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Issued on July 23, 2024.

**Peter A. White,**

*Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.*

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## DEPARTMENT OF EDUCATION

### 34 CFR Part 263

[Docket ID ED-2024-OESE-0008]

RIN 1810-AB70

#### Indian Education Discretionary Grant Programs; Professional Development Program

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to revise the regulations that govern the Professional Development program, Assistance Listing Number (ALN) number 84.299B, authorized under title VI of the Elementary and Secondary Education Act of 1965, as amended (ESEA), to establish priorities, requirements, and a definition for the program, including a priority for teacher retention projects.

**DATES:** We must receive your comments on or before August 28, 2024.

**ADDRESSES:** Comments must be submitted via the Federal eRulemaking Portal at [regulations.gov](http://regulations.gov). However, if you require an accommodation or cannot otherwise submit your comments via [regulations.gov](http://regulations.gov), please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments

only once. In addition, please include the Docket ID at the top of your comments.

• **Federal eRulemaking Portal:** Go to [regulations.gov](http://regulations.gov) to submit your comments electronically. Information on using [regulations.gov](http://regulations.gov), including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “Help.”

• **Postal Mail, Commercial Delivery, or Hand Delivery:** The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about these proposed regulations, address them to Donna Sabis-Burns, U.S. Department of Education, 400 Maryland Avenue SW, Room 4B-213, Washington, DC 20202-6335. Telephone: (202) 213-9014.

**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 [regulations.gov](http://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:**

Donna Sabis-Burns, U.S. Department of Education, 400 Maryland Avenue SW, Room 4B-213, Washington, DC 20202-6335. Telephone: (202) 213-9014. Email: [donna.sabis-burns@ed.gov](mailto:donna.sabis-burns@ed.gov).

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

**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 identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department’s programs and activities.

During and after the comment period, you may inspect all public comments

about these proposed regulations by accessing [regulations.gov](http://regulations.gov). To inspect comments in person, 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

Every student deserves access to well-prepared, qualified, and supported educators who reflect the rich diversity of our nation. To support student success, the Department is committed to recruiting, preparing, and retaining a well-prepared educator workforce that is culturally and linguistically diverse. Well before the COVID-19 pandemic, low wages in the education profession, the cost of high quality educator preparation, inequitable funding practices, poor working conditions, and other factors contributed to a decline in new educators entering the field and high rates of educator attrition.<sup>1</sup> The COVID-19 pandemic exacerbated the shortage of education professionals in many communities.<sup>2</sup> The impact of these factors may be especially challenging in schools that serve a high proportion of Indian students, and they are all key challenges that Tribal leaders have reported during Tribal Consultation. In response, as part of its *Raise the Bar: Lead the World* initiative (<https://www.ed.gov/raisethebar/>), the Department is working with State educational agencies (SEAs), Tribal education agencies (TEAs), local

<sup>1</sup> Podolsky, A., Kini, T., Bishop, J., & Darling-Hammond, L. (2016). *Solving the Teacher Shortage: How to Attract and Retain Excellent Educators*. Learning Policy Institute. <https://doi.org/10.54300/262.960>; Prince, C.D. (2022). *Attracting Well-Qualified Teachers to Struggling Schools*. American Federation of Teachers. <https://www.aft.org/periodical/american-educator/winter-2002/attracting-well-qualified-teachers-struggling>; Walker, T. (2019). *Educators and Parents Reset the Class Size ‘Debate’*. National Education Association. <https://www.nea.org/advocating-for-change/new-from-nea/educators-and-parents-reset-class-size-debate>.

<sup>2</sup> U.S. Department of Education. (2023). *Raise the Bar Policy Brief: Eliminating Educator Shortages through Increased Compensation, High-Quality and Affordable Educator Preparation and Teacher Leadership*. <https://www.ed.gov/raisethebar/eliminating-educator-shortages-compensation-preparation-leadership>.

educational agencies (LEAs), and others to help them recruit and retain highly qualified and diverse educators by expanding access to high-quality and affordable educator preparation, improving compensation and working conditions, providing high-quality new teacher induction, offering ongoing professional learning, providing opportunities for teacher leadership and career advancement, and increasing educator diversity. For additional information on *Raise the Bar: Eliminate the Educator Shortage*, please see <https://www.ed.gov/raisethebar/educators>.

The Professional Development program can help address the unique needs of Indian students by expanding the proportion of educators who share their cultural and linguistic background. Research indicates that Indian teachers have a significant impact on Indian students. Students who have exposure to teachers who represent their background demonstrate improved academic achievement.<sup>3</sup> While approximately one percent of students were Indian or Alaska Native in school year 2020–2021, 0.5 percent of educators shared this background (for additional information, see <https://nces.ed.gov/programs/coe/indicator/clr>).

Indian teacher education and retention is an investment in Tribal Nations that strengthens their capacity to address community needs.<sup>4</sup> When Indian students in the fourth and eighth grade were asked who taught them most of what they know about their Indian history, language, and traditions, they ranked teachers second only to their families. Yet 60 percent of those students had teachers who reported never attending professional development programs aimed at developing culturally responsive instructional practices for Indian students over the past two years.<sup>5</sup>

The Secretary proposes to revise the regulations in 34 CFR part 263 that govern the Professional Development program to better enable the Department and grantees to meet the objectives of

the program, including supporting educator retention efforts. As described in the *Tribal Consultation* section of this document, Tribes favored expanding and increasing efforts to retain high-quality Indian educators. This notice of proposed rulemaking (NPRM) also reflects recent congressional interest in promoting retention of effective educators through Department programs. Accordingly, the Department proposes two new priorities and accompanying requirements for applicants proposing to retain highly effective Indian educators. The Secretary also proposes to revise the payback requirements to be responsive to comments received during Tribal Consultation.

We propose adding two new priorities that respond to the need to retain effective Indian educators. The first is a priority for projects focused on the retention of Indian educators. The second priority is for applications submitted by an SEA, LEA, or Bureau of Indian Education (BIE) school as the lead applicant, in consortium with an institution of higher education (IHE). This priority would support the applicants that are directly responsible for retaining teachers. Note, there is already a priority in § 263.6(a)(1) for applications submitted by an Indian Tribe, Indian organization (including a TEA that meets the definition of “Indian organization” in § 263.3), or TCU.

For use in the priority on the retention of Indian educators, we also propose a new definition of “educator” that is broad and informed by ESEA sections 6122(a)(2), 8101(42)(A), and 8101(35). The proposed definition includes teachers, principals, administrators, and other school leaders, as well as specialized instructional support personnel (e.g., school psychologists, school counselors, school social workers, librarians, early intervention service personnel), paraprofessionals, and other faculty. A broad definition creates the opportunity for the Department to support communities in addressing a variety of needs facing their schools and classrooms, such as utilizing early intervention service personnel to provide targeted instruction to students and additional support to teachers. At the same time, the definition is structured to allow the Department to focus on particular groups of educators, such as teachers, in a given grant competition.

Applicants addressing the priority on Indian educator retention would propose an educator retention initiative to help address the shortage of Indian educators and expand their impact on

Indian students’ education. For example, applicants could propose an educator retention initiative providing Indian educators the opportunity to facilitate, lead, or engage in sustained, intensive, job-embedded, data-driven, classroom-focused professional learning that is collaborative and evidence based. Applicants could also propose a retention initiative to support compensated educator leadership models designed to increase the retention of effective, experienced Indian educators who take on leadership responsibilities to help ensure that Indian students gain knowledge and understanding of their communities, languages, histories, traditions, and cultures and support their peers. Applicants addressing the proposed priority for applications from an SEA, LEA, or BIE school would propose an initiative as the lead applicant in consortium with an IHE. This may be especially relevant in circumstances where the SEA, LEA, or BIE school is likely to be the employer, but must still work in partnership with an IHE to meet the statutory eligibility requirements.

In addition, we propose updates to the payback requirements to ensure that more programmatic models are feasible, including by clarifying that payback requirements only apply to pre-service training, distinguishing between the payback requirements for individuals who receive training as full-time or part-time students, and explicitly clarifying that payback may continue after the end of a grant.

We invite comment specifically on the effects of the proposed regulations on small entities, and on whether there may be further opportunities to reduce any potential adverse impacts, or increase potential benefits, resulting from these proposed regulations without impeding the effective and efficient administration of the Indian Education Discretionary Grant programs.

### Tribal Consultation

Due to the Federal Government’s unique political and legal relationship with Tribes, as set forth in the Constitution of the United States, treaties, Federal law, and Executive orders, the Department held three virtual Tribal consultations relevant to these proposed regulations on June 30, 2022, January 24, 2023, and May 23, 2023. The Department announced the opportunities through various external listservs and social media.

In the sessions on June 30, 2022, and May 23, 2023, the Department sought feedback from elected Tribal leaders on three topics: future priority areas, the

<sup>3</sup> Olson, L. (2023). *Teachers Like Us: Strategies for Increasing Educator Diversity in Public Schools*. FutureEd. Washington, DC: McCourt School of Public Policy, Georgetown University.

<sup>4</sup> Anthony-Stevens, V., Moss, I., Como Jacobson, A., Boysen-Taylor, R., & Campbell-Daniels, S. (2022). Grounded in relationships of support: Indigenous teacher mentorship in the Rural West. *The Rural Educator*, 43(1), 88–104. <https://doi.org/10.35608/ruraled.v43i1.1209>.

<sup>5</sup> Rampey, B.D., Faircloth, S.C., Whorton, R.P., and Deaton, J. (2021). *National Indian Education Study 2019* (NCES 2021–018). U.S. Department of Education. Washington, DC: Institute of Education Sciences, National Center for Education Statistics.

needs of Indian students, and future budget development. In these sessions, the Department posed 10 specific questions to Tribal leaders or their proxies to inform the design of future competitions. Tribal Consultation with elected Tribal leaders or their officially designated proxies informed the proposed priorities, requirements, and definition.

To begin, the Department requested input on future priority areas and funding levels for programs with Tribal implications. The majority of Tribal leaders expressed the need for educator, principal, school leader, and administrator retention and recruitment support, including professional development, housing, and access to mental and emotional health resources for both educators and students. Particularly in rural areas, Tribal leaders emphasized retention and “grow your own” programs to increase the number of effective educators who enter, and stay in, the profession. Several leaders also expressed the need for Native American language and culture revitalization and resources. Additionally, one participant requested reprioritizing doctoral program assistance for Indian students.

The FY 2023 Demonstration Grants for Indian Children competition invited applications to support Native American teacher retention. The priorities proposed in this notice of proposed rulemaking would allow the Department to run future Indian teacher retention competitions under the Professional Development program. Adding these priorities under the Professional Development program would provide more flexibility and agency to SEAs, LEAs, BIE schools, and Tribal applicants to address the variety of factors impacting Indian teacher retention.

During the June 30, 2022, and May 23, 2023, Tribal consultations, the Department also requested input on the fiscal year (FY) 2024 and 2025 budget proposals, data sources to inform the budget, budget presentation, and future budget development. The majority of Tribal leaders highlighted a need to support Native American language programs, technology, and housing in rural areas, and they stressed the difficulty of recruiting and retaining educators without adequate housing.

The majority of written comments submitted for the May 23, 2023, Tribal Consultation echoed the need for language and cultural revitalization, resources for language teaching and training programs, and social supports such as mental health services. Half of the written comments emphasized

educator shortages and the need for additional postsecondary education funding. In response to these comments, the Department proposes a priority for projects focused on the retention of Indian educators and proposes the definition of “educators” to include specialized instructional support personnel, providing flexibility for SEAs, LEAs, BIE schools, and Tribal applicants to meet the mental and emotional needs of students and educators.

In the development of the FY 2023 Native American Teacher Retention Initiative, the Department held an additional virtual Tribal Consultation on January 24, 2023. The Department requested specific input from Tribal Nations on which of three priority options from the Secretary’s Supplemental Priority 3 would best support the initiative.

The majority of Tribal leaders expressed that educator preparation and retention should be prioritized to ensure that teaching is seen as a viable profession for Indian students to pursue. Tribal leaders supported raising salaries and providing other benefits to keep teachers from leaving the profession or finding better opportunities in higher-paying areas. Additionally, Tribal leaders said that exposing Indian students to more Indian educators would help students see teaching as a viable career path. In response to this feedback, the Department proposes a priority for projects focused on the retention of Indian educators and a priority for SEAs, LEAs, or BIE schools applying as lead applicants.

The Department also requested input from Tribal Nations on identifying challenges that impact Indian educator retention, ways to overcome these challenges, and any known innovative educator leadership models to increase retention of effective, experienced Indian educators. The Tribal leaders also described additional barriers to educator retention, such as salaries and housing availability or housing costs that still need to be addressed.

Tribal leaders in all three Tribal consultations stressed the importance of retaining Indian educators as well as ways that strong retention initiatives can improve student achievement, increase school leadership, and create culturally responsive instructional and curricular resources to meet students’ needs. In response to these comments, the Department proposes priorities to support SEA, LEA, BIE school, and Tribal applicants in addressing these needs.

## Proposed Regulations

We group major proposals according to section of the regulations.

*What definitions apply to the Professional Development program? (§ 263.3)*

*Statute:* The program statute addresses the training, development, and retention of school staff who serve Indian students, variously referring to teachers, education professionals, educators, administrators, principals, other school leaders, paraprofessionals, counselors, social workers, and specialized instructional support personnel.

*Current Regulations:* The program regulations in part 263 restate the program purpose and list school staff including teachers, educators, principals, other school leaders, administrators, teacher aides, paraprofessionals, counselors, social workers, and specialized instructional support personnel.

*Proposed Regulations:* For use in the Indian educator retention priority, we propose to create an umbrella term for such school staff by establishing a defined term “educator.”

*Reasons:* We propose to establish the broad defined term “educator” for the purpose of the retention priority, to capture all of the educational professionals currently referenced in the program statute and regulations who serve Indian students and have a hand in their outcomes, using terminology consistent with that used in ESEA section 6122(a). As proposed, the Department would have the flexibility to choose from among these education professionals, in a given competition, which would allow the Department, where appropriate, to target specific kinds of educators in response to local needs or changing priorities.

*What are the application requirements for these grants? (§ 263.5)*

*Statute:* ESEA section 6122(e) specifies three application requirements.

*Current Regulations:* Section 263.5 includes the statutory application requirements and regulatory clarifications.

*Proposed Regulations:* We propose to revise § 263.5 to distinguish between the application requirements that are required for every competition under the Professional Development program and those that may be applied in any year at the Secretary’s discretion and as appropriate to the competition.

*Reasons:* The proposed changes would allow the Department to tailor

the application requirements to the type of priority used in a particular competition. For example, if the Department were to use only the priority for a retention program in a particular competition, we would not require one or more letters of support from LEAs that serve a high proportion of Indian students indicating their plans to consider graduates of the Professional Development program for employment, as that is an application requirement related to the priorities for pre-service training.

*What priority is given to certain projects and applicants? (§ 263.6)*

*Statute:* ESEA section 6122(a)(4) provides that one purpose of the Professional Development program is to develop and implement initiatives to promote the retention of effective educators, principals, and school leaders who have a record of success in helping low-achieving Indian students improve their academic achievement, outcomes, and preparation for postsecondary education or employment.

*Current Regulations:* Section 263.6 contains two competitive preference priorities in paragraphs (a)(1) and (2), and four optional priorities in paragraph (b) that the Secretary may use in any year in which there is a new competition.

*Proposed Regulations:* We propose to add a priority for projects focused on Indian educator retention to § 263.6(b). We also propose to add a priority for applications submitted by SEA, LEA, or BIE school applicants as lead applicants in consortia with IHEs to § 263.6(b).

*Reasons:* We propose the new Indian educator retention priority to address the need, heard through Tribal consultation, to support Indian Tribes and Indian organizations (including TEAs), SEAs, LEAs, and BIE schools in addressing the shortage of Indian educators and increasing educators' impact on Indian students' education. The proposed priority for SEA, LEA, and BIE school applicants would provide these applicants more control and flexibility in implementing educator retention initiatives. Because SEAs, LEAs, and BIE school applicants are more likely to be the employers of elementary and secondary educators than are IHEs, their role as the lead applicant can promote strong program implementation, particularly for retention initiatives, that will benefit Indian students in accordance with the purposes described in ESEA section 6122(a). This priority would be in addition to the priority for Tribal lead applicants in § 263.6(a)(1), which

applies to TEA applicants that meet the definition of an "Indian organization" in § 263.3.

We are not proposing to remove any of the existing priorities from the regulations. The proposed priorities would provide additional options from which the Department may choose for any competition under the Professional Development program. Two of the purposes of the Professional Development program described in ESEA section 6122(a) are to increase the number of qualified Indian teachers and administrators that serve Indian students and to develop and implement initiatives to promote the retention of effective teachers, principals, and school leaders. Adding these proposed priorities would encourage new projects to increase the retention of Indian educators and encourage partnerships between SEAs, LEAs, BIE schools, Tribal applicants, and IHEs to improve the achievement of Indian students by increasing their engagement with highly effective Indian educators.

*What are the payback requirements? (§ 263.9)*

*Statute:* Under ESEA section 6122(h), the Secretary must require through regulations a service obligation for individuals who receive training under the Professional Development program. Such work must relate to the training received under the program and benefit Indian students in an LEA that serves a high proportion of Indian students. An individual not performing such work must repay all or a prorated part of the assistance received.

*Current Regulations:* Section 263.9 establishes payback requirements. The current regulations set the work-related payback requirement equal to the total period of time for which pre-service or in-service training was actually received on a month-for-month basis. The current regulations also describe requirements for a payback agreement, cash payback, and opportunities for payback deferral based on continued education or military service. The current regulations do not specify that payback is only required for pre-service training or distinguish between individuals who receive full-time training through the Professional Development program and those who receive part-time training.

*Proposed Regulations:* We propose clarifying that pre-service training requires payback and retention activities do not require payback. We also propose to change the required payback time period so that individuals who participate in training under the Professional Development program on a part-time basis incur a payback period

equivalent to the accumulated academic years of training the participant received. For example, if a participant completed part-time pre-service training over the course of two years that is equivalent to one academic year, they must complete work-related payback for the number of months that are equivalent to one full academic year at the institution where they received the training (e.g., ten months).

*Reasons:* These changes would allow the Professional Development program to more fully meet its mission of recruiting qualified Indian individuals to become educators and offer part-time students a service payback option that is equivalent to the accumulated academic-year equivalent of the credit they received through training.

In addition, these updates clarify that individuals who receive services as part of an educator retention program would be beneficiaries of services related to their current roles as educators and not participants in a pre-service training program that requires work payback.

*What are the requirements for payback deferral? (§ 263.10)*

*Statute:* Under ESEA section 6122(h)(2), the Secretary must require periodic work-related payback reporting for individuals receiving training under the Professional Development program. An individual not performing such work must repay all or a prorated part of the assistance received.

*Current Regulations:* Section 263.10 establishes payback deferral requirements. The current regulations permit deferral for military service or continued education and describe the requirements for obtaining deferral under these circumstances.

*Proposed Regulations:* We propose to expand the circumstances under which the Secretary may grant exceptions to and deferral of the payback requirement for pre-service training. Specifically, we propose to add exceptions for participants who experience permanent disability and deferrals for participants who experience temporary disability, or are serving as a full-time volunteer for an Indian Tribe. We also propose regulations that would establish the process for requesting an exception or deferral based on the underlying reason for the request.

*Reasons:* Consistent with the Department's administration of other programs with payback or similar requirements, the Department proposes to add an exemption for participants who are unable to meet their obligations due to death or permanent disability. Similarly, we propose to allow participants to defer their payback

obligations in the event of temporary disability. We propose to allow deferral for temporary disabilities for up to 36 months to help ensure that participants have adequate time for recovery and to reacclimate into the workforce, before resuming their statutory payback obligation. An individual experiencing a disability that was initially thought to be temporary but became permanent could request an exception on the basis of a permanent disability any time during the maximum allowable deferral of 36 months. We propose these grounds for exemption and deferral in recognition that many participants face changing life circumstances and to make the payback requirement less daunting and more flexible so grantees can recruit a robust pool of qualified participants.

We propose to allow payback deferral for participants who are full-time volunteers for Indian Tribes for several reasons. First, we believe that encouraging such volunteer experience, while ensuring that payback requirements are still met, will help serve the purpose of the program by providing participants with experience and knowledge that will enhance their ability to effectively serve Indian students. In addition to benefiting the participants and their Indian students, such volunteer work would help to build capacity of Indian Tribes, which has been identified by Tribal leaders as a critical need. Again, we propose to allow this flexibility in recognition that many participants face changing life circumstances and to improve program recruitment. We note that, in recent years, participants and grantees have requested that we provide more flexibility in programs that support Indian Self-Determination, to expand their impact. Together with the current exemption and deferral options, this and the other proposed changes would promote such flexibility, while balancing the need to ensure that the program purpose is served and payback obligations are met.

To ensure that the process for requesting and obtaining such exceptions and deferrals is clear and accessible, we have proposed simple procedures that would ensure the Department has the relevant supporting information without imposing unnecessary burden on applicants.

*What are the post-award requirements for grantees providing pre-service training? (§ 263.12)*

*Statute:* Section 6122 and the related portions of title VI of the ESEA require a service payback obligation for individuals who receive training.

*Current Regulations:* Under § 263.12, prior to providing funds to a participant, a grantee must conduct a payback meeting with the participant to explain related costs and the participant's responsibilities after receiving pre-service training. The grantee must report to the Secretary all participant training and payback information in a manner specified by the Department or its designee.

*Proposed Regulations:* Under the proposed regulations, prior to providing funds or services to a participant, and for each subsequent year that training funds are disbursed, each grantee would be required to meet with the participant and enter into a written agreement to ensure all parties are informed about the purposes of the participant's compliance with payback requirements; estimated length of the training; total training costs; the total amount of assistance accrued year-to-date; contact information for the Office of Indian Education; and a statement explaining that work must be in an "LEA that serves a high proportion of Indian students." In addition, we propose to include a requirement for exit certification. At the time a participant exits from the training program, the grantee must provide certain information to the participant, including: the name of the institution and the number of the Federal grant that provided the scholarship; the number of months the participant needs to work to satisfy the payment requirements; the total amount of scholarship assistance received; the participant's field of study; and the obligation of the participant to perform the service obligation. Upon receipt from the grantee, the participant must provide written certification that the information provided is correct. The proposed regulations would also require the grantee to develop and publish standards for measuring a participant's progress in their training program and require the grantee to report all participant training and payback information to the Secretary.

*Reasons:* We propose these changes for several reasons. The proposed changes would increase accountability for both grantees and participants, and give participants more information about their responsibilities under the professional development program. In recent years, an increasing number of participants have requested information about their payback requirements, indicating the need for a more informative approach. Making these changes would provide more capability for the Department to ensure grantee and participant compliance with all requirements of this program.

## Executive Orders 12866, 13563, and 13771

### Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, 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 \$200 million or more (as of 2023 but to be adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

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

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

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles stated in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866 (as amended by Executive Order 14094).

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

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

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

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits

(including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

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

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

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

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

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

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

*Discussion of Costs and Benefits:* There would be greater potential benefits while the potential costs associated with the proposed regulatory changes would be minimal.

For Professional Development grants, there will be no additional time or cost for applicants developing an application under the proposed priorities and application requirements. The benefits include allowing the program to more fully meet its mission of recruiting and retaining qualified Indian individuals to become educators. We anticipate no additional time spent reporting full-time

participant payback information in the Professional Development Program Data Collection System (PDPDCS). The costs of carrying out these activities would continue to be paid for with program funds.

The benefits include enhancing project design and quality of services to better meet the objectives of the program and the needs of potential grantees with the result being more educators remaining in their current positions and expanding their impact on Indian students and communities and more accurately calculating the length of payback for participants in part-time training. We added deferral payback options for participants who serve as full-time volunteers with Indian Tribes because it will provide them with opportunities to better understand the educational needs of Indian students, while helping to build the capacity of Tribes. These deferral pathways would provide participants more flexibility and help them obtain experience that fulfills their service obligation and provides relief to Tribal communities.

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

#### Clarity of the Regulations

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

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

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A “section” is preceded by the symbol “§” and a numbered heading; for example, § 263.3 What definitions apply to the Professional Development program?)
- 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 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 would be affected by these proposed regulations are LEAs, IHEs, Tribal Colleges and Universities, Tribes, and Tribally operated schools receiving Federal funds under this program. The proposed regulations would not have a significant economic impact on the small entities affected because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision.

However, the Secretary specifically invites comments on the effects of the proposed regulations on small entities, and on whether there may be further opportunities to reduce any potential adverse impact or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of Indian Education Discretionary Grant programs. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible.

#### Paperwork Reduction Act of 1995

The proposed regulations do not create any new information collection requirements under OMB Control number 1810–0722 and therefore do not change the related information collection.

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

coordination and review of proposed Federal financial assistance.

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

**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. These proposed regulations may have federalism implications. We encourage State and local elected officials to review and provide comments on these proposed regulations.

**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, audiotope, or compact disc) on request to the 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](http://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 Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department. (Assistance Listing Number: 84.299B Professional Development Program.)

**List of Subjects in 34 CFR Part 263**

Business and industry, College and universities, Elementary and secondary

education, Grant programs—education, Grant programs—Indians, Indians—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

**Adam Schott,**

*Deputy Assistant Secretary, For Policy and Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.*

For the reasons discussed in the preamble, the Secretary of Education proposes to amend 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 continues to read as follows:

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

■ 2. Amend § 263.3 by adding a definition for “educator” in alphabetical order to read as follows:

**§ 263.3 What definitions apply to the Professional Development program?**

\* \* \* \* \*

*Educator* means an individual who is one or more of—

- (1) A teacher (including an early education teacher);
- (2) A principal or other school leader;
- (3) An administrator;
- (4) Specialized instructional personnel (e.g., school psychologist, school counselor, school social worker, school nurse, librarian, early intervention service personnel);
- (5) A paraprofessional; or
- (6) Faculty.

\* \* \* \* \*

■ 3. Revise § 263.5 to read as follows:

**§ 263.5 What are the application requirements?**

An applicant must—

- (a) Describe how it will—
  - (1) Recruit qualified Indian individuals, such as students who may not be of traditional college age, to become teachers, principals, or school leaders, if applicable;
  - (2) Use funds made available under the grant to support the recruitment, preparation, retention, and professional development of Indian teachers or principals in LEAs that serve a high proportion of Indian students; and
  - (3) Assist participants who receive pre-service training in meeting the payback requirements under § 263.9(b), if applicable;
- (b) If required by the Secretary through a notice inviting applications

published in the **Federal Register**, submit one or more letters of support from LEAs that serve a high proportion of Indian students. Each letter must include—

- (1) A statement that the LEA agrees to consider program graduates for employment;
  - (2) Evidence that the LEA meets the definition of “LEA that serves a high proportion of Indian students”; and
  - (3) The signature of an authorized representative of the LEA;
- (c) If applying as an Indian organization, demonstrate that the entity meets the definition of “Indian organization”;

(d) If it is an affected LEA that is subject to the requirements of section 8358 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), consult with appropriate officials from Tribe(s) or Tribal organizations approved by the Tribes located in the area served by the LEA prior to its submission of an application, as required under ESEA section 8538; and

(e) Comply with any other requirements in the application package.

■ 4. Amend § 263.6 by adding paragraphs (b)(5) and (6) to read as follows:

**§ 263.6 What priority is given to certain projects and applicants?**

\* \* \* \* \*

(b) \* \* \*

(5) *Indian educator retention.* The Secretary establishes a priority for projects that—

- (i) Propose an educator retention initiative to help address the shortage of fully certified Indian educators to help ensure that Indian students gain knowledge and understanding of Native communities, languages, histories, traditions, and cultures and expand their impact on Indian students’ education; or
- (ii) Support compensated educator leadership models designed to increase the retention of effective, experienced Indian educators who take on additional leadership and peer support responsibilities such that Indian teachers have the opportunity to advance in their careers and earn additional compensation.

(6) *State or local educational agencies or Bureau of Indian Education school lead applicants.* The Secretary establishes a priority for applications that are submitted by one or more of the below types of applicants, in consortium with an institution of higher education, which could include a Tribal college or university:

- (i) State educational agency.
- (ii) Local educational agency.
- (iii) Bureau of Indian Education school.

\* \* \* \* \*

■ 5. Amend § 263.9 by:

- a. Revising paragraph (a) introductory text and paragraph (b)(2).
- b. Adding paragraph (b)(5).
- c. Removing paragraph (c)(4) and redesignating paragraph (c)(5) as paragraph (c)(4).
- d. Revising the newly redesignated paragraph (c)(4) and the note to § 263.9.

The revisions and addition read as follows:

**§ 263.9 What are the payback requirements?**

(a) *General.* All participants who receive pre-service training must—

\* \* \* \* \*

(b) \* \* \*

(2) The period of time required for a work-related payback is determined as follows:

(i) If a participant was a full-time student in a pre-service training program, the work-related payback period is equivalent to the total period of time for which pre-service training under the Professional Development program was actually received on a month-for-month basis.

(ii) If a participant was a part-time student in a pre-service training program, the work-related payback period is proportional to the accumulated academic years for which pre-service training under the Professional Development program was actually received on a month-for-month basis, taking into consideration the typical academic calendar of the institution where the training was received.

(iii) If a participant received pre-service training as a full-time student for a portion of the program and as a part-time student for another portion of the program, the period of work-related payback is prorated accordingly.

\* \* \* \* \*

(5) The work-related payback period for an individual supported under the Professional Development program may extend beyond the end of the performance period of the Professional Development grant.

(c) \* \* \*

(4) Notwithstanding paragraph (c)(1) of this section, participants who exited or completed a grant-funded pre-service training program in Federal fiscal year 2020 (October 1, 2019–September 30, 2020) who did not submit employment verification within 24 months of program exit or completion, and

participants with qualifying employment during Federal fiscal year 2020 who did not submit employment verification for a 24-month period, will automatically be referred for a cash payback unless the participant qualifies for a deferral as described in § 263.10.

*Note to § 263.9:* For grants that provide pre-service administrator training, a participant who has received administrator training and subsequently works for a Tribal education agency that provides administrative control or direction of public schools (e.g., BIE-funded schools or charter schools) satisfies the requirements of paragraph (b)(1) of this section.

■ 6. Revise § 263.10 to read as follows:

**§ 263.10 What are the exceptions to payback requirements and requirements for payback deferral?**

(a) *Exceptions to payback.* Based upon sufficient evidence to substantiate the grounds, the Secretary may grant, in whole or in part, an exception to the repayment requirement in § 263.9 as follows:

(1) Repayment is not required if the participant—

(i) Is unable to continue the course of study or perform the service obligation because of a permanent disability that—

(A) Had not been diagnosed at the time the participant executed the initial agreement; or

(B) Did not originally prevent the participant from performing the requirements of the course of study or the service obligation at the time the participant signed the agreement but subsequently the participant's condition has worsened; or

(ii) Has died.

(2) To request an exception to payback under paragraph (a)(1) of this section for oneself or on behalf of another individual, a requestor must submit an explanation of the reason for the exception along with substantiating evidence to the Secretary through the program officer.

(b) *Deferral of payback.* Subject to meeting the requirements of this section, the Secretary may defer payback requirements during the time the participant is—

(1) Continuing education after completing or exiting the Professional Development program, in a full- or part-time course of study without interruption, in a program leading to a degree at an accredited institution of higher education;

(2) Serving on active duty as a member of the Armed Forces of the United States;

(3) Serving as a full-time volunteer for an Indian Tribe;

(4) Experiencing a temporary disability that affects the participant's ability to continue the course of study or perform the work obligation, for a period not to exceed thirty-six months.

(c) *Secretarial exceptions.* Under limited circumstances as determined by the Secretary and based upon evidence submitted by the participant, the Secretary may grant an exception to, or deferral of, the payback requirement under circumstances not specified in this section. These circumstances may include, but are not limited to, the need to care for a disabled spouse, partner, or child, or to accompany a spouse or partner on active duty in the Armed Forces or Bureau of Indian Affairs law enforcement.

(d) *Requesting payback deferral for continuing education.*

(1) To receive a payback deferral under paragraph (b)(1) of this section, a participant must submit a request to the Secretary through the program officer that includes—

(i) The name of the accredited institution the student will be attending;

(ii) A copy of the letter of admission from the institution;

(iii) The degree being sought; and

(iv) The projected date of completion.

(2) If the Secretary approves the deferral of the payback requirement under paragraph (b)(1) of this section, the participant must submit to the Secretary through the program officer a status report from an academic advisor or other authorized representative of the institution of higher education, showing verification of enrollment and status, after every grading period.

(e) *Requesting payback deferral for active duty in the Armed Forces.* If a participant exits the Professional Development program because the participant is called or ordered to active duty status in connection with a war, military operation, or national emergency for more than 30 days as a member of a reserve component of the Armed Forces named in 10 U.S.C. 10101, or as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5), the Secretary may defer the payback requirement until the participant has completed the military service. Requests for deferral must be submitted to the Secretary through the program officer within 30 days of the earlier of receiving the call to military service or completing or exiting the Professional Development program, and must include—

(1) A written statement from the participant's commanding or personnel officer certifying—



(i) That the participant is on active duty in the Armed Forces of the United States;

(ii) The date on which the participant's service began; and

(iii) The date on which the participant's service is expected to end; or

(2) (i) A true certified copy of the participant's official military orders; and

(ii) A copy of the participant's military identification.

(f) *Requesting payback deferral for volunteer work.*

(1) To receive a payback deferral related to qualifying volunteer work under paragraph (b)(3) of this section, the participant must submit a request to the Secretary through the program officer that includes—

(i) The name of the Indian Tribe at which the participant will be volunteering;

(ii) A copy of the letter appointing the participant as a full-time volunteer at the Indian Tribe;

(iii) A statement of volunteer work to be performed; and

(iv) The projected date of completion.

(2) If the Secretary approves payback deferral under this paragraph (f), the participant must submit to the Secretary through the program officer a status report from an authorized representative from the entity with which the participant is volunteering, showing verification of continued engagement every 12 months. The Secretary may defer the payback requirement until the participant has completed his or her qualifying volunteer work, for a period not to exceed 36 months.

(g) To receive a payback deferral under paragraph (b)(4) of this section, the participant must submit a request to the Secretary through the program officer that includes—

(1) An explanation of the reason for the deferral;

(2) An indication of the length of time for which they are requesting deferral; and

(3) Substantiating evidence.

■ 7. Revise § 263.12 to read as follows:

**263.12 What are the post-award requirements for grantees providing pre-service training?**

(a) *Requirement for payback meeting.* Prior to providing funds or services to a participant, the grantee must conduct a payback meeting with the participant to explain the costs of training and payback responsibilities following training.

(b) *Requirement for payback agreement.* (1) Prior to providing funds or services to a participant, and for each subsequent year that training funds are

disbursed, the grantee must enter into a written agreement with each participant in which the participant agrees to the terms and conditions required by this section.

(2) The payback agreement must explain the Secretary's authority to grant deferrals and exceptions to the service obligation pursuant to § 263.10 and include—

(i) The current Department address for purposes of the participant's compliance with § 263.11, or any other purpose under this part, and other Office of Indian Education contact information;

(ii) The estimated length of training;

(iii) The total training costs;

(iii) The total amount of assistance accrued year-to-date;

(iv) The total number of months in the service obligation year-to-date;

(v) A statement explaining that work must be in an "LEA that serves a high proportion of Indian students," and the regulatory definition of that phrase; and

(vi) Information documenting that the grantee held a payback meeting with the participant that meets the requirements of this section.

(3) A grantee must submit a signed payback agreement to the Department within 30 days of the date on which the payback agreement is fully executed by the grantee and participant. The grantee must provide a copy of the payback agreement to the participant upon execution.

(c) *Exit certification.* At the time of exit from the program, the grantee must provide the below information to the participant. Upon receipt of this information from the grantee, the participant must provide written certification to the grantee that the information is correct:

(1) The name of the institution where the participant received pre-service training and the number of the Federal grant that provided the scholarship.

(2) The number of months the participant needs to work in an LEA that serves a high proportion of Indian students to satisfy the payback requirements in § 263.9.

(3) The total amount of financial assistance received.

(4) The participant's field of study and the obligation of the participant to perform the service obligation with employment that meets the requirements in § 263.9(b).

(d) *Career preparation.* During the grant period, a grantee must conduct activities to assist participants in identifying qualified employment opportunities following completion of the program.

(e) *Information and annual reporting.* The grantee must report to the Secretary

all participant training and payback information in a manner specified by the Secretary as well as any other information that is necessary to carry out the Secretary's functions under section 6122 of the ESEA and this part. Each grantee will make annual reports to the Secretary, unless more frequent reporting is required by the Secretary, that are necessary to carry out the Secretary's functions under this part.

(f) *Standards for satisfactory progress.* The grantee must establish, publish, notify participants of, and apply reasonable standards for measuring whether a participant is making satisfactory progress in the training program. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Are the same as the institution's standards for a student enrolled in the same academic program who is not receiving assistance under this program; and

(2) Include the following elements:

(i) Grades, work projects completed, including performance tasks, or comparable factors that are measurable against a norm and are aligned with demonstrating effective practice.

(ii) A maximum timeframe in which the participant must complete the participant's educational objective, degree, or certificate.

(iii) Consistent application of standards to all participants within categories of students, (e.g., full-time, part-time, undergraduate students, and graduate students).

(iv) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(v) Specific procedures for appeal of a determination that a participant is not making satisfactory progress and for reinstatement of aid.

(g) *Requirement for Indian Preference.* (1) Under section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638), to the greatest extent feasible, a grantee must—

(i) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(ii) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(2) For the purposes of this paragraph (g), an Indian is a member of any federally recognized Indian Tribe.

(Authority: 20 U.S.C. 7442, 25 U.S.C. 5304, 5307)

[FR Doc. 2024-16206 Filed 7-26-24; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 216

[Docket DARS-2024-0023]

RIN 0750-AL80

#### Defense Federal Acquisition Regulation Supplement: Task Order and Delivery Order Contracting for Architectural and Engineering Services (DFARS Case 2023-D007)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2023 that provides directions for awarding architectural and engineering service task orders and delivery orders under multiple-award contracts.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before September 27, 2024, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2023-D007, using either of the following methods:

○ *Federal eRulemaking Portal:* <https://regulations.gov>. Search for DFARS Case 2023-D007. Select “Comment” and follow the instructions to submit a comment. Please include “DFARS Case 2023-D007” on any attached documents.

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2023-D007 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kimberly R. Ziegler, telephone 703-901-3176.

**SUPPLEMENTARY INFORMATION:**

## I. Background

DoD is proposing to amend DFARS subpart 216.5, Indefinite-Delivery Contracts, to implement section 802 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117-263), which amends 10 U.S.C. 3406. Section 802 added a requirement at 10 U.S.C. 3406(h)(1) for DoD contracting officers to use qualification-based selections when awarding task orders and delivery orders for architectural and engineering (AE) services in accordance with Federal Acquisition Regulation (FAR) subpart 36.6 and 40 U.S.C. chapter 11 (The Brooks Architect Engineer Act). Section 802 also added, at 10 U.S.C. 3406(h)(2), direction that prevents contracting officers from routinely requesting additional information regarding qualifications when awarding task orders or delivery orders under a multiple-award contract.

The final rule for FAR Case 2004-001, Improvements in Contracting for Architect-Engineer Services, was published in the **Federal Register** at 70 FR 57452 on September 30, 2005, to implement section 1427(b) of the NDAA for FY 2004 (Pub. L. 108-136). Section 1427(b) required the use of FAR subpart 36.6 procedures for the selection of contractors and placement of orders under multiple-award contracts, among other similar requirements. The final rule placed new direction pertaining to AE services at FAR 16.500(d), 16.505(a)(9), and 36.600. The requirement at 10 U.S.C. 3406(h)(1) closely resembles the direction provided at FAR 16.500(d). Since the direction at FAR 16.500(d) applies Governmentwide, DoD is currently complying with 10 U.S.C. 3406(h)(1).

## II. Discussion and Analysis

The proposed rule implements 10 U.S.C. 3406(h)(1) by utilizing the existing Governmentwide direction at FAR 16.500(d) and reminds DoD contracting officers, at DFARS 216.500(d)(i), of the applicability of the Governmentwide guidance. This proposed rule adds the DoD-specific statutory guidance required by 10 U.S.C. 3406(h)(2), at DFARS 216.500(d)(ii), to direct contracting officers not to request additional information regarding qualifications unless necessary to determine qualifications for a particular task order or delivery order under a multiple-award contract.

## III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Services and Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

This proposed rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or their applicability to contracts valued at or below the simplified acquisition threshold, for commercial products including COTS items, or for commercial services.

## IV. Expected Impact of the Rule

DoD does not expect the proposed rule, when finalized, to have a significant impact on the public because the rule maintains the status quo regarding procedures for awarding task orders or delivery orders for AE services under multiple-award contracts. The FAR currently provides those procedures at subpart 36.6. This DFARS proposed rule points to those procedures.

This proposed rule also adds language to prevent contracting officers from requesting unnecessary information regarding qualifications. Therefore, the proposed rule may reduce the resubmission of qualification information when competing for AE services under multiple-award contracts. Contracting officers will request additional information only when necessary to determine the most qualified offeror for the particular task order or delivery order.

## V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

## VI. Regulatory Flexibility Act

DoD does not expect this proposed rule, when finalized, to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*,