cameras and associated websites may also provide mariners with additional information in some locations.

(2) *Safety requirements for recreational vessels.* The operator of any recreational vessel operating in an RNA established in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of the recreational vessel are wearing lifejackets and that lifejackets are readily accessible for/to all persons located in any enclosed area of the recreational vessel:

(i) When crossing the bar and a bar restriction exists or

(ii) Whenever the recreational vessel is being towed or escorted across the bar.

(3) *Safety requirements for uninspected passenger vessels (UPVs).* (i) The master or operator of any uninspected passenger vessel operating in an RNA established in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of their vessel are wearing lifejackets and that lifejackets are readily accessible for/to all persons located in any enclosed areas of their vessel uninspected passenger vessel:

(A) When crossing the bar and a bar restriction exists or

(B) Whenever the uninspected passenger vessel is being towed or escorted across the bar.

(ii) The master or operator of any uninspected passenger vessel operating in an RNA established in paragraph (a) of this section during the conditions described in paragraph (c)(3)(i)(A) of this section shall contact the Coast Guard on VHF–FM Channel 16 prior to crossing the bar. The master or operator shall report the following:

(A) Vessel name,

(B) Vessel location or position,

(C) Number of persons onboard the vessel and

(D) Vessel destination.

(4) *Safety Requirements for Small Passenger Vessels (SPV).* (i) The master or operator of any small passenger vessel operating in an RNA established in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of the small passenger vessel are wearing lifejackets and that lifejackets are readily accessible for/to all persons located in any enclosed areas of the vessel:

(A) Whenever crossing the bar and a bar restriction exists or

(B) Whenever their vessel is being towed or escorted across the bar.

(ii) Small passenger vessels with bar crossing plans that have been reviewed by and accepted by the Officer in Charge of Marine Inspection (OCMI) are exempt from the safety requirements described in paragraph (c)(4)(i) of this section during the conditions described in paragraph (c)(4)(i)(A) of this section so long as when crossing the bar the master or operator ensures that all persons on their vessel wear lifejackets in accordance with their bar crossing plan. If the vessel's bar crossing plan does not specify the conditions when the persons on their vessel shall wear lifejackets, however, then the master or operator shall comply with the safety requirements provided in paragraph (c)(4)(i) of this section in its entirety.

(iii) The master or operator of any small passenger vessel operating in an RNA established in paragraph (a) of this section during the conditions described in paragraph (c)(4)(i)(A) of this section shall contact the Coast Guard on VHF–FM Channel 16 prior to crossing the bar. The master or operator shall report the following:

(A) Vessel name,

(B) Vessel location or position,

(C) Number of persons on board the vessel and

(D) Vessel destination.

(5) *Safety Requirements for Commercial Fishing Vessels (CFV).* (i) The master or operator of any commercial fishing vessel operating in an RNA described in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of commercial fishing vessel are wearing lifejackets or immersion suits and that lifejackets or immersion suits are readily accessible for/to all persons located in any enclosed spaces of the vessel:

(A) Whenever crossing the bar and a bar restriction exists or

(B) Whenever the commercial fishing vessel is being towed or escorted across the bar.

(ii) The master or operator of any commercial fishing vessel operating in an RNA described in paragraph (a) of this section during the conditions described in paragraph (c)(5)(i)(A) of this section shall contact the Coast Guard on VHF–FM Channel 16 prior to crossing the bar. The master or operator shall report the following:

(A) Vessel name,

(B) Vessel location or position,

(C) Number of persons on board the vessel and

(D) Vessel destination.

(6) *Penalties.* All persons and vessels within the RNAs described in paragraph (a) of this section shall comply with orders of Coast Guard personnel. Coast Guard personnel includes commissioned, warrant, petty officers, and civilians of the United States Coast Guard. Any person who fails to comply with this regulation is subject to civil penalty in accordance with 46 U.S.C. 70036.

Dated: June 30, 2020.

Peter W. Gautier,

Rear Admiral, U.S. Coast Guard, Commander, Coast Guard District Eleven.

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DEPARTMENT OF EDUCATION

34 CFR Part 263

RIN 1810–AB54

[Docket ID ED–2019–OESE–0126]

Indian Education Discretionary Grant Programs; Demonstration Grants for Indian Children and Youth Program

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

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations that govern the Demonstration Grants for Indian Children and Youth Program (Demonstration program), authorized under title VI of the Elementary and Secondary Education Act of 1965, as amended (ESEA), to implement changes to title VI resulting from the enactment of the Every Student Succeeds Act (ESSA). These final regulations would update, clarify, and improve the current regulations. These regulations also add a new priority, and accompanying requirements and selection criteria, for applicants proposing to empower Tribes and families to decide which education services will best support their children to succeed in college and careers.

DATES: These regulations are effective August 17, 2020. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995. These regulations apply to applications for the Demonstration program for fiscal year (FY) 2020 and subsequent years.

FOR FURTHER INFORMATION CONTACT: Bianca Williams, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W237 Washington, DC 20202–6335. Telephone: 202–453–5671. Email: *Bianca.Williams@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: These regulations implement statutory changes

made to the Demonstration program in section 6122 of the ESEA (20 U.S.C. 7442) by the ESSA and make other changes to better enable the Department and grantees to meet the objectives of the program.

We published a notice of proposed rulemaking for this program (NPRM) in the **Federal Register** on March 31, 2020 (85 FR 17794).

In the preamble of the NPRM, we discussed on pages 17799–17801 the major changes proposed in that document. These included the following:

- Amending the priority in § 263.21(b)(1) that gives priority to Indian applicants to include schools funded by the Bureau of Indian Education (BIE) in the list of entities that are included in that priority.
- Adding a priority to § 263.21(c) for entities that are not rural and do not meet the existing priority for rural entities to allow the use of the existing priority for rural entities along with this new priority to create separate rank orders of rural and non-rural applicants.
- Adding a priority as § 263.21(c)(7) that would expand educational choice for parents and students, to enhance the ability of parents to choose high-quality educational opportunities to meet the needs of Native youth.
- Adding as new § 263.22(b)(4) an application requirement to include a plan to oversee service providers and ensure students are receiving high-quality services.
- Adding as new § 263.22(b)(5) an application requirement for non-Tribal applicants to partner with a Tribe or Indian organization.
- Amending renumbered § 263.24 to add new selection criteria.
- Adding as new § 263.25 program requirements relating to the new choice priority.

These final regulations contain several substantive changes from the NPRM, which we fully explain in the *Analysis of Comments and Changes* section of this preamble, in addition to several technical changes.

Public Comment: In response to our invitation in the NPRM, eight parties submitted comments on the proposed regulations. Although none of the comments received during public comment were from federally recognized Tribes, one commenter is an organization that includes several federally recognized Tribes. Tribes previously participated in Tribal consultation during development of the NPRM. For additional information on Tribal Consultation, please see the *Tribal Consultation* section of the NPRM.

Performance Measures

Although we are not required to include our proposed performance measures for this program in the notice and comment rulemaking process, in the NPRM we invited comment on those measures in order to gain more insight into the impact and feasibility of these measures. We appreciate the feedback and we have considered that feedback in revising the performance measures. We will publish the revised measures in the notice inviting applications for the competition for FY 2020 funding.

Analysis of Comments and Changes: An analysis of the comments regarding the proposed regulations and of any changes in the regulations since publication of the NPRM follows. We group major issues according to subject. Generally, we do not address technical and other minor changes.

General

Comment: One commenter objected to the inclusion of BIE-funded schools as eligible applicants for this program. One commenter opposed the addition of BIE-funded schools to the list of Tribal entities that receive priority under § 263.21(b)(1) of the regulations.

Discussion: Under section 6121(b) of the ESEA, BIE-funded schools are eligible to apply for this grant program because they meet the definition of a ''federally supported elementary school or secondary school for Indian students.'' These regulations do not constitute a change to the statutory eligibility of BIE-funded schools to apply for grants under this program.

With regard to the regulatory priority for Tribal entities, that priority is required by section 6143 of the ESEA, which requires the Department, in awarding grants under the discretionary grant programs in title VI, part A, subparts 2 and 3, to give preference to ''Indian tribes, organizations, and institutions of higher education.'' The term ''Indian'' modifies ''organizations'' and ''institutions of higher education.'' The Department has defined the term ''Indian organization,'' for purposes of the Demonstration program, in § 263.21 of these regulations. Schools funded by the BIE meet that definition, and the Office of Indian Education has treated them as included under the statutory priority.

Changes: None.

Comment: Several commenters provided input on the proposed priority for non-rural applicants in § 263.21(c)(6). One suggested that we permit applicants to self-select into rural and non-rural categories to better ensure applications are reviewed in a fair and equitable manner. This commenter also suggested that we use four categories to further distinguish between rural and non-rural applicants based on the number of Tribal nations represented in the targeted student population. The commenter explained that in their State, the majority of Indian students live in urban areas, and have needs that are different from those in rural areas.

Another commenter objected to including a priority for non-rural applicants if it means that rural applicants would receive less funding, due to the high needs of the rural areas. Another commenter stated that the change to § 263.21(c)(6) to add a non-rural priority in combination with the rural priority in § 263.21(c)(5) would be overly limiting to applicants.

Discussion: We do not believe it would be reasonable for applicants to self-select into rural and non-rural categories, because it would create an arbitrary and subjective distinction. We also do not believe it would be reasonable to use four categories to further distinguish between rural and non-rural applicants based on the number of Tribal nations represented in the targeted student population because of the complexity involved. Rather than permitting applicants to arbitrarily choose which category they would like to belong to, we feel it is important to use clear, objective, and simple criteria in order to classify entities as rural or non-rural. To ensure applicants meet the priority's requirements, an applicant would indicate in its application whether it meets the specific requirements of the rural priority, that is, the entity is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program, or is a BIE-funded school in an area designated by certain locale codes. Other applicants would apply as non-rural applicants.

With regard to the concerns that including a non-rural priority would mean less funding for rural applicants, or provide a limitation, the text of new § 263.21(c)(6) specifies that the non-rural priority may only be used in competitions for which the rural priority is also used.

This change allows the Department the flexibility in future competitions to consider rural and non-rural applicants separately. For example, by using both priorities as absolute priorities, we can create separate funding slates for applicants that propose to serve rural communities and applicants that do not. This would provide a way for the Department to distribute grants fairly across high-scoring rural and non-rural

applicants, ensuring that applicants serving rural areas that may have fewer available resources are not disadvantaged compared to non-rural applicants.

Changes: None.

Comment: One commenter expressed support for the proposed choice priority for the Demonstration program in § 263.21(c)(7). The commenter stated that this priority enables all Native students to have opportunities to succeed without biases or limitations in their career of choice, and provides the flexibility for grantees to determine which academic pursuits are most impactful for students in their communities, including students with disabilities. The commenter stated that under this priority, grantees can pay for the services that parents and students may not be able to afford otherwise, such as individual tutoring services or student counseling. The commenter recommended a requirement that services be supplemental to existing school services and funding sources.

Discussion: We appreciate the support for this new priority. The priority already includes a requirement that services be supplemental to existing school services and funding sources, so no change is needed.

Changes: None.

Comment: Several commenters stated that they oppose the addition of the priority in § 263.21(c)(7) because they believe it would fund private school education by creating a private school voucher funded with taxpayer dollars. One commenter stated that this priority would undermine Tribal sovereignty by creating vouchers that could be used to fund non-Native private entities and would also undermine the goals of the Demonstration program. Another commenter stated that very few students live near a private school that would accept vouchers, so for most students, vouchers would not provide a meaningful choice outside of their traditional public school. Another commenter stated that, given the history of mission-run schools on American Indian reservations, the majority of private schools that would accept vouchers under this program would probably be religious schools. This commenter argued that voucher programs violate the fundamental principle of separation of church and State, because it is impossible to prevent the use of voucher funds for the schools' religious education. The commenter and other commenters further stated that private schools are not required to provide students with the same civil rights protections as public schools, discriminate against students for entrance purposes, and do not provide students with disabilities with a free and appropriate education. The commenter noted that during Tribal consultation for this program, Tribal leaders requested a variety of service options, but did not ask for private school vouchers, because private schools are generally not a viable option for their students due to the lack of transportation and other concerns.

Several of the commenters stated that voucher systems do not improve academic outcomes, that private schools are not subject to ESEA accountability requirements, and that vouchers do not guarantee compliance with State standards. One commenter argued that studies indicate that vouchers could be particularly harmful for American Indian children due to the effects of transitioning between schools.

During Tribal consultation, the majority of participants supported inclusion of a choice priority. For information regarding Tribal input, see the *Tribal Consultation* section of the NPRM.

Discussion: The new choice priority does not create a voucher system. Rather, it enables grantees to choose a service focus based on the needs of their own communities, and to set up a system that empowers parents and students to choose the specific services and providers that best suit their needs. By empowering Tribes to select the project focus that they want, this priority supports Tribal sovereignty; by empowering parents and students to choose their services and providers, this priority effectuates the goal of the Demonstration program, which is ''to support projects to develop, test, and demonstrate the effectiveness of services and programs to improve educational opportunities and achievement of Indian children and youth.''

During Tribal consultation, we presented Tribal leaders with a list of possible education services that a Tribe might include if it were applying for a grant under a priority that would allow parents of eligible Indian students to choose education services for their child. That list included private or home education. A majority of consultation participants expressed general interest in the services discussed. Tuition for private school expenses is included in § 263.25(b) of these final regulations in the list of 12 examples of service options that could be offered by grantees; none of these are required but are examples only. We agree that in many Tribal areas, there are not private schools in the local vicinity; in such areas, applicants may not wish to choose this service option. We leave it to the Tribe or other grantee to decide, based on its own community needs and the required input of local families and Tribes, which services to offer.

With regard to the argument that voucher systems do not improve academic outcomes, do not guarantee compliance with State standards or accountability systems, and could be harmful for American Indian children, this priority does not create or require a voucher system, as explained above. Therefore, we do not address the merits of these arguments because they are not relevant to the priority.

Related to the argument that using these grant funds for tuition at a private religious school would violate the principle of separation of church and State, we note that Department-wide regulations prohibit Department funds from being used for religious instruction, including equipment or supplies related to such instruction (34 CFR 75.532). In addition, we require in § 263.25(c) that grant funds be supplemental to the existing education program and funding sources at any participating school, whether public or private.

With regard to the argument that private schools discriminate against certain students in their admissions, the regulations require that each written agreement between the grantee and a service provider contain a nondiscrimination clause that prohibits the provider from discriminating against students on the basis of race, color, national origin, religion, sex, or disability.

In response to the arguments concerning civil rights and services for students with disabilities at private schools, the Tribe or other grantee chooses the service providers. Grantees do not need to enter into agreements with private schools, even if there are private schools in the vicinity. Grantees are free to enter into agreements with schools or other providers that contain requirements in addition to those required by these regulations; such additional requirements could include provisions relating to civil rights, services for students with disabilities, or any other conditions desired.

Changes: None.

Comment: One commenter objected to the proposed changes to the application requirements in § 263.22(a), stating that a requirement for applicants to describe how the parents and families of Indian children and youth have been and will be involved in the planning and implementation of the proposed project is unnecessary because Tribes and Indian organizations are knowledgeable

intermediaries that already understand and can represent the needs of Indian children and youth.

The commenter also objected to the requirement in § 263.22(a)(3) that applicants demonstrate the proposed project is evidence-based, where applicable, or is based on an existing program that has been modified to be culturally appropriate for Indian students. The commenter stated that this requirement does not align with the statutory purpose of the program, which the commenter describes as trying out new and different program ideas that support academic success for Indian children, because newly developed programs will not be able to show evidence of prior success. The commenter argued that the kinds of evidence-based programming that are successful in other communities are not necessarily successful in Indian communities, and that the programs that have been successful in Indian communities based on qualitative measures are not likely to meet the requirement for evidence-based program design.

Discussion: The changes to § 263.22(a)(1), which requires applicants to describe how the parents and families of Indian children and youth are involved in planning and implementation of the proposed project, are required by changes to the statute. Parent involvement has always been a statutory application requirement; the only change to the regulation reflects ESSA changes to the ESEA, which added the phrase ''and families'' after the word ''parents'' (section 6121(d)(3)(B)(i) of the ESEA).

With regard to the requirement in § 263.22(a)(3) that applicants provide information showing that the proposed project is evidence-based, where applicable, or is based on an existing evidence-based program that has been modified to be culturally appropriate for Indian students, this application requirement is also mandated by the ESEA (section 6121(d)(3)(B)(iii)). The ESSA changes removed the term ''based on scientific research'' and instead uses ''evidence-based.'' We understand the commenter's concern that there may be educational programs used in Indian communities that have shown success at improving the educational outcomes for Indian students, but do not meet the ESEA's definition of ''evidence-based'' (see ESEA section 8101(21)), but the language in the statute and regulations provides enough flexibility to address these situations, by providing that programs must be evidence-based ''as applicable,'' and by allowing for programs that ''have been modified to be culturally appropriate for Indian students.''

We make no changes to proposed § 263.22 for the reasons described above. However, as a result of the commenter's input, we have re-examined the proposed selection criterion in § 263.24(a)(3) regarding the extent to which the services to be offered are evidence-based. Rather than requiring applicants to explain how the services in their proposed project are evidence-based, we have determined that it would better align with the program goals and the application requirement to instead have the criterion examine the quality of the applicant's plan for ensuring that evidence-based services are provided. This will allow applicants, particularly those that propose a planning period and have not yet identified service providers, to submit a plan for identifying and monitoring service providers to ensure they are providing services that are evidence-based using these grant funds. We also add the qualifying terms that the services must be evidence-based ''where applicable'' and may be modified to be culturally appropriate.

Changes: We have revised proposed § 263.24(a)(3) (renumbered § 263.24(b)(3) in these final regulations) to refer to a plan for ensuring that services are evidence-based where applicable and that services may be modified to be culturally appropriate.

Comment: One commenter generally supported the proposed application requirement in § 263.22(b)(5) that non-Tribal entities partner with a Tribe or Tribal organization, as this will ensure Tribes or Tribal organizations will be important participants in this program; however, the commenter objected to the specifics of the partnership requirement. The commenter stated that requiring non-Tribal applicants to partner with a Tribe or Tribal organization depending on whether the majority of students to be served are members of a single Tribe is not required by the statute. Additionally, the commenter argued that it is unclear whether the 50 percent requirement relates to the students to be served, or to the percentage of students in the school district applying for the grant. The commenter argued that the 50 percent threshold is too high because few school districts meet that threshold; the commenter suggested that the threshold instead be set at 15 percent.

Discussion: During the consultation process, Tribes advised that in order to support Tribal sovereignty, projects that serve Indian children must include a Tribal partner. The phrase ''of the student body to be served'' was intended to encompass the entire school or schools where students who might participate attend, rather than just the number of students that would be served by the project; for example, if a Tribal applicant plans to serve students from both the local public school and the local BIE-funded school, it would add the enrollment of both schools to calculate the percentage of Native students who could be served by the project. We have revised the language to more clearly express this intent by replacing ''of the student body to be served'' with ''of the total student population of the schools to be served by the project'' in § 263.22(b)(5)(i).

Regarding the commenter's concern, it was the intended result that relatively few applicants will meet the threshold of 50 percent membership from a single Tribe. A Tribe for which a local school's student population is 50 percent or more members of that Tribe will likely have a heightened interest in the project and in the services that will be provided to students. A public school district applicant whose target population for its project is located on a reservation, for example, would likely meet this threshold and should be required to partner with the local Tribe. To respect Tribal sovereignty and the important relationship between a Tribe and its members, this requirement was designed to ensure that for the relatively small number of applicants that meet the 50 percent student threshold, partnership with a specific Tribe is required.

We also recognize that many schools, especially in urban areas, serve students from many different Tribes and understand that it may be difficult for entities to obtain accurate data on the percentages of students from various Tribes, which can create a burden for applicants. Moreover, we recognize that in some situations, such as in urban areas, there is no Tribe with a local presence, and that an Indian organization may be a more appropriate partner.

In the situation in which the student body does not have a majority of students from one Tribe, the proposed language required every entity other than a Tribe to partner with a local Tribe, a local or national Tribal organization, TCU, or BIE-funded school for the project. We are narrowing this alternative part of the application requirement to apply only to local educational agency (LEA) and State educational agency (SEA) applicants. An applicant that meets the definition of Indian organization, as well as a BIE-funded school or a TCU, already has Tribal affiliation and it would be unduly

burdensome to require such entities to include documentation of partnership with a Tribe or other Indian organization.

We are also changing the requirement regarding which entity an LEA or SEA must partner with when no single Tribe accounts for a majority of students in the schools to be served. Rather than allowing a partnership with a local Tribe, Indian organization, TCU, or BIE-funded school, we are changing the options to require a partnership with either a Tribe or an Indian organization. We are replacing the phrase ''Tribal organization'' with ''Indian organization'' to correctly match the defined term in this regulation. In addition, we are removing the ''local'' qualifier for a Tribe because we believe this could be ambiguous and could unduly limit the prospective partners for an application. In the interests of sovereignty, the preference is for the applicant to partner with a local Tribe if possible, but we recognize that this is not always possible. In addition, we are changing the related program requirement to require only LEAs or SEAs to include the Tribe or Indian organization partner in selecting services and providers.

Changes: We have revised proposed § 263.22(b)(5) to—(1) provide that a non-Tribal applicant that proposes a project serving a student population consisting of 50 percent or more members of one Tribe must submit documentation of partnership with that Tribe and (2) require an LEA or SEA applicant that proposes a project that will serve a student population where no single Tribe accounts for at least 50 percent of the members to submit documentation of partnership with at least one Tribe or Indian organization. We have also revised the related program requirement in § 263.25(a) to require only LEAs or SEAs to include the Tribe or Indian organization partner in selecting services and providers.

Comment: One commenter stated that proposed § 263.24 adds numerous new selection criteria to the program that would place a significant burden on Tribes and Tribal organizations, whether applying alone or as a documented partner to a non-Tribal applicant. Additionally, the commenter argued the regulations do not clearly state whether these new selection criteria will be applied to all priorities or only to the new priority in § 263.21(c)(7).

Discussion: Proposed § 263.24 creates new selection criteria for evaluation of grant applications: Three factors under the criterion ''quality of project services'' (§ 263.21(a)), four factors under the criterion ''quality of project design'' (§ 263.21(b)), and two factors under the criterion ''reasonableness of budget'' (§ 262.21(c)). The Department can use these selection criteria in addition to the general selection criteria in 34 CFR 75.210. The expanded set of available selection criteria ensures a grant competition that is tailored to the unique needs of Tribal applicants and the students they serve. While the more specific selection criteria may result in a minor burden to applicants that choose to address those criteria, we believe this burden is outweighed by the benefit of being able to evaluate applicants using selection criteria that reflect the specific goals of the program. We believe this will enhance our ability to ensure we select applicants that will provide programs that are designed to improve the educational opportunities and achievement of Indian children and youth.

With respect to the commenter's statement that it is unclear when the new selection criteria in § 263.24 will be applied, it is clear from the language of the regulation that the specific criteria in § 263.24 as well as the general selection criteria in 34 CFR 75.210 may be chosen to evaluate applicants for any competition. In the NPRM we included a range of possible selection criteria, some of which do relate to the new choice priority and some that are more general, so that we are able to choose selection criteria that will best align with the program focus from year to year.

Changes: None.

Comment: Several commenters provided specific suggestions regarding the requirements in proposed § 263.25 relating to the new choice priority.

One commenter suggested that, to ensure accountability and reliability of providers, grantees should work with their SEA to pre-approve providers. The commenter also suggested that applicants with a current Demonstration Grant under the absolute priority for Native Youth Community Partnerships (NYCP) should combine some of the objectives from the current NYPC project in planning a project under this new priority in order to sustain successful efforts and relationships. Finally, the commenter asked that we include in this program a focus on engaging and involving the parent, guardian, or family.

Another commenter objected to the new choice priority if its use would result in a decrease in the number of students served. The commenter also requested that we include, among possible service options, assistance for helping students navigate college life. The commenter also requested that grantees that are not Tribes should be responsible for selecting service providers, and that the local Tribe should not have the burden of selecting or approving them. Another commenter provided the opposite suggestion, stating that Tribes should have sole responsibility for approving service providers in order to maintain more control over the services available to their members. This commenter also stated that instead of focusing on parental choice of services, the regulations should allow Tribes and Tribal organizations to be solely responsible for determining what services should be provided to students and approving service providers. This commenter argued that if Tribes and Tribal organizations have the sole authority to make these decisions, they will be better able to maintain control over funds, ensure funds are spent in accordance with spending requirements, hold service providers accountable, and deploy scarce resources in the most effective manner. The commenter recommended that Tribes and Tribal organizations should be permitted to continue providing the same programs that have proven successful in previous years.

Discussion: We appreciate the suggestions on the choice priority requirements. We agree that it is important that grantees ensure that providers are high quality and have a record of success and reliability, and one way to ensure that could be to work with the SEA. However, we decline to add that as a program requirement in order to respect Tribal sovereignty and so as not to preclude the flexibility for grantees to address this in another way based on local needs and context.

We also agree that applicants with a current Demonstration Grant under the absolute priority for NYCP could use their current objectives in a proposed project under the new choice priority. Such grantees would need to ensure that they use a variety of providers and permit families to choose from options, rather than using the previous model under which the grantee exclusively provided a specific set of services. Finally, we agree with the commenter that it is important that projects engage and involve parents and families. We believe that the requirements attached to this priority, specifically the parent involvement and feedback process that may include a parent liaison, will ensure that involvement.

With regard to whether the new choice priority would prevent projects from increasing the number of students served, we note that applicants have

discretion in the number of students to serve in their project. The choice priority does not create any limitation on the number of students a grantee would serve; rather the scope of the project, the capacity of the grantee and its partners, and the availability of service providers in the local area all may be factors in determining how many students are served.

We decline to add to the list of possible services assistance to college students in navigating the college experience because the Demonstration program is an elementary and secondary education grant program for Indian children and youth. Although one of the statutory uses of funds is college coursework for secondary students to aid in their transition to higher education, services to students at institutions of higher education are not allowable uses of funds.

With regard to the Tribe's role in selecting or approving service providers, the proposed regulations require that a public school district applicant partner with a Tribe or Indian organization, and that together the applicant and the Tribal partner select service providers. We believe that, rather than unduly burdening the Tribe, this honors Tribal sovereignty and ensures the Tribe's involvement in the project. Importantly, this approach will help ensure that Tribal service providers are not omitted from consideration. In addition to ensuring the Tribe's role in designing projects to meet its goals and objectives, we believe that it is important for parents and families to be included in the decision-making process by providing them with a choice of services or service providers. We believe that this level of parent and family involvement is consistent with section 6121(d)(3) of the ESEA, which requires applicants for this grant program to describe how parents and families of Indian children will be involved in developing and implementing the activities of each project.

Regarding the commenter's concerns about the appropriate and effective use of funds and the ability to hold service providers accountable, the eligibility for this program is not limited to Tribes and Indian organizations. Other entities, including public school districts and other entities, can be, and in the past have been, successful in administering grants under the Demonstration program. Although we have added the requirement to partner with Tribes or Indian organizations, the lead applicant can be an entity other than a Tribe or Indian organization. Finally, a Tribal grantee under the new priority is not prevented from offering as options for parents, services and programs that have proven successful in the past.

Changes: None.

Comment: One commenter stated that when the educational choice priority in proposed § 263.21(c)(7) is used, the corresponding program requirement in proposed § 263.25(h)(1)—that at least 80 percent of grant funds are used for direct services to eligible students—is too limiting and does not take into consideration a Tribe or Indian organization's Federal indirect cost rate. The commenter contended that the Tribe or Tribal organization's Federal indirect cost rate should be used instead of the same percentage for all grantees.

Discussion: When developing these regulations, we determined that when the educational choice priority in § 263.21(c)(7) is used, it is important to have a specific minimum percentage of the grant funds that must be spent on direct services for eligible students. Because the choice priority will require the grantee to engage in activities other than direct services (for example, seeking out and vetting service providers, establishing a method for parents to select services, and receiving parent requests for services), we sought to ensure that these program requirements do not undercut the overall goal of the grant program. Requiring grantees to spend at least 80 percent of grant funds on direct services for eligible students helps ensure that the grant program supports services that improve the educational opportunities and achievement of Indian children and youth, as required under ESEA section 6121(a)(1). Although the 80 percent requirement may limit the amount of indirect costs that some grantees are otherwise authorized to take, most Department grantees have indirect cost rates well under 20 percent, and for those with higher authorized rates, the 80 percent requirement effectuates the policy goal of ensuring that funds are spent on services to students.

Although we determined that no change is needed to this program requirement, we also examined the related selection criterion in proposed § 263.24(c)(1) regarding the extent to which the budget reflects a reasonable per-pupil amount for services. Whereas in the NPRM the proposed language excluded funds for ''project administration,'' we are clarifying that the per-pupil amount should be based only on costs for direct services, and should not take into account other costs such as the cost of the service selection method or parent feedback process.

Changes: We have revised proposed § 263.24(c)(1) (§ 263.24(d)(1) in the final regulations) to clarify that the per-pupil amount should be based only on direct costs for student services.

Comment: One commenter stated that we did not engage in Tribal consultation regarding several specific provisions in the regulations. The commenter argued that we characterized these changes as minor or technical but in the commenter's view they are substantive changes to the regulations.

Discussion: The regulatory provisions listed by the commenter are either technical changes or are changes added to the proposed regulations as a result of the Tribal consultation sessions.

The commenter listed, as changes to the application requirements that were not part of the Tribal consultation process, the addition of ''and families'' in § 263.22(a)(1) and the addition of ''evidence-based'' in § 263.22(a)(3). These changes are technical changes to align the regulations with the ESSA amendments to title VI of the ESEA, and are explained in more detail in the separate discussions of each regulatory provision. The commenter also objected to § 263.21(c)(5)(ii), which affects the eligibility of BIE-funded schools for the rural priority; this is a technical change, as BIE-funded schools were always eligible for the rural priority under the existing regulations.

In addition, the commenter listed, as changes that were not part of the Tribal consultation process, § 263.21(c)(6), the addition of a non-rural priority; § 263.22(b)(4), a requirement that applicants plan for how they will oversee service providers; and § 263.22(b)(5), an application requirement for non-Tribal partnerships. Each of these changes were the result of recommendations and input from Tribes that occurred as part of the Tribal consultation process.

The commenter also cited the new selection criteria in § 263.24 and new program requirements in § 263.25 as further changes that were not part of the Tribal consultation process. While these specific selection criteria and requirements were not listed in the request for Tribal consultation, these criteria and requirements were informed by the totality of input and discussion we received during the Tribal consultation process.

Changes: None.

Comment: None.

Discussion: Upon further consideration regarding the new priority for choice in § 263.21(c)(7), and in considering that many applicants may propose a planning period for a portion of their project, it is important that we clarify the expectations for grantees that use a planning period. Specifically, in § 263.25(i), we have added a

requirement that grantees submit to the Department prior to the end of the planning period the following documentation: (1) A description of the service selection process, which is functioning and ready for parent use; (2) a description of the parent involvement and feedback process, which is functioning and ready for parent use; (3) a sample of the written agreement with providers, along with a list of providers with whom the grantee has obtained signed written agreements; and (4) a description of the process to be used to select students in the case of excess demand.

For applicants that do not propose a planning period, it is important that applicants provide a description of how they will meet these four program requirements; therefore, we are also adding them as application requirements for such grantees in § 263.22(b)(7). We have also determined that the program requirement regarding supplement-not-supplant in § 263.25(c) should be moved to the application requirements in § 263.22(b)(6) as an assurance. We have removed proposed paragraph § 263.25(d)(3), which required that the service selection method be supplemental to existing methods to reduce unnecessarily duplication and burden. Finally, to provide flexibility for applicants that would like a planning period of less than a year in order to provide direct services to students more quickly, we are revising the relevant language of proposed § 263.25(h) to permit a shorter planning period.

In further consideration of the planning period and the relationship between grantees and service providers, we are also clarifying the limitations on the use of grant funds. We are not changing the limits proposed in § 263.25(h)(1) and (2), which require that at least 80 percent of grants funds are used for direct services and not more than 15 percent of the grant funds are used for the service selection method. We had proposed the provision that these limits do not apply during a grantee's planning period in order to permit grantees to use funds during a planning period to establish a service selection method and parent feedback process. To ensure that grantees use funds in a way that will maximize services to students rather than funding a specific service opportunity, we are clarifying that grantees may not use grant funds to establish or develop the capacity of entities that are or may become service providers for the project. This requirement applies both during a planning period and for the duration of the grant.

Changes: We have added new paragraphs (b)(6) and (7) to proposed § 263.22, requiring that applications include assurances of non-supplanting and, for applicants that do not propose a planning period, documentation of compliance with certain program requirements; deleted proposed paragraphs (c) and (d)(3) of § 263.25; redesignated proposed § 263.25(d) through (h) as § 263.25(c) through (g); revised proposed § 263.25(h) to permit planning periods of up to 12 months; added new § 263.25(h)(3) to restrict funds from being used to establish or develop entities that may become service providers; and added new paragraph (h) to § 263.25 regarding information that must be submitted at the end of a planning period.

Executive Orders 12866, 13563, and 13771 Regulatory Impact Analysis

Under Executive Order 12866, it must be determined 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.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For Fiscal Year 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. These final regulations are not a significant regulatory action. Therefore, the requirements of Executive Order 13771 do not apply.

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

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

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

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

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

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

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

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

Discussion of Costs and Benefits: The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for

administering the Department's programs and activities. The potential costs associated with the priorities and requirements will be minimal, while the potential benefits are significant. We have determined that these proposed regulations would impose minimal costs on eligible applicants. Program participation is voluntary, and the costs imposed on applicants by these regulations will be limited to paperwork burden related to preparing an application. The potential benefits of implementing the programs—for example, expanding the choices available to parents and students, improving access to services such as Native language programs, and providing new internship or apprenticeship programs—would outweigh any costs incurred by applicants, and the costs of carrying out activities associated with the application will be paid for with program funds. For these reasons, we have determined that the costs of implementation will be minimal for eligible applicants, including small entities.

Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a substantial economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that will be affected by these final program regulations are LEAs, TCUs, Tribes, Indian organizations, and BIE-funded schools. The final regulations will not have a significant economic impact on the small entities affected because the regulations impose only minimal regulatory burdens and do not require unnecessary Federal supervision. The final regulations will impose minimal requirements to ensure the proper expenditure of program funds. We note that grantees that will be subject to the minimal requirements imposed by these final regulations will be able to meet the costs of compliance using Federal funds provided through the Indian Education Discretionary Grant programs.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Proposed § 263.22 (Application Requirements) and § 263.24 (Selection Criteria) contain information collection requirements (ICR) for the program application package. As a result of the proposed revisions to these sections, under the PRA, the Department has submitted a copy of these sections and an Information Collection request to OMB for its review, 1810–0722.

In Table 1 below, we assume 100 applicants each spend 30 hours preparing their applications.

TABLE 1—DEMONSTRATION GRANTS PROGRAM INFORMATION COLLECTION STATUS

OMB Control No.	Relevant regulations	Expiration	Previous burden (total hours)	Burden under final rule (total hours)	Action under final rule
1810–0722	Sections 263.22, 263.24.	July 31, 2021	Applicants: 4,000	Applicants: 3,000	Reinstate this collection with changes.

Intergovernmental Review

This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards by the end of FY 2020.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

In the NPRM we solicited comments on whether any sections of the proposed regulations could have federalism implications and encouraged State and local elected officials to review and provide comments on the proposed regulations. In the *Public Comment* section of this preamble, we discuss any comments we received on this subject.

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**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is

available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects in 34 CFR Part 263

Business and industry, Colleges and universities, Elementary and secondary education, Grant programs—education, Grant programs—Indians, Indians—education, Reporting and recordkeeping requirements, scholarships and fellowships.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

For the reasons discussed in the preamble, the Secretary of Education amends part 263 of title 34 of the Code of the Federal Regulations as follows:

PART 263—INDIAN EDUCATION DISCRETIONARY GRANT PROGRAMS

■ 1. The authority citation for part 263 continues to read as follows:

Authority: 20 U.S.C. 7441, unless otherwise noted.

■ 2. Revise the heading to subpart B to read as follows:

Subpart B—Demonstration Grants for Indian Children and Youth Program

■ 3. Section 263.20 is amended by:
■ a. In the section heading, adding the words ''and Youth'' after the word ''Children''.
■ b. Removing the definition of ''Indian institution of higher education''.
■ c. In paragraph (5) of the definition of ''Indian organization'', adding the words ''or TCU'' after ''higher education''.
■ d. In paragraph (6)(i) of the definition of ''Native Youth community project'', adding the words ''and Youth'' after the word ''Children''.
■ e. Adding in alphabetical order a definition of ''Parent''.
■ f. In the definition of ''Professional development activities'', adding the words ''and Youth'' after the word ''Children''.
■ g. Adding in alphabetical order a definition for ''Tribal College or University (TCU)''.

The additions read as follows:

§ 263.20 What definitions apply to the Demonstration Grants for Indian Children and Youth program?

* * * * *

Parent includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare).

* * * * *

Tribal College or University (TCU) means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994, any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978, and the Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978.

■ 4. Section 263.21 is revised to read as follows:

§ 263.21 What priority is given to certain projects and applicants?

(a) The Secretary gives priority to an application that presents a plan for combining two or more of the activities described in section 6121(c) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), over a period of more than one year.

(b) The Secretary gives a competitive preference priority to—

(1) *Tribal lead applicants.* An application submitted by an Indian Tribe, Indian organization, BIE-funded school, or TCU that is eligible to participate in the Demonstration Grants for Indian Children and Youth program. A group application submitted by a consortium that meets the requirements of 34 CFR 75.127 through 75.129 or submitted by a partnership is eligible to receive the preference only if the lead applicant is an Indian Tribe, Indian organization, BIE-funded school, or TCU; or

(2) *Tribal partnership.* A group application submitted by a consortium of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 or submitted by a partnership if the consortium or partnership—

(i) Includes an Indian Tribe, Indian organization, BIE-funded school, or TCU; and

(ii) Is not eligible to receive the preference in paragraph (b)(1) of this section.

(c) The Secretary may give priority to an application that meets any of the priorities listed in this paragraph. When inviting applications for a competition under the Demonstration Grants program, the Secretary designates the type of each priority as absolute, competitive preference, or invitational through a notice inviting applications published in the **Federal Register**. The effect of each type of priority is described in 34 CFR 75.105.

(1) *Native youth community projects.* Native youth community projects, as defined in this subpart.

(2) *Experienced applicants.* Projects in which the applicant or one of its partners has received a grant in the last four years under a Federal program selected by the Secretary and announced in a notice inviting applications published in the **Federal Register**.

(3) *Consolidated funding.* Projects in which the applicant has Department approval to consolidate funding through a plan that complies with section 6116 of the ESEA or other authority designated by the Secretary.

(4) *Statutorily authorized activities.* Projects that focus on a specific activity authorized in section 6116(c) of the ESEA as designated by the Secretary in the notice inviting applications.

(5) *Rural applicants.* Projects that include either—

(i) An LEA that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under title VI, part B of the ESEA; or

(ii) A BIE-funded school that is located in an area designated with locale code of either 41, 42, or 43 as designated by the National Center for Education Statistics.

(6) *Non-rural applicants.* Non-rural projects that do not meet the priority in paragraph (c)(5) of this section. This priority can only be used in competitions where the priority in paragraph (c)(5) of this section is also used.

(7) *Accessing choices in education.* Projects to expand educational choice by enabling a Tribe, or the grantee and its Tribal partner, to select a project focus that meets the needs of their students and enabling parents of Indian students, or the students, to choose education services by selecting the specific service and provider desired.

■ 5. Section 263.22 is amended by:
■ a. Revising paragraphs (a)(1) and (3).
■ b. Adding paragraphs (b)(4) through (7).

The revisions and additions read as follows:

§ 263.22 What are the application requirements for these grants?

(a) * * *

(1) A description of how Indian Tribes and parents and families of Indian children and youth have been, and will be, involved in developing and implementing the proposed activities;

* * * * *

(3) Information demonstrating that the proposed project is evidence-based,

where applicable, or is based on an existing evidence-based program that has been modified to be culturally appropriate for Indian students;

* * * * *

(b) * * *

(4) A plan for how the applicant will oversee service providers and ensure that students receive high-quality services under the project.

(5) (i) For an applicant that is not a Tribe, if 50 percent or more of the total student population of the schools to be served by the project consists of members of one Tribe, documentation that that Tribe is a partner for the proposed project.

(ii) For an applicant that is an LEA or SEA and is not required by paragraph (i) of this section to partner with a specific Tribe, documentation that at least one Tribe or Indian organization is a partner for the proposed project.

(6) An assurance that—

(i) Services will be supplemental to the education program provided by local schools attended by the students to be served;

(ii) Funding will be supplemental to existing sources, such as Johnson O'Malley funding; and

(iii) The availability of funds for supplemental special education and related services (*i.e.,* services that are not part of the special education and related services, supplementary aids and services, and program modifications or supports for school personnel that are required to make a free appropriate public education (FAPE) available under Part B of the Individuals with Disabilities Education Act (IDEA) to a child with a disability in conformity with the child's IEP or the regular or special education and related aids and services required to make FAPE available under a Section 504 plan, if any) does not affect the right of the child to receive FAPE under Part B of the IDEA or Section 504, and the respective implementing regulations.

(7) For an applicant that does not propose a planning period—

(i) A description of the service selection method required in § 263.25(d).

(ii) A description of the parent involvement and feedback process required in § 263.25(e).

(iii) A sample of the written agreement required in § 263.25(f).

(iv) A description of the process to choose students to be served, as required in § 263.25(g).

■ 6. Revising the authority citation to § 263.23 to read as follows:

(Authority: 25 U.S.C. 5304, 5307)

■ 7. Add § 263.24 to read as follows:

§ 263.24 How does the Secretary evaluate applications for the Demonstration Grants for Indian Children and Youth grants program?

(a) *In general.* The Secretary uses the procedures in 34 CFR 75.200 through 75.210 to establish the selection criteria and factors used to evaluate applications submitted in a grant competition for the Demonstration Grants for Indian Children and Youth program. The Secretary may also consider one or more of the criteria and factors in this section to evaluate applications.

(b) *Quality of project services.* The Secretary may consider one or more of the following factors in determining the quality of project services:

(1) The extent to which the project would offer high-quality choices of services, including culturally relevant services, and providers, for parents and students to select.

(2) The extent to which the services to be offered would meet the needs of the local population, as demonstrated by an analysis of community-level data, including direct input from parents and families of Indian children and youth.

(3) The quality of the plan to ensure that the services to be offered are evidence-based, where applicable, or are based on existing evidence-based programs that have been modified to be culturally appropriate for Indian students.

(c) *Quality of the project design.* The Secretary may consider one or more of the following factors in determining the quality of the project design:

(1) The extent to which the project is designed to improve student and parent satisfaction with the student's overall education experience, as measured by pre- and post-project data.

(2) The extent to which the applicant proposes a fair and neutral process of selecting service providers that will result in high-quality options from which parents and students can select services.

(3) The quality of the proposed plan to inform parents and students about available service choices under the project, and about the timeline for termination of the project.

(4) The quality of the applicant's plan to oversee service providers and ensure that students receive high-quality services under the project.

(d) *Reasonableness of budget.* The Secretary may consider one or more of the following factors in determining the reasonableness of the project budget:

(1) The extent to which the budget reflects the number of students to be served and a per-pupil amount for services, based only on direct costs for student services, that is reasonable in relation to the project objectives.

(2) The extent to which the per-pupil costs of specific services and per-pupil funds available are transparent to parents and other stakeholders.

■ 8. Add § 263.25 to read as follows:

§ 263.25 What are the program requirements when the Secretary uses the priority in § 263.21(c)(7)?

In any year in which the Secretary uses the priority in § 263.21(c)(7) for a competition, each project must—

(a) Include the following, which are chosen by the grantee, or for LEAs and SEAs, the grantee and its partnering Tribe or Indian organization:

(1) A project focus and specific services that are based on the needs of the local community; and

(2) Service providers;

(b) Include more than one education option from which parents and students may choose, which may include—

(1) Native language, history, or culture courses;

(2) Advanced, remedial, or elective courses, which may be online;

(3) Apprenticeships or training programs that lead to industry certifications;

(4) Concurrent and dual enrollment;

(5) Tuition for private school or home education expenses;

(6) Special education and related services that supplement, and are not part of, the special education and related services, supplementary aids and services, and program modifications or supports for school personnel required to make available a free appropriate public education (FAPE) under Part B of the IDEA to a child with a disability in conformity with the child's individualized education program (IEP) or the regular or special education and related aids and services required to ensure FAPE under Section 504 of the Rehabilitation Act of 1973 (Section 504);

(7) Books, materials, or education technology, including learning software or hardware, that are accessible to all children;

(8) Tutoring;

(9) Summer or afterschool education programs, and student transportation needed for those specific programs. Such programs could include instruction in the arts, music, or sports, to the extent that the applicant can demonstrate that such services are culturally related or are supported by evidence that suggests the services may have a positive effect on relevant education outcomes;

(10) Testing preparation and application fees, including for private school and graduating students;

(11) Supplemental counseling services, not to include psychiatric or medical services; or

(12) Other education-related services that are reasonable and necessary for the project;

(c) Provide a method to enable parents and students to select services. Such a method must—

(1) Ensure that funds will be transferred directly from the grantee to the selected service provider; and

(2) Include service providers other than the applicant, although the applicant may be one of the service providers;

(d) Include a parent involvement and feedback process that—

(1) Describes a way for parents to request services or providers that are not currently offered and provide input on services provided through the project, and describes how the grantee will provide parents with written responses within 30 days; and

(2) May include a parent liaison to support the grantee in outreach to parents, inform parents and students of the timeline for the termination of the project, and assist parents and the grantee with the process by which a parent can request services or providers not already specified by the grantee;

(e) Include a written agreement between the grantee and each service provider under the project. Each agreement must include—

(1) A nondiscrimination clause that—

(i) Requires the provider to abide by all applicable non-discrimination laws with regard to students to be served, *e.g.,* on the basis of race, color, national origin, religion, sex, or disability; and

(ii) Prohibits the provider from discriminating among students who are eligible for services under this program, *i.e.,* that meet the definition of ''Indian'' in section 6151 of the ESEA, on the basis of affiliation with a particular Tribe;

(2) A description of how the grantee will oversee the service provider and hold the provider accountable for—

(i) The terms of the written agreement; and

(ii) The use of funds, including compliance with generally accepted accounting procedures and Federal cost principles;

(3) A description of how students' progress will be measured; and

(4) A provision for the termination of the agreement if the provider is unable to meet the terms of the agreement;

(f) Include a fair and documented process to choose students to be served, such as a lottery or other transparent criteria (*e.g.,* based on particular types of need), in the event that the number of requests from parents of eligible students or from students for services under the project exceeds the available capacity, with regard to the number or intensity of services offered;

(g) Ensure that—

(1) At least 80 percent of grant funds are used for direct services to eligible students, provided that, if a grantee requests and receives approval for a planning period, not to exceed 12 months, the 80 percent requirement does not apply to that planning period;

(2) Not more than 15 percent of grant funds are used on the service selection method described in paragraph (d) of this section or the parent involvement and feedback process described in paragraph (e) of this section, except in an authorized planning period; and

(3) No grant funds are used to establish or develop the capacity of entities or individuals that are or may become service providers under this project;

(h) For a grantee that receives approval for a planning period, not to exceed 12 months, submit to the Department prior to the end of that period the following documents:

(1) A description of the operational service selection process that meets the requirements of paragraph (c) of this section.

(2) A description of the operational parent involvement and feedback process that meets the requirements of paragraph (d) of this section.

(3) A sample of the written agreement that meets the requirements of paragraph (e) of this section, and a list of providers with whom the grantee has signed written agreements.

(4) A description of the process that will be used to choose students to be served in the event that the demand for services exceeds the available capacity, as described in paragraph (f) of this section.

[FR Doc. 2020–15543 Filed 7–16–20; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 10012–16–OW]

40 CFR Part 35

Notice of Funding Availability for Applications for Credit Assistance Under the Water Infrastructure Finance and Innovation Act (WIFIA) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funding availability.

SUMMARY: In the Further Consolidated Appropriations Act, 2020, signed by the President on December 20, 2019, Congress provided $50 million in budget authority for the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) program to cover the subsidy required to provide a much larger amount of credit assistance. The Environmental Protection Agency (EPA or the Agency) estimates that this budget authority may provide approximately $5 billion in credit assistance and may finance approximately $10 billion in water infrastructure investment, while covering increased costs associated with implementing a larger program. The purpose of this notice of funding availability (NOFA) is to solicit letters of interest (LOIs) from prospective borrowers seeking credit assistance from EPA.

EPA will evaluate and select proposed projects described in the LOIs using the selection criteria established in statute and regulation, and further described in this NOFA as well as the WIFIA program handbook. This NOFA establishes relative weights that will be used in the current LOI submittal period for the selection criteria, introduces new budgetary scoring factors to determine budgetary scoring compliance, and outlines the process that prospective borrowers should follow to be considered for WIFIA credit assistance.

In addition, EPA reserves the right to make additional awards using FY 2020 appropriated funding or available carry-over resources, consistent with Agency policy and guidance, if additional funding is available after the original selections are made. This could include holding a subsequent selection round.

DATES: The LOI submittal period will begin on July 17, 2020 and end at 11:59 p.m. EDT on October 15, 2020.

ADDRESSES: Prospective borrowers should submit all LOIs electronically via email at: *wifia@epa.gov* or via EPA's SharePoint site. To be granted access to the SharePoint site, prospective borrowers should contact *wifia@epa.gov* and request a link to the SharePoint site, where they can securely upload their LOIs. Requests to upload documents should be made no later than 5:00 p.m. EDT on October 13, 2020.

EPA will notify prospective borrowers that their LOI has been received via a confirmation email.

Prospective borrowers can access additional information, including the WIFIA program handbook and application materials, on the WIFIA website: *https://www.epa.gov/wifia/.*

SUPPLEMENTARY INFORMATION: For a project to be considered during a selection round, EPA must receive a