vessel or persons shall anchor, fish or conduct any waterborne activities within the danger zone established in accordance with this regulation any time live firing exercises are being conducted.

(2) Anytime live firing is being conducted, the person or persons in charge shall display a red flag from a conspicuous location along the shore to signify the range is active and post lookouts to ensure the safety of all vessels passing through the area. At night, red lights will be displayed in lieu of flags. No firing activities shall be conducted when the visibility is less than the maximum range of the weapons being used at the facility.

(3) Recreational and commercial activities may be conducted in this area anytime the range is inactive.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, Naval Weapons Station, Yorktown, or such agencies as he or she may designate.

Dated: September 10, 2013.

Approved:

**James R. Hannon,**

*Chief, Operations and Regulatory, Directorate of Civil Works.*

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**DEPARTMENT OF EDUCATION**

**34 CFR Part 300**

[DOCKET ID ED-2012-OSERS-0020]

RIN 1820-AB65

**Assistance to States for the Education of Children With Disabilities**

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend regulations under Part B of the Individuals with Disabilities Education Act (IDEA or Act). These regulations govern the Assistance to States for the Education of Children with Disabilities program. The Secretary seeks public comment on proposed amendments to the regulation regarding local maintenance of effort to clarify existing policy and make other related changes regarding: The compliance standard; the eligibility standard; the level of effort required of a local educational agency (LEA) in the year after it fails to maintain effort under the IDEA; and the consequence for a failure to maintain local effort. The Secretary also seeks comment on whether States and LEAs or other interested parties think these proposed amendments will be helpful in increasing understanding of, and ensuring compliance with, the current local maintenance of effort requirements. Specifically, the Secretary seeks comment from States and LEAs to identify where they are experiencing the most problems in implementing the maintenance of effort requirements.

**DATES:** We must receive your comments on or before December 2, 2013.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket is available on the site under "Are you new to the site?"
- *Postal Mail, Commercial Delivery, or Hand Delivery:*

If you mail or deliver your comments about these proposed regulations, address them to Mary Louise Dirrigl, U.S. Department of Education, 400 Maryland Avenue SW., room 5103, Potomac Center Plaza, Washington, DC 20202-2600.

*Privacy Note:* The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:**

Mary Louise Dirrigl, U.S. Department of Education, 400 Maryland Avenue SW., room 5103, Potomac Center Plaza, Washington, DC 20202-2600. Telephone: (202) 245-7605.

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

**SUPPLEMENTARY INFORMATION:**

**Invitation To Comment**

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to begin with any general comments and then to identify clearly the specific section or sections of the proposed regulations that your comments address and to arrange your comments in the same order as the proposed regulations.

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

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You also may inspect the comments in person in room 5104, Potomac Center Plaza, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

**Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

**Background***34 CFR Part 300 (Part B)*

The regulations in 34 CFR part 300 implement Part B of the IDEA. Under Part B, the Department provides grants to States, outlying areas, and freely associated States, as well as funds to the Department of the Interior, to assist them in providing special education and related services to children with disabilities. There are four key purposes of the Part B regulations: (1) To ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; (2) to ensure that the rights of children with disabilities and their parents are protected; (3) to assist States, localities, educational service agencies, and Federal agencies in providing for the education of all children with disabilities; and (4) to assess and ensure the effectiveness of efforts to educate children with disabilities.

Part B funding is intended to assist States and LEAs in meeting their financial obligation to provide special education and related services to eligible children with disabilities. In order to receive funds, States must apply to the Secretary, and LEAs must apply to their States. The statute and its regulations impose conditions on Part B grants, including a maintenance of State financial support provision and a maintenance of effort (MOE) provision for LEAs. This NPRM focuses only on proposed amendments to the LEA MOE provision.

*The LEA MOE Requirement*

Under section 613(a)(2)(A)(iii) of the IDEA, except as provided in section 613(a)(2)(B) and (C), Part B funds provided to an LEA must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA below the level of those expenditures for the preceding fiscal year. This provision is repeated in the Part B regulations in § 300.203(a).

*Standard for Determining LEA Eligibility.* The regulations expand on the statutory requirement by adding an LEA MOE standard that State educational agencies (SEAs) must apply when determining whether an LEA is eligible for Part B funds. The eligibility standard is in § 300.203(b). Under this provision, the SEA must determine whether the LEA has budgeted for the education of children with disabilities at least the same total or per capita amount of local, or State and local, funds as it spent during the most recent prior year for which there is information available. In other words, the standard for determining eligibility for funds described in § 300.203(b) generally compares the amount budgeted for the year for which the LEA is applying for Part B funds to the amount expended in the most recent prior year for which data are available.

If an LEA has been meeting the MOE standard with State and local funds and in a subsequent year will not be able to budget at least as much in State and local funds as it spent in the most recent prior year for which data are available, the LEA must budget at least as much in local funds as it spent in local funds when the LEA last met the MOE standard using local funds only. (§ 300.203(b)(2))

Using an LEA's budget as the measure of eligibility is necessary because LEAs apply for, and SEAs generally determine their eligibility for, Part B funding for the upcoming school year (SY) in the spring or early summer of the current year, well before expenditure data for that current year are available.

*Auditing and Compliance Standard.* SEAs use a different standard when determining whether an LEA complied with the requirement to maintain effort. When an SEA examines an LEA's compliance with the MOE requirement, such as in an audit or compliance review, the amount of local, or State and local, funds expended for the education of children with disabilities in a year generally determines the level of fiscal "effort" that an LEA must maintain in the following year. (*See* § 300.203(a).)

*Exceptions to the MOE Requirements.* Under section 613(a)(2)(B) and (C) of the IDEA, certain exceptions and adjustments to the basic MOE requirements apply. Under section 613(a)(2)(B) and its implementing regulations in § 300.204 (exceptions for local changes), an LEA may reduce its required level of expenditures because of the voluntary departure of special education personnel, a decrease in the enrollment of children with disabilities, the termination of the obligation of the agency to provide an exceptionally costly program of special education to a child with a disability, or the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

Under section 613(a)(2)(C) and its implementing regulations in § 300.205 (Federal increase), an LEA may adjust its expenditures in fiscal years when the Part B, section 611 allocation received by the LEA exceeds the amount the LEA received for the previous fiscal year. In those years, under the conditions specified in section 613(a)(2)(C)(ii), (iii), and (iv), the LEA may reduce its required level of expenditures by not more than 50 percent of the amount by which the LEA's current Part B section 611 grant exceeds its Part B section 611 grant in the prior year. If, when reviewed retrospectively, and after making allowances for any of the exceptions and adjustments described in section 613(a)(2)(B) and (C), the LEA maintained or exceeded its level of local, or State and local, expenditures for the education of children with disabilities from year to year, either in total or per capita, then the LEA has met the MOE requirement.

The following chart and explanations illustrate how an LEA could meet local MOE under current §§ 300.203 through 300.205 over a period of years:

Numbers are dollars in 10,000s budgeted and expended for the education of children with disabilities

(\* Denotes how the LEA met the MOE requirement, i.e., through local funds or State and local funds)

**HOW AN LEA MEETS LOCAL MOE OVER A PERIOD OF YEARS**

Fiscal year (actual expenditures)	Local funds	State funds	State and local funds	Reductions in Expenditures pursuant to § 300.204 or § 300.205
Covering SY 2006–2007 .....	* 110	190	300	
Covering SY 2007–2008 .....	70	210	* 280	20 reduction permissible under § 300.204(a).
Covering SY 2008–2009 .....	40	230	* 270	10 reduction permissible under § 300.204(c).
Covering SY 2009–2010 .....	40	240	* 280	
Covering SY 2010–2011 .....	60	220	* 280	
Covering SY 2011–2012 .....	* 80	150	230	
Covering SY 2012–2013 .....	* 75	160	235	5 reduction permissible under § 300.205.

SY2006–2007: Assumes 110 is the amount of local funds expended in the prior year.

SY2007–2008: The LEA met MOE based on the combination of State and local funds, after a reduction of 20 permissible under § 300.204(a) based on voluntary departures of special education personnel. The LEA did not meet MOE based on local funds only.

SY2008–2009: The LEA met MOE based on the combination of State and local funds, after a reduction of 10 permissible under § 300.204(c) because the LEA was no longer responsible for a particularly costly program of special education to a child who moved out of the jurisdiction. The LEA did not meet MOE based on local funds only.

SY2009–2010: The LEA met MOE based on the combination of State and local funds. The LEA did not meet MOE based on local funds only, because the comparison is to the last year the LEA met MOE based on local funds only (06–07), less any reductions taken under §§ 300.204 (exceptions for local changes) and 300.205 (Federal increase).

SY2010–2011: The LEA met MOE based on the combination of State and local funds. The LEA did not meet MOE based on local funds only, because the comparison is to the last year the LEA met MOE based on local funds only (2006–2007), less any reductions taken under §§ 300.204 (exceptions for local changes) and 300.205 (Federal increase).

SY2011–2012: The LEA met MOE based on local funds only (the last year the LEA met MOE based on local funds only, 2006–2007, less reductions taken in 2007–2008 and 2008–2009 permitted under § 300.204 (exceptions for local changes)), but the LEA did not meet MOE based on the combination of State and local funds.

SY2012–2013: The LEA met MOE based on local funds only (the last year the LEA met MOE based on local funds only, 2011–2012, less a reduction permitted under § 300.205 (Federal increase)).

### Significant Proposed Regulations

*Summary of proposed changes.* We are proposing in this NPRM to amend current § 300.203 by—

(1) Clarifying the compliance standard. We propose to—

- Revise the heading of § 300.203(a) to clarify that this section addresses the compliance standard an SEA must use when determining whether an LEA has complied with the requirement to maintain effort;

- Add language to § 300.203(a) to clarify how an LEA meets the standard in any fiscal year, based on a

combination of State and local funds or local funds only; and

- Add language to § 300.203(a) to specify how an LEA meets the standard in any fiscal year based on local funds only if the LEA has not previously met the MOE compliance standard based on local funds only;

(2) Clarifying the eligibility standard. We propose to—

- Revise the heading of § 300.203(b) to clarify that this section addresses the eligibility standard an SEA must use when determining whether an LEA is eligible for Part B funds;

- Revise 300.203(b)(1) to replace the phrase “most recent prior year” with the phrase “most recent fiscal year” to conform with the remaining changes proposed in this section;

- Revise the language in § 300.203(b)(2) to clarify that if an LEA relies on local funds only to meet the eligibility standard in § 300.203(b)(1)(i), the LEA must budget at least as much in local funds for the education of children with disabilities, either in total or per capita, as the amount it spent in local funds for that purpose in the most recent fiscal year for which information is available and for which the LEA met the MOE compliance standard based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds;

- Add language to § 300.203(b) to specify that if an LEA relies on local funds only to meet the eligibility standard in § 300.203(b)(1)(i) and has not previously met the MOE compliance standard based on local funds only, the LEA must budget at least as much in local funds for the education of children with disabilities, either in total or per capita, as the amount it spent in local funds for that purpose in the most recent fiscal year for which information is available; and

- Move current § 300.203(b)(3) to § 300.203(a) and to modify the language because current § 300.203(b)(3) addresses the compliance standard, not the eligibility standard;

(3) Specifying the MOE requirements for an LEA that fails to maintain effort in a prior year. We propose to specify in § 300.203(c) that when an LEA fails to maintain its level of expenditures required by § 300.203(a), the level of expenditures required in any fiscal year beginning on or after July 1, 2014, is the amount that would have been required in the absence of that failure and not the LEA’s reduced level of expenditures; and

(4) Specifying the consequences for an LEA’s failure to maintain effort. We propose in § 300.203(d) the consequence for an LEA that fails to maintain its level

of expenditures for the education of children with disabilities. The SEA would be liable in a recovery action under 20 U.S.C. 1234a to return to the Department, using non-Federal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures.

The economic downturn in recent years has hurt many State and local treasuries and generated a number of questions about the application of the Part B LEA MOE requirements. The Department has provided guidance to States and LEAs about the LEA MOE provisions in Part B, through multiple means such as policy letters, webinars, and conference presentations. However, the Department continues to receive questions on these complex requirements.

Through fiscal monitoring and reviewing audit findings, the Office of Special Education Programs (OSEP) has found that a significant lack of understanding regarding the local MOE requirements persists. For example, through our fiscal monitoring OSEP has determined that many SEAs have not allowed LEAs to use all four comparisons (State and local total or per capita or local only total or per capita) to demonstrate compliance with the LEA MOE requirements. This could result in an SEA making a finding of noncompliance and returning funds to the Department without giving LEAs the opportunity to demonstrate compliance using all four comparisons. Other States are not applying the exceptions in § 300.204 correctly or are not applying them at all. Finally, some States have not understood the difference between the eligibility standard and the compliance standard and may only be evaluating the eligibility standard and never determining actual LEA compliance with the LEA MOE provisions. As noted previously, the Secretary seeks comment from States and LEAs to identify where they are experiencing the most problems in implementing the maintenance of effort requirements and whether these proposed regulations will help to address those problems.

Many parties expressed concern about our June 16, 2011, response to a question from Dr. Bill East about what level of expenditures an LEA must maintain in a year following a year in which the LEA fails to maintain its required level of expenditures, and the consequence for an LEA’s failure to maintain effort in the prior year.

After further review, and as indicated in our April 4, 2012, letter to Ms. Kathleen Boundy ([www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep-04-](http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep-04-)

04-2012.pdf), we have withdrawn our interpretation as expressed in the letter to Dr. East.

In the letter to Ms. Boundy, we noted that

LEAs, at a minimum, should not reduce their level of financial support for the education of children with disabilities, except as permitted in section 613(a)(2)(B) and (C), so that they can continue to meet their obligations to provide the special education and related services that children with disabilities need to receive a free appropriate public education.

In order to ensure that all parties involved in implementing, monitoring, and auditing LEA compliance with MOE requirements understand the rules to apply, we are instituting this regulatory action. We are proposing to amend the regulations to clarify: (1) The compliance standard; (2) the eligibility standard; (3) the level of financial support required in a subsequent year if an LEA fails to maintain effort; and (4) the consequences for failure to maintain effort.

*Compliance standard.* The Department continues to receive questions on the compliance standard in current § 300.203(a). This section states that except as provided in §§ 300.204 (exceptions for local changes) and 300.205 (Federal increase), funds provided to an LEA under Part B of the IDEA must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

This does not conform to the eligibility standard in § 300.203(b). The eligibility standard provides an SEA flexibility for the purpose of determining if an LEA meets the eligibility standard by allowing an LEA to budget for the education of children with disabilities at least the same total or per capita amount from either the combination of State and local funds or local funds only as the LEA spent for that purpose from the same source for the most recent prior year for which information was available. Therefore, we are proposing to clarify in § 300.203(a)(2)(i) that an SEA may determine that an LEA meets the compliance standard if the LEA does not reduce the amount of State and local funds expended for the education of children with disabilities, either in total or per capita, below the amount of State and local funds expended for that purpose in the preceding fiscal year, except as provided in §§ 300.204 (exceptions for local changes) and 300.205 (Federal increase).

In addition, under the eligibility standard in current § 300.203(b)(2), if an LEA relies on local funds to establish eligibility, the fiscal year that determines the amount of local funds the LEA must budget for the education of children with disabilities is the most recent fiscal year for which information is available and in which the LEA established compliance using local funds only. We are proposing to clarify in § 300.203(a)(2)(ii) that an SEA may determine that an LEA meets the compliance standard if the LEA does not reduce the amount of local funds expended for the education of children with disabilities, either in total or per capita, below the amount of local funds expended for that purpose in the most recent fiscal year for which the LEA met the MOE compliance standard based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds, except as provided in §§ 300.204 (exceptions for local changes) and 300.205 (Federal increase).

This provision is consistent with the purpose of the local MOE provision, which is to support the continuation of at least a certain level of local expenditures for the education of children with disabilities. This provision would clarify that an LEA does not meet the compliance standard if the amount of local funds expended in a fiscal year for the education of children with disabilities is the same as the amount of local funds expended for that purpose in the preceding fiscal year, if the LEA did not meet the MOE compliance standard based on local funds only in the preceding fiscal year. This ensures that if an LEA met MOE in year one based on local funds only, and decreased the amount of local funds it expended as State funding increased in year two, the LEA could not demonstrate that it met MOE based on local funds only in year three by using the preceding fiscal year (year two), the fiscal year in which it decreased the amount of local funds it expended, as the comparison year.

For example, in year one an LEA met MOE based on local funds. In year two, the LEA decreased the amount of local funds it expended, and, because State funding increased, the LEA met MOE based on State and local funds. In year three, the LEA meets MOE based on local funds only by spending the amount of local funds it expended in year one; it cannot use year two (the preceding fiscal year) as the comparison year because the amount of local funds expended that year was less than the amount of local funds expended in year one.

Thus, comparing the amount of local funds expended for the education of children with disabilities to a fiscal year in which an LEA met the compliance standard based on local funds only, rather than the preceding fiscal year, means in this situation the comparison year is the year in which the LEA expended the highest amount of local funds.

In addition, under the proposed regulations, an LEA may not use as a comparison year a year in which the LEA met the compliance standard based on local funds (and not State and local funds) and in an intervening year increased the amount of local funds expended and met the compliance standard based on local funds and State and local funds. For example, in year one an LEA met MOE based on local funds. In year two, the LEA increased the amount of local funds it expended and met MOE based on local funds, and, because State funding also increased, it also met MOE based on State and local funds. In year three, the LEA meets MOE based on local funds only by spending the amount of local funds it expended in year two; it cannot use year one as a comparison year because the amount of local funds expended in that year was less than the amount of local funds expended in year two. Thus, comparing the amount of local funds expended for the education of children with disabilities to a fiscal year in which an LEA met the compliance standard based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds, means in this situation the comparison year is the year in which the LEA expended the highest amount of local funds. We understand that because of fluctuations in the amount of State and local funds LEAs receive for the education of children with disabilities, there may not be an approach that would in every instance result in the comparison year being the year in which the LEA expended the highest amount of local funds. However, we believe that using the most recent fiscal year in which an LEA met the compliance standard based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds, is most likely to result in the comparison year being the year in which the LEA expended the highest amount of local funds.

On May 20, 2013, the Department's Office of Inspector General (OIG) issued an Alert Memorandum related to the administration of LEA MOE requirements by the California Department of Education (CDE). (See [www2.ed.gov/about/offices/list/oig/](http://www2.ed.gov/about/offices/list/oig/))

*auditreports/fy2013/109n0004.pdf*.) The OIG found two instances in which CDE allowed LEAs that had not previously demonstrated compliance based on local funds only to demonstrate MOE compliance by comparing their fiscal year 2009–2010 local only expenditures to fiscal year 2006–2007 local only expenditures. We agreed with the OIG that in this situation, the LEAs should not have been permitted to demonstrate MOE compliance by comparing their fiscal year 2009–2010 local only expenditures to fiscal year 2006–2007 local only expenditures.

We recognize that the current regulations do not address the situation where an LEA has not previously demonstrated compliance based on local funds only. Both the statutory and regulatory LEA MOE provisions set out two comparison years for the purpose of LEA MOE compliance—the preceding fiscal year or, if the LEA relies on local funds only, the most recent fiscal year the LEA met the MOE compliance standard based on local funds only. Given the OIG’s recommendation that the Department revise the local MOE regulation as needed and the fact that this situation is not addressed in the current regulations, we are proposing to add language to § 300.203(a)(2)(iii) to specify that the comparison year that applies when determining compliance if an LEA has not previously met MOE based on local funds only is the preceding fiscal year.

Because current § 300.203(b)(3) addresses the compliance standard and not the eligibility standard, we are also proposing to modify the language and move that section to proposed § 300.203(a), which would address the compliance standard.

*Eligibility standard.* Under current § 300.203(b)(2), an LEA that relies on local funds to establish eligibility must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.

The Department has received questions that indicate the language “the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section” has created some confusion. Therefore, we are proposing to revise § 300.203(b)(2) to clarify that the comparison year is the most recent fiscal year for which information is available and the LEA met the MOE compliance standard

using local funds only, even if the LEA also met the MOE compliance standard based on State and local funds. We are also proposing to add language to § 300.203(b)(3) to specify that the comparison year that applies when determining eligibility if an LEA has not previously met MOE based on local funds only is the most recent fiscal year for which information is available.

*Level of effort required in a subsequent year.* The Department believes that when an LEA fails to maintain its required level of expenditures, the level of expenditures required in future years should be the amount that would have been required in the absence of that failure and not the LEA’s actual expenditures in the year it failed to meet the MOE requirement. This interpretation is based on careful consideration of the statutory language, structure, and purpose.

The statute is silent on the precise question of the level of effort required if an LEA fails to meet MOE in a prior year. In contrast, section 613(a)(2)(B) and (C) of the IDEA describes in detail two sets of conditions under which an LEA lawfully may reduce its expenditures. In light of the precision with which these exceptions and adjustments are spelled out, it would be anomalous for Congress to permit LEAs—through silence—to reduce the required level of expenditures. The absence of an exception in the statute for failure of an LEA to meet the local MOE requirement in the prior year strongly supports the position that such a failure does not reduce the level of effort required in future years. In light of the detail with which other exceptions are laid out in the statute, we believe that the Act’s silence on the level of expenditures required in the year after an LEA has failed to comply with the LEA MOE requirement does not reflect an intent by Congress to permit LEAs to take advantage of a violation of the Act.

With regard to the State maintenance of State financial support required in section 612(a)(18) of the Act, the IDEA makes clear that, if effort is not maintained in a particular year, the financial support required in future years “shall be the amount that would have been required in the absence of that failure and not the reduced level of the State’s support.” 20 U.S.C. 1412(a)(18)(D). Although similar language pertaining to LEAs is not contained in section 613, had Congress intended the phrase “for the preceding fiscal year” to carry a different meaning when applied to LEAs, we believe it would have stated that intention clearly. Rather, it is likely that Congress did not

feel compelled to restate in section 613 what it already had made obvious in the preceding section.

Furthermore, allowing an LEA to reduce spending on the education of children with disabilities by failing to comply with a statutory requirement is inconsistent with the purpose of the local MOE requirement, which is to support a continuation of at least a certain level of local expenditures for the education of children with disabilities. Permitting an LEA to lower its required level of effort based on a past year’s failure to comply with the requirement conflicts in a fundamental way with that purpose and provides a financial incentive for LEAs not to maintain their fiscal efforts. We do not believe that the statute contemplates that an LEA should be permitted a future financial benefit from a current failure to comply with the LEA MOE requirement.

We also believe that if an LEA were permitted to reduce expenditures for the education of children with disabilities for reasons not specifically stated in the exceptions in section 613(a)(2)(B) and (C) of the Act, services for children with disabilities would likely suffer. This result would be contrary to the overall purpose of the IDEA, which is “to ensure that all children with disabilities have available to them a free appropriate public education” (20 U.S.C. 1401(d)).

The adjustments and exceptions that are built into the IDEA in section 613(a)(2)(B) and (C) provide sufficient protection to LEAs faced with changed circumstances, and they also help to ensure that sufficient funding will be available in the future to provide appropriate services to children with disabilities. Additionally, under § 300.203(b), an LEA is given the benefit of the most favorable of four comparisons in calculating the required maintenance of effort level. An SEA must determine that an LEA meets the MOE standard if, after taking into account the adjustments and exceptions described previously, the LEA maintained (or exceeded) its level of local, or State and local, expenditures for the education of children with disabilities from year to year, either in total or per capita.

For all of these reasons, we believe that the position expressed in the April 4, 2012, letter correctly interprets the statutory obligation of LEAs to maintain effort. Therefore, we are proposing to add a provision that if, for any fiscal year, an LEA fails to maintain effort, the level of effort required of the LEA in a subsequent fiscal year is the amount that would have been required in the

absence of that failure and not the LEA's reduced level of expenditures. We are proposing to specify that this provision would apply to any fiscal year beginning on or after July 1, 2014, the beginning of the first grant award period after the date these regulations could take effect.

Under the proposed regulations, in order to be eligible to receive a grant under IDEA Part B, LEAs will need to budget as much or more State and local funds in the upcoming fiscal year as they expended in the most recent fiscal year for which data are available. If LEAs do not meet that test, they must budget as much or more local funds in the upcoming fiscal year as they expended in the most recent fiscal year for which data are available and in which they met the MOE compliance requirement based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds.

Thus, if an LEA did not maintain effort in 2012–2013, and will meet the MOE requirement based on the combination of State and local funds in 2014–2015, the LEA must budget for 2014–2015 the amount that it should

have expended in 2012–2013 rather than its actual 2012–2013 expenditures. Similarly, when determining an LEA's eligibility based on expenditures in 2013–2014, if an LEA did not maintain effort in 2013–2014 and will meet MOE in 2015–2016 based on the combination of State and local funds, the State must compare the LEA's amount budgeted for 2015–2016 to the amount the LEA should have expended in 2013–2014 rather than its actual expenditures. If an LEA will not be able to meet the MOE requirement based on State and local funds but did not maintain effort in the last year it established eligibility based on meeting MOE with local funds only, the LEA must budget for the upcoming fiscal year the amount of its expenditures for the last year that it met the MOE requirement based on local funds only. States will need to carefully review LEA applications, and compare amounts budgeted to amounts expended in prior years, to ensure that their LEAs meet the eligibility requirement.

In addition, States will need to monitor and audit their LEAs to ensure that they expended as much or more State and local funds in the next fiscal year as they did in the prior year, less

any reductions permitted by §§ 300.204 (exceptions for local changes) and 300.205 (Federal increase). For example, if an LEA failed to maintain effort in 2013–2014, the level of effort that a State must audit against when considering the combination of State and local funds for 2014–2015 is the level of effort the LEA should have met in 2013–2014, less any 2014–2015 reductions permitted by §§ 300.204 (exceptions for local changes) and 300.205 (Federal increase). Similarly, when an SEA considers an LEA's compliance with MOE based on local funds only for 2014–2015, the level of effort required is the LEA's required level of effort in the most recent fiscal year in which the LEA met MOE based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds, less any intervening reductions permitted by §§ 300.204 (exceptions for local changes) and 300.205 (Federal increase). The following charts illustrate how to identify the level of effort required of an LEA consistent with this interpretation for both eligibility determinations and auditing and compliance purposes.

#### ELIGIBILITY DETERMINATIONS BASED ON STATE AND LOCAL FUNDS

Budget year (planned expenditures)	Met/did not meet MOE	Level of effort to be budgeted (either total or per capita) <sup>1</sup>
2014–2015 Budget (Assumes most recent fiscal year for which data are available is 2012–2013).	Met MOE in 2012–2013 .....	2012–2013 actual expenditures.
	Did not meet MOE in 2012–2013 .....	2011–2012 actual expenditures less any reductions in 2012–2013 permitted under §§ 300.204 and 300.205.
2015–2016 Budget (Assumes most recent fiscal year for which data are available is 2013–2014).	Met MOE in 2013–2014 .....	2013–2014 actual expenditures.
	Did not meet MOE in 2013–2014 .....	2012–2013 actual expenditures less any reductions in 2013–2014 permitted under §§ 300.204 and 300.205.
2016–2017 Budget (Assumes most recent fiscal year for which data are available is 2014–2015).	Met MOE in 2014–2015 .....	2014–2015 actual expenditures.
	Did not meet MOE in 2014–2015 .....	Level of effort required to meet MOE in 2014–2015. <sup>2</sup>

<sup>1</sup> The required level of effort for budgeting purposes does not include any reductions that

could be taken in the budget year under §§ 300.204 and 300.205.

<sup>2</sup> As determined under proposed §§300.203(b) and current 300.205.

## AUDITING AND COMPLIANCE ANALYSIS BASED ON STATE AND LOCAL FUNDS

Fiscal year (actual expenditures)	Met/Did not meet MOE	Required level of effort (either total or per capita)
Covering school year 2013–2014 .....	N/A .....	2012–2013 actual expenditures less any reductions in 2013–2014 permitted under §§ 300.204 and 300.205.
Covering school year 2014–2015 .....	Met MOE in 2013–2014 .....	2013–2014 actual expenditures less any reductions in 2014–2015 permitted under §§ 300.204 and 300.205.
	Did not meet MOE in 2013–2014 .....	Level of effort required to meet MOE in 2013–2014, less any reductions in 2014–2015 permitted under §§ 300.204 and 300.205.
Covering school year 2015–2016 .....	Met MOE in 2014–2015 .....	2014–2015 actual expenditures less any reductions in 2015–2016 permitted under §§ 300.204 and 300.205.
	Did not meet MOE in 2014–2015 .....	Level of effort required to meet MOE in 2014–2015 less any reductions in 2015–2016 permitted under §§ 300.204 and 300.205.

## ELIGIBILITY DETERMINATIONS BASED ON LOCAL FUNDS ONLY

Budget year (planned expenditures)	Met/did not meet MOE	Level of effort to be budgeted <sup>3</sup> (either total or per capita)
2014–2015 Budget (Assumes most recent fiscal year for which data are available and LEA eligibility was established based on meeting MOE with local funds only is 2012–2013).	Met MOE in 2012–2013 .....	2012–2013 actual expenditures.
	Did not meet MOE in 2012–2013 .....	Actual expenditures from the last year the LEA met MOE based on local funds only, even if the LEA also met MOE based on State and local funds, less any reductions in intervening years permitted under §§ 300.204 and 300.205.
2015–2016 Budget (Assumes most recent fiscal year for which data are available and LEA eligibility was established based on meeting MOE with local funds only is 2013–2014).	Met MOE in 2013–2014 .....	2013–2014 actual expenditures.
	Did not meet MOE in 2013–2014 .....	Actual expenditures from the last year LEA met MOE based on local funds only, even if the LEA also met MOE based on State and local funds, less any reductions in intervening years permitted under §§ 300.204 and 300.205.
2016–2017 Budget (Assumes most recent fiscal year for which data are available and LEA eligibility was established based on meeting MOE with local funds only is 2014–2015).	Met MOE in 2014–2015 .....	2014–2015 actual expenditures.
	Did not meet MOE in 2014–2015 .....	Level of effort required to meet MOE in 2014–2015. <sup>4</sup>

<sup>3</sup> The required level of effort for budgeting purposes does not include any reductions that

could be taken in the budget year under §§ 300.204 and 300.205.

<sup>4</sup> As determined under proposed § 300.203(b) and current §§ 300.204 and 300.205.

AUDITING AND COMPLIANCE ANALYSIS BASED ON LOCAL FUNDS ONLY

Fiscal year (actual expenditures)	Met/Did not meet MOE	Required level of effort (either total or per capita)
2013–2014 .....	N/A .....	Actual expenditures from the last year LEA met MOE based on local funds only, even if the LEA also met MOE based on State and local funds, less any reductions in intervening years permitted under §§ 300.204 and 300.205.
2014–2015 .....	Met MOE based on local funds only in 2013–2014.	Actual expenditures from 2013–2014 less any reductions in intervening years permitted under §§ 300.204 and 300.205.
	Did not meet MOE based on local funds only in 2013–2014.	Level of effort required to meet MOE in the last year the LEA met MOE with local funds only, even if the LEA also met MOE based on State and local funds, less any reductions in intervening years permitted under §§ 300.204 and 300.205.
2015–2016 .....	Met MOE based on local funds only in 2014–2015.	Actual expenditures from 2014–2015 less any reductions in intervening years permitted under §§ 300.204 and 300.205.
	Did not meet MOE based on local funds only in 2014–2015.	Level of effort required to meet MOE in the last year that LEA met MOE based on local funds only, even if the LEA also met MOE based on State and local funds, less any reductions in intervening years permitted under §§ 300.204 and 300.205.

*Consequences for Failure to Maintain Effort.* We also are proposing to add a provision regarding the consequence if an LEA fails to maintain its level of expenditures for the education of children with disabilities. The provision would specify, consistent with long-standing Department practice, that the SEA is liable in a recovery action under 20 U.S.C. 1234a to pay the Department, from non-Federal funds or funds for which accountability to the Federal government is not required, the difference between the amount of local, or State and local, funds the LEA should have expended and the amount that it did expend. 20 U.S.C. 1234a describes the method the Department uses to recover misused funds.

Under 20 U.S.C. 1234b(a), if a recipient of Department funds is determined to have made an unallowable expenditure or to have otherwise failed to discharge its responsibility to account properly for funds, the recipient is required to return an amount that is proportionate to the harm to the Federal interest. The addition of this provision to current § 300.203 will not change the law in this area. However, it is important to add this provision to the regulations in order to highlight the importance of the LEA MOE requirement and the significance of the remedies for a failure to comply. This addition should increase focus on,

and, through heightened attention and monitoring by States, compliance with the LEA MOE requirement.

Although not necessary to address in the regulation, it is worthwhile to point out that if an SEA is required to pay the Department based on an LEA’s failure to comply with the LEA MOE requirement, the SEA may then seek to recoup from the LEA, from non-Federal funds or funds for which accountability to the Federal Government is not required, the amount by which the LEA did not maintain effort. Whether the SEA seeks recovery of those funds from the LEA is a matter of State discretion.

**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.

The proposed amendment is a significant regulatory action subject to review by OMB under section 3(f)(4) of Executive Order 12866.

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

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

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

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

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

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make informed choices. Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

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

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

#### *Potential Costs and Benefits*

In accordance with both Executive orders, the Department has assessed the potential costs and benefits of this regulatory action. In conducting this analysis, the Department examined the extent to which the changes made by these proposed regulations would add to or reduce the costs to States, LEAs, and others, as compared to the costs of implementing the current Part B program regulations. Based on the following analysis, the Secretary has concluded that the proposed changes could result in reduced costs for States and LEAs to the extent that increased understanding of LEA MOE requirements and use of all four tests to demonstrate LEAs met MOE would result in States making fewer repayments to the Department and seeking fewer recoveries from LEAs.

However, there is also potential for additional costs for States, and potentially LEAs to the extent LEAs are required to increase expenditures in the year following a failure to meet the LEA MOE provisions under Part B of the Act or in the event that a State or LEA incorrectly calculated MOE in a previous year due to confusion. The Secretary believes that the benefits of ensuring that adequate resources are available to provide FAPE for children with disabilities are likely to outweigh any costs to LEAs that violated the local MOE requirements in the previous year and do not plan to restore funding in the subsequent year to the level they should have maintained in the prior year.

#### Section 300.203

The effect of the proposed changes on LEAs would depend on: (1) The degree of misunderstanding on the part of States and LEAs about the eligibility and compliance standards and the flexibility that the LEAs have in meeting one of four tests; and (2) the likelihood that LEAs would violate the MOE requirement in one or more years and seek to maintain funding at the reduced level in subsequent years. One possible source of information that could be used to estimate the effect of the proposed changes on LEAs would be data on previous findings of LEA violations. However, the Department has limited information on LEA violations. States are responsible for monitoring LEA compliance with MOE requirements and resolving any audit findings in this area, but States are not required to report the number of LEAs that violated MOE requirements, the basis of the violations, or the amount of funding involved.

Other sources of information on the likely effects of the proposed changes are audit reports and OSEP’s fiscal monitoring of States regarding the implementation of the current regulations.

OSEP’s fiscal monitoring, in conjunction with OIG’s audit findings and reports, have identified a number of problems with State administration of the LEA MOE requirements under the current regulations, suggesting that there is confusion about the MOE requirements and a lack of clarity in the existing regulations. Specifically, OSEP has found that at least 40 percent of States have policies and procedures that are not consistent with how States should determine eligibility or compliance in relation to the LEA MOE requirements. Most notably, it appears that some States have not allowed LEAs to use all four tests to demonstrate that they have met the MOE requirements for purposes of eligibility or compliance

determinations, including the test that allows the LEA to demonstrate it met the MOE requirement on the basis of only local funds. There is also some indication that States may have used an inappropriate comparison year when States have allowed LEAs to make a local-to-local comparison.

In years when States did not allow the LEAs to use all four tests to demonstrate they met MOE, it is possible that LEAs budgeted for, and expended, more than they would have if both States and LEAs had understood they had flexibility to use all four tests. In these instances, the clarification made in the proposed regulations could result in a reduction in future expenditures on the part of LEAs. Additionally, in instances in which States did not appropriately allow the LEAs to use all four tests in meeting MOE, the State may have sought to recover funds from LEAs or made unnecessary repayments to the Department. Clarifying that all four tests may be used for MOE determinations could result in States making fewer repayments to the Department and seeking fewer recoveries from LEAs.

Alternatively, in those cases in which States may be allowing LEAs to use an incorrect comparison year in implementing the test for local-only funds, the change in the regulations that clarifies the comparison year may result in increased expenditures for LEAs. For example, in its May 20, 2013 Alert Memorandum, the OIG raised concerns about the comparison years used by the State of California in determining LEA MOE compliance. According to that memorandum, the State used an incorrect comparison year when determining that two LEAs met MOE requirements using the local-only test. Specifically, California allowed the LEAs that had never relied on local funds only to meet the MOE requirement to use a comparison year from three years earlier, instead of requiring a comparison of local-only expenditures to the previous fiscal year. In this case, the clarification made by the proposed regulations would require increased LEA expenditures. We do not know the extent to which the use by States and LEAs of incorrect comparison years has permitted lower expenditures than would be required under the proposed changes, or, alternatively, the extent to which using the incorrect comparison year has resulted in higher expenditures than would be required under the proposed regulations. However, in general, the findings in fiscal monitoring demonstrating that States are providing less flexibility to LEAs than is allowable under the law suggest that the clarifications included

in these proposed regulations could reduce costs for both LEAs and States.

The regulations also specifically address the level of expenditures required by an LEA in the years following a year in which an LEA violated the MOE requirements. Specifically, the proposed regulations clarify that, in a year following a year in which the LEA failed to meet MOE, the required level of expenditures is the level of expenditures in the last year in which the LEA met the MOE requirements, not the reduced level of expenditures in the preceding year.

We believe that this clarification in the regulations will improve State administration of the program, is consistent with the intent of the IDEA, and is in the best interest of children with disabilities. We do not expect the change to have a significant impact on LEA expenditures in the near term because of what we know about the extent of LEA violations and the likelihood of future violations. However, the change would eliminate the risk we have under the current regulations that State policy would permit LEAs that reduce spending in violation of the MOE requirements to maintain the reduced level of expenditures in subsequent years.

The Department typically learns of an LEA violation in conjunction with its review of audit findings. In the relatively few instances in which the Department has issued program determination letters to States concerning audit findings about LEA failure to maintain the appropriate level of effort, most of the findings concerned the absence of an effective State system for monitoring LEA MOE, rather than identifying MOE violations. Since 2004, the only program determination letter that identified specific questioned costs for LEA failure to meet MOE involved Oklahoma. In December 2006, the Department issued a program determination letter to the Oklahoma SEA seeking recovery of \$583,943.29 expended under Part B of the IDEA due to audit findings that 76 LEAs had not met their required level of effort for the receipt of Federal fiscal Year (FFY) 2003 funds. In SY 2009–2010, Oklahoma reported having 532 LEAs; accordingly, 76 LEAs represented 14 percent of the State's LEAs affected by these audit findings. After reviewing additional materials provided by the State that supported the application of the MOE exceptions in § 300.204 (exceptions for local changes), the Department reduced the amount of its determination to \$289,501.76. The final claim against Oklahoma was settled at \$217,126.32.

We also searched the Federal Audit Clearinghouse for information about single audits of Federal awards conducted by States or private accounting firms of LEAs that expend \$500,000 or more in a year in Federal award funds as required by the Office of Management and Budget's (OMB) Circular A–133. The Federal Audit Clearinghouse is located at the following link: [www.census.gov/econ/overview/go1400.html](http://www.census.gov/econ/overview/go1400.html). We searched for audit findings in response to area “G” of the compliance supplement to OMB Circular A–133, which relates to “Matching, Level of Effort, and Earmarking,” for audits related to Code of Federal Domestic Assistance 84.027 (funds awarded under section 611 of the IDEA). Single audits of Federal awards are not available for all LEAs through the Federal Audit Clearinghouse, but there is information on single audits for 9,024 LEAs for FY 2009, which represents approximately 60 percent of LEAs.

Our search identified 25 audits that contained findings related to section G of the compliance supplement, four of which were accompanied by audit reports that included questioned costs related to failure to achieve the required MOE. Only two of the four audits specified amounts of questioned costs, for \$10,428 and \$153,621.53, respectively. Although one cannot assume that these findings represent all violations of the LEA MOE requirement, both the small number and size of questioned costs related to failure to meet this requirement suggest that LEA MOE violations are not extensive. Audit findings for fiscal years 2007, 2008, 2010, and 2011 (to the extent available) were generally consistent with the findings for 2009.

Another source of information for estimating the likelihood of future MOE violations are data on the extent to which LEAs have reduced expenditures pursuant to the new flexibility provided in the 2004 amendments to the IDEA. Under section 613(a)(2)(C), for any fiscal year in which an LEA receives an allocation under section 611(f) that exceeds its allocation for the previous fiscal year, an LEA may reduce the level of expenditures otherwise required to meet the MOE requirement by not more than 50 percent of the amount of the increased allocation. Since May 2011, States have been reporting the amount each LEA received in an IDEA subgrant under section 611 or section 619, whether the State had determined that the LEA or educational service agency (ESA) had met the requirements of Part B of IDEA, and whether each LEA or

ESA had reduced its expenditures pursuant to § 300.205.<sup>5</sup>

The data we have collected to date include reductions taken in the year in which LEAs were most likely to make reductions because of the availability of an additional \$11.3 billion for formula grant awards under the Grants to States program provided under the American Recovery and Reinvestment Act of 2009 (ARRA). Since these additional funds increased the annual allocation to most LEAs in FFY 2009 relative to FFY 2008, LEAs meeting conditions established by the State and the Department were permitted to reduce the level of support they would otherwise be required to provide during SY 2009–2010 by up to 50 percent of the amount of the increase.

Of the 14,936 LEAs that received allocations under section 611 in FFY 2008 and FFY 2009, States reported that 12,061 received increased allocations under section 611 and met other conditions such that they were eligible to reduce their level of effort. Notably, only 4,237 LEAs (or 36 percent) reported that they reduced their level of effort. If they met the conditions, LEAs were permitted to reduce effort by up to 50 percent of the increase in their allocation, but they typically reduced spending only by 38 percent.

Larger LEAs were more likely to reduce expenditures than LEAs in general. For the 100 largest LEAs, based on their FFY 2008 allocations under section 611, 31 of the 51 LEAs that were eligible to reduce expenditures actually did so and these LEAs reduced expenditures by an average of 73 percent of the allowable amount.

Of the 4,237 LEAs overall that reported reducing expenditures, only 32 had been determined to have not met the requirements of Part B of the IDEA and may have violated the MOE requirements, unless one of the exceptions to the MOE requirements in § 300.204 (exceptions for local changes) were applicable. The combined amount of MOE reductions for these LEAs was \$19,304,506, with a median reduction of \$745. One of these LEAs reported a reduction of \$18,358,631, which represents 41 percent of the increase in that LEA's allocation from the previous year; but the reductions that were taken by the remaining LEAs were relatively small.

The combined amount by which eligible LEAs in the 50 States, Washington, DC, and Puerto Rico could have reduced their level of effort in SY

<sup>5</sup>Data are available online at [www.ideadata.org/PartBMaintenance.asp](http://www.ideadata.org/PartBMaintenance.asp) (Table 8 LEA-level files, revised 2/29/12, Accessed 5/15/12).

2009–2010 was \$5.6 billion, but the combined amount of actual reduction was only 27 percent of that amount or \$1.5 billion. Because most LEAs did not reduce expenditures when they had a legitimate opportunity to do so and thereby reduce the level of effort required in future years, it is reasonable to assume that a smaller number of LEAs would undertake reductions that constitute violations of the MOE requirements. We believe it is highly unlikely that the 4,205 LEAs that met the requirements of section 613(a)(2)(C) of the Act and reduced their level of effort would seek further reductions that would violate the MOE requirements since they legitimately lowered their own required level of effort when they made those previous reductions.

Based on available audit findings and data, the Department believes that LEAs generally are unlikely to reduce expenditures in violation of the MOE requirements. Moreover, we believe that the requirement that LEAs provide FAPE for all eligible children with disabilities provides another critical protection against unwarranted reductions of expenditures to support special education and related services for children with disabilities. However, to ensure that State policy and administration of the MOE requirements is consistent with the Department's position on the required level of future expenditures in cases of LEA violations, we think it is critical to change the regulations, as we have proposed, to clearly articulate the Department's interpretation of the law in this regard.

#### *Clarity of the Regulations*

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 300.203 Maintenance of effort.)

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

- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand see the instructions in the **ADDRESSES** section.

#### *Regulatory Flexibility Act Certification*

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) Size Standards define "small entities" as for-profit or nonprofit institutions with total annual revenue below \$7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000. These proposed regulations would affect all local educational agencies, including the estimated 12,358 LEAs that meet the definition of small entities. However, we have determined that the proposed regulations would not have a significant economic impact on these small entities. This regulatory action would have the effect of increasing costs for small LEAs that have either violated the local MOE requirements and are not seeking to restore funding in the subsequent year to the level they should have maintained in the prior year or incorrectly calculated MOE in a previous year due to confusion. However, this regulation could also potentially decrease the costs for small LEAs to the extent that increased understanding of LEA MOE requirements and use of all four tests to demonstrate LEAs met MOE would result in States making fewer repayments to the Department and seeking fewer recoveries from LEAs. Based on the limited information available, the Secretary does not believe that the effect would be significant. We do not have any evidence that LEAs generally are likely to violate the MOE requirements and we have no reason to believe that small LEAs are more likely to violate the local MOE requirements than larger LEAs. There are no increased costs associated with this regulatory action for LEAs that do not violate the MOE requirement.

#### *Paperwork Reduction Act of 1995*

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), we have assessed the potential information collections in these proposed regulations that would be subject to review by OMB (Report on IDEA Part B Maintenance of Effort Reduction (§ 300.205(a)) and Coordinated Early Intervening Services (§ 300.226)) (Information Collection 1820–0689). In conducting this analysis, the Department examined the extent to which the amended regulations would add information collection requirements for public agencies. Based on this analysis, the Secretary has concluded that these amendments to the Part B regulations would not impose additional information collection requirements.

#### *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 the Department's specific plans and actions for this program.

#### *Assessment of Educational Impact*

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

#### List of Subjects in 34 CFR Part 300

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

Dated: September 13, 2013.

**Arne Duncan,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary proposes to amend 34 CFR part 300 as follows:

#### PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 20 U.S.C. 1221e–3, 1406, 1411–1419, unless otherwise noted.

■ 2. Section 300.203 is revised to read as follows:

##### § 300.203 Maintenance of effort.

(a) *Compliance standard.* (1) Except as provided in §§ 300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(2) An LEA meets this standard if it does not—

(i) Reduce the level of expenditures for the education of children with disabilities made by the LEA from State and local funds, either in total or per capita, below the level of those expenditures for the preceding fiscal year, except as provided in §§ 300.204 and 300.205;

(ii) Reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds, either in total or per capita, below the level of those expenditures for the most recent fiscal year for which the LEA met the MOE compliance standard based on local funds only,

even if the LEA also met the MOE compliance standard based on State and local funds, except as provided in §§ 300.204 and 300.205; or

(iii) Reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds, either in total or per capita, below the level of those expenditures for the preceding fiscal year if the LEA has not previously met the MOE compliance standard based on local funds only, except as provided in §§ 300.204 and 300.205.

(3) Expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA may not be considered in determining whether an LEA meets the standard in this paragraph.

(b) *Eligibility standard.* (1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available:

(i) Local funds only.

(ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the LEA met the MOE compliance standard based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds.

(3) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year and has not previously met the MOE compliance standard based on local funds only must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent from local funds for that purpose in the most recent fiscal year for which information is available.

(c) *Subsequent years.* If, for any fiscal year, an LEA fails to meet the requirement of paragraph (a) of this

section, the level of expenditures required of the LEA for any fiscal year beginning on or after July 1, 2014 under paragraphs (a) and (b) of this section is the amount that would have been required in the absence of that failure and not the LEA's reduced level of expenditures.

(d) *Consequence of failure to maintain effort.* If an LEA fails to maintain its level of expenditures for the education of children with disabilities in accordance with paragraph (a) of this section, the SEA is liable in a recovery action under 20 U.S.C. 1234a to return to the Department, using non-Federal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures in accordance with paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1413(a)(2)(A))

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA–R07–OAR–2013–0511; FRL–9901–00–Region 7]

#### Approval and Promulgation of Implementation Plans; State of Missouri; Conformity of General Federal Actions to State Implementation Plans

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri on August 12, 2011. This revision proposes to update the state general conformity rule in its entirety to bring it into compliance with the Federal general conformity rule which was updated in the **Federal Register** on April 5, 2010. General conformity regulations prohibit Federal agencies from taking actions that may cause or contribute to violations of the National Ambient Air Quality Standards (NAAQS). This rule applies to non-attainment and maintenance areas of the state. The revision to Missouri's rule does not have an adverse affect on air quality. EPA's approval of this SIP revision is being done in accordance with the requirements of the Clean Air Act (CAA).