DEPARTMENT OF EDUCATION

34 CFR Parts 75, 76, 77, 79, and 299

RIN 1875–AA14

[Docket ID ED–2023–OPEPD–0110]

Education Department General Administrative Regulations and Related Regulatory Provisions

AGENCY: Office of Planning, Evaluation and Policy Development, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education amends the Education Department General Administrative Regulations (EDGAR) and associated regulatory provisions to update, improve, and better align them with U.S. Department of Education (Department) implementing statutes and other regulations and procedures.

DATES: These regulations are effective September 30, 2024. The incorporation by reference of certain publications listed in this final rule is approved by the Director of the **Federal Register** as of September 30, 2024. The incorporation by reference of the other material listed in this final rule was approved by the Director of the **Federal Register** as of July 31, 2017, and October 5, 2020.

FOR FURTHER INFORMATION CONTACT: Kelly Terpak, U.S. Department of Education, 400 Maryland Avenue SW, Room 4C212, Washington, DC 20202. Telephone: (202) 245–6776. Email: *EDGAR@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:

Executive Summary

Purpose of this Regulatory Action: The last major update to EDGAR was in 2013. Given that EDGAR serves as the foundational set of regulations for the Department, we have reviewed EDGAR, evaluated it for provisions that, over time, have become outdated, unnecessary, or inconsistent with other Department regulations, and identified ways in which EDGAR could be updated, streamlined, and otherwise improved. Specifically, we amend parts 75, 76, 77, 79, and 299 of title 34 of the Code of Federal Regulations.

Summary of Major Provisions of This Regulatory Action

The final EDGAR provisions:

- Make technical updates to refer to up-to-date statutory authorities, remove outdated terminology, use consistent references, and eliminate obsolete cross-references.
- Align EDGAR with updates in the most recent reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA). For example, updates to EDGAR revise the tiers of evidence to incorporate and generally parallel those in the ESEA and specify the procedures used to give special consideration to an application supported by evidence in § 75.226.
- Clarify, streamline, and expand the selection criteria the Secretary may use to make discretionary awards under § 75.210.
- Clarify procedural approaches, such as those related to making continuation awards under § 75.253, and exceptions to the typical process for new awards under § 75.219, such as if a grant application had been mishandled.
- Improve public access to research and evaluation related to Department-funded projects by requiring, under §§ 75.590 and 75.623, that each grantee that prepares an evaluation or a peer-reviewed scholarly publication as part of the grant award or on the basis of grant-funded research make the final evaluation report or peer-reviewed scholarly publication available through the Education Resource Information Center (ERIC), which is the current practice of the Department's Institute of Education Sciences (IES).
- Expand and clarify flexibility for the Department in administering its grants programs, including by—
  - Providing the Department the option to require applicants under grant programs to include a logic model or other conceptual framework supporting their proposed project under § 75.112;
  - Replacing the definition in § 75.225 of ''novice applicant'' with a broader definition of ''new potential grantee,'' to allow additional flexibility to give special consideration to such grantees and to increase equity in the applicant pool and recipients of Department funds;
  - Allowing the Department to require a grantee to conduct an independent evaluation of its project and make the results of such an evaluation public under § 75.590;
  - Defining ''independent evaluation'' under § 77.1(c);
  - Clarifying for the first time that, under § 76.50, where not prohibited by law, regulation, or the terms and conditions of the grant award, State agencies have subgranting authority;
  - Allowing States flexibility under § 76.140 to adopt a process for amending a State plan that is distinct from the process used for initial approval; and
  - Clarifying the hearing and appeal process under § 76.401 for subgrants of State-administered formula grant programs, including by clarifying that aggrieved applicants must allege that a specific Federal or State statute or regulation has been violated.

Costs and Benefits: As further detailed in the *Regulatory Impact Analysis* section, the benefits of these final regulations will outweigh any associated costs to States, local educational agencies (LEAs), and other Department applicants and grantees. The final regulations will, in part, update terminology to align with applicable statutes and regulations. Many of the adjustments will support the Department in selecting high-quality grantees and those grantees in ensuring the effectiveness and continuous improvement of their projects. These changes include, for example, adding selection criteria that apply only to programs that elect to use them, as announced in a notice inviting applications (NIA), and clarifying the language in selection criteria for applicants and peer reviewers. Please refer to the *Regulatory Impact Analysis* section of this document for a more detailed discussion of costs and benefits. The Administrator of the Office of Information and Regulatory Affairs (OIRA) has determined this to be a significant regulatory action under Executive Order 12866, as amended most recently by Executive Order 14094, and therefore has been subject to review by OIRA.

Supplementary Information—General: On January 11, 2024, the Secretary published a Notice of Proposed Rulemaking (NPRM) for these amendments in the **Federal Register** (89 FR 1982).

There are differences between some of the selection criteria and definitions proposed in the NPRM and those established in these final regulations, as discussed in the *Analysis of Comments and Changes* section below.

We recognize that the Office of Management and Budget (OMB) updated the Uniform Administrative Requirements, Cost Principles, and Audit Requirements (the Uniform Guidance) on April 22, 2024 (89 FR 30046). Many of the changes in EDGAR align with the goals behind the changes in the Uniform Guidance, and the Department will continue to review EDGAR, as needed, to ensure alignment with the Uniform Guidance.

Incorporation by Reference: Section 75.616 incorporates by reference the American Society of Heating,

Refrigerating, and Air Conditioning Engineers (ASHRAE) Standard 90.1–2022. ASHRAE is included in the construction section focused on energy conservation and has been included in EDGAR for more than 30 years. The ASHRAE standards are the industry leading standards and are relevant to the construction regulations in this section of EDGAR because grantees need to know the current standard with which they must comply. Standard 90.1 has been a benchmark for commercial building energy codes in the United States, and a key basis for codes and standards around the world, for almost half a century. This standard provides the minimum requirements for energy-efficient design of most sites and buildings, except low-rise residential buildings. It offers, in detail, the minimum energy efficiency requirements for design and construction of new sites and buildings and their systems, new portions of buildings and their systems, and new systems and equipment in existing buildings, as well as criteria for determining compliance with these requirements. It is an indispensable reference for engineers and other professionals involved in design of buildings, sites, and building systems. This standard is available to the public at *www.ashrae.org/technical-resources/bookstore/standard-90-1,* and a read-only version is available at *https://www.ashrae.org/technical-resources/standards-and-guidelines/read-only-versions-of-ashrae-standards*. This final rule also will remove outdated versions of the ASHRAE standard from § 75.616.

Section 77.1 incorporates by reference the What Works Clearinghouse (WWC) Procedures and Standards Handbook, Version 5.0. The purpose of the WWC is to review and summarize the quality of existing research in educational programs, products, practices, and policies. We incorporate the Handbook, which provides a detailed description of the standards and procedures of the WWC, by reference. The Handbook is available to interested parties at *https://ies.ed.gov/ncee/wwc/Handbooks*. As the Handbook is available as a free download, it is reasonably available to the public. The Version 5.0 Handbook includes a new Chapter I, Overview of the What Works Clearinghouse and Its Procedures and Standards and aligns the flow of content with the study review process. Additionally, it no longer allows for topic-specific customization of the standards, aligns its effectiveness ratings with the evidence definitions in § 77.1(c), and describes other protocols for specific study designs. More details are available at *https://ies.ed.gov/ncee/WWC/Docs/referenceresources/Final_HandbookSummary-v5-0-508.pdf*.

The WWC is an initiative of the Department's National Center for Education Evaluation and Regional Assistance, within IES, which was established under the Education Sciences Reform Act of 2002 (Title I of Pub. L. 107–279). The WWC is an important part of the Department's strategy to use rigorous and relevant research, evaluation, and statistics to inform decisions in the field of education. The WWC provides critical assessments of scientific evidence on the effectiveness of education programs, policies, products, and practices (referred to as ''interventions'') and a range of publications and tools summarizing this evidence. The WWC meets the need for credible, succinct information by reviewing research studies, assessing the quality of the research, summarizing the evidence of the effectiveness of interventions on student outcomes and other outcomes related to education, and disseminating its findings broadly.

This handbook is available to the public at *https://ies.ed.gov/ncee/wwc/handbooks#procedures*.

Public Comment: In response to our invitation in the NPRM, 28 unique parties submitted comments on the proposed regulations. We group major issues according to subject.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the regulations since publication of the NPRM follows. Generally, we do not address technical or minor comments or comments that are not relevant to the proposed changes in the NPRM.

General Comments

Comments: Multiple commenters offered general support for the proposed changes to EDGAR and appreciated the specificity of the proposed changes and the removal of conflicting regulations. One commenter appreciated the focus on using and building evidence in the Department's grant programs. One commenter recommended finalizing the updates to EDGAR in time for fiscal year (FY) 2025 grant competitions. Additionally, commenters appreciated the Department's effort to reduce barriers for underserved populations.

Multiple commenters appreciated the focus on continuous improvement in the proposed changes and recommended additional locations for such focus in provisions governing discretionary and formula awards. One commenter urged the Department to ensure it sets clear expectations in its NIAs so that applicants with the greatest need and the opportunity for greatest impacts receive funding. The commenter specifically called for clear expectations by the Department in how it will continuously improve its grantmaking efforts, including how the Department clearly communicates the selection criteria in its NIAs, how those criteria are scored, and expectations for grantee performance.

Discussion: We appreciate the support for the proposed changes and agree that they will provide specificity and clarity regarding Department processes and the purpose of these regulations and will better serve the needs of underserved populations. We agree on the importance of continuous improvement and address comments related to specific proposed additions in the relevant sections below. The proposed revisions to § 75.210, discussed further below, are intended to strengthen expectations around need and significance and how applicants address those selection criteria.

Lastly, we appreciate the value of these final regulations for upcoming and future grant competitions. We will consider approaches to using these criteria that advance the goal of best positioning applicants and grantees to continuously improve their practices while implementing their projects. With respect to grantmaking expectations, the Department continues to focus on simplifying NIAs and clarifying the focus on outcomes for communities served.

Changes: None.

34 CFR Part 75—Direct Grant Programs

Sections 75.101 and 75.102 Information in the Application Notice That Helps An Applicant Apply; Deadline Date for Applications

Comments: One commenter encouraged the Department to consider additional revisions to EDGAR that were not part of the NPRM, focused on the Department's outreach efforts when announcing grant competitions and support to applicants during the application period. Specifically, the commenter proposed revisions to §§ 75.100 through 75.102 to add LEA outreach efforts and to specify longer application periods (90 days or more) for competitions where LEAs are eligible applicants.

Discussion: The Department recognizes the importance of outreach in its discretionary grant competitions. Outreach and technical assistance efforts are a part of the Department's ongoing grant planning conversations,

and the Department actively pursues outreach through stakeholders and partner organizations, online forums, and grant competition summary documents such as brochures. Outreach also includes technical assistance for applicants during the application period, including through webinars and other efforts to ensure applicant questions are addressed. The Department shares the interest in continuously improving outreach efforts to support increased awareness of grant opportunities and to ensure all potential grantees are competitive. We appreciate the recommendation to specify outreach efforts in §§ 75.100 and 75.101 but decline the revisions proposed by commenters because the Department needs to determine the best approach for each program based on the potential applicants, lessons learned from previous efforts, and new and creative approaches.

Regarding the proposed 90-day minimum application period in § 75.102 for competitions where LEAs are eligible applicants, we are continually looking for ways to ensure a sufficient grant application period for our competitions, supporting efforts to make grant awards earlier in the year, and also ensuring that grant awards are made early enough to support efficient implementation timelines and to ensure appropriated funds do not lapse. Given the complexity of grant competitions, including those where LEAs are the eligible applicants, the Department needs discretion in establishing appropriate deadlines and therefore declines to make this change.

Changes: None.

Section 75.110 Information Regarding Performance Measurement

Comments: We received two comments on the proposed revisions to § 75.110 regarding performance measures. Both commenters generally supported the proposed revisions and the Department's effort to clearly differentiate between program and project-specific performance measures, and the commenters believe the proposed changes will lead to better quality data. The commenters proposed adding a new paragraph (d) to § 75.110 allowing applicants and grantees to propose alternative measures, baseline data, or targets related to program goals and objectives.

Discussion: We appreciate the support for the proposed revisions to § 75.110. Regarding the proposed paragraph (d), applicants and grantees already are permitted to propose alternative performance measures, baseline data, and targets in the form of project-specific measures. See § 75.110(a). As such, we do not think the additional paragraph is necessary.

Changes: None.

Section 75.112 Include a Proposed Project Period and a Timeline

Comments: Multiple commenters offered support for the proposed revisions to § 75.112, stating that the benefit of a logic model—requiring applicants to connect project activities to outcomes outweighed any additional cost or time in its preparation. One commenter noted the value of connecting the outcomes in the logic model with a project's performance measures, and another commenter mentioned how logic models help summarize the project's intent, activities, and outcomes.

Multiple commenters recommended redesignating proposed paragraph (c) as a new paragraph (d), adding a new paragraph (c) that would require a continuous improvement plan, and expanding redesignated paragraph (d) to require a conceptual framework, which is broader than a logic model and accounts for other ways an applicant can demonstrate a connection between inputs and outcomes. The commenters recommended including a continuous improvement requirement so that applicants would make clear how they would use research, data, community engagement, and other feedback to inform the grant project.

A few commenters raised concerns about the proposed requirement for a logic model in § 75.112, worried it would potentially limit applications, especially applications from smaller, less experienced entities who lack resources (both time and funding) to apply for Federal grant funds and add an application requirement that, they believe, would not result in substantive improvement in the quality of the application. The commenters felt such applicants may be unsure about how to articulate their project's reasoning in the form of a logic model or about using a specific template, and were concerned about the amount of time and burden associated with using a template. In addition, these commenters raised concerns that the logic model might satisfy the requirement but might not actually be aligned with the proposed project or the evaluation plan for the project, including consideration of the local context. They also stated that logic models are often developed by grant writers, which would favor entities that can afford such a writer.

Discussion: We appreciate the commenters' feedback on the proposed revisions to § 75.112. We note that the inclusion of a logic model as an option in EDGAR does not mean that all grant programs will require one. We consider several things when designing a grant competition, including the purpose of the program, the types of applicants and their experience in applying for Department grants, as well as which selection criteria to use for the competition.

We agree with the commenters interested in ensuring grantees have continuous improvement plans for their projects. The final selection criteria in § 75.210 include factors that evaluate the elements of an applicant's logic model, such as how inputs are related to outcomes and the likely benefit to the intended recipients, as indicated by the logic model, which address the commenters' concern about alignment with the proposed project and its intended outcomes. The final selection criteria in § 75.210 also include factors requiring applicants to consider how the proposed project design focuses on continuous improvement efforts, such as establishing targets, using data, and gathering community member and partner input to measure progress and inform continuous improvement. We are revising paragraph (b) to include the requirement to discuss continuous improvement in relation to the logic model or within the applicant's project narrative.

We also agree with the commenters' suggestion that broadening the language beyond ''logic model'' allows for other frameworks that connect activities and outcomes, without requiring a specific logic model format, and therefore added ''conceptual framework''.

The Department currently does not have a specific logic model template. If a logic model is used in a particular grant competition, the Department will provide technical assistance and resources to help applicants design their logic model, which may include the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/rel/Products/Region/pacific/Resource/100677,* and other resources including *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf, https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf,* and *https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.* The Department agrees with the commenter that it is important to develop these resources to support all applicants, and we value the role of partners in the education community who provide resources to support the development of logic models. Partners are a key element of supporting

evidence-based policymaking in our shared efforts to improve opportunities and outcomes for learners.

Changes: We have revised paragraph (b) in § 75.112 to add information about what details related to continuous improvement must be addressed in the project narrative as well as added ''project narrative'' to the title of § 75.112, and revised paragraph (c) to include a ''conceptual framework.''

Section 75.125 Submit a Separate Application to Each Program

Comments: Two commenters proposed a revision to § 75.125 to allow the Secretary to establish a common application process across multiple grant programs. The commenters were interested in making it easier for applicants to access Federal funds and to streamline application requirements.

Discussion: We share the commenters' interest in reducing applicant burden. The Department has the authority to establish a common application process where appropriate, taking into account the statutes, purposes, and requirements of each grant program, so specifically recognizing such authority in the regulations is not necessary.

Changes: None.

Section 75.210 General Selection Criteria

Comments: We received multiple comments on the proposed revisions to the selection criteria. Commenters were generally supportive. Some proposed revisions or additional selection factors, which are described further below. Multiple commenters supported linking the selection criteria to the components of an applicant's logic model. Commenters also appreciated the focus on underserved populations when addressing the need for, and significance of, a proposed project.

Regarding paragraph (a) (''need for the project''), some commenters suggested including language to emphasize the comprehensiveness of the data required in factor (i), which considers how the applicant's data demonstrate the issue, challenge, or opportunity to be addressed by the project, and language requiring coordination with other programs and services. Some commenters also expressed support for factor (iv), which considers the extent to which the project focuses on serving or addressing the needs of underserved populations.

Regarding paragraph (b) (''significance''), commenters recommended revisions to factors (v), (xi), and (xvii) that focused on measurable improvement, data infrastructure, and data analysis, citing the importance of using data to determine need and significance. Another commenter expressed general support for factor (xii) and its focus on dissemination of information beyond the individual grant so others can learn from these Federal investments. One commenter sought clarity about the meaning of the word ''innovative'' with respect to the factors in paragraph (b), concerned that peer reviewers' understanding of the term could widely vary.

Regarding paragraph (c) (''quality of the project design''), two commenters proposed revisions to factors (v) and (x) to emphasize the use of administrative data and reusable data tools in project design. Another commenter expressed general support for the focus on formative research in factor (xx) and the focus on continued refinement of a project based on initial findings. One commenter proposed a new factor for paragraph (c) focused on sharing the research design, methods, and preliminary outcomes early in the project timeline to ensure the quality of the research. One commenter appreciated the focus on meaningful community engagement in factor (xviii). One commenter raised a general concern about utilizing too many factors from paragraph (c) in an NIA, worried it would complicate the NIA and disadvantage less experienced applicants.

With respect to paragraph (d) (''quality of project services''), two commenters proposed a revision to factor (xii) to include how data from other social services or programs will be utilized to inform the project services.

We received multiple comments regarding paragraph (e) (''quality of the project personnel''). Specifically, multiple commenters appreciated the focus of ensuring diverse perspective in factor (iv); commenters were concerned, however, that an emphasis on having the project team reflect the demographics of project participants might limit other personnel with relevant experience, or that personnel might not be willing to share their demographics. One commenter proposed inclusion of ''proximate, lived experiences'' to broaden the focus of the factor. Another commenter was concerned that this factor might result in a researcher that is considered to be project personnel prioritizing samples that are reflective of their own demographics. One commenter proposed a new factor under paragraph (e) on project personnel using technology for data collection and analysis.

In paragraph (f) (''adequacy of resources''), one commenter appreciated factor (iv) and its focus on the reasonableness of costs in relation to people served, and two commenters proposed a new factor focused on ''leveraging shared data and evaluation infrastructure,'' consistent with the commenters' recommendations of including a focus on data throughout the selection criteria.

In paragraph (g) (''quality of the management plan''), two commenters recommended a revision to factor (ii) to include ''shared data and evaluation infrastructure,'' consistent with the commenter's interest in seeing the use of data across the selection criteria.

We received multiple comments on paragraph (h) (''quality of the evaluation plan or other evidence-building''). One commenter was concerned about the factors' wide range in rigor, especially in relation to evaluation design, and sought clarification on the meaning of an independent evaluation, specifically whether the evaluator could be from a separate unit of the same organization. Two commenters proposed a new factor on including administrative data and the ''depth of insights'' from using such data in the project evaluation, citing the importance of such data in continuous improvement efforts.

One commenter offered general support for paragraph (i) (''strategy to scale''), understanding the importance of local context for scaling strategies. One commenter sought clarity on how ''efficiency'' is defined for purposes of the paragraph (i) factors. Two commenters proposed a new factor in paragraph (i) on data tools and infrastructure, continuing to emphasize the importance of using data, and building an infrastructure for data, in Department grant programs and grant projects.

Discussion: We appreciate the overall positive feedback on § 75.210 and commenters' proposed revisions. We agree that it is important to focus on underserved populations and to tie the selection criteria to an applicant's logic model.

Regarding the proposed revisions to paragraph (a) factor (i), while it is important for applicants to provide data to support the need for the project, it would be difficult to meaningfully define ''comprehensive'' for all contexts, as the type of level of data varies based on a program's purpose and the population to be served, and we note that there are other selection criteria that incorporate the concept of program or service coordination, such as the coordination with other Federal investments. As such, we are not

including any of the proposed revision the factors under paragraph (a).

Under paragraph (b), we appreciate the general support for the dissemination focus in factor (xii). We agree that it is important for improvement to be ''measurable'' in (v) and that ''data infrastructure'' fits within the purpose of factor (xi), and revised those factors in paragraph (b) accordingly. As for the proposed revisions to factor (xvii) to incorporate a data analysis tool, we determined this would more appropriately fit within paragraph (i) (''strategy to scale''), and we have included a proposed a new factor (x) under paragraph (i) related to data tools and techniques. We decline to adopt a definition of ''innovative'' for the purposes of paragraph (b), because the meaning of that term could vary based on program purpose and context, and it's important for individual programs to decide its meaning. In some programs, for example, innovative may mean something that is novel, while in others it may refer to a program aspect that is specific to the population or setting to be served.

Regarding the comment about using too many factors in an NIA from paragraph (c), we agree that it is important to consider, when reviewing which selection criteria to include an NIA, which criteria and how many factors are necessary, weighing applicant burden and the peer review process as we make these determinations but are not making and changes, as determination regarding the appropriate number of selection criteria and factors are determined for each grant competition. We support the proposed revision to factor (v) under paragraph (c), as we agree with the use of administrative data to support continuous improvement, and we have revised paragraph (c) accordingly. We decline to revise factor (x) to require use of administrative data, because not all grant programs or projects result in the creation of data tools, and we do not want to unnecessarily restrict the use of this factor. We appreciate the support for factors (xviii) and (xx) and agree that community engagement, performance feedback, and formative data are important to continuous improvement efforts and project success. We decline to adopt the proposed new factor related to early registration of research design, because we do not think this is a marker of quality related to project design at the application phase. Rather, this issue is best handled in post-award monitoring.

We decline the proposed revision to factor (xii) in paragraph (d) to include how data from other programs will inform project services, because focusing on other programs dilutes the central purpose of this factor, which is ensuring that project services align with the needs of the target population.

Regarding comments on paragraph (e), factor (iv) is intended to encourage projects that hire individuals who can relate to the life experience, assets, and needs of the target population; we recognize, however, that the demographics language as proposed could unnecessarily limit how those qualities are determined. As such, we have revised factor (iv) to include consideration of the lived or relevant experiences of those in the target population to allow applicants the flexibility to select a project team that can best serve project participants, taking a range of relevant circumstances into account, and have made a similar revision regarding lived experiences in factor (ii). We also took into consideration, across factors, the appropriate use of ''target population'' and ''project participants'' within a given factor. Regarding the comment about a researcher prioritizing study samples that reflect their own demographic characteristics during a project evaluation, we think this factor relates to the qualifications and relevant experiences of the personnel of the project, not about the design of the evaluation and any potential biases in the evaluation design. While we appreciate the suggestion to add a factor emphasizing the use of technology to support data collection and analysis, we have determined that this concept is more appropriate as part of the ''strategy to scale'' factors in paragraph (i), and we have added a new factor (x) in paragraph (i) to that effect.

We appreciate the support for paragraph (f) and understand the importance of shared data infrastructure. As noted above, we have determined that this concept is more appropriate as part of the ''strategy to scale'' factors in paragraph (i), and we have added a factor (x) related to data tools and techniques in paragraph (i).

In paragraph (g), we recognize the importance of the management plan utilizing data but do not think it is necessary to add the data source or the infrastructure around the data, as it is important that the factor should be focused on the overall use of quantitative and qualitative data without creating further complications for applicants or peer reviewers.

We understand that expectations related to the project evaluation in the paragraph (h) factors differ in terms of rigor; however, variance in the evaluation factors is intentional to account for reasonable differences in a program's purpose, the size of a grant, and complexity of the project. Regarding the meaning of independent evaluation, the NPRM included a proposed definition of ''independent evaluation'' that is adopted in § 77.1(c) of these final regulations, and that definition specifies that the evaluation must be independent from the design and implementation of the project component, which could allow for a separate unit from an organization, as long as that unit is not involved in the development or implementation. As to the proposed new factor related to use of administrative data, we agree there is value in mentioning the use of administrative data and have added a new factor (xvi) to gauge the extent to which the evaluation will access and link high-quality administrative data from authoritative sources to improve evaluation quality and comprehensiveness. Because this language comprehensively encompasses use of high-quality administrative data, however, we decline to also include the commenter's proposed ''depth of insights'' language.

With respect to paragraph (i), we appreciate the positive comments recognizing the importance of scaling strategies and taking local needs and context into consideration when scaling. We also agree that data and infrastructure tools are important to scaling efforts. To capture these important tools and additional proposed data-related factors in one place, we have added a new factor (x), which will consider the extent to which the project will create reusable data and evaluation tools and techniques that facilitate expansion and support continuous improvement. Consolidating the administrative data proposals into one factor maximizes the impact of individual selection criteria, both in terms of how applicants respond and how peer reviewers assess an application. We decline the commenter's request to define ''efficiency'' for the purposes of paragraph (i) because efficiency may vary within a specific Department grant program or individual grant project, and we want to retain flexibility in the application of that term. For example, efficiency in one grant program and grant project might relate to the cost per participant, while in another it might relate to identifying the project component(s) most necessary to maintain at scale.

We also undertook a review of the factors and selection criteria to ensure consistency, taking into consideration the comments received. As a result of this review, we made minor edits for

clarity and consistency. These minor edits include, for example: under ''quality of the project design,'' using the term ''includes'' instead of ''encourages;'' under ''quality of project personnel,'' adding ''the extent to which,'' to better allow peer reviewers to assess the quality of an applicant's response to the selection criteria and specific factors; under ''adequacy of resources,'' connecting the costs more clearly with potential replication; under ''quality of the project evaluation or other evidence-building,'' aligning analytic strategies with project components; and under ''strategy to scale,'' aligning the introductory paragraphs with those of the other selection criteria.

Changes: In paragraph (a), we moved ''close gaps in the educational opportunity'' to the end of factor (iii).

In paragraph (b), we added ''educational challenges'' to factor (iii), we added ''measurable'' to factor (v), ''entities'' to factor (vi), ''regional'' to factor (viii), ''more'' to factor (x), ''or data infrastructure'' to factor (xi), and ''development of'' to factor (xvii).

In paragraph (c), we ensured consistency in the use of ''logic model'' and ''conceptual framework'' in factors (iii) and (iv); added ''and uses reliable administrative data to measure progress and inform continuous improvement'' to factor (v); added ''more'' to factor (x), changed ''encourages'' to ''includes'' in factors (xviii) and (xix); in factor (xxii), clarified that reviewers can assess the extent to which applicants propose a plan for capacity-building that leverages one or more of the other resources listed in that factor; and included the ''extent to which'' language in factor (xxiii).

In paragraph (c), we added ''meaningful'' to factor (ii).

In paragraph (d), we added ''responsive'' to factor (i), modified factor (ii) for clarity by substituting ''target population'' for ''entities,'' and added ''or other conceptual framework'' after ''logic model'' in factor (iv).

In paragraph (e), we added the ''extent to which'' language in factors (i) and (ii), and we revised factors (ii) and (iv) to focus on lived and relevant experiences.

In paragraph (f), we removed the first mention of ''organization'' from factor (i), revised factor (v) to clarify how the costs would ''permit other entities to replicate the project,'' and in factor (vii), we changed ''institution'' to ''applicant'' and the ''end date of Federal funding'' to ''Federal funding ends.''

In paragraph (g), we added ''meaningful'' to factor (ii).

In paragraph (h), we changed ''provided for describing'' to ''are designed to measure'' in factor (iii), added ''diagnostic'' to factor (vi), revised the second half of factor (xi) to focus on informing decisions about specific project components, added ''the extent to which'' in factor (xiv) along with ''required to conduct an evaluation of the proposed project,'' and added a new factor (xvi) on administrative data.

In paragraph (i), we revised paragraph (1) to include ''the proposed project for recipients, community members, and partners'' and then removed this language from paragraph (2); added consistent language in factors (ii) and (iii) on ''together with any project partners;'' revised factor (iii) to focus on scaling at the national level, to distinguish it from factor (ii), as was the intent; added the ''quality of the'' before ''mechanisms'' in factor (iv) for consistency, changing ''being able to expand the proposed project'' to ''expansion'' in factor (vii); added ''and are responsive to'' in factor (vii), and added a new factor (x) on data tools and techniques.

Section 75.225 What procedures does the secretary use when deciding to give special consideration to new potential grantees?

Comments: Multiple commenters supported the proposed changes to § 75.225 and the ability to prioritize new potential grantees, recognizing that the current ''novice applicant'' language limited the Department to prioritizing only applicants that have not received Federal funding in the past five years. Two commenters recommended that the Department retain current § 75.225(d), allowing for the imposition of special grant conditions for novice applicants.

In addition to prioritizing new potential grantees, multiple commenters encouraged prioritizing grantees ''with a history of success,'' citing, as an example, rural grantees that have benefited from the experience.

One commenter, while agreeing with the use of the term ''new potential grantee'' instead of ''novice applicant,'' questioned the likelihood that this modified priority would diversify the applicant and grantee pools, particularly in competitions with limited numbers of applications and competitions where there are often repeat grantees.

One commenter urged the Department not to prioritize new potential grantees in the TRIO programs, citing the program's statutory requirement to consider prior experience.

Discussion: We appreciate the support for the proposed changes to § 75.225 and agree that the proposed revisions will allow use of this priority in more discretionary grant programs and that it will more effectively promote the Department's interest in awarding grants to a diverse and inclusive group of applicants, including those who have served students with positive results but may have less experience with Federal grants. The Department declines the commenter's suggestion to retain the language regarding special conditions for new applicants in current § 75.225(d), because the Department already is required to conduct a risk assessment of applicants prior to making an award under 2 CFR 200.206 of the Uniform Guidance, and, under 34 CFR 200.208, to impose appropriate specific conditions, and the revisions to § 75.225 eliminate this redundancy.

The Department declines to adopt a specific priority for experienced grantees, because other factors, such as the selection criteria in § 75.210, already take into account organizational and personnel experience. We are clarifying, in paragraph (a), that in instances where we prioritize new potential grantees by establishing an absolute priority for those applicants, we also have a separate absolute priority for applicants that are not new potential grantees, to align with the current practices of the Department. For example, a competition including § 75.225(b)(3)(i) as an absolute priority would include § 75.225(c)(3)(i) as a separate absolute priority. We are also clarifying how paragraph (a) works when used as a competitive preference priority.

As to the concern about whether prioritizing new potential grantees will successfully diversify the applicant and grantee pools, the Department is actively engaged in outreach efforts for each of its grant competitions, as discussed above in the response to the comment on §§ 75.100–75.102 and regards this new language as one tool in the broader strategy to reach more potential applicants for its grant programs.

Lastly, regarding the concern about prioritizing new potential grantees in the TRIO programs, the Department considers a program's statute and purpose, as well as the number and types of applicants in recent competitions, when determining whether and how to use § 75.225 for a particular grant competition.

Changes: We have revised paragraph (a) to clarify how new potential grantees are prioritized through a competitive preference priority or through an absolute priority by establishing one competition for those applicants that meet one or more of the conditions in paragraph (b) of this section and a separate competition for applicants that meet the corresponding condition(s) in paragraph (c), deleted proposed

paragraph (c), and redesignated proposed paragraph (d) as paragraph (c).

Section 75.226 What procedures does the secretary use if the secretary decides to give special consideration to applications supported by strong, moderate, or promising evidence, or an application that demonstrates a rationale?

Comments: Several commenters supported the prioritization of evidence in grant competitions, recognizing the need to prioritize rigorous evidence, including at the ''demonstrates a rationale'' level to support innovation. One commenter proposed to give the greatest consideration to strong, moderate, or promising evidence. Multiple commenters raised concerns about § 75.226 and the prioritization of evidence, asserting that the evidence level definitions are not clear and that applicants may select evidence that meets the applicable program requirement but does not align with the proposed project or with local needs. These commenters suggested that if the Department intends to replicate particular models supported by evidence, the Department should provide a list of those models. One commenter was concerned about how the Department intends to apply § 75.226 to specific Department grant programs, indicating that in some instances project staff may lack the experience and expertise to conduct research and, more generally, that a focus on research pulls resources from direct services.

Discussion: We appreciate the thoughtful comments about § 75.226. The Department has had the discretion to prioritize evidence at the promising, moderate, and strong levels since 2013, and the proposed update to § 75.226 simply aligns this provision with the current evidentiary definitions in the ESEA, including the fourth tier of evidence: ''demonstrates a rationale.'' These four tiers of evidence can be considered for use in any of the Department's programs. Applicants should assess the evidence base in relation to their particular local needs, the evidence base may include utilizing the resources provided by the What Works Clearinghouse (WWC). The Department also considers the evidence base when determining whether and how to prioritize evidence in a grant competition and determines the highest level of available evidence when making these decisions.

Regarding the priority of evidence in specific Department grant programs, along with taking into consideration the current body of evidence relating to a program, the Department also considers a program's statute and purpose. Section 75.226 does not involve research or specify a particular use of funds regarding research, or whether funds are used for research or for direct services; instead, it addresses an applicant's submission of evidence during the grant application process to support a component of the proposed project. As noted above, the Department has the discretion to choose whether and how to use § 75.226 in a particular grant competition. For these reasons, it is not necessary or appropriate to add language giving particular priority to the strong, moderate, or promising evidence levels.

Changes: None.

Section 75.227 What procedures does the secretary use if the secretary decides to give special consideration to rural applicants?

Comments: Multiple commenters supported the prioritization of rural applicants, including entities that serve rural areas, stating that § 75.227 recognizes the unique needs of rural applicants and the challenges in accessing resources for rural areas.

Two commenters expressed concerns with giving priority to an applicant based on its locale, stating that some entities located outside rural areas may have experience serving rural locations and should not be excluded if they propose to serve more than solely rural areas. They also expressed concern about prioritizing rural applicants when many services are now provided virtually.

One commenter did not feel rural applicants in the TRIO programs should receive priority because rural areas are already served by the program.

Discussion: We appreciate the comments in support of § 75.227. We clarify that § 75.227 does not require that an applicant be rural; rather, the applicant must propose to serve a rural locale. With respect to the comment regarding priority in the TRIO program, we note that we consider a program's statute and purpose, including whether the program serves rural areas, when determining whether and how to use § 75.227 for a particular grant competition. We are clarifying, in paragraph (a), that in instances where we prioritize rural applicants by establishing an absolute priority for those applicants, we also have a separate absolute priority for applicants that are not rural applicants, to align with the current practices of the Department. For example, a competition including § 75.227(b)(2)(i) as an absolute priority would include § 75.227(c)(2)(i) as a separate absolute priority.

Changes: We have revised paragraph (a) to clarify how rural applicants are prioritized through a competitive preference priority or through an absolute priority by establishing one competition for those applicants that meet one or more of the conditions in paragraph (b) of this section and a separate competition for applicants that meet the corresponding condition(s) in paragraph (c), deleted proposed paragraph (c), and redesignated proposed paragraph (d) as paragraph (c).

Section 75.253 Continuation of a Multiyear Project After The First Budget Period

Comments: We received two comments with recommended revisions to § 75.253 that focused on continuous improvement in making continuation award decision for current grantees, stating that a focus on continuous improvement and an examination of the goals and objectives of the project can improve outcomes for the grant's target population. Commenters specifically proposed a new paragraph that would allow a grantee to achieve or exceed its goals, which could result in revisions to targets.

Discussion: We appreciate the focus on continuous improvement and the opportunity for grantees to revise targets as goals are met. Grantees work with the Department on any proposed changes to the approved grant application, which may include changes to targets based on how grantees are performing relative to the goals outlined in the approved grant application. We decline to adopt the commenters' proposed revisions to proposed paragraphs (ii)(A) and (ii)(B) to address changes when goals are exceeded, because paragraph (ii) applies to a different group of grantees, specifically those who have encountered challenges meeting their goals and are seeking approval for changes to help them make substantial progress. We thus do not think the proposed revisions align with the intent of paragraphs (ii)(A) and (ii)(B).

Changes: None.

Section 75.254 Data Collection Period

Comments: We received three comments in support of the data collection period in proposed § 75.254. One commenter appreciated the ability to use Federal funds for salaries and costs associated with data collection requirements after the initial grant project period. Another commenter appreciated the ability to provide the necessary description and budget for a

data collection period in the initial grant application.

Discussion: We agree with the commenters on the value of a data collection period and agree that it could be helpful for an applicant to provide details about such a period in their initial grant application.

Changes: None.

Section 75.261 Extension of a Project Period

Comments: None.

Discussion: After undertaking our own internal review, we have revised the cross-reference in proposed § 75.261(c) to read ''(b)(4)(ii)'' to align with current Department practices. This makes clear that the waiver request in § 75.261(c) is applicable to paragraphs (b)(4)(ii)(A), (b)(4)(ii)(B), and (b)(4)(ii)(C).

Changes: We have revised the cross-reference in § 75.261(c) to read ''paragraph (b)(4)(ii).''

Section 75.590 Grantee Evaluations and Reports

Comments: We received multiple comments in support of the proposed addition of paragraph (c) in § 75.590, which allows the Secretary to require an independent evaluation and make reports and data publicly available. The commenters appreciated the effort to advance evidence by sharing data and evaluations, and one commenter especially appreciated the use of ERIC to reduce the public's burden finding published evaluation results.

One commenter, in response to proposed § 75.590(c) requested clarity on the meaning of ''independent evaluation'' and requested that the Department require rigorous evaluations proposed under paragraph (h) of § 75.210 (''quality of the project evaluation or other evidence-building'') be posted to ERIC.

Two commenters had privacy concerns about making data available to third-party researchers under proposed § 75.590(c)(3). One commenter felt LEAs might limit their participation in studies if they required sharing data about students. The second commenter felt the phrase ''consistent with applicable privacy requirements'' was not specific enough and should take into consideration other legal and privacy concerns, such as the Federal Policy for the Protection of Human Subjects and institutional review board policies, as well as terms established by the provider of the data.

Lastly, two commenters recommended that the Department set up a system, perhaps through the WWC, to manage these data sets, similar to how the IES makes data available from the National Center for Education Evaluation and Technical Assistance evaluations.

Discussion: We appreciate the support for proposed § 75.590(c) and agree that it is valuable to share project evaluations and data, including through ERIC as a central resource.

As for the meaning of ''independent evaluation'' under § 75.590(c), these final regulations add a definition in § 77.1(c). The definition allows different types of entities or units of an organization to conduct the evaluation, provided they are not directly involved with the project implementation. We appreciate the commenter's recommendation that rigorous evaluations proposed under paragraph (h) (''quality of the project evaluation and evidence-building'') in § 75.210 be posted to ERIC and will consider how to use the options available under § 75.590 when developing an NIA for a grant competition.

With respect to commenters' privacy concerns about § 75.590(c)(3), the Department's Public Access Plan takes data privacy into account. *https://ies.ed.gov/funding/pdf/EDPlanPolicyDevelopmentGuidanceforPublicAccess2024.pdf.* Specifically,

> [t]here are circumstances, such as when a State or Federal law does not allow student data to be further disclosed, where investigators will not be able to share their complete data set. However, [the Department] expects those data not restricted by law, including primary data collected by the project or extant data obtained from a private source, to be shared at the time of initial publication of the findings or within a certain time period following award close-out, whichever occurs first, in machine readable formats. As with publications, these data should be made available to the public without charge and with accompanying metadata to facilitate discoverability and re-use (Public Access Plan, section 3.0, page 6).

We agree that § 75.590(c)(3) could further specify privacy requirements and have added confidentiality language that is conceptually similar to the commenter's proposal and mirrors language in the Public Access Plan.

We decline commenters' request to establish a Department repository for data, because, as set forth in the Public Access Plan, other entities are developing plans to share data in public repositories that align with the characteristics described in the National Science and Technology Council document entitled ''Desirable Characteristics of Data Repositories for Federally Funded Research'' whenever feasible. *https://www.whitehouse.gov/wp-content/uploads/2022/05/05-2022-Desirable-Characteristics-ofData-Repositories.pdf.*

Changes: We have revised § 75.590(c)(3) to ensure that the data from the independent evaluation are made available to third-party researchers consistent with the requirements in 34 CFR part 97, Protection of Human Subjects, and other applicable laws.

Section 75.591 Federal Evaluation; Cooperation by a Grantee

Comments: Three commenters had concerns about the proposed revisions to § 75.591. One commenter recommended clarifying that the examples provided in the proposed revisions are illustrative and proposed adding language to clarify that there may be other activities a grantee would be expected to undertake as part of a Federal evaluation. Another commenter was concerned about increased burden on grantees to participate in a Federal evaluation and about the ability to recruit LEAs and other entities to participate in grants where there is such a requirement. The commenter also was concerned that ''pilot'' studies would have limited ability to meet WWC standards, and found the use of ''if required'' and ''must'' in paragraph (b) to be contradictory. The third commenter stated that the TRIO programs are expressly prohibited from recruiting ''additional students beyond those the program or project would normally serve,'' which the commenter interpreted to prohibit the random selection of a subset of subgrantees for pilot projects contemplated in paragraph (b) with respect to the TRIO programs.

Discussion: We appreciate the concerns raised about the revisions to proposed § 75.591.

We agree with the commenter's suggestion that paragraphs (a) and (b) should be presented as a non-exhaustive list of required evaluation activities and accept the commenter's proposed revision.

Not all programs or grantees will involve a Federal evaluation. We consider program statutes and purposes, including statutory requirements to conduct a program-level evaluation, when determining which programs and grantees should participate in a Federal evaluation. We also consider the Department's Learning Agenda, which sets forth six focus areas for evidence building over four years to strengthen the Nation's education system. *https://ies.ed.gov/ncee/pdf/ED_FY22-26_Learning_Agenda_v2.pdf.* Because not all programs and grantees will participate in a Federal evaluation,

proposed § 75.591(b) included both ''if required'' and ''must.'' However, for streamlining with the introductory paragraph, which already includes the phrase ''if requested by the Secretary,'' we are removing the phrase ''if required by the Secretary'' at the beginning of paragraph (b).

We also recognize that there are many types of evaluations and that the randomized controlled trial referenced in paragraph (b) may not be the appropriate type of evaluation for all programs. We take this point into consideration, among other factors, when determining when and how to evaluate a Federal program. Where a randomized controlled trial might be appropriate, however, it is important that an applicant be aware in advance and can recruit enough sites to allow the Department to randomly select a subset for the purposes specified in paragraph (b).

Additionally, we recognize that not all programs that will participate in a Federal evaluation will have a program statute that requires such participation, and we are removing this language to align with current Department practices.

Changes: We added ''among other types of activities'' to the introductory language of § 75.591 and removed the ''in accordance with program statute'' language. We also removed the phrase ''if requested by the Secretary'' from the beginning of proposed § 75.591(b).

Section 75.600–75.618 Construction

Comments: We received multiple comments related to the proposed revisions to the construction regulations in §§ 75.600–75.618. One commenter urged the Department to consult with State educational agencies (SEAs) and LEAs before finalizing these sections of EDGAR, asserting that proposed §§ 75.611 and 76.600 do not recognize the distinction between direct grant programs and state-administered programs. Regarding the application of §§ 75.600–75.618, the commenter requested that the Department consider existing paperwork related to construction before requiring any new reporting, citing 2 CFR 200.329(d) of the Uniform Guidance.

One commenter had concerns that proposed § 75.602(a)(1) could inhibit innovative building practices by just focusing on meeting building codes and not considering other concepts such as net zero energy buildings. The commenter proposed revisions to focus on green building practices.

Two commenters expressed concerns about the proposed changes to § 75.606(b)(3) and (b)(5) regarding the recording of a Federal interest on real property and annual reporting on the status of real property. The commenters raised concern about the administrative burden of this recording and reporting when there are improvement and minor updates to real property. One commenter cited a lack of consistency in how ''real property acquisition'' is defined, including between the Department and OMB (as shown on OMB Standard Form 424D, for example). The commenter noted that the recording requirements of other agencies are not as extensive as the Department's and they allow recording to be forgone on a case-by-case basis where the Federal investment is minor. The commenter also requested less frequent reporting in § 75.606(b)(5), which the commenter asserted would be more consistent with OMB and other agencies. The commenter proposed these revisions to support a focus on green building efforts, encouraging the modernization of school buildings, and consideration of life-cycle costs in addition to upfront costs.

One commenter proposed specific edits to § 75.612 regarding mitigating flood hazards and flooding risks, noting that schools often serve as community shelters during severe weather.

One commenter recommended that § 75.616 include additional language to cover subsequent updates to the ASHRAE standards; the commenter also proposed language in paragraph (a) on life-cycle costs that take into consideration costs associated with building beyond initial construction and the costs associated with educating the community about the building efforts, which the commenter suggested be capped at 0.5%.

One commenter recommended revisions to § 75.618 to allow a grantee to ''use additional standards and best practices to support health and wellbeing of students and staff.'' The commenter indicated that, because standards are often updated more frequently than regulations, it would be beneficial to allow grantees, and LEAs in particular, to utilize standards when making health and safety determinations for their population.

Discussion: We recognize the importance of working with entities impacted by these regulations, including States and LEAs, and the public comment period provided a valuable opportunity for these entities to provide their perspectives. We also appreciate the concerns about the potential burden of any additional reporting for grantees. With respect to commenters' concerns about the scope of proposed § 75.606(b), we note that § 75.606(b) is specifically about the acquisition of real property and construction, and we included a definition for ''construction'' in § 77.1(c). With respect to potential administrative burden, we note that the Federal interest recording and real property reporting requirements are not new, and they are driven by the Uniform Guidance. When funds are used for construction, many different existing requirements are triggered, including the recording and reporting on real property improvements or acquisition.

The definition of ''Federal interest'' and the annual reporting requirement that is currently in 2 CFR 200.330 was originally in 2 CFR 200.329 when the Uniform Guidance was first adopted by many agencies, including the Department. The Uniform Guidance provisions apply to all new Department grant awards and non-competing continuations made on or after December 26, 2014, and include requirements around reporting on real property.

The Department's requirements are consistent with the Uniform Guidance, and the Department cannot speak to the practices of other agencies. We are adding introductory language to § 75.606(b)(3) to make clear that any recording of Federal interest must be in accordance with agency directives, to account for any program-specific directives that may impact the recording of Federal interest.

Regarding the comments and proposed edits to §§ 75.602, 75.612, 75.616, and 75.618 related to green building practices and flood hazards, and energy conservation, we recognize the importance of considering flood hazards, green building practices, life-cycle costs in building, and educating the community around construction efforts. We include the proposed changes to § 75.612 regarding flood hazards and are including additional, relevant Executive orders. Additionally, related to flood hazards, the Federal Emergency Management Agency's ''Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input'' includes information related to flood risk guidance that we note here for consideration. While we decline to require such measures due to potential costs to grantees, we agree that many of the commenters' suggestions would add value in the construction process and have added many of them as options in the provisions to which they apply, as set forth in the ''Changes'' section

below. Given that community education is optional, it is not necessary to include the commenter's suggested percentage limit on such costs.

We appreciate the interest in avoiding the need to update EDGAR when the ASHRAE standards are updated, but because ASHRAE is incorporated by reference in EDGAR, the specific version must be cited, which the Department will update if the ASHRAE standards are revised.

Lastly, we reviewed the construction sections for clarity and are making revisions to streamline the language, such as changing ''made a determination on the specifications'' to ''approved''.

Changes: We are changing ''made a determination on the specifications'' in § 75.601(b) to ''approved'' and ''providing approval of the final working specifications of'' in § 75.602(c) to ''approving''. We are adding three new paragraphs to § 75.602(b) that allow grantees developing a construction budget to include funds for energy, HVAC, and water systems and training on their use; life-cycle cost analysis; and school and community education about the project. We are revising § 75.606(b)(3) to make clear that the real property recording requirement accounts for this agency's directives. We are revising § 75.612 to include new paragraphs that require grantees to consider flood hazards and risks in planning a construction or real property project and reference two additional Executive orders. We are changing ''applicant'' in § 75.614(b)(1) to ''grantee.'' We are adding a new sentence to § 75.616(a) that allows grantees to consider life-cycle costs and benefits of certain energy projects. We are adding a new § 75.618(b) that allows a grantee to consider additional standards to support health and wellbeing.

Section 75.623 Public Availability of Grant-Supported Research Articles

Comments: Three commenters expressed support for the proposed addition of § 75.623, with one commenter appreciating the easier access to federally funded research and another commenter highlighting paragraphs (a) and (c) and supporting alignment with IES practices and making grant-supported research publications accessible. One commenter recommended aligning the timeline in § 75.623(c) with the Public Access Plan with respect to when IES will make peer-reviewed scholarly articles available in ERIC. The commenter also recommended a new paragraph (e) requiring grantees to make ''scientific data'' available.

Discussion: We appreciate the support for proposed § 75.623 and agree that it is valuable to make grant-supported research publications accessible. We also agree that the timing in § 75.623 should align with the Public Access Plan and have revised § 75.623(c) accordingly. Likewise, we agree with the commenter's suggestion to make ''scientific data'' from Department grants publicly available, and added a new paragraph (e) to this effect as well as a definition of ''scientific data'' in § 77.1(c) that aligns with language in the Public Access Plan.

Changes: We aligned the timing in § 75.623(c) to the language in the Public Access Plan, added a paragraph (e) that requires scientific data to be made available ''consistent with the requirements in 34 CFR part 97, Protection of Human Subjects, and other applicable laws,'' and added a definition of scientific data to § 77.1(c).

Section 75.708 Subgrants

Comments: We received one comment on § 75.708, seeking confirmation that a contract entered into by a grantee is different than a subgrant awarded by the grantee and seeking clarification about the contract competition process.

Discussion: Final § 75.708 clarifies how the Secretary authorizes subgrants and that contracts are an option when subgranting is not allowed. We confirm that a contract and a subgrant (subaward) are distinct, and the differences between the terms are reflected in their respective definitions in § 77.1(b). A contract is ''a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a Federal award.'' 34 CFR 77.1(b) and 2 CFR 200.1. A subgrant is an award by a grantee to a subgrantee to ''to carry out part of a Federal award received by the [grantee].'' 34 CFR 77.1(b) and 2 CFR 200.1. The procurement requirements a grantee must follow to enter into a contract are set out in 2 CFR 200.317 through 200.327.

Changes: None.

Section 75.720 Financial and Performance Reports

Comments: Multiple commenters opposed the proposed revisions to § 75.720. The commenters also shared the concern that reports, especially financial reports, contain proprietary information. One commenter expressed concern about the administrative costs of preparing reports for public posting and the potential insufficiency of funds to cover such costs. Another commenter was concerned that making the reports publicly available could negatively influence peer reviewers who could access the reports when reviewing applications for a new award.

One commenter proposed revising paragraph (a) to incorporate the theme of continuous improvement.

Discussion: We appreciate the concerns raised by the commenters about proprietary information in financial and performance reports and have included language to address these concerns that mirror language included in NIAs regarding proprietary ''business information.'' We note that the Department will decide which programs are subject to this additional posting requirement in paragraph (d), taking into account the costs and benefits of posting within a particular program and will clarify the allowability of funds to pay for any additional posting.

With respect to the concern that peer reviewers might be influenced by publicly available performance reports, peer reviewers receive training to only review materials in the submitted grant application, and we will continue to emphasize this point. We thus decline to explicitly address this concern in § 75.720.

Given that § 75.720 cross-references defined types of reports in the Uniform Guidance, we do not think it is necessary to include suggested edits related to continuous improvement beyond the approved types of reporting from the Uniform Guidance.

Changes: We have added language to § 75.720(d) about requesting confidentiality of ''business information'' to allow for its protection.

Section 75.732 Records Related to Performance

Comments: We received two comments regarding § 75.732 with proposed revisions to this section as well as a recommendation to create a new parallel § 76.732 in part 76 so that this provision also applies to State-administered grant programs. The commenters requested that we amend § 75.732(b) to use performance records to inform continuous improvement.

Discussion: We appreciate and agree with the focus on continuous improvement, as informed by performance records, and agree that it is appropriate to adopt a similar provision for State-administered grant programs in part 76.

Changes: We have added a new paragraph (b)(2) to § 75.732 that requires grantees to use performance reports to inform continuous improvement, and

added a new § 76.732 that mirrors § 75.732.

Part 76—State-Administered Formula Grant Programs

Section 76.50 Basic Requirements for Subgrants

Comments: One commenter was generally supportive of the proposed changes to § 76.50 but requested additional clarification on: (1) whether States may determine which entities are eligible for subgrants when the program statute is silent; (2) how, if at all, subgrants the State chooses to make interact with grant formulas that determine the amount of Federal funds that the State must subgrant; and (3) whether the proposed regulations allow subgrantees to make their own subgrants. Another commenter strongly opposed the proposed changes to § 76.50 that would clarify States' ability to make subgrants, and allow States to authorize a subgrantee to make subgrants, using funds from State-administered formula grant programs, unless prohibited by their authorizing statutes, implementing regulations, or the terms and conditions of their awards. The commenter asserted that this proposed revision would create additional complications for States, requiring them to train and oversee subgrantees on how to make and monitor subgrants.

Discussion: We appreciate the commenter's suggestions and agree that additional clarity would be useful. We clarify that a State may, but is not required to, determine eligible subgrantees if the applicable statutes and regulations do not specify them, so long as the applicable statute, regulations, or terms and conditions of the grant award do not prohibit subgranting. We also clarify that no subgrant a State chooses to make may change the amount of Federal funds for which an entity is eligible through a formula in the applicable statute or regulation. That is, any subgrant a State chooses to make would be in addition to the funds a subgrantee already receives by formula. Finally, we note in response to the commenter's question, that under § 76.50(b)(3), a State may authorize a subgrantee to make subgrants, unless prohibited by their authorizing statutes, implementing regulations, or the terms and conditions of their awards.

We appreciate the concerns raised about how the potential for additional subgrants could require additional State oversight and training. This provision provides States with appropriate flexibility to implement grants in a manner most suitable to their circumstances, by permitting, but not requiring, the State to make subgrants. Accordingly, a State could avoid any additional training and oversight if the State agency elects not to award subgrants, except in those programs where subgranting is required by statute or regulations. However, when a State elects to engage in subgranting, or is required to do so, it is the State's responsibility as a Federal grantee pursuant to 2 CFR 200.332 to conduct oversight of the subgrantee to ensure Federal requirements are satisfied. Section 76.50(c) simply reminds grantees of those Federal requirements at 2 CFR 200.332 and does not impose additional oversight requirements on the State. These changes will ensure common standards across programs when applicable statutes, regulations, or the terms and conditions of a grant award are silent regarding subgrants. Even if the statute or regulations are silent, the Department may prohibit subgranting through the terms and conditions of a grant award, as appropriate given the nature of the program and its requirements. These provisions give both the Department and the State sufficient authority to ensure subgranting occurs only when appropriate.

Changes: We have amended § 76.50(b)(2) to specify that applicable statutes or regulations determine eligible subgrantees and that States make such determination if not addressed in applicable statutes or regulations. In addition, we made a technical edit to § 76.50(d) to add the words ''terms and'' to make clear that the Department may prohibit subgranting through the terms and conditions of a grant award. This phrase is consistent as that used in § 76.50(b) and is needed to ensure clarity and consistency. Last, we have added a new paragraph § 76.50(e) to clarify that receipt of a subgrant a State chooses to make does not change the amount of Federal funds for which an entity is eligible through a formula in applicable statute or regulation.

Section 76.101 State Plans in General

Comments: Two commenters recommended adding an additional paragraph to § 76.101 to require LEA subgrant applicants to focus on the use of research, data, information learned from engagement, and continuous improvement efforts to inform program implementation. The comments aligned with the commenters' broader focus on continuous improvement throughout EDGAR.

Discussion: We appreciate the effort to infuse continuous improvement throughout EDGAR. We are adding language to § 76.101 to note ways States may consider continuous improvement in their plans. The Department can work with States to understand this new language; however, we are not adding language to § 76.301 regarding LEA subgrant applications since those plans go directly to States, rather than the Department, though nothing in our regulations limits a State's ability to work with subgrantees on continuous improvement.

Changes: We are adding language to 76.101(a) to acknowledge that continuous improvement may help States use their State plans to meet program objectives.

Section 76.140 Amendments to a State Plan

Comments: One commenter raised the concern that while the proposed revisions to § 76.140 address how the Secretary can streamline the process for amendments to State plans, it does not discuss any streamlining of the approval process. Specifically, the commenter proposed revisions to paragraph (c) to incorporate the submitting and approving of amendments, and the addition of a new paragraph (d) around exceptions to the approval process, including expedited approval.

Discussion: The Department appreciates the commenter's recognition for why amendments to State plans might follow different procedures from the original State application. As such, we accept the proposed edits to paragraph (c) around the submission of amendments and the requirements associated with a State-administered formula program. States, when submitting an amendment, may request expedited approval; however, when and how the Department is able to expedite approval is case-specific and, as such, we do not think it necessary to expand beyond what the normal procedural rules would be and decline to add a new paragraph (d).

Changes: We have revised paragraph (c) in § 76.140 to clarify that the Secretary may prescribe different procedures for submitting amendments and to refer to the requirements as well as the characteristics of a particular State-administered formula program.

Section 76.301 Local Educational Agency Application in General

Comments: Two commenters recommended adding an additional paragraph to § 76.301 to focus on the use of research, data, information learned from engagement, and continuous improvement efforts to inform program implementation. The comments aligned with the commenters' broader focus on continuous improvement throughout EDGAR.

Discussion: We appreciate the effort to infuse continuous improvement throughout EDGAR but decline to adopt the commenter's recommendation because Section 76.301 is about the application of GEPA section 442 to LEAs; it is not about the contents of a subgrant application submitted by an LEA, which is driven by the applicable program statute. However, there is nothing that prohibits a State from requesting that an LEA seeking a subgrant provide information about the research, data, information learned from engagement, and continuous improvement efforts to inform program implementation.

Changes: None.

Section 76.500 Constitutional Rights, Freedom of Inquiry, and Federal Statutes and Regulations on Nondiscrimination

Comments: None.

Discussion: Based upon our own internal review, we have revised § 76.500 to correct the section heading, which was inadvertently changed in the NPRM. The section heading should read the same as the current language in EDGAR: ''Constitutional rights, freedom of inquiry, and Federal statutes and regulations on nondiscrimination.'' The section heading was inadvertently modified in the NPRM, when the Department's only proposed changes to § 76.500 should have been to paragraph (a).

Changes: We have corrected the heading to section 76.500 in the final regulations.

Section 76.560 Approval of Indirect Cost Rates

Comments: One commenter appreciated the Department's efforts to align the indirect cost sections in EDGAR with the Uniform Guidance. One commenter requested that the Department clarify the role SEAs play in facilitating indirect cost rate determinations for non-LEA subgrantees that do not have established rates. The commenter expressed particular interest in the relationship between proposed § 76.561(a), which clarifies that the Department negotiates indirect cost rates for non-LEA subgrantees when the Department is the cognizant agency, and 2 CFR 200.332(a)(4)(i), which describes the role of passthrough entities in identifying rates for subrecipients without one.

Discussion: OMB has designated the Department as the cognizant agency for indirect costs for SEAs and LEAs (see 2 CFR Appendix-V-to-Part-200 F.1. ''Department of Education''). Under § 76.561(b), the Department has delegated to SEAs the responsibility for approving the indirect cost rates for LEAs on the basis of a plan approved by the Department. For non-LEA subgrantees that do not have direct Federal awards, the indirect cost review process is addressed in the Uniform Guidance. Specifically, the Uniform Guidance provides the three-step process for pass-through entities and subrecipients to identify and review indirect cost rates. Under 2 CFR 200.332(a)(4)(i), if the subrecipient has an approved allowable indirect cost rate for the award, then the subrecipient may use the indirect cost rate. Under 2 CFR 200.332(a)(4)(i)(A), if no indirect cost rate is available, the pass-through entity is to collaboratively negotiate an indirect cost rate using the Federal regulations. Finally, under 2 CFR 200.332(a)(4)(i)(B), the entity may elect the *de minimis* indirect cost rate if the program does not require special indirect cost rates such as restricted indirect cost rates (§ 75.563 and § 76.563) or training indirect cost rates (§ 75.562). Consistent with 2 CFR Appendix-IV-to-Part-200 2.a, if the subrecipient does not receive any funding from any Federal agency, the pass-through entity is responsible for the negotiation of the indirect cost rates in accordance with 2 CFR 200.332(a)(4).

The Department's Indirect Cost Division is available to provide technical assistance and guidance on issues relating to cognizance of direct recipients and pass-through entity responsibilities. Additional information is available at: *https://www2.ed.gov/about/offices/list/ofo/indirect-cost/responsibility.html.*

Changes: None.

Section 76.650–76.677 Participation of Students Enrolled in Private Schools, Equitable Services Under the Cares Act, and Procedures for a Bypass

Comments: A couple of commenters opposed removing §§ 76.650–76.662 and instead proposed that the Department update these sections to be consistent with current laws. They stated that it is appropriate to have consistent default standards for providing services and assistance to students and educators in private schools if Congress authorizes new grant programs outside of programs such as those under the Individuals with Disabilities Education Act or ESEA, for which program-specific regulations exist.

A few other commenters expressed concern that the existing requirements in § 76.650 are not consistently implemented or monitored. These commenters urged emphasis on grantee and subgrantee consultation with representatives of students enrolled in private schools by having § 76.650 reference proposed § 299.7(a)(1)(i).

Discussion: We agree with the commenters that retaining equitable services requirements in part 76 is useful for potential future programs. Accordingly, we will not remove §§ 76.650–76.662. As a result, we will also not change the cross-references in § 75.119, which will continue to refer to § 76.656, and § 75.650, which will continue to refer to §§ 76.650–76.662. Similarly, we will not delete paragraph (c) of § 299.6, which cross-references §§ 75.650 and 76.650–76.662.

At the same time, we also agree with commenters about the value of additional clarity regarding the consultation requirements outlined in § 299.7. Accordingly, we are including a cross-reference to final § 299.7 in § 76.652.

Changes: We are retaining §§ 76.650–76.651 and 76.653–76.662 as they exist in current regulations, with minor updates for clarity and accuracy, rather than making the changes proposed in the NPRM. Since we are not changing § 76.656, we will also not change the cross-reference in § 75.119, which will continue to refer to § 76.656. We are revising § 76.652 to refer to the consultation requirements in final § 299.7.

Section 76.707 When Obligations Are Made

Comments: A few commenters proposed that the Department consider changes to § 76.707 to align fund obligation standards for personal services provided by an employee of the State or a subgrantee with those applicable to contractors. Two commenters noted that it is important for State and subgrantee personnel to be allowed to provide oversight beyond the period during which the funds are available for obligation. They also noted that recently proposed updates to the Uniform Guidance (since finalized) would allow payment of closeout costs using the applicable Federal financial assistance, which would apply to employees, contractors of grantees, and subgrantees.

Discussion: We understand the complexities of the issues and appreciate the views expressed by the commenters. However, the changes to the Uniform Guidance do not alter the time period in which obligations are allowable under each appropriation in concert with section 421 of the General Education Provisions Act and as reflected in § 76.709. Because we did not propose substantive changes in §§ 76.707 or 76.709 in the NPRM, we decline to make them at this time. The Department will collaborate with grantees in implementing the Uniform Guidance.

Changes: None.

Section 76.720 State Reporting Requirements

Comments: One commenter proposed including ''continuous improvement'' as part of State reporting requirements, consistent with the commenter's interested in embedding continuous improvement efforts throughout EDGAR.

Discussion: We recognize the importance of continuous improvement and agree with the connection of continuous improvement in the context of State reporting requirements. Specifically, it is helpful to clarify that State reporting requirements in § 76.720 are inclusive of reporting on monitoring and continuous improvement.

Changes: We have added ''continuous improvement'' to the State reporting requirements.

Section 76.722 Subgrantee Reporting Requirements

Comments: One commenter proposed requiring subgrantees to submit reports to assist the State and the subgrantee in engaging in ''periodic review and continuous improvement'' of their respective plans, in keeping with the commenter's focus on continuous improvement efforts.

Discussion: Similar to the discussion above of comments for § 76.720, we recognize the value of continuous improvement efforts for both the State and the subgrantee and have modified § 76.722 accordingly.

Changes: We are revising § 76.722 to require subgrantees to submit reports to assist the State and the subgrantee in engaging in ''periodic review and continuous improvement'' of their respective plans.

Part 77—Definitions That Apply to Department Regulations

Section 77.1 Definitions That Apply to All Department Programs

Comments: Two commenters expressed general support for the proposed evidence definitions in § 77.1, with one commenter specifically supporting the proposed definitions for the tiers of evidence. The commenter stressed that the Department should require grantees to use the most rigorous evidence available and suggested that evaluations be designed to meet the ''moderate evidence'' or ''strong evidence'' standards, while recognizing the importance of ''promising evidence'' to help build an evidence base.

One commenter recommended the Department consider using the definitions for ''evidence-based program'' and ''evidence-building program'' that the nonprofit group Results for America has developed in consultation with its stakeholders, which the commenter asserted would improve upon the ESEA definitions. The same commenter recommended deleting the option under ''moderate evidence'' to use a study that includes ''20 or more students or other individuals,'' concerned that a study of this size is unlikely to meet a rigorous evidence standard.

One commenter recommended that the definition of ''demonstrates a rationale'' require that relevant outcomes relate to policy or practice, to narrow the focus to outcomes of most interest to policymakers. Another commenter recommended expanding the definition of ''demonstrates a rationale'' to include the second part of the ESEA section 8101 definition of the term, focused on learning from approaches implemented under the project.

One commenter appreciated that the proposed definition of ''peer-reviewed scholarly publication'' aligns with the Department's Public Access Plan, and that proposed § 75.623 requires peer-reviewed scholarly publications to be made available in ERIC.

Lastly, one commenter proposed a definition of ''continuous improvement,'' given its frequent use throughout EDGAR.

Discussion: We appreciate the support for the evidence definitions and recognize their importance for articulating evidentiary expectations for both applications and evaluations designed to build evidence, including more rigorous evaluations designed to meet the standard of ''moderate evidence'' or ''strong evidence.'' The Department considers the evidence base as well as the purpose of the grant program when determining how to include evidence-building and evaluation in a grant competition, which includes an assessment of the appropriate level of rigor for project evaluations.

We appreciate the commenter's interest in including the definitions of ''evidence-based program'' and ''evidence-building program'' and appreciate the efforts of the stakeholders involved in the development of those definitions. While those definitions are in some ways aligned with the Department's approach to evidence-based policymaking, they differ enough from the tiered evidence framework in the ESEA and EDGAR that include four tiers of evidence, that we decline to revisit our approach in this rulemaking.

We decline the commenter's request to strike certain language in paragraph (ii) of the definition of ''moderate evidence'' related to a sample size of 20 students or individuals, because it is important that EDGAR's evidence definitions align with WWC Standards. The low sample size aspect of the definition ensures that the WWC Standards are appropriately inclusive for studies related to students with disabilities, by allowing for studies involving low-incidence populations in the context of a systematic review of an intervention report.

We decline to adopt the recommended additions to the definition of ''demonstrates a rationale,'' because the proposed revisions are intended to align EDGAR's definition with the ESEA definition to the extent practicable, and the section 8101 definition does not incorporate a focus on ''policy or practice.'' We also decline the suggestion to add the second part of the ESEA definition, which requires a showing of ''ongoing efforts to examine the effects of [an] activity, strategy, or intervention,'' because applicants that are required to demonstrate a rationale in their applications have not yet implemented their projects. We also decline to adopt the second half of the ESEA definition of ''demonstrates a rationale'' for consistency with the other tiers of evidence, none of which requires ongoing evaluation efforts. We note that other parts of EDGAR, such as the selection criteria in § 75.210, incorporate ongoing efforts to evaluate impact. See, *e.g.,* § 75.210(h)(2)(ix) (the extent to which the evaluation is designed to meet WWC standards with or without reservations); and § 75.210(h)(2)(x) (the extent to which the methods of evaluation include an experimental study, a quasi-experimental design study, or a correlational study with statistical controls for selection bias).

We appreciate the support for the proposed definition of ''peer-reviewed scholarly publication'' and agree that it's important for EDGAR, and this definition, to align with the

Department's Public Access Plan, cited earlier.

We agree that, given the frequency of its use throughout EDGAR, it is appropriate to define ''continuous improvement.'' We are adding a definition of ''continuous improvement'' that aligns with the Department's evidence framework in EDGAR and that is consistent with the Department's discussion of continuous improvement in other resources, including the Department's Non-Regulatory Guidance: Using Evidence to Strengthen Education Investments (September 28, 2023). *https://www2.ed.gov/fund/grant/about/discretionary/2023-non-regulatory-guidance-evidence.pdf.*

Changes: We are adding a definition of ''continuous improvement'' to § 77.1.

Part 299—General Provisions

General Comments

Comments: Several commenters recommended that the regulations emphasize the goal of reaching agreement through consultation regarding equitable services. Commenters emphasized the importance of this being the goal for both (1) an agency, consortium, or entity receiving funds under an applicable program and (2) representatives of private schools. Commenters expressed concern that the consultation requirements may not be fully implemented in some cases or may be misunderstood to require only a single conversation that may not amount to meaningful consultation. Commenters also requested confirmation that failure of both parties to have the goal of reaching agreement could be a basis for a private school official to submit a complaint. One commenter recommended highlighting the goal of reaching agreement in proposed § 299.12 regarding the role of the ombudsman.

Discussion: We appreciate the commenters' concerns and the opportunity to confirm that final § 299.7(b) already requires that both parties have the goal of reaching agreement, and final § 299.7(e) addresses the right of a private school official to file a complaint. See 20 U.S.C. 7881(c)(1) and (6) (requiring timely and meaningful consultation and the goal of reaching agreement and providing the right to file a complaint). The final regulations also already emphasize the ongoing nature of consultation. For example, § 299.7 describes specific points when consultation is required and states that ''such consultation must continue throughout the implementation and assessment of equitable services.'' § 299.7(a)(2). We also note that the final regulations at § 299.12 require the ombudsman to monitor and enforce all equitable services requirements in final §§ 299.6–299.11, which includes § 299.7(b). We note, however, that while there is an existing requirement that there be a goal of reaching agreement, there is no requirement that agreement is ultimately reached. Accordingly, mere disagreement is not, on its own, the basis of a complaint.

Changes: None.

Comments: Several commenters sought clarity regarding the role of the ombudsman, specifically asking for additional detail about the responsibilities of the ombudsman and any oversight of the person serving in that role, but also acknowledged that such clarity likely requires legislative, rather than regulatory, changes.

Discussion: Since the ombudsman is, by statute, an employee of the SEA, we do not include additional specificity in this regulation.

Changes: None.

Comments: Several commenters underscored the importance of current § 299.7, which would become redesignated § 299.9, and requested additional information about how and when notice would be provided to appropriate private school officials of the amount of funds for educational services and other benefits that are available for eligible private school children and their teachers and other educational services personnel.

Discussion: The Department did not propose any changes to current § 299.7, which has been redesignated as § 299.9 in these final regulations, and it will continue in effect as written. The existing regulations continue to require timely notice.

Changes: None.

Comments: Two commenters expressed general support for § 299.16, stating it would provide clarity regarding the contents of an SEA's written resolution of an equitable services complaint. These two commenters offered three suggestions: (1) they pointed out that proposed § 299.16(c) should reference paragraph (h), rather than paragraph (g) of § 299.16; (2) they requested rephrasing proposed § 299.16(d) to avoid implying that the complaint resolution could only be done by an attorney; and (3) they requested clarification in § 299.16(h) that the documents that must be paginated are only those the SEA deemed relevant to its decision.

Discussion: We appreciate commenters' support for proposed § 299.16 and agree that it will bring clarity with regard to the contents of an SEA's written resolution of an equitable services complaint. We further agree with commenters that § 299.16(c) should reference paragraph (h) of this section. We also agree with commenters that we can rephrase § 299.16(d) to refer to the analysis and conclusion reached regarding requirements. Finally, we agree with commenters that the documents requiring pagination need only be those on which the SEA relied in making its decision, rather than every document received by or reviewed by the SEA.

Changes: We are revising § 299.16(c) to refer to ''supporting documents under paragraph (h) of this section.'' In addition, we are revising § 299.16(d) to refer to ''analysis and conclusions regarding the requirements'' instead of ''legal analysis and conclusions.'' We are revising § 299.16(h) to require the inclusion of ''all documents the SEA relied on in reaching its decision, paginated consecutively.''

Comments: Several commenters expressed concern that § 299.27 related to judicial review of a bypass hearing decision does not include a specific timeline for resolution.

Discussion: While we appreciate commenters' concerns about the importance of timely decisions, we do not have the authority to set timeframes for judicial processes.

Changes: None.

Other Comments

Comments: We received multiple comments with recommendations to add new sections in part 75 and 76 that would allow for the use of grant funds for costs associated with data and evaluation. Specifically, two commenters recommended the creation of new § 75.535 and a new § 76.535 to support costs related to data and evaluation. The comments cite OMB's proposed updates to the Uniform Guidance (since finalized), and specifically alignment with the proposed updates to Cost Principles in 2 CFR 200.455(c), that would allow for costs associated with data and evaluation. Another commenter proposed a new § 76.762 to allow States or subgrantees to use funds for an evaluation, with exceptions.

Discussion: We appreciate these comments, which recognize the importance of data and evaluation. The Department adopts the Uniform Guidance and uses the Cost Principles in the administration of its programs. As such, it is not necessary to include approval for use of funds for particular activities that already are covered by the

Cost Principles in the Uniform Guidance, including the allowance of funds for related evaluation costs. We discuss the allowable costs under specific grant programs and the Cost Principles in pre-application technical assistance and in post-award conversations with grantees, including the update to OMB's Uniform Guidance and Cost Principles.

Changes: None.

Comments: Two commenters recommended the creation of new §§ 75.536 and 76.536 that would allow the use of grant funds for costs associated with community engagement, given the focus on community engagement in the proposed revisions to EDGAR, including the selection criteria in § 75.210.

Discussion: We agree that community engagement is important to the success of many of the Department's grant programs. To the extent that a program's statute and purpose already allow for funds related to community engagement, adding new language is not necessary. The Department will continue to review whether further expansion of allowable costs for community engagement would be appropriate.

Changes: None.

Comments: Three commenters requested specific information related to the Individuals with Disabilities Education Act regulations in 34 CFR part 300, specifically about State and LEA responsibilities related to private school children, including ''child find'' requirements.

Discussion: We appreciate the concerns raised by the commenters but note that 34 CFR part 300 is not part of the proposed updates included in the EDGAR NPRM.

Changes: None.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, OIRA must determine 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 adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) of OMB 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 regulatory action is 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 assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action and have determined that the benefits would justify the costs.

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.'' OIRA 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 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 an analysis of anticipated costs and benefits, we believe that these regulations are consistent with the principles in Executive Order 13563.

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

Costs and Benefits

We have reviewed the changes in these final regulations in accordance with Executive Order 12866, as amended by Executive Order 14094, and do not believe that these changes would generate a considerable increase in burden. In total, we estimate that the changes in these final regulations would result in a net increase in burden of approximately $100 annually with transfers of $109.8 million per year at a 7% discount rate or $113.9 million per year at 3% discount rate. Most of the changes in these final regulations are technical in nature and are unlikely to affect the administration of programs or allocation of benefits in any substantial way. However, given the large number of edits herein, we discuss each provision, other than those for which we are updating citations or cross-references and making other technical edits, and its likely costs and benefits below.

Unless otherwise specified, the Department's model uses mean hourly wages for personnel employed in the education sector as reported by the Bureau of Labor Statistics [1] (BLS) and a loading factor of 2.0 to account for the employer cost of employee compensation and indirect costs (*e.g.,* physical space, equipment, technology costs). When appropriate, the Department identifies the specific occupation used by the BLS in its tables to support the reader's analysis. The Department assumes that wage rates

[1] U.S. Bureau of Labor Statistics, *May 2023 National Industry-Specific Occupational Employment and Wage Estimates, Sector 61—Educational Services, https://www.bls.gov/oes/current/oes_nat.htm* (last modified Apr. 3, 2024).

remain consistent for the duration of the time horizon.

Changes to §§ 75.1 and 75.200 simply combine currently existing text into a single section and clarify terms used. We do not expect that these changes will have any quantifiable cost, and the changes may benefit the Department and general public by improving the clarity of the regulations.

The deletion of § 75.4 as unnecessary and redundant is unlikely to generate any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 75.60, which delete an outdated table and clarify a definition, are unlikely to generate any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 75.101, which clarify what is in a notice and an application package, are unlikely to generate any meaningful cost and may benefit the Department and general public by improving the clarity of the regulations.

Changes to §§ 75.102 and 75.104, which move paragraph (b) of § 75.102 to § 75.104, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 75.105, which add reference to an already existing exemption to the public comment period to the regulations, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 75.109, which eliminate the requirement that an applicant submit two copies of any paper applications in addition to the original, may reduce costs for applicants that submit paper applications. However, those savings are likely to be minimal, given the small incremental cost of photocopies and the low number of paper applications the Department receives in any year. At most, we estimate that it would save applicants $7.50 per application, assuming a 75-page application photocopied at a rate of $0.05 per page. Assuming an average of 50 paper applications submitted per year, this change would result in an annual savings of approximately $375.

Changes to § 75.110, which more clearly specify how applicants must report against program measures and project-specific performance measures, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 75.112, which allow the Secretary to require applicants to submit a logic model or other conceptual framework, are unlikely to generate any quantifiable costs or benefits. Many grant competitions already include this requirement and, to the extent that it is included in additional competitions in the future, we do not believe that it would create a substantial burden for applicants, because we assume that applicants in those programs would likely already have conceptualized an implicit logic model or conceptual framework for their applications and, therefore, would experience only minimal paperwork burden associated with memorializing it in their applications.

Changes to § 75.127, which add the term ''partnership'' and clarify that all members of a group application must be eligible entities, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

The deletion of §§ 75.190–75.192 as duplicative is unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 75.201, which refer to selection ''factors'' as well as ''criteria'' are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 75.210, which would clarify word choice, update language based on past experience in using the current selection criteria and factors, and add additional factors such as those that include a focus on the use of data, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 75.216, which remove paragraphs (a) and (d) and revise the section heading, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations and providing the Department additional flexibility in considering applications.

Changes to § 75.217, which remove the word ''solely'' and add ''and any competitive preference points,'' are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 75.219, which reorganize the section to improve clarity, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 75.221, which revise the section to improve clarity and remove unnecessary language, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 75.222, which update the mailing address for unsolicited applications, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

The changes to § 75.225 change the current term ''novice applicant'' to ''new potential grantee'' and revise the definition to provide greater flexibility to the Department in classifying applicants as ''new potential grantees.'' We believe that this change may result in a number of changes in the behavior of both Department staff and applicants. First, we believe that the additional flexibility in the revised section will increase the number of competitions in which § 75.225 is used. Second, we believe that it may result in additional applicants submitting applications for competitions in which § 75.225 is used, increasing access to Federal resources and which may serve to strengthen the quality of the applicant pool. Finally, we believe that the additional applicants, in conjunction with any absolute or competitive preference associated with the revised section, may shift at least some of the Department's grants among eligible entities. However, because this revised standard will neither expand nor restrict the universe of eligible entities for any Department grant program, and since application submission and participation in our discretionary grant programs is completely voluntary, we do not think that it would be appropriate to characterize any increased participation in our grant competitions as costs associated with this regulation.

Changes to § 75.226, which provide the Secretary with the authority to give special consideration to an application that demonstrates a rationale, are unlikely to generate any quantifiable costs or benefits. Many grant competitions already ask applicants to discuss the extent to which they can demonstrate a rationale for their proposed projects through a selection factor and, to the extent that it is included in additional competitions in the future, we do not believe that it would create a substantial burden for applicants because we assume that applicants in those programs would likely already have conceived an implicit logic model or other conceptual framework for their applications and would, therefore, experience only minimal paperwork burden associated with memorializing it in their

applications to address the requirements of the demonstrates a rationale level of evidence.

Changes to § 75.227 provide the Secretary with the authority to give special consideration to rural applicants. The language in this section mirrors language adopted by the Department in the Administrative Priorities for Discretionary Grants Programs (Administrative Priorities), published in the **Federal Register** on March 9, 2020 (85 FR 13640), and we are codifying this language in EDGAR. As such, these changes will not generate any quantifiable costs and may benefit the Department and general public by improving the clarity and transparency of the Department's authority to provide special consideration to particular applicants.

Changes to § 75.234, which replace the word ''special'' with the word ''specific,'' are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 75.250, which update the heading and clarify that an extension of the project period is authorized by EDGAR only if the applicable statutes and regulations permit it, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 75.253, which allow a grantee whose request for a non-competitive continuation award has been denied to request reconsideration, could generate costs to affected grantees and the Department. In general, we do not deny a large number of non-competing continuation awards and, if that does happen, grantees are often aware of the likelihood of the decision well in advance and often cite no concerns if they do not receive a continuation award. Therefore, we do not believe that many grantees would qualify for the redress, and we do not believe that the few who may qualify would exercise the right. However, for the purpose of this analysis, we assume that we would process 10 such requests annually, which we believe is an overestimate of the likely incidence in order to capture the high end of potential costs. For each request, we assume a project director earning a loaded wage rate of $112.81 per hour, on average, would spend 24 hours drafting and submitting the request. At the Department, a program officer at the GS–13/1 level (loaded wage rate of $61.96 per hour) would spend approximately 8 hours reviewing each request, along with 2 hours for their supervisor at the GS–14/1 level (loaded wage rate of $72.69 per hour) to review. We also assume that a Department attorney at the GS–14/1 level (loaded wage rate of $72.69 per hour) would spend approximately 4 hours reviewing each request. In sum, we estimate that this provision would generate an additional cost of approximately $27,074 for grantees and $9,318 for the Department per year. In total, we estimate an additional cost of $36,392 per year.

The addition of a new § 75.254 gives the Secretary the authority to approve data collection periods. The language in this section is aligned with this previous authority under § 75.250(b) as well the Administrative Priorities and is just codifying this language in EDGAR. As such, these changes will not generate any quantifiable costs and may benefit the Department and general public by allowing for data collection periods that give grantees additional time to collect data to measure project impact.

Changes to § 75.261, which remove references to obsolete programs and make other edits, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 75.263, which remove the clause ''notwithstanding any requirement in 2 CFR part 200,'' are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to §§ 75.560–75.564, which align these sections with the Uniform Guidance and provide additional information on the application of indirect cost rates, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 75.590, which allow the Department to require the use of an independent evaluation in a program and include a confidentiality provision, would likely generate transfers for affected grantees. Specifically, we assume that grantees that are required to use an independent evaluator will transfer grant funds from their currently designated purpose (such as to defray the costs of an internal evaluation) to pay for an independent evaluation. We note, however, that we do not believe that these transfers would substantially affect the level of support that beneficiaries of our competitive grant programs receive; the grantees would have spent a certain percentage of their awards on evaluation, whether such evaluation is conducted by an internal or external entity. We believe that the most likely programs in which the Department would require an independent evaluation are those that include an expectation of a rigorous evaluation using selection factors related to What Works Clearinghouse evidence standards in project evaluations. From 2014 through 2022, we included such selection factors in 18 competitions (excluding programs that have their own independent evaluation requirements, such as Education Innovation and Research and its predecessor, Investing in Innovation, because these programs are already included in the baseline), with a combined average of $194.8 million in awards per year. Assuming that evaluation costs in these programs average approximately 15 percent of total project costs, we estimate that the evaluations for these competitions would cost approximately $29,227,000 in Year 1.

TABLE 1—ANNUAL TRANSFERS—CHANGES TO § 75.590

Year	Net annual transfer
Year 1	$29,226,998
Year 2	58,453,995
Year 3	87,680,993
Year 4	116,907,990
Year 5	146,134,988
Year 6	146,134,988
Year 7	146,134,988
Year 8	146,134,988
Year 9	146,134,988
Year 10	146,134,988
Total Net Present Value (NPV), 7%	770,534,217
Annualized, 7%	109,706,738
Total NPV, 3%	970,948,946
Annualized, 3%	113,824,837

Assuming equal-sized cohorts of new grants per year, we estimate that this total would increase through Year 5, when it would plateau at $146,135,000 per year. To the extent that grantees already use evaluators that would meet the requirements for an independent evaluation, this would represent an overestimate of the transfers associated with this provision.

Changes to § 75.591, which clarify how grantees cooperate with Federal research activities, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to §§ 75.600–75.615 and §§ 75.618–75.619, which restructure the sections on construction to improve the flow of the information, update citations, and include green building concepts that are optional and are for consideration in construction are

unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 75.620, which update language regarding Federal endorsement, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

The addition of § 75.623 requires certain grantees to submit final versions of Department-funded research publications to ERIC so that they are publicly available, aligning with the Department's September 2023 Plan for Public Access: Improving Access to Results of Federally Funded Scientific Research (Public Access Plan). Given that submission of the files would be a required grant activity, we do not anticipate that the requirement will generate any additional costs for grantees. To the extent that submissions would generate additional burdens, they would likely be minimal and would be properly considered transfers from support of other grant-related activities. Such transfers would be *de minimis.* Further, the addition of this requirement would generate benefits for the general public by increasing the availability of publicly supported research.

Changes to § 75.700 add existing Executive orders, which grantees must already comply with, to the list of authorities with which grantees must comply. These changes are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 75.708, which allow the Secretary to provide notice authorizing subgrants through the **Federal Register** or another reasonable means, may generate minimal efficiency returns to the Department by reducing burdens and costs associated with preparing a notice for publication in the **Federal Register**. However, we estimate that staff time to draft and compile these notices will likely remain unchanged and, therefore, do not estimate any changes in burden associated with this provision.

Changes to § 75.720 allow the Secretary to require grantees to publish their annual performance reports on a public-facing website, accounting for privacy and proprietary business information. Given that publishing their reports would be a required grant activity, we do not anticipate that the requirement will generate any additional costs for grantees. To the extent that the publishing of the report would generate additional burdens, they would likely be minimal and would be properly considered transfers from support of other grant-related activities. However, we believe that, to the extent that the requirement results in a shift in activities by grantees, it is possible that there would be minimal transfers. We estimate that it would take a web developer approximately 30 minutes to post a copy of the grantee's annual performance report on the website. Assuming a loaded wage rate of $91.90 per hour for web developers, we estimate that this requirement could generate transfers of approximately $46 per year per affected grantee. In FY 2023, the Department made approximately 9,470 grant awards. Assuming this requirement would be used in 20 percent of those grants, we estimate total transfers of approximately $87,124 per year.

Changes to § 75.732, which includes using records for continuous improvement, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 76.1, which ensure consistent reference to State-administered formula grant programs, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 76.50 clarify that, in the absence of a statutory or regulatory prohibition against subgranting, or in the absence of a term and condition in the grant award that would prohibit subgranting, States, consistent with 2 CFR 200.332, determine whether to make subgrants. These changes would likely generate cost savings for States through the reduced burden associated with making subgrants as opposed to contracts. However, we do not have sufficient information to quantify this impact and did not receive public comment on the cost savings associated with such a shift at the State level.

Changes to §§ 76.51–76.52 and 76.100 are for clarity only. They are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 76.101, which clarify the applicability of section 441 of GEPA, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 76.102, which remove a table and provide a general definition of the term ''State plan,'' are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 76.103, which remove extraneous text and simplify the section, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to §§ 76.125–76.136, which remove references to the Trust Territory of the Pacific Islands and make other minor updates that better align with current statutes, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to §§ 76.140–76.142, which, among other things, allow the Secretary to prescribe alternative amendment processes on a program-by-program basis, could generate benefits for both States and the Department. The changes provide the Secretary broad flexibility to prescribe alternative procedures, which makes it difficult to assess precisely the specific cost reductions that would occur. However, we assume that these alternative procedures would result in a net burden reduction of 2 hours for a management analyst at the State level and 0.5 hours for an administrator at the State level for each State plan revision under the ESEA. We assume that the loaded wage rate is $73.18 per hour for a management analyst at the State level and $109.88 per hour for an administrator at the State level. We further estimate that alternative procedures that are likely to be used would result in a burden reduction of 5 hours for a management analyst and 0.5 hours for a chief executive at the State level for each State plan revision under the Workforce Innovation and Opportunity Act (WIOA). We assume that the loaded wage rate is $161.20 per hour for a chief executive at the State level. We further assume, based on historical averages, an average of 15 State plan amendments under the ESEA and 52 State plan amendments under WIOA each year. In total, we estimate that these alternative procedures would reduce costs for States by approximately $26,238 per year. We also assume that the alternative procedures would reduce burden on Federal staff[2] by approximately 1 hour per State plan amendment for a total Federal savings of approximately $4,150 per year. In total, we estimate that these alternative procedures would reduce costs by approximately $30,389 per year.

Changes to § 76.260 are for clarity only. They are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

[2] One GS–13/1 staff earning a loaded wage rate of $61.96 per hour.

Changes to § 76.301, which clarify that section 442 of GEPA does not apply to LEA subgrantees, would not generate any quantifiable costs, and would benefit the Department and the general public by improving the clarity of the regulations.

Changes to § 76.400 are for clarity only. They are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 76.401, which clarify that a notice of appeal must include an allegation of a specific violation of law by the SEA, are likely to generate benefits for the Department by reducing the number of appeals that fail to state a claim that we receive and process each year. On average, we process approximately 10 appeals each year, with an attorney [3] spending approximately 30 hours reviewing each appeal. We estimate that this provision would reduce the number of appeals the Department receives each year by approximately 20 percent, resulting in a net savings of 60 hours per year or approximately $5,530 per year. We also believe that this provision would generate cost savings at the State level, but do not have sufficient information on the case load at the State level to make a reliable estimate and did not receive any public comments on the potential savings at the State level associated with this proposed change. While this statement of uncertainty was also included in the NPRM, we inadvertently included a benefit of $5,124 for States in the NPRM analysis model. We correct that inclusion here by removing that benefit from the model and reaffirm that we do not have sufficient information to make a reliable estimate on cost savings at the State level associated with this proposed change.

Changes to §§ 76.500, 76.532, and 76.533 are for clarity only. They are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to §§ 76.560–580, which align these sections with the Uniform Guidance and provide additional information on the application of indirect cost rates, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 76.600 relate to updates regarding construction regulations to align with current statutes and regulations and are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

We are retaining §§ 76.650–76.651 and 76.653–76.662 as they exist in current regulations, with minor updates for clarity and accuracy, rather than making the changes proposed NPRM, and therefore the revisions to those sections should not generate any quantifiable costs.

The change in § 76.652 to refer to § 299.7 regarding consultation with representatives of private school students is unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

We are removing and reserving §§ 76.670–76.677. Since the only programs that were subject to these provisions are already subject to bypass procedures under the ESEA, which are now spelled out in §§ 299.18–299.28 (see below), there should not be any quantifiable costs to the removal of §§ 76.670–76.677.

Changes to §§ 76.702, 76.707–76.711, and 76.714 are for clarity only. They are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 76.720, which clarify continuous improvement efforts in State reporting requirements, would not generate any quantifiable costs and would benefit the Department and the general public by improving the clarity of the regulations.

Changes to § 76.722, which clarify periodic review and continuous improvement efforts in subgrantee reporting requirements, would not generate any quantifiable costs and would benefit the Department and the general public by improving the clarity of the regulations.

Changes to § 76.732, which includes using records for continuous improvement, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations. Changes to § 76.740 are for clarity only. They are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 76.783 indicate that a subgrantee may request a hearing related to an SEA's failure to provide an amount of funds in accordance with the requirements of applicable statutes and regulations. These changes would not generate any additional costs as this circumstance was previously contemplated in § 76.401 from which relevant provisions would be moved to § 76.783 for clarity.

Changes to §§ 76.785–76.788, and 76.900–76.901 are for clarity only. They are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to § 77.1(c), which update existing definitions, remove unnecessary definitions, and add new definitions, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to part 79, which remove outdated statutory references, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Changes to part 299, which reflect statutory changes, are unlikely to generate any quantifiable costs and may benefit the Department and the general public by improving the clarity of the regulations.

New §§ 299.16–299.17 specify what must be included in an SEA's resolution of a complaint and a party's appeal to the Secretary of an SEA decision. The specific elements listed in these sections are all what a legal decision or appeal should already include (such as a description of applicable statutory and regulatory requirements, legal analysis and conclusions, and supporting documentation). When the Department receives records on appeal that do not include one or more of these elements, we go back to the parties to request the missing element(s). Specifying the elements we need to issue a decision will prevent this unnecessary delay; we do not think that the specific elements will generate quantifiable costs, however, because, as noted above, these are items that parties should already be including.

Additions of §§ 299.18–299.28 regarding the procedures for a bypass in providing equitable services to eligible private school children, teachers or other educational personnel, and families, as applicable, are unlikely to generate any quantifiable costs and may benefit the Department and the general public by improving the clarity of the regulations. These sections reflect only minor updates to information previously contained in §§ 76.670–76.677, which will be deleted, as previously discussed.

In total, we estimate that these final regulations will result in a net increase in costs of approximately $100 per year with transfers of $109.8 million per year at a 7% discount rate or $113.9 million per year at a 3% discount rate. Of the

[3] One GS–14/10 Federal attorney earning a loaded wage rate of $92.18 per hour.

net benefit, approximately $200would accrue to grantees. The remaining approximately $400 in net additional benefits would accrue to the Department.

As noted above, we do not anticipate any meaningful, quantifiable impact from the majority of these final regulations. However, for those provisions for which we do estimate impacts, we summarize those impacts below using 3 and 7 percent discount rates, consistent with OMB Circular A–4:

Provision	Benefits	
	3% discount rate	7% discount rate
§ 75.109—Reduce the number of paper copies of an application to be submitted	$375	$375
§ 76.140–142—Amendments to State Plan	30,389	30,389
§ 76.401—Disapproval of an application	5,531	5,531
Costs		
§ 75.253—Request for Reconsideration	(36,392)	(36,392)
Transfers		
§ 75.590—Independent evaluation	113,824,837	109,706,738
§ 75.720—Financial and Performance Reports	87,124	87,124

Regulatory Flexibility Act Certification

The Secretary certifies that this regulatory action would not have a significant economic impact on a substantial number of small entities. The Small Business Administration Size Standards for ''proprietary institutions of higher education'' are set out in 13 CFR 121.201. ''Nonprofit institutions'' are defined as small entities if they are independently owned and operated and not dominant in their field of operation. *See* 5 U.S.C. 601(4). ''Public institutions and LEAs'' are defined as small organizations if they are operated by a government overseeing a population below 50,000. *See* 5 U.S.C. 601(5). This final rule also applies to States. States are not small governmental organizations.

Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary and related mostly to an increase in the number of applications prepared and submitted annually for competitive grant competitions. Therefore, we do not believe that these regulations present any significant impact on small entities beyond the potential for increasing the likelihood of their applying for, and receiving, competitive grants from the Department.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected sections of the regulations.

We anticipate that changes to §§ 76.140–76.142 would reduce State burden under existing information collection requirements by approximately 323 hours per year (see *Costs and Benefits* for more information on this estimate). The valid OMB control number for that information collection is 1810–0576.

Intergovernmental Review

These programs are 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 these programs.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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List of Subjects

34 CFR Part 75

Accounting; Copyright; Education; Grant programs—education; Incorporation by reference; Indemnity payments; Inventions and patents; Private schools; Reporting and recordkeeping requirements; Youth organizations.

34 CFR Part 76

Accounting; Administrative practice and procedure; American Samoa; Education; Grant programs—education; Guam; Northern Mariana Islands; Pacific Islands Trust Territory; Prisons; Private schools; Reporting and recordkeeping requirements; Virgin Islands; Youth organizations.

34 CFR Part 77

Education; Incorporation by reference; Grant programs—education.

34 CFR Part 79

Intergovernmental relations.

34 CFR Part 299

Administrative practice and procedure; Elementary and secondary education; Grant programs—education;

Private schools; Reporting and recordkeeping requirements.

Roberto J. Rodriguez,

Assistant Secretary for Planning, Evaluation and Policy Development.

For the reasons discussed in the preamble, the Secretary amends parts 75, 76, 77, 79, and 299 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

■ 1. The authority citation for part 75 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

Section 75.263 also issued under 2 CFR 200.308(e)(1).

Section 75.617 also issued under 31 U.S.C. 3504, 3505.

Section 75.740 also issued under 20 U.S.C. 1232g and 1232h.

■ 2. Revise § 75.1 to read as follows:

§ 75.1 Programs to which part 75 applies.

(a) *General.* (1) The regulations in this part apply to each direct grant program of the Department of Education, except as specified in these regulations for direct formula grant programs, as referenced in paragraph (c)(3) of this section.

(2) The Department administers two kinds of direct grant programs. A direct grant program is either a discretionary grant program or a formula grant program other than a State-administered formula grant program covered by 34 CFR part 76.

(3) If a direct grant program does not have implementing regulations, the Secretary implements the program under the applicable statutes and regulations and, to the extent consistent with the applicable statutes and regulations, under the General Education Provisions Act and the regulations in this part. With respect to the Impact Aid Program (Title VII of the Elementary and Secondary Education Act of 1965), see 34 CFR 222.19 for the limited applicable regulations in this part.

(b) *Discretionary grant programs.* A discretionary grant program is one that permits the Secretary to use discretionary judgment in selecting applications for funding.

(c) *Formula grant programs.* (1) A formula grant program is one that entitles certain applicants to receive grants if they meet the requirements of the program. Applicants do not compete with each other for the funds, and each grant is either for a set amount or for an amount determined under a formula.

(2) The Secretary applies the applicable statutes and regulations to fund projects under a formula grant program.

(3) For specific regulations in this part that apply to the selection procedures and grant-making processes for direct formula grant programs, see §§ 75.215 and 75.230.

Note 1 to § 75.1: See 34 CFR part 76 for the general regulations that apply to programs that allocate funds by formula among eligible States.

§ 75.4 [Removed and Reserved]

■ 3. Remove and reserve § 75.4.

§ 75.50 [Amended]

■ 4. Amend § 75.50 by removing the words ''the authorizing statute'' and adding in their place the words ''applicable statutes and regulations''.

§ 75.51 [Amended]

■ 5. Amend § 75.51 in paragraph (a) by removing the parenthetical sentence ''(See the definition of *nonprofit* in 34 CFR 77.1.)''.

■ 6. Revise § 75.60 to read as follows:

§ 75.60 Individuals ineligible to receive assistance.

An individual is ineligible to receive a fellowship, scholarship, or discretionary grant funded by the Department if the individual—

(a) Is not current in repaying a debt or is in default, as that term is used in 34 CFR part 668, on a debt—

(1) Under a program administered by the Department under which an individual received a fellowship, scholarship, or loan that they are obligated to repay; or

(2) To the Federal Government under a nonprocurement transaction; and

(b) Has not made satisfactory arrangements to repay the debt.

§ 75.61 [Amended]

■ 7. Amend section 75.61 by:

■ a. In paragraph (a)(2), removing the words ''section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a)'' and adding in their place the words ''section 421 of the Controlled Substances Act (21 U.S.C. 862)''; and

■ b. Removing the parenthetical authority citation at the end of the section.

§ 75.62 [Amended]

■ 8. Amend § 75.62 by:

■ a. In paragraph (a)(2), removing the words ''section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a)'' and adding, in their place, the words ''section 421 of the Controlled Substances Act (21 U.S.C. 862)''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 9. Amend § 75.101 by:

■ a. Revising paragraph (a)(1);

■ b. Adding a period after ''assistance?)'' in paragraph (a)(7); and

■ c. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.101 Information in the application notice that helps an applicant apply.

(a) * * *

(1) How an applicant can obtain an application package.

* * * * *

§ 75.102 [Amended]

■ 10. Amend § 75.102 by removing and reserving paragraph (b) and removing the parenthetical authority citation at the end of the section.

§ 75.103 [Amended]

■ 11. Amend § 75.103 by:

■ a. Removing in paragraph (b) the citation ''§ 75.102(b) and (d)'' and adding in its place the citation ''§ 75.102(d)''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 12. Amend § 75.104 by:

■ a. Revising the section heading;

■ b. Adding paragraph (c); and

■ c. Removing the parenthetical authority citation at the end of the section.

The revision and addition read as follows.

§ 75.104 Additional application provisions.

* * * * *

(c) If an applicant wants a new grant, the applicant must submit an application in accordance with the requirements in the application notice.

■ 13. Amend § 75.105 by:

■ a. Revising the section heading;

■ b. In paragraph (b)(2)(i), removing the words ''by inviting applications that meet the priorities'' and adding in their place the words ''through invitational priorities'';

■ c. In paragraph (b)(2)(iii), removing the words ''seriously interfere with an orderly, responsible grant award process or would otherwise'';

■ d. In paragraph (b)(2)(iv), removing the word ''or'' after the semicolon;

■ e. In paragraph (b)(2)(v), removing the period and adding in its place ''; or'';

■ f. Adding paragraph (b)(2)(vi);

■ g. Removing the words ''high quality'' in paragraph (c)(3) and adding in their place the words ''high-quality''; and

■ h. Removing the parenthetical authority citation at the end of the section.

The revision and addition read as follows:

§ 75.105 Annual absolute, competitive preference, and invitational priorities.

* * * * *

(b) * * *

(2) * * *

(vi) The final annual priorities are developed under the exemption from rulemaking for the first grant competition under a new or substantially revised program authority pursuant to section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1), or an exemption from rulemaking under section 681(d) of the Individuals with Disabilities Education Act, 20 U.S.C. 1481(d), section 191 of the Education Sciences Reform Act, 20 U.S.C. 9581, or any other applicable exemption from rulemaking.

* * * * *

■ 14. Revise § 75.109 to read as follows:

§ 75.109 Changes to applications.

An applicant may make changes to its application on or before the deadline date for submitting the application under the program.

■ 15. Revise § 75.110 to read as follows:

§ 75.110 Information regarding performance measurement.

(a) The Secretary may establish, in an application notice for a competition, one or more program performance measurement requirements, including requirements for performance measures, baseline data, or performance targets, and a requirement that applicants propose in their applications one or more of their own project-specific performance measures, baseline data, or performance targets and ensure that the applicant's project-specific performance measurement plan would, if well implemented, yield quality data.

(b) If the application notice establishes program performance measurement requirements, the applicant must also describe in the application—

(1)(i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and

(ii) If the Secretary requires applicants to collect data after the substantive work of a project is complete in order to measure progress toward attaining certain performance targets, the data-collection and reporting methods the applicant would use during the post-performance period and why those methods are likely to yield quality data.

(2) The applicant's capacity to collect and report the quality of the performance data, as evidenced by quality data collection, analysis, and reporting in other projects or research.

(c) If an application notice requires applicants to propose project-specific performance measures, baseline data, or performance targets, the application must include the following, as required by the application notice:

(1) *Project-specific performance measures.* How each proposed project-specific performance measure would: accurately measure the performance of the project; be consistent with the program performance measures established under paragraph (a) of this section; and be used to inform continuous improvement of the project.

(2) *Baseline data.* (i) Why each proposed baseline is valid and reliable, including an assessment of the quality data used to establish the baseline; or

(ii) If the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) *Performance targets.* Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

■ 16. Amend § 75.112 by:

■ a. Revising the section heading and paragraph (b);

■ b. Adding paragraph (c); and

■ c. Removing the parenthetical authority citation at the end of the section.

The revisions and addition read as follows:

§ 75.112 Include a proposed project period, timeline, project narrative, and a logic model or other conceptual framework.

* * * * *

(b) An application must include a narrative that describes how the applicant plans to meet each objective of the project and, as appropriate, how the applicant intends to use continuous improvement strategies in its project implementation based on periodic review of research, data, community input, or other feedback to advance the programmatic objectives most effectively and efficiently, in each budget period of the project.

(c) The Secretary may establish, in an application notice, a requirement to include a logic model or other conceptual framework.

§ 75.117 [Amended]

■ 17. Amend § 75.117 in paragraph (a) by adding ''and'' after the semicolon.

§ 75.118 [Amended]

■ 18. Amend § 75.118 by:

■ a. In paragraph (a), removing ''2 CFR 200.327 and 200.328'' and adding in its place ''2 CFR 200.328 and 200.329''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 19. Amend § 75.127 by:

■ a. Redesignating paragraphs (b)(3) and (4) as paragraphs (b)(4) and (5), respectively;

■ b. Adding new paragraph (b)(3) and paragraph (c); and

■ c. Removing the parenthetical authority citation at the end of the section.

The additions read as follows:

§ 75.127 Eligible parties may apply as a group.

* * * * *

(b) * * *

(3) Partnership.

* * * * *

(c) In the case of a group application submitted in accordance with §§ 75.127 through 75.129, all parties in the group must be eligible applicants under the competition.

§ 75.135 [Amended]

■ 20. Amend § 75.135 by:

■ a. In paragraph (a) introductory text, removing the citation ''2 CFR 200.320(c) and (d)'' and adding in its place the citation ''2 CFR 200.320(b)''; and

■ b. In paragraph (b) introductory text, removing the citation ''2 CFR 200.320(b)'' and adding in its place the citation ''2 CFR 200.320(a)(2)''.

§ 75.155 [Amended]

■ 21. Amend § 75.155 by removing the words ''the authorizing statute for a program requires'' and adding in their place the words ''applicable statutes and regulations require''.

§ 75.157 [Amended]

■ 22. Amend § 75.157 by removing the parenthetical authority citation at the end of the section.

§ 75.158 [Amended]

■ 23. Amend § 75.158 by:

■ a. In paragraph (c), removing the citation ''§ 75.102(b) and (d)'' and adding in its place the citation ''§ 75.102(d)''; and

■ b. Removing the parenthetical authority citation at the end of the section.

§§ 75.190 through 75.192 [Removed and Reserved]

■ 24. Remove the undesignated section heading before § 75.190, and remove and reserve §§ 75.190 through 75.192.

■ 25. Revise the undesignated center heading before § 75.200 and revise § 75.200 to read as follows:

Selection of New Discretionary Grant Projects

§ 75.200 How applications for new discretionary grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.

(a) The Secretary uses selection criteria to evaluate the applications submitted for new grants under a discretionary grant program.

(b) To evaluate the applications for new grants under the program, the Secretary may use—

(1) Selection criteria established under § 75.209;

(2) Selection criteria in § 75.210; or

(3) Any combination of criteria from paragraphs (b)(1) and (2) of this section.

(c)(1) The Secretary may award a cooperative agreement instead of a grant if the Secretary determines that substantial involvement between the Department and the recipient is necessary to carry out a collaborative project.

(2) The Secretary uses the selection procedures in this subpart to select recipients of cooperative agreements.

§ 75.201 [Amended]

■ 26. Amend § 75.201 by:

■ a. In paragraph (b), adding the words ''or factors'' after the words ''selection criteria'';

■ b. In paragraph (c), removing the word ''and'' between the words ''selection criteria'' and ''selected factors'' and adding in its place the word ''or''; and

■ c. Removing the parenthetical authority citation at the end of the section.

§ 75.209 [Amended]

■ 27. Amend § 75.209 by:

■ a. In the introductory text, adding a comma immediately after ''limited to''; and

■ b. In paragraph (c), removing the words ''the program statute or regulations'' and adding in their place the words ''applicable statutes and regulations''.

■ 28. Revise § 75.210 to read as follows:

§ 75.210 General selection criteria.

In determining the selection criteria to evaluate applications submitted in a grant competition, the Secretary may select one or more of the following criteria and may select from among the list of optional factors under each criterion. The Secretary may define a selection criterion by selecting one or more specific factors within a criterion or assigning factors from one criterion to another criterion.

(a) *Need for the project.* (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers one or more of the following factors:

(i) The data presented (including a comparison to local, State, regional, national, or international data) that demonstrates the issue, challenge, or opportunity to be addressed by the proposed project.

(ii) The extent to which the proposed project demonstrates the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(iii) The extent to which the proposed project will provide support, resources, or services; or otherwise address the needs of the target population, including addressing the needs of underserved populations most affected by the issue, challenge, or opportunity, to be addressed by the proposed project and close gaps in educational opportunity.

(iv) The extent to which the proposed project will focus on serving or otherwise addressing the needs of underserved populations.

(v) The extent to which the specific nature and magnitude of gaps or challenges are identified and the extent to which these gaps or challenges will be addressed by the services, supports, infrastructure, or opportunities described in the proposed project.

(vi) The extent to which the proposed project will prepare individuals from underserved populations for employment in fields and careers in which there are demonstrated shortages.

(b) *Significance.* (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers one or more of the following factors:

(i) The extent to which the proposed project is relevant at the national level.

(ii) The significance of the problem or issue as it affects educational access and opportunity, including the underlying or related challenges for underserved populations.

(iii) The extent to which findings from the project's implementation will contribute new knowledge to the field by increasing knowledge or understanding of educational challenges, including the underlying or related challenges, and effective strategies for addressing educational challenges and their effective implementation.

(iv) The potential contribution of the proposed project to improve the provision of rehabilitative services, increase the number or quality of rehabilitation counselors, or develop and implement effective strategies for providing vocational rehabilitation services to individuals with disabilities.

(v) The likelihood that the proposed project will result in systemic change that supports continuous, sustainable, and measurable improvement.

(vi) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study, including the extent to which the contributions may be used by other appropriate agencies, organizations, institutions, or entities.

(vii) The potential for generalizing from the findings or results of the proposed project.

(viii) The extent to which the proposed project is likely to build local, State, regional, or national capacity to provide, improve, sustain, or expand training or services that address the needs of underserved populations.

(ix) The extent to which the proposed project involves the development or demonstration of innovative and effective strategies that build on, or are alternatives to, existing strategies.

(x) The extent to which the proposed project is innovative and likely to be more effective compared to other efforts to address a similar problem.

(xi) The likely utility of the resources (such as materials, processes, techniques, or data infrastructure) that will result from the proposed project, including the potential for effective use in a variety of conditions, populations, or settings.

(xii) The extent to which the resources, tools, and implementation lessons of the proposed project will be disseminated in ways to the target population and local community that will enable them and others (including practitioners, researchers, education leaders, and partners) to implement similar strategies.

(xiii) The potential effective replicability of the proposed project or strategies, including, as appropriate, the potential for implementation by a variety of populations or settings.

(xiv) The importance or magnitude of the results or outcomes likely to be attained by the proposed project,

especially contributions toward improving teaching practice and student learning and achievement.

(xv) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in employment, independent living services, or both, as appropriate.

(xvi) The importance or magnitude of the results or outcomes likely to be attained by the proposed project that demonstrate its impact for the targeted underserved populations in terms of breadth and depth of services.

(xvii) The extent to which the proposed project introduces an innovative approach, such as a modification of an evidence-based project component to serve different populations, an extension of an existing evidence-based project component, a unique composition of various project components to explore combined effects, or development of an emerging project component that needs further testing.

(c) *Quality of the project design.* (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers one or more of the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified, measurable, and ambitious yet achievable within the project period, and aligned with the purposes of the grant program.

(ii) The extent to which the design of the proposed project demonstrates meaningful community engagement and input to ensure that the project is appropriate to successfully address the needs of the target population or other identified needs and will be used to inform continuous improvement strategies.

(iii) The quality of the logic model or other conceptual framework underlying the proposed project, including how inputs are related to outcomes.

(iv) The extent to which the proposed project's logic model or other conceptual framework was developed based on engagement of a broad range of community members and partners.

(v) The extent to which the proposed project proposes specific, measurable targets, connected to strategies, activities, resources, outputs, and outcomes, and uses reliable administrative data to measure progress and inform continuous improvement.

(vi) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to enable successful achievement of project objectives.

(vii) The quality of the proposed demonstration design, such as qualitative and quantitative design, and procedures for documenting project activities and results for underserved populations.

(viii) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including valid and reliable information about the effectiveness of the approach or strategies employed by the project.

(ix) The extent to which the proposed development efforts include adequate quality controls, continuous improvement efforts, and, as appropriate, repeated testing of products.

(x) The extent to which the proposed project demonstrates that it is designed to build capacity and yield sustainable results that will extend beyond the project period.

(xi) The extent to which the design of the proposed project reflects the most recent and relevant knowledge and practices from research and effective practice.

(xii) The extent to which the proposed project represents an exceptional approach to meeting program purposes and requirements and serving the target population.

(xiii) The extent to which the proposed project represents an exceptional approach to any absolute priority or absolute priorities used in the competition.

(xiv) The extent to which the proposed project will integrate or build on ideas, strategies, and efforts from similar external projects to improve relevant outcomes, using existing funding streams from other programs or policies supported by community, State, and Federal resources.

(xv) The extent to which the proposed project is informed by similar past projects implemented by the applicant with demonstrated results.

(xvi) The extent to which the proposed project will include coordination with other Federal investments, as well as appropriate agencies and organizations providing similar services to the target population.

(xvii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards and increased social, emotional, and educational development for students, including members of underserved populations.

(xviii) The extent to which the proposed project includes explicit plans for authentic, meaningful, and ongoing community member and partner engagement, including their involvement in planning, implementing, and revising project activities for underserved populations.

(xix) The extent to which the proposed project includes plans for consumer involvement.

(xx) The extent to which performance feedback and formative data are integral to the design of the proposed project and will be used to inform continuous improvement.

(xxi) The extent to which fellowship recipients or other project participants are to be selected on the basis of academic excellence.

(xxii) The extent to which the applicant demonstrates that it has the resources to operate the project beyond the project period, including a multiyear financial and operating model and accompanying plan; the demonstrated commitment of any partners; demonstration of broad support from community members and partners (such as State educational agencies, teachers' unions, families, business and industry, community members, and State vocational rehabilitation agencies) that are critical to the project's long-term success; or a plan for capacity-building by leveraging one or more of these types of resources.

(xxiii) The extent to which there is a plan to incorporate the project purposes, activities, or benefits into the ongoing work of the applicant beyond the end of the project period.

(xxiv) The extent to which the proposed project will increase efficiency in the use of time, staff, money, or other resources in order to improve results and increase productivity.

(xxv) The extent to which the proposed project will integrate with, or build on, similar or related efforts in order to improve relevant outcomes, using nonpublic funds or resources.

(xxvi) The extent to which the proposed project demonstrates a rationale that is aligned with the purposes of the grant program.

(xxvii) The extent to which the proposed project represents implementation of the evidence cited in support of the proposed project with fidelity.

(xxviii) The extent to which the applicant plans to allocate a significant portion of its requested funding to the evidence-based project components.

(xxix) The strength of the commitment from key decision-makers at proposed implementation sites.

(d) *Quality of project services.* (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equitable and adequate access and participation for project participants who experience barriers based on one or more of the following: economic disadvantage; gender; race; ethnicity; color; national origin; disability; age; language; migration; living in a rural location; experiencing homelessness or housing insecurity; involvement with the justice system; pregnancy, parenting, or caregiver status; and sexual orientation. This determination includes the steps developed and described in the form Equity For Students, Teachers, And Other Program Beneficiaries (OMB Control No. 1894–0005) (section 427 of the General Education Provisions Act (20 U.S.C. 1228a)).

(3) In addition, the Secretary considers one or more of the following factors:

(i) The extent to which the services to be provided by the proposed project were determined with input from the community to be served to ensure that they are appropriate and responsive to the needs of the intended recipients or beneficiaries, including underserved populations, of those services.

(ii) The extent to which the proposed project is supported by the target population that it is intended to serve.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge and an evidence-based project component.

(iv) The likely benefit to the intended recipients, as indicated by the logic model or other conceptual framework, of the services to be provided.

(v) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to build recipient and project capacity in ways that lead to improvements in practice among the recipients of those services.

(vi) The extent to which the services to be provided by the proposed project are likely to provide long-term solutions to alleviate the personnel shortages that have been identified or are the focus of the proposed project.

(vii) The likelihood that the services to be provided by the proposed project will lead to meaningful improvements in the achievement of students as measured against rigorous and relevant standards.

(viii) The likelihood that the services to be provided by the proposed project will lead to meaningful improvements in early childhood and family outcomes.

(ix) The likelihood that the services to be provided by the proposed project will lead to meaningful improvements in the skills and competencies necessary to gain employment in high-quality jobs, careers, and industries or build capacity for independent living.

(x) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners, including those from underserved populations, to maximize the effectiveness of project services.

(xi) The extent to which the services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(xii) The extent to which the services to be provided by the proposed project are focused on recipients, community members, or project participants that are most underserved as demonstrated by the data relevant to the project.

(e) *Quality of the project personnel.* (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant demonstrates that it has project personnel or a plan for hiring of personnel who are members of groups that have historically encountered barriers, or who have professional or personal experiences with barriers, based on one or more of the following: economic disadvantage; gender; race; ethnicity; color; national origin; disability; age; language; migration; living in a rural location; experiencing homelessness or housing insecurity; involvement with the justice system; pregnancy, parenting, or caregiver status; and sexual orientation.

(3) In addition, the Secretary considers one or more of the following factors:

(i) The extent to which the project director or principal investigator, when hired, has the qualifications required for the project, including formal training or work experience in fields related to the objectives of the project and experience in designing, managing, or implementing similar projects for the target population to be served by the project.

(ii) The extent to which the key personnel in the project, when hired, have the qualifications required for the proposed project, including formal training or work experience in fields related to the objectives of the project, and represent or have lived experiences of the target population.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iv) The extent to which the proposed project team maximizes diverse perspectives, for example by reflecting the lived experiences of project participants, or relevant experience working with the target population.

(v) The extent to which the proposed planning, implementing, and evaluating project team are familiar with the assets, needs, and other contextual considerations of the proposed implementation sites.

(f) *Adequacy of resources.* (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers one or more of the following factors:

(i) The adequacy of support for the project, including facilities, equipment, supplies, and other resources, from the applicant or the lead applicant organization.

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(iii) The extent to which the budget is adequate to support the proposed project and the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(iv) The extent to which the costs are reasonable in relation to the number of persons to be served, the depth and intensity of services, and the anticipated results and benefits.

(v) The extent to which the costs of the proposed project would permit other entities to replicate the project.

(vi) The level of initial matching funds or other commitment from partners, indicating the likelihood for potential continued support of the project after Federal funding ends.

(vii) The potential for the purposes, activities, or benefits of the proposed project to be institutionalized into the ongoing practices and programs of the applicant, agency, or organization and continue after Federal funding ends.

(g) *Quality of the management plan.* (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed

project, the Secretary considers one or more of the following factors:

(i) The feasibility of the management plan to achieve project objectives and goals on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of plans for ensuring the use of quantitative and qualitative data, including meaningful community member and partner input, to inform continuous improvement in the operation of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality and accessible products and services from the proposed project for the target population.

(iv) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(v) How the applicant will ensure that a diversity of perspectives, including those from underserved populations, are brought to bear in the design, implementation, operation, evaluation, and improvement of the proposed project, including those of parents, educators, community-based organizations, civil rights organizations, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(h) *Quality of the project evaluation or other evidence-building.* (1) The Secretary considers the quality of the evaluation or other evidence-building of the proposed project.

(2) In determining the quality of the evaluation or other evidence-building, the Secretary considers one or more of the following factors:

(i) The extent to which the methods of evaluation or other evidence-building are thorough, feasible, relevant, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation or other evidence-building are appropriate to the context within which the project operates and the target population of the proposed project.

(iii) The extent to which the methods of evaluation or other evidence-building are designed to measure the fidelity of implementation of the project.

(iv) The extent to which the methods of evaluation or other evidence-building include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quality data that are quantitative and qualitative.

(v) The extent to which the methods of evaluation or other evidence-building will provide guidance for quality assurance and continuous improvement.

(vi) The extent to which the methods of evaluation or other evidence-building will provide performance feedback and provide formative, diagnostic, or interim data that is a periodic assessment of progress toward achieving intended outcomes.

(vii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing and potential implementation in other settings.

(viii) The extent to which the methods of evaluation will, if well implemented, produce evidence about the effectiveness of the project on relevant outcomes that would meet the What Works Clearinghouse standards without reservations, as described in the What Works Clearinghouse Handbooks.

(ix) The extent to which the methods of evaluation will, if well implemented, produce evidence about the effectiveness of the project on relevant outcomes that would meet the What Works Clearinghouse standards with or without reservations, as described in the What Works Clearinghouse Handbooks.

(x) The extent to which the methods of evaluation include an experimental study, a quasi-experimental design study, or a correlational study with statistical controls for selection bias (such as regression methods to account for differences between a treatment group and a comparison group) to assess the effectiveness of the project on relevant outcomes.

(xi) The extent to which the evaluation employs an appropriate analytic strategy to build evidence about the relationship between key project components, mediators, and outcomes and inform decisions on which project components to continue, revise, or discontinue.

(xii) The quality of the evaluation plan for measuring fidelity of implementation, including thresholds for acceptable implementation, to inform how implementation is associated with outcomes.

(xiii) The extent to which the evaluation plan includes a dissemination strategy that is likely to promote others' learning from the project.

(xiv) The extent to which the evaluator has the qualifications, including the relevant training, experience, and independence, required to conduct an evaluation of the proposed project, including experience conducting evaluations of similar methodology as proposed and with evaluations for the proposed population and setting.

(xv) The extent to which the proposed project plan includes sufficient resources to conduct the project evaluation effectively.

(xvi) The extent to which the evaluation will access and link high-quality administrative data from authoritative sources to improve evaluation quality and comprehensiveness.

(i) *Strategy to scale.* (1) The Secretary considers the applicant's strategy to effectively scale the proposed project for recipients, community members, and partners, including to underserved populations.

(2) In determining the applicant's strategy to effectively scale the proposed project, the Secretary considers one or more of the following factors:

(i) The quality of the strategies to reach scale by expanding the project to new populations or settings.

(ii) The applicant's capacity (such as qualified personnel, financial resources, or management capacity), together with any project partners, to bring the proposed project effectively to scale on a national or regional level during the grant period.

(iii) The applicant's capacity (such as qualified personnel, financial resources, or management capacity), together with any project partners, to further develop and bring the proposed project effectively to scale on a national level during the grant period, based on the findings of the proposed project.

(iv) The quality of the mechanisms the applicant will use to broadly disseminate information and resources on its project to support further development, adaptation, or replication by other entities to implement project components in additional settings or with other populations.

(v) The extent to which there is unmet demand for broader implementation of the project that is aligned with the proposed level of scale.

(vi) The extent to which there is a market of potential entities that will commit resources toward implementation.

(vii) The quality of the strategies to scale that take into account and are responsive to previous barriers to expansion.

(viii) The quality of the plan to deliver project services more efficiently at scale and maintain effectiveness.

(ix) The quality of the plan to develop revenue sources that will make the project self-sustaining.

(x) The extent to which the project will create reusable data and evaluation tools and techniques that facilitate expansion and support continuous improvement.

■ 29. Revise § 75.215 to read as follows:

§ 75.215 How the Department selects a new project.

Sections 75.216 through 75.222 describe the process the Secretary uses to select applications for new grants. All these sections apply to a discretionary grant program. However, only § 75.216 applies also to a formula grant program. (See § 75.1(b) Discretionary grant programs, § 75.1(c) Formula grant programs, and § 75.200, How applications for new discretionary grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.)

■ 30. Revise § 75.216 to read as follows:

§ 75.216 Applications that the Secretary may choose not to evaluate for funding.

The Secretary may choose not to evaluate an application if—

(a) The applicant does not comply with all of the procedural rules that govern the submission of the application; or

(b) The application does not contain the information required under the program.

§ 75.217 [Amended]

■ 31. Amend § 75.217 by:

■ a. In paragraph (a), removing the words ''the authorizing statute'' and adding in their place the words ''applicable statutes and regulations'';

■ b. In paragraph (c), removing the word ''solely'' and adding the words ''and any competitive preference points'' after the words ''selection criteria''; and

■ c. Removing the parenthetical authority citation at the end of the section.

■ 32. Amend § 75.219 by:

■ a. Revising paragraph (b); and

■ b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.219 Exceptions to the procedures under § 75.217.

* * * * *

(b)(1) The application was submitted under the program's preceding competition;

(2) The application was not selected for funding because the application was mishandled or improperly processed by the Department; and

(3) The application has been rated highly enough to deserve selection under § 75.217; or

* * * * *

§ 75.220 [Amended]

■ 33. Amend § 75.220 by:

■ a. In paragraph (b)(2), removing the words ''Office of the Chief Financial Officer (OCFO)'' and adding, in their place, the words ''Office of Finance and Operations (OFO)''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 34. Revise § 75.221 to read as follows:

§ 75.221 Procedures the Department uses under § 75.219(b).

If the Secretary has documentary evidence that the special circumstances of § 75.219(b) exist for an application, the Secretary may select the application for funding.

§ 75.222 [Amended]

■ 35. Amend § 75.222 by:

■ a. In paragraph (a)(1), removing the word ''under'' before ''which funds'' and adding in its place the word ''for'';

■ b. In paragraph (a)(2)(ii)(B), removing the citation ''(a)(2)(ii)'' and adding in its place the citation ''(a)(2)(ii)(A)'';

■ c. In paragraph (b)(1), removing the word ''ED'' and adding, in its place, the word ''the Department'';

■ d. Removing, in paragraph (b)(2), the word ''codified'';

■ e. Revising the Note; and

■ f. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.222 Procedures the Department uses under § 75.219(c).

* * * * *

Note 1 to § 75.222: To ensure prompt consideration, an applicant submitting an unsolicited application should send the application, marked ''Unsolicited Application'' on the outside, to U.S. Department of Education, OFO/G6 Functional Application Team, Mail Stop 5C231, 400 Maryland Avenue SW, Washington, DC 20202–4260.

■ 36. Revise § 75.225 to read as follows:

§ 75.225 What procedures does the Secretary use when deciding to give special consideration to new potential grantees?

(a) If the Secretary determines that special consideration of new potential grantees is appropriate, the Secretary may: provide competitive preference to applicants that meet one or more of the conditions in paragraph (b) of this section; or provide special consideration for new potential grantees by establishing one competition for those applicants that meet one or more of the conditions in paragraph (b) of this section and a separate competition for applicants that meet the corresponding conditions in paragraph (c) of this section.

(b) As used in this section, ''new potential grantee'' means an applicant that meets one or more of the following conditions—

(1) The applicant has never received a grant or cooperative agreement, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129 that received a grant or cooperative agreement, under the program from which it seeks funds;

(2) The applicant does not, as of the deadline date for submission of applications, have an active grant or cooperative agreement, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129 that has an active grant or cooperative agreement, under the program from which it seeks funds;

(3) The applicant has not had an active discretionary grant or cooperative agreement under the program from which it seeks funds, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129, within one of the following number of years before the deadline date for submission of applications under the program:

(i) 1 year;
(ii) 2 years;
(iii) 3 years;
(iv) 4 years;
(v) 5 years;
(vi) 6 years; or
(vii) 7 years;

(4) The applicant has not had an active discretionary grant or cooperative agreement from the Department, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129, within one of the following number of years before the deadline date for submission of applications under the program from which it seeks funds:

(i) 1 year;
(ii) 2 years;
(iii) 3 years;
(iv) 4 years;
(v) 5 years;
(vi) 6 years; or
(vii) 7 years;

(5) The applicant has not had an active contract from the Department within one of the following number of years before the deadline date for submission of applications under the program for which it seeks funds:

(i) 1 year;
(ii) 2 years;
(iii) 3 years;
(iv) 4 years;

(v) 5 years;
(vi) 6 years; or
(vii) 7 years; or
(6) Any combination of paragraphs (b)(1) through (5) of this section.

(c) As used in this section, an ''application from a grantee that is not a new potential grantee'' means an applicant that meets one or more of the following conditions—

(1) The applicant has received a grant or cooperative agreement, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129 that received a grant or cooperative agreement, under the program from which it seeks funds;

(2) The applicant has, as of the deadline date for submission of applications, an active grant or cooperative agreement, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129 that has an active grant or cooperative agreement, under the program from which it seeks funds;

(3) The applicant has had an active discretionary grant or cooperative agreement under the program from which it seeks funds, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129, within one of the following number of years before the deadline date for submission of applications under the program:
(i) 1 year;
(ii) 2 years;
(iii) 3 years;
(iv) 4 years;
(v) 5 years;
(vi) 6 years; or
(vii) 7 years;

(4) The applicant has had an active discretionary grant or cooperative agreement from the Department, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129, within one of the following number of years before the deadline date for submission of applications under the program from which it seeks funds:
(i) 1 year;
(ii) 2 years;
(iii) 3 years;
(iv) 4 years;
(v) 5 years;
(vi) 6 years; or
(vii) 7 years;

(5) The applicant has had an active contract from the Department within one of the following number of years before the deadline date for submission of applications under the program from which it seeks funds:
(i) 1 year;
(ii) 2 years;
(iii) 3 years;
(iv) 4 years;
(v) 5 years;
(vi) 6 years; or
(vii) 7 years.

(e) For the purpose of this section, a grant, cooperative agreement, or contract is active until the end of the grant's, cooperative agreement's, or contract's project or funding period, including any extensions of those periods that extend the grantee's or contractor's authority to obligate funds.

■ 37. Revise § 75.226 to read as follows:

§ 75.226 What procedures does the Secretary use if the Secretary decides to give special consideration to an application supported by strong evidence, moderate evidence, or promising evidence, or an application that demonstrates a rationale?

If the Secretary determines that special consideration of applications supported by strong evidence, moderate evidence, promising evidence, or evidence that demonstrates a rationale is appropriate, the Secretary may establish a separate competition under the procedures in § 75.105(c)(3), or provide competitive preference under the procedures in § 75.105(c)(2), for applications that are supported by—
(a) Strong evidence;
(b) Moderate evidence;
(c) Promising evidence; or
(d) Evidence that demonstrates a rationale.

■ 38. Add § 75.227 before the undesignated center heading ''Procedures to Make a Grant'' to read as follows:

§ 75.227 What procedures does the Secretary use if the Secretary decides to give special consideration to rural applicants?

(a) If the Secretary determines that special consideration of rural applicants is appropriate, the Secretary may: provide competitive preference to applicants that meet one or more of the conditions in paragraph (b) of this section; or provide special consideration for rural applicants by establishing one competition for those applicants that meet one or more of the conditions in paragraph (b) of this section and a separate competition for applicants that meet the corresponding conditions in paragraph (c).

(b) As used in this section, ''rural applicant'' means an applicant that meets one or more of the following conditions:

(1) The applicant proposes to serve a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under title V, part B of the Elementary and Secondary Education Act of 1965.

(2) The applicant proposes to serve a community that is served by one or more LEAs—
(i) With a locale code of 32, 33, 41, 42, or 43; or
(ii) With a locale code of 41, 42, or 43.

(3) The applicant proposes a project in which a majority of the schools served—
(i) Have a locale code of 32, 33, 41, 42, or 43; or
(ii) Have a locale code of 41, 42, or 43.

(4) The applicant is an institution of higher education with a rural campus setting, or the applicant proposes to serve a campus with a rural setting. Rural settings include one or more of the following: Town-Fringe, Town-Distant, Town-Remote, Rural Fringe, Rural-Distant, and Rural-Remote, as defined by the National Center for Education Statistics College Navigator search tool.

(c) As used in this section, a ''non-rural applicant'' means an applicant that meets one or more of the following conditions—

(1) The applicant does not propose to serve a local educational agency (LEA) that is eligible under the Small Rural School Achievement program or the Rural and Low-Income School program authorized under title V, part B of the Elementary and Secondary Education Act of 1965.

(2) The applicant does not propose to serve a community that is served by one or more LEAs—
(i) With a locale code of 32, 33, 41, 42, or 43; or
(ii) With a locale code of 41, 42, or 43.

(3) The applicant proposes a project in which a majority of the schools served—
(i) Have a locale code of 32, 33, 41, 42, or 43; or
(ii) Have a locale code of 41, 42, or 43.

(4) The applicant is not an institution of higher education with a rural campus setting, or the applicant proposes to serve a campus with a rural setting. Rural settings include one or more of the following: Town-Fringe, Town-Distant, Town-Remote, Rural Fringe, Rural-Distant, and Rural-Remote, as defined by the National Center for Education Statistics College Navigator search tool.

■ 39. Revise § 75.230 to read as follows:

§ 75.230 How the Department makes a grant.

(a) If the Secretary selects an application under § 75.217, § 75.220, or

§ 75.222, the Secretary follows the procedures in §§ 75.231 through 75.236 to set the amount and determine the conditions of a grant. Sections 75.235 through 75.236 also apply to grants under formula grant programs. (See § 75.200 for more information.)

§ 75.234 [Amended]

■ 40. Amend § 75.234 by:
■ a. In paragraph (a)(2), removing the word ''special'' and adding in its place the word ''specific''; and
■ b. Removing the parenthetical authority citation at the end of the section.

■ 41. Revise § 75.250 to read as follows:

§ 75.250 Maximum project period.

The Secretary may approve a project period of up to 60 months to perform the substantive work of a grant unless an applicable statute provides otherwise.

■ 42. Revise § 75.253 to read as follows:

§ 75.253 Continuation of a multiyear project after the first budget period.

(a) *Continuation award.* A grantee, in order to receive a continuation award from the Secretary for a budget period after the first budget period of an approved multiyear project, must—

(1) Either—

(i) Demonstrate that it has made substantial progress in achieving—

(A) The goals and objectives of the project; and

(B) The performance targets in the grantee's approved application, if the Secretary established performance measurement requirements for the grant in the application notice; or

(ii) Obtain the Secretary's approval for changes to the project that—

(A) Do not increase the amount of funds obligated to the project by the Secretary; and

(B) Enable the grantee to achieve the goals and objectives of the project and meet the performance targets of the project, if any, without changing the scope or objectives of the project;

(2) Submit all reports as required by § 75.118;

(3) Continue to meet all applicable eligibility requirements of the grant program;

(4) Maintain financial and administrative management systems that meet the requirements in 2 CFR 200.302 and 200.303; and

(5) Receive a determination from the Secretary that continuation of the project is in the best interest of the Federal Government.

(b) *Information considered in making a continuation award.* In determining whether the grantee has met the requirements described in paragraph (a) of this section, the Secretary may consider any relevant information regarding grantee performance. This includes considering reports required by § 75.118, performance measures established under § 75.110, financial information required by 2 CFR part 200, and any other relevant information.

(c) *Funding for continuation awards.* Subject to the criteria in paragraphs (a) and (b) of this section, in selecting applications for funding under a program, the Secretary gives priority to continuation awards over new grants.

(d) *Budget period.* If the Secretary makes a continuation award under this section—

(1) The Secretary makes the award under §§ 75.231 through 75.236; and

(2) The new budget period begins on the day after the previous budget period ends.

(e) *Amount of continuation award.* (1) Within the original project period of the grant and notwithstanding any requirements in 2 CFR part 200, a grantee may expend funds that have not been obligated at the end of a budget period for obligations in subsequent budget periods if—

(i) The obligation is for an allowable cost within the approved scope and objectives of the project; and

(ii) The obligation is not otherwise prohibited by applicable statutes, regulations, or the conditions of an award.

(2) The Secretary may—

(i) Require the grantee to submit a written statement describing how the funds made available under paragraph (e)(1) of this section will be used; and

(ii) Determine the amount of new funds that the Department will make available for the subsequent budget period after considering the statement the grantee provides under paragraph (e)(2)(i) of this section and any other information available to the Secretary about the use of funds under the grant.

(3) In determining the amount of new funds to make available to a grantee under this section, the Secretary considers whether the unobligated funds made available are needed to complete activities that were planned for completion in the prior budget period.

(4) A decision to reduce the amount of a continuation award under this paragraph (e) does not entitle a grantee to reconsideration under 2 CFR 200.342.

(f) *Decision not to make a continuation award.* The Secretary may decide not to make a continuation award if—

(1) A grantee fails to meet any of the requirements in paragraph (a) of this section; or

(2) A grantee fails to ensure that data submitted to the Department as a condition of the grant meet the definition of ''quality data'' in 34 CFR 77.1(c) and does not have a plan acceptable to the Secretary for addressing data-quality issues in the next budget period.

(g) *Request for reconsideration.* If the Secretary decides not to make a continuation award under this section, the Secretary will notify the grantee of that decision, the grounds on which it is based, and, consistent with 2 CFR 200.342, provide the grantee with an opportunity to request reconsideration of the decision.

(1) A request for reconsideration must—

(i) Be submitted in writing to the Department official identified in the notice denying the continuation award by the date specified in that notice; and

(ii) Set forth the grantee's basis for disagreeing with the Secretary's decision not to make a continuation award and include relevant supporting documentation.

(2) The Secretary will consider the request for reconsideration.

(h) *No-cost extension when a continuation award is not made.* If the Secretary decides not to make a continuation award under this section, the Secretary may authorize a no-cost extension of the last budget period of the grant in order to provide for the orderly closeout of the grant.

(i) *A decision to reduce or not to make a continuation award does not constitute withholding.* A decision by the Secretary to reduce the amount of a continuation award under paragraph (e) of this section or to not make a continuation award under paragraph (f) of this section does not constitute a withholding under section 455 of GEPA (20 U.S.C. 1234d).

■ 43. Add § 75.254 to read as follows:

§ 75.254 Data collection period.

(a) The Secretary may approve a data collection period for a grant for a period of up to 72 months after the end of the project period and provide funds for the data collection period for the purpose of collecting, analyzing, and reporting performance measurement data on the project.

(b) If the Secretary plans to approve a data collection period, the Secretary may inform applicants of the Secretary's intent to approve data collection periods in the application notice published for a competition or may decide to fund

data collection periods after grantees have started their project periods.

(c) If the Secretary informs applicants of the intent to approve data collection periods in the notice inviting applications, the Secretary may require applicants to include in the application a budget for, and description of, a data collection period for a period of up to 72 months, as specified in the notice inviting applications, after the end of the project period.

§ 75.260 [Amended]

■ 44. Amend § 75.260 by:

■ a. In paragraph (b), removing the words ''the authorizing statute for that program'' and adding in their place the words ''applicable statutes and regulations''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 45. Revise § 75.261 to read as follows:

§ 75.261 Extension of a project period.

(a) *One-time extension of project period without prior approval.* A grantee may extend the project period of an award one time, for a period up to 12 months, without the prior approval of the Secretary, if—

(1) The grantee meets the requirements for extension in 2 CFR 200.308(e)(2); and

(2) The extension is not otherwise prohibited by statute, regulation, or the conditions of an award.

(b) *Extension of project period with prior approval.* At the conclusion of the project period extension authorized under paragraph (a) of this section, or in any case in which a project period extension is not authorized under paragraph (a) of this section, a grantee, with prior approval of the Secretary, may extend a project for an additional period if—

(1) The extension is not otherwise prohibited by statute, regulations, or the conditions of an award;

(2) The extension does not involve the obligation of additional Federal funds;

(3) The extension is to carry out the approved objectives and scope of the project; and

(4)(i) The Secretary determines that, due to special or unusual circumstances applicable to a class of grantees, the project periods for the grantees should be extended; or

(ii)(A) The Secretary determines that special or unusual circumstances would delay completion of the project beyond the end of the project period;

(B) The grantee requests an extension of the project period at least 45 calendar days before the end of the project period; and

(C) The grantee provides a written statement, before the end of the project period, of the reasons the extension is appropriate under paragraph (b)(4)(ii)(A) of this section and the period for which the project extension is requested.

(c) *Waiver.* The Secretary may waive the requirement in paragraph (b)(4)(ii) of this section if—

(1) The grantee could not reasonably have known of the need for the extension on or before the start of the 45-day period; or

(2) The failure to give notice on or before the start of the 45-day period was unavoidable.

§ 75.263 [Amended]

■ 46. Amend § 75.263 by:

■ a. Removing '', notwithstanding any requirement in 2 CFR part 200,'' from the introductory text;

■ b. In paragraph (a), removing the word ''ED'' and adding in its place the word ''Department''; and

■ c. Removing the parenthetical authority citation at the end of the section.

§ 75.264 [Amended]

■ 47. Remove the authority citation at the end of the section.

■ 48. Amend § 75.500 by revising paragraph (a) to read as follows:

§ 75.500 Federal statutes and regulations on nondiscrimination.

(a) Each grantee must comply with the following statutes and regulations:

TABLE 1 TO PARAGRAPH (a)

Subject	Statute	Regulations
Discrimination on the basis of race, color, or national origin ..	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).	34 CFR part 100.
Discrimination on the basis of disability	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	34 CFR part 104.
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).	34 CFR part 106.
Discrimination on the basis of age	Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*)	34 CFR part 110.

* * * * *

§ 75.519 [Amended]

■ 49. Amend § 75.519 by:

■ a. Removing the words ''its grantee'' and adding in their place the words ''its grant'';

■ b. Adding '', consistent with the cost principles described in 2 CFR part 200'' after the word ''funds''; and

■ c. Removing the parenthetical authority citation at the end of the section.

§ 75.531 [Amended]

■ 50. Amend § 75.531 by removing the word ''insure'' and adding in its place the word ''ensure''.

§ 75.533 [Amended]

■ 51. Amend § 75.533 by:

■ a. Removing the words ''authorizing statute or implementing regulations for the program'' and adding in their place the words ''applicable statutes and regulations''.

■ b. Removing the parenthetical authority citation at the end of the section.

§ 75.534 [Amended]

■ 52. Amend § 75.534 in paragraph (a) by removing the words ''the program statute'' and adding in their place the words ''applicable statutes and regulations''.

■ 53. Revise § 75.560 to read as follows:

§ 75.560 General indirect cost rates and cost allocation plans; exceptions.

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for—

(1) All grantees, other than hospitals and commercial (for-profit) organizations, at 2 CFR part 200, subpart E;

(2) Hospitals, at 45 CFR part 75, appendix XI; and

(3) Commercial (for-profit) organizations, at 48 CFR part 31.

(b) Except as specified in paragraph (c) of this section, a grantee must have

obtained a current indirect cost rate agreement or approved cost allocation plan from its cognizant agency, to charge indirect costs to a grant. To obtain a negotiated indirect cost rate agreement or approved cost allocation plan, a grantee must submit an indirect cost rate proposal or cost allocation plan to its cognizant agency within 90 days after the date on which the Department issues the Grant Award Notification (GAN).

(c) A grantee that meets the requirements in 2 CFR 200.414(f) may elect to charge the *de minimis* rate of modified total direct costs (MTDC) specified in that provision, which may be used indefinitely. The *de minimis* rate may not be used on programs that have statutory or regulatory restrictions on the indirect cost rate. No documentation is required to justify the *de minimis* rate.

(1) If the grantee has established a threshold for equipment that is lower than the amount specified in the Uniform Guidance, the grantee must use that threshold to exclude equipment from the MTDC base.

(2) For purposes of the MTDC base and application of the *de minimis* rate, MTDC includes up to the amount specified in the definition of MTDC in the Uniform Guidance of each subaward, each year.

(d) If a grantee is required to, but does not, have a federally recognized indirect cost rate agreement or approved cost allocation plan, the Secretary may permit the grantee to charge its grant for indirect costs at a temporary rate of 10 percent of budgeted direct salaries and wages.

(e)(1) If a grantee fails to submit an indirect cost rate proposal or cost allocation plan to its cognizant agency within the required 90 days, the grantee may not charge indirect costs to its grant from the end of the 90-day period until it obtains a federally recognized indirect cost rate agreement applicable to the grant.

(2) If the Secretary determines that exceptional circumstances warrant continuation of a temporary indirect cost rate, the Secretary may authorize the grantee to continue charging indirect costs to its grant at the temporary rate specified in paragraph (d) of this section even though the grantee has not submitted its indirect cost rate proposal within the 90-day period.

(3) Once a grantee obtains a federally recognized indirect cost rate that is applicable to the affected grant, the grantee may use that indirect cost rate to claim indirect cost reimbursement for expenditures made on or after the date on which the grantee submitted its indirect cost proposal to its cognizant agency or the start of the project period, whichever is later. However, this authority is subject to the following limitations:

(i) The total amount of funds recovered by the grantee under the federally recognized indirect cost rate is reduced by the amount of indirect costs previously recovered under the temporary indirect cost rate specified in paragraph (d) of this section.

(ii) The grantee must obtain prior approval from the Secretary to shift direct costs to indirect costs in order to recover indirect costs at a higher negotiated indirect cost rate.

(iii) The grantee may not request additional funds to recover indirect costs that it cannot recover by shifting direct costs to indirect costs.

(f) The Secretary accepts a current indirect cost rate and cost allocation plan approved by a grantee's cognizant agency but may establish a restricted indirect cost rate or cost allocation plan compliant with 34 CFR 76.564 through 76.569 to satisfy the statutory requirements of certain programs administered by the Department.

■ 54. Amend § 75.561 by:

■ a. Revising the section heading and paragraph (a); and

■ b. Removing the second sentence of paragraph (b).

The revisions read as follows:

§ 75.561 Approval of indirect cost rates and cost allocation plans.

(a) If the Department of Education is the cognizant agency, the Secretary approves an indirect cost rate or cost allocation plan for a grantee that is eligible and does not elect a *de minimis* rate, and is not a local educational agency. For the purposes of this section, the term ''local educational agency'' does not include a State agency.

* * * * *

■ 55. Revise § 75.562 to read as follows:

§ 75.562 Indirect cost rates for educational training projects; exceptions.

(a) Educational training grants provide funds for training or other educational services. Examples of the work supported by training grants are summer institutes, training programs for selected participants, the introduction of new or expanded courses, and similar instructional undertakings that are separately budgeted and accounted for by the sponsoring institution. These grants do not usually support activities involving research, development, and dissemination of new educational materials and methods. Training grants largely implement previously developed materials and methods and require no significant adaptation of techniques or instructional services to fit different circumstances.

(b) The Secretary uses the definition in paragraph (a) of this section to determine which grants are educational training grants.

(c)(1) Indirect cost reimbursement on a training grant is limited to the lesser of the recipient's approved indirect cost rate, or 8 percent of the modified total direct cost (MTDC) base. MTDC is defined in 2 CFR 200.1.

(2) If the grantee does not have a federally recognized indirect cost rate agreement on the date on which the training grant is awarded, the grantee may elect to use the temporary indirect cost rate authorized under § 75.560(d)(3) or a rate of 8 percent of the MTDC base. The *de minimis* rate may not be used on educational training programs.

(i) If the grantee has established a threshold for equipment that is lower than the amount specified in the Uniform Guidance, the grantee must use that threshold to exclude equipment from the MTDC base.

(ii) For purposes of the MTDC base and application of the 8 percent rate, MTDC includes up to the amount specified in the definition of MTDC in the Uniform Guidance of each subaward, each year.

(3) The 8 percent indirect cost rate reimbursement limit specified in paragraph (c)(1) of this section also applies when subrecipients issue subawards that fund training, as determined by the Secretary under paragraph (b) of this section.

(4) The 8 percent limit does not apply to agencies of Indian Tribal governments, local governments, and States as defined in 2 CFR 200.1.

(5) Indirect costs in excess of the 8 percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

(d) A grantee using the training rate of 8 percent is required to maintain documentation to justify the 8 percent rate.

■ 56. Revise § 75.563 to read as follows:

§ 75.563 Restricted indirect cost rate or cost allocation plans—programs covered.

If a grantee or subgrantee decides to charge indirect costs to a program that is subject to a statutory prohibition on using Federal funds to supplant non-Federal funds, the grantee must—

(a) Use a negotiated restricted indirect cost rate or restricted cost allocation plan compliant with 34 CFR 76.564 through 76.569; or

(b) Elect to use an indirect cost rate of 8 percent of the modified total direct

costs (MTDC) base if the grantee or subgrantee does not have a negotiated restricted indirect cost rate. MTDC is defined in 2 CFR 200.1. If the Secretary determines that the grantee or subgrantee would have a lower rate under 34 CFR 76.564 through 76.569, the lower rate must be used on the affected program.

(c) If the grantee has established a threshold for equipment that is lower than the amount specified in the Uniform Guidance, the grantee must use that threshold to exclude equipment from the MTDC base.

(d) For purposes of the MTDC base and application of the 8 percent rate, MTDC includes up to the amount specified in the definition of MTDC in the Uniform Guidance of each subaward, each year.

■ 57. Amend § 75.564 by:
■ a. Revising paragraph (b);
■ b. Adding the words ''and other applicable restrictions'' at the end of paragraph (d);
■ c. Removing the word ''for'' after the phrase ''to the direct cost base'' and adding in its place the word ''of'' in paragraph (e)(1);
■ d. Adding the words ''and program requirements'' at the end of paragraph (e)(1);
■ e. Removing the hyphen between ''sub'' and ''awards'' in paragraph (e)(2); and
■ f. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.564 Reimbursement of indirect costs.

* * * * *

(b) The application of the negotiated indirect cost rate (determination of the direct cost base) or cost allocation plan (charging methodology) must be in accordance with the agreement/plan approved by the grantee's cognizant agency.

* * * * *

§ 75.580 [Amended]

■ 58. Amend § 75.580 by removing the parenthetical authority citation.

■ 59. Amend § 75.590 by:
■ a. Adding paragraph (c); and
■ b. Removing the parenthetical authority citation at the end of the section.

The addition reads as follows:

§ 75.590 Grantee evaluations and reports.

* * * * *

(c) An application notice for a competition may require each grantee under that competition to do one or more of the following:

(1) Conduct an independent evaluation;

(2) Make public the final report, including results of any required independent evaluation;

(3) Ensure that the data from the independent evaluation are made available to third-party researchers consistent with the requirements in 34 CFR part 97, Protection of Human Subjects, and other applicable laws;

(4) Submit the final evaluation to the Education Resources Information Center (ERIC), which is administered by the Institute of Education Sciences; or

(5) Submit the final performance report under the grant to ERIC.

■ 60. Revise § 75.591 to read as follows:

§ 75.591 Federal evaluation; cooperation by a grantee.

A grantee must cooperate in any evaluation of the program by the Secretary. If requested by the Secretary, a grantee must, among other types of activities—

(a) Cooperate with the collection of information, including from all or a subset of subgrantees and potential project beneficiaries, including both participants and non-participants, through surveys, observations, administrative records, or other data collection and analysis methods. This information collection may include program characteristics, including uses of program funds, as well as beneficiary characteristics, participation, and outcomes; and

(b) Pilot its Department-funded activities with a subset of subgrantees, potential project beneficiaries, or eligible participants and allow the Department or its agent to randomly select the subset for the purpose of providing a basis for an experimental evaluation that could meet What Works Clearinghouse standards, with or without reservations.

■ 61. Revise § 75.600 to read as follows:

§ 75.600 Applicability of using grant funds for construction or real property.

(a) As used in this section, the terms ''construction'' and ''minor remodeling'' have the meanings given those terms in 34 CFR 77.1(c).

(b) Except as provided in paragraph (c) of this section, §§ 75.600 through 75.618 apply to—

(1) An applicant that requests funds for construction or real property acquisition; and

(2) A grantee whose grant includes funds for construction or real property acquisition.

(c) Sections 75.600 through 75.618 do not apply to grantees in—

(1) Programs prohibited from using funds for construction or real property acquisition under § 75.533; and

(2) Projects determined by the Secretary to be minor remodeling under 34 CFR 77.1(c).

■ 62. Revise § 75.601 to read as follows:

§ 75.601 Approval of the construction.

(a) The Secretary approves a direct grantee construction project—

(1) When the initial grant application is approved; or

(2) After the grant has been awarded.

(b) A grantee may not advertise or place the construction project on the market for bidding until after the Secretary has approved the project.

■ 63. Revise § 75.602 to read as follows:

§ 75.602 Planning the construction.

(a) In planning the construction project, a grantee—

(1) Must ensure that the design is functional, economical, and not elaborate in design or extravagant in the use of materials compared with facilities of a similar type constructed in the State or other applicable geographic area;

(2) May consider excellence of architecture and design and inclusion of works of art. A grantee must not spend more than 1 percent of the cost of the project on works of art; and

(3) May make reasonable provision, consistent with the other uses to be made of the construction, for areas that are adaptable for artistic and other cultural activities.

(b) In developing the proposed budget for the construction project, a grantee—

(1) Must ensure that sufficient funds are available to meet any non-Federal share of the cost of the construction project;

(2) May include sufficient funds for commissioning of energy, HVAC, and water systems and to train personnel in the proper operation of such building systems;

(3) For new construction and major rehabilitation projects, may consider life-cycle cost analysis for major design decisions to the extent possible;

(4) May budget for reasonable and predictable contingency costs consistent with 2 CFR 200.433; and

(5) May budget for school and community education about the construction project including its energy, environmental, and health features and benefits.

(c) Prior to approving a construction project under § 75.601, the Secretary considers a grantee's compliance with the following requirements, as applicable:

(1) Title to site (§ 75.610).

(2) Environmental impact assessment (§ 75.611).

(3) Avoidance of flood hazards (§ 75.612).

(4) Compliance with the Coastal Barrier Resources Act (§ 75.613).

(5) Preservation of historic sites (§ 75.614).

(6) Build America, Buy America Act (§ 75.615).

(7) Energy conservation (§ 75.616).

(8) Access for individuals with disabilities (§ 75.617).

(9) Safety and health standards (§ 75.618).

■ 64. Revise § 75.603 to read as follows:

§ 75.603 Beginning the construction.

(a) A grantee must begin work on the construction project within a reasonable time after the Secretary has approved the project under § 75.601.

(b) A grantee must follow all applicable procurement standards in 2 CFR part 200, subpart D, when advertising or placing the project on the market for bidding.

■ 65. Revise § 75.604 to read as follows:

§ 75.604 During the construction.

(a) A grantee must maintain competent architectural engineering supervision and inspection at the construction site to ensure that the work conforms to the approved final working specifications.

(b) A grantee must complete the construction in accordance with the approved final working specifications unless a revision is approved.

(c) If a revision to the timeline, budget, or approved final working specifications is required, the grantee must request prior written approval consistent with 2 CFR 200.308(h).

(d) A grantee must comply with Federal laws regarding prevailing wages on construction and minor remodeling projects assisted with Department funding, including, as applicable, subchapter IV of chapter 31 of title 40, United States Code (commonly known as the ''Davis-Bacon Act''; as applied through section 439 of GEPA; 20 U.S.C. 1232b) and any tribally determined prevailing wages.

(e) A grantee must submit periodic performance reports regarding the construction project containing information specified by the Secretary consistent with 2 CFR 200.329(d).

■ 66. Revise § 75.605 to read as follows:

§ 75.605 After the construction.

(a) A grantee must ensure that sufficient funds will be available for effective operation and maintenance of the facilities after the construction is complete.

(b) A grantee must operate and maintain the facilities in accordance with applicable Federal, State, and local requirements.

(c) A grantee must maintain all financial records, supporting documents, statistical records, and other non-Federal entity records pertinent to the construction project consistent with 2 CFR 200.334.

■ 67. Revise § 75.606 to read as follows:

§ 75.606 Real property requirements.

(a) The Secretary approves a direct grantee real property project—

(1) When the initial grant application is approved;

(2) After the grant has been awarded; or

(3) With the approval of a construction project under § 75.601.

(b) A grantee using any grant funds for real property acquisition must—

(1) Comply with the Real Property Standards of the Uniform Guidance (2 CFR 200.310 through 200.316);

(2) Not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without written permission and instructions from the Secretary;

(3) In accordance with agency directives, record the Federal interest in the title of the real property in the official real property records for the jurisdiction in which the facility is located and include a covenant in the title of the real property to ensure nondiscrimination; and

(4) Report at least annually on the status of real property in which the Federal Government retains an interest consistent with 2 CFR 200.330.

(c) A grantee is subject to the regulations on relocation assistance and real property acquisition in 34 CFR part 15 and 49 CFR part 24, as applicable.

§ 75.607 through 75.609 [Removed and Reserved]

■ 68. Remove and reserve §§ 75.607 through 75.609.

■ 69. Revise § 75.610 to read as follows:

§ 75.610 Title to site.

A grantee must have or obtain a full title or other interest in the site (such as a long-term lease), including right of access, that is sufficient to ensure the grantee's undisturbed use and possession of the facilities for at least 25 years after completion of the project or for the useful life of the construction, whichever is longer.

■ 70. Revise § 75.611 to read as follows:

§ 75.611 Environmental impact assessment.

(a) When a grantee's construction or real property acquisition project is considered a ''Major Federal Action,'' as defined in 40 CFR 1508.1(q), the grantee must include an assessment of the impact of the proposed construction on the quality of the environment in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) and Executive Order 11514 (35 FR 4247).

(b) If a grantee's construction or real property project is not considered a ''Major Federal Action'' under NEPA, a NEPA environmental impact assessment is not required; however—

(1) An environmental impact assessment may be required under State or local requirements; and

(2) Grantees are encouraged to perform some type of environmental assessment for projects that involve breaking ground, such as projects to expand the size of an existing building or replace an outdated building.

■ 71. Revise § 75.612 to read as follows:

§ 75.612 Avoidance of flood hazards.

In planning the construction or real property project, a grantee must, consistent with Executive Order (E.O.) 11988 of May 24, 1977, E.O. 13690 of January 30, 2015, and E.O. 14030 of May 20, 2021—

(a) Evaluate flood hazards in connection with the construction;

(b) As far as practicable, avoid uneconomic, hazardous, or unnecessary use of flood plains in connection with the construction;

(c) Mitigate flood hazards through design such as elevating systems and first floor elevations above flood level plus freeboard; and

(d) Summarize remaining flood risks in a memorandum.

■ 72. Revise § 75.613 to read as follows:

§ 75.613 Compliance with the Coastal Barrier Resources Act.

A grantee may not use, within the Coastal Barrier Resources System, funds made available under a program administered by the Secretary for any purpose prohibited by the Coastal Barrier Resources Act (16 U.S.C. 3501–3510).

■ 73. Revise § 75.614 to read as follows:

§ 75.614 Preservation of historic sites.

(a) A grantee must describe the relationship of the proposed construction to, and probable effect on, any district, site, building, structure, or object that is—

(1) Included in the National Register of Historic Places; or

(2) Eligible under criteria established by the Secretary of the Interior for inclusion in the National Register of Historic Places.

(b) In deciding whether to approve a construction project, the Secretary considers—

(1) The information provided by the grantee under paragraph (a) of this section; and

(2) Any comments received by the Advisory Council on Historic Preservation (see 36 CFR part 800).

■ 74. Revise § 75.615 to read as follows:

§ 75.615 Build America, Buy America Act.

A grantee must comply with the requirements of the Build America, Buy America Act, Pub. L. 117–58, § 70901 through 70927 and implementing regulations, as applicable.

■ 75. Revise § 76.616 to read as follows:

§ 75.616 Energy conservation.

(a) To the extent practicable, a grantee must design and construct facilities to maximize the efficient use of energy. A grantee that is constructing a new school building or conducting a major rehabilitation of a school building may evaluate life-cycle costs and benefits of highly efficient, all-electric systems or a net zero energy project in the early design phase.

(b) A grantee must comply with ASHRAE 90.1–2022 in their construction project.

(c) ANSI/ASHRAE/IES Standard 90.1–2022 (I–P), Energy Standard for Sites and Buildings Except Low-Rise Residential Buildings (I–P Edition), 2022 (''ASHRAE Standard 90.1–2022''), is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Department of Education (the Department) and at the National Archives and Records Administration (NARA). Contact the Department at: Department of Education, 400 Maryland Avenue SW, room 4C212, Washington, DC, 20202–8472; phone: (202) 245–6776; email: *EDGAR@ed.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) at American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., 180 Technology Parkway, Peachtree Corners, GA 30092; *www.ashrae.org;* 404–636–8400.

■ 76. Revise § 75.617 to read as follows:

§ 75.617 Access for individuals with disabilities.

A grantee must comply with the following Federal regulations on access by individuals with disabilities that apply to the construction of facilities:

(a) For residential facilities: 24 CFR part 40.

(b) For non-residential facilities: 41 CFR 102–76.60 to 102–76.95.

§ 75.618 [Redesignated as § 75.619]

■ 77. Redesignate § 75.618 as § 75.619.

■ 78. Add new § 75.618 to read as follows:

§ 75.618 Safety and health standards.

In planning for and designing a construction project,

(a) A grantee must comply with the following:

(1) The standards under the Occupational Safety and Health Act of 1970 (See 29 CFR part 1910).

(2) State and local codes, to the extent that they are more stringent.

(b) A grantee may use additional standards and best practices to support health and wellbeing of students and staff.

■ 79. Revise § 75.620 to read as follows:

§ 75.620 General conditions on publication.

(a) *Content of materials.* Subject to any specific requirements that apply to its grant, a grantee may decide the format and content of project materials that it publishes or arranges to have published.

(b) *Required statement.* The grantee must ensure that any publication that contains project materials also contains the following statement: The contents of this [insert type of publication; such as book, report, film, website, and web page] were developed under a grant from the U.S. Department of Education (Department). The Department does not mandate or prescribe practices, models, or other activities described or discussed in this document. The contents of this [insert type of publication] may contain examples of, adaptations of, and links to resources created and maintained by another public or private organization. The Department does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. The content of this [insert type of publication] does not necessarily represent the policy of the Department. This publication is not intended to represent the views or policy of, or be an endorsement of any views expressed or materials provided by, any Federal agency.

■ 80. Revise § 75.622 to read as follows:

§ 75.622 Definition of ''project materials.''

As used in §§ 75.620 through 75.621, ''project materials'' means a copyrightable work developed with funds from a grant of the Department. (See 2 CFR 200.307 and 200.315.)

■ 81. Add § 75.623 to read as follows:

§ 75.623 Public availability of grant-supported research publications.

(a) Grantees must make final peer-reviewed scholarly publications resulting from research supported by Department grants available to the Education Resources Information Center (ERIC), which is administered by the Institute of Education Sciences, upon acceptance for publication.

(b) A final, peer-reviewed scholarly publication is the final version accepted for publication and includes all edits made as part of the peer review process, as well as all graphics and supplemental materials that are associated with the article.

(c) The Department will make the final, peer-reviewed scholarly publication available to the public through ERIC at the same time as the publication becomes available on the publisher's website.

(d) Grantees are responsible for ensuring that any publishing or copyright agreements concerning submitted articles fully comply with this section.

(e) Grantees must make scientific data that inform the findings in a peer-reviewed scholarly publication publicly available, consistent with requirements in 34 CFR part 97, Protection of Human Subjects, and other applicable laws.

■ 82. Remove the undesignated center heading ''Inventions and Patents'' preceding § 75.626.

■ 83. Amend § 75.626 by:

■ a. Revising the section heading; and

■ b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.626 Show Federal support.

* * * * *

■ 84. Revise § 75.650 to read as follows:

§ 75.650 Participation of students enrolled in private schools.

If applicable statutes and regulations provide for participation of students enrolled in private schools and, as applicable, their teachers or other educational personnel, and their families, the grantee must provide, as applicable, services in accordance with §§ 76.650 through 76.662.

§ 75.682 [Amended]

■ 85. Amend § 75.682 by:

■ a. Removing the word ''shall'' and adding in its place the word ''must'';
■ b. Removing the words ''of 1970'' after the words ''Animal Welfare Act''; and
■ c. Removing the parenthetical authority citation at the end of the section.

■ 86. Revise § 75.700 to read as follows:

§ 75.700 Compliance with the U.S. Constitution, statutes, regulations, stated institutional policies, and applications.

A grantee must comply with § 75.500, applicable statutes, regulations, Executive orders, stated institutional policies, and applications, and must use Federal funds in accordance with the U.S. Constitution and those statutes, regulations, Executive orders, stated institutional policies, and applications.

§ 75.702 [Amended]

■ 87. Amend § 75.702 by removing the word ''insure'' and adding in its place the word ''ensure''.

■ 88. Amend § 75.708 by:
■ a. Revising paragraph (b) introductory text;
■ b. In paragraph (d)(2), removing the words ''Federal statute and executive orders and their implementing regulations'' and adding in their place the words ''applicable law'';
■ c. In paragraph (d)(3), removing the word ''anti-discrimination'' and adding in its place the word ''nondiscrimination'';
■ d. Revising paragraph (e); and
■ e. Removing the parenthetical authority citation at the end of the section.

The revisions read as follows:

§ 75.708 Subgrants.

* * * * *

(b) The Secretary may, through an announcement in the **Federal Register** or other reasonable means of notice, authorize subgrants when necessary to meet the purposes of a program. In this announcement, the Secretary will—

* * * * *

(e) Grantees that are not allowed to make subgrants under paragraph (b) of this section are authorized to contract, as needed, for supplies, equipment, and other services, in accordance with 2 CFR part 200, subpart D (2 CFR 200.317 through 200.326).

■ 89. Amend § 75.720 by:
■ a. In paragraph (a)(1), remove the citation ''2 CFR 200.327'' and adding in its place the citation ''2 CFR 200.328'';
■ b. In paragraph (a)(2), removing the citation ''2 CFR 200.328'' and adding in its place the citation ''2 CFR 200.329'';
■ c. Adding paragraph (d); and
■ d. Removing the parenthetical authority citation at the end of the section.

The addition reads as follows:

§ 75.720 Financial and performance reports.

* * * * *

(d) Upon request of the Secretary, a grantee must, at the time of submission to the Secretary, post any performance and financial reports required by this section on a public-facing website maintained by the grantee, after redacting any privacy or confidential business information.

■ 90. Amend § 75.732 by:
■ a. Redesignating paragraph (b)(2) as paragraph (b)(3) and adding the word ''project'' after the words ''Revise those''.
■ b. Adding a new paragraph (b)(2).

The addition reads as follows:

§ 75.732 Records related to performance.

* * * * *

(b) * * *

(2) Inform periodic review and continuous improvement of the project plans; and

* * * * *

■ 91. Amend § 75.740 by:
■ a. In paragraph (a), revising the parenthetical sentence at the end;
■ b. In paragraph (b), adding ''; 20 U.S.C. 1232h, commonly known as the ''Protection of Pupil Rights Amendment'' or ''PPRA''; and the Common Rule for the protection of Human Subjects and its implementing regulations at 34 CFR part 97, as applicable'' after the words ''GEPA and its implementing regulations at 34 CFR part 98''; and
■ c. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.740 Protection of and access to student records; student rights in research, experimental programs, and testing.

(a) * * * (Section 444 of GEPA (20 U.S.C. 1232g) is commonly referred to as the ''Family Educational Rights and Privacy Act of 1974'' or ''FERPA''.)

* * * * *

§ 75.900 [Amended]

■ 92. Amend § 75.900 by removing ''ED'' in paragraphs (a) and (b) and adding in its place the words ''the Department''.

§ 75.901 [Amended]

■ 93. Amend § 75.901 by:
■ a. In the introductory text, removing the words ''that are not subject to other procedures''; and
■ b. Removing the parenthetical authority citation from the end of the section.

PART 76—STATE–ADMINISTERED FORMULA GRANT PROGRAMS

■ 94. The authority citation for part 76 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

Section 76.101 also issued under 20 U.S.C. 1221e–3, 3474, and 7844(b).

Section 76.127 also issued under 48 U.S.C. 1469a.

Section 76.128 also issued under 48 U.S.C. 1469a.

Section 76.129 also issued under 48 U.S.C. 1469a.

Section 76.130 also issued under 48 U.S.C. 1469a.

Section 76.131 also issued under 48 U.S.C. 1469a.

Section 76.132 also issued under 48 U.S.C. 1469a.

Section 76.134 also issued under 48 U.S.C. 1469a.

Section 76.136 also issued under 48 U.S.C. 1469a.

Section 76.140 also issued under 20 U.S.C. 1221e–3, 1231g(a), and 3474.

Section 76.301 also issued under 20 U.S.C. 1221e–3, 3474, and 7846(b).

Section 76.401 also issued under 20 U.S.C. 1221e–3, 1231b–2, and 3474.

Section 76.709 also issued under 20 U.S.C. 1221e–3, 1225(b), and 3474.

Section 76.710 also issued under 20 U.S.C. 1221e–3, 1225(b), and 3474.

Section 76.720 also issued under 20 U.S.C. 1221e–3, 1231a, and 3474.

Section 76.740 also issued under 20 U.S.C. 1221e–3, 1232g, 1232h, and 3474.

Section 76.783 also issued under 20 U.S.C. 1231b–2.

Section 76.785 also issued under 20 U.S.C. 7221e.

Section 76.786 also issued under 20 U.S.C. 7221e

Section 76.787 also issued under 20 U.S.C. 7221e.

Section 76.788 also issued under 20 U.S.C. 7221e.

Section 76.901 also issued under 20 U.S.C. 1234.

■ 95. The part heading for part 76 is revised to read as set forth above.

■ 96. Revise § 76.1 to read as follows:

§ 76.1 Programs to which this part applies.

(a) The regulations in this part apply to each State-administered formula grant program of the Department.

(b) If a State-administered formula grant program does not have implementing regulations, the Secretary implements the program under the applicable statutes and, to the extent consistent with the authorizing statute, under the GEPA and the regulations in this part. For the purposes of this part, the term State-administered formula grant program means a program whose applicable statutes or implementing regulations provide a formula for allocating program funds among eligible States.

§ 76.2 [Amended]

■ 97. Amend § 76.2 by removing the parenthetical authority citation at the end of the section.

■ 98. Revise § 76.50 to read as follows:

§ 76.50 Basic requirements for subgrants.

(a) Under a program covered by this part, the Secretary makes a grant—

(1) To the State agency designated by applicable statutes and regulations for the program; or

(2) To the State agency designated by the State in accordance with applicable statutes and regulations.

(b) Unless prohibited by applicable statutes or regulations or by the terms and conditions of the grant award, a State may use State-administered formula grant funds—

(1) Directly;

(2) To make subgrants to eligible applicants, as determined by applicable statutes or regulations, or if applicable statutes and regulations do not address eligible subgrantees, as determined by the State; or

(3) To authorize a subgrantee to make subgrants.

(c) Grantees are responsible for monitoring subgrantees consistent with 2 CFR 200.332.

(d) Grantees, in cases where subgrants are prohibited by applicable statutes or regulations or the terms and conditions of a grant award, are authorized to contract, as needed, for supplies, equipment, and other services, in accordance with 2 CFR part 200, subpart D (2 CFR 200.317 through 200.326).

(e) No subgrant that a State chooses to make in accordance with paragraph (b) may change the amount of Federal funds for which an entity is eligible through a formula in the applicable Federal statute or regulation.

§ 76.51 [Amended]

■ 99. Amend § 76.51 by:

■ a. In the introductory text, removing the words ''a program statute authorizes'' and adding in their place ''applicable statutes and regulations authorize''; and

■ b. Removing the parenthetical citation authority at the end of the section.

§ 76.52 [Amended]

■ 100. Amend § 76.52 by removing the words ''State-Administered Formula Grant'' and adding in their place ''State-administered formula grant'' in paragraphs (a)(3) and (4), (b), (c)(1), and (d)(1) and (2).

§ 76.100 [Amended]

■ 101. Amend § 76.100 by removing the words ''the authorizing statute and implementing regulations'' and adding in their place the words ''applicable statutes and regulations''.

■ 102. Revise § 76.101 to read as follows:

§ 76.101 State plans in general.

(a) Except as provided in paragraph (b) of this section, a State that makes subgrants to local educational agencies under a program subject to this part must have on file with the Secretary a State plan that meets the requirements of section 441 of GEPA (20 U.S.C. 1232d), which may include information about how the State intends use continuous improvement strategies in its program implementation based on periodic review of research, data, community input, and other feedback.

(b) The requirements of section 441 of GEPA do not apply to a State plan submitted for a program under the Elementary and Secondary Education Act of 1965.

■ 103. Revise § 76.102 to read as follows:

§ 76.102 Definition of ''State plan'' for this part.

As used in this part, *State plan* means any document that applicable statutes and regulations for a State-administered formula grant program require a State to submit in order to receive funds for the program. To the extent that any provision of this part conflicts with program-specific implementing regulations related to the plan, the program-specific implementing regulations govern.

■ 104. Revise § 76.103 to read as follows:

§ 76.103 Multiyear State plans.

Unless otherwise specified by statute, regulations, or the Secretary, each State plan is effective for a period of more than one fiscal year, to be determined by the Secretary or by regulations.

§ 76.125 [Amended]

■ 105. Amend § 76.125 by:

■ a. In paragraph (b), removing ''the Trust Territory of the Pacific Islands,'';

■ b. In paragraph (c), adding '', consistent with applicable law'' after the word ''Department''; and

■ c. Removing the parenthetical authority citation at the end of the section.

§ 76.127 [Amended]

■ 106. Amend § 76.127 by:

■ a. In the introductory text, removing the words ''of the programs listed in § 76.125(c)'' and adding in their place the words ''State-administered formula grant programs''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 107. Amend § 76.128 by:

■ a. Removing the words ''of the programs listed in § 76.125(c)'' and adding in their place the words ''State-administered formula grant programs'';

■ b. Revising the example at the end of the section; and

■ c. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 76.128 What is a consolidated grant?

* * * * *

Example 1 to § 76.128. Assume the Virgin Islands applies for a consolidated grant that includes funds under the Carl D. Perkins Career and Technical Education Act of 2006 and title I, part A; title II, part A; and title IV, part A of the Elementary and Secondary Education Act of 1965. If the Virgin Islands' allocation under the formula for each of these four programs is $150,000, the total consolidated grant to the Virgin Islands would be $600,000.

■ 108. Amend § 76.129 by:

■ a. Revising the example after paragraph (a) and the example after paragraph (b).

■ b. Removing the parenthetical authority citation at the end of the section.

The revisions read as follows:

§ 76.129 How does a consolidated grant work?

(a) * * *

Example 1 to paragraph (a). Assume that Guam receives, under the consolidated grant, funds from Carl D. Perkins Career and Technical Education Act of 2006, Title I, part A of the ESEA, and Title IV, part A of the ESEA. The sum of the allocations under these programs is $600,000. Guam may choose to allocate this $600,000 among one, two, or all three of the programs.

(b) * * *

Example 2 to paragraph (b). Assume that American Samoa uses part of the funds under a consolidated grant to carry out programs and activities under Title IV, part A of the ESEA. American Samoa need not submit to the Secretary a State plan that addresses the program's application requirement that the State educational agency describe how it will use funds for State-level activities. However, in carrying out the program, American Samoa must use the required amount of funds for State-level activities under the program.

§ 76.130 [Amended]

■ 109. Amend § 76.130 by:

■ a. Removing in paragraph (d) the words ''statute and regulations for that program'' and adding in their place the words ''statutes and regulations that apply to that program''; and
■ b. Removing the parenthetical authority citation at the end of the section.

§ 76.131 [Amended]

■ 110. Amend § 76.131 by:
■ a. In paragraph (a), removing the words ''programs listed in § 76.125(c)'' and adding in their place the words ''State-administered formula grant programs'';
■ b. In paragraph (b), removing the words ''the authorizing statutes and regulations'' and adding in their place the words ''applicable statutes and regulations'';
■ c. In paragraph (c)(1), removing the words ''programs in § 76.125(c)'' and adding in their place the words ''State-administered formula grant programs'';
■ d. In paragraph (c)(2), removing the words ''program or programs in § 76.125(c)'' and adding in their place the words ''State-administered formula grant programs''; and
■ e. Removing the parenthetical authority citation at the end of the section.

§ 76.132 [Amended]

■ 111. Amend § 76.132 by:
■ a. In paragraphs (a)(2), removing the word ''authorizing'' and adding in its place the word ''applicable'';
■ b. In paragraph (a)(4), removing the word ''assure'' and adding in its place the word ''ensure'';
■ c. In paragraph (a)(5), removing the phrase ''2 CFR 200.327 and 200.328'' and adding in its place ''2 CFR 200.328 and 200.329'';
■ d. In paragraph (a)(9), removing the word ''authorizing'' and adding in its place the word ''applicable''; and
■ e. Removing the parenthetical authority citation at the end of the section.

■ 112. Amend § 76.134 by:
■ a. Revising paragraph (a);
■ b. In paragraph (b), removing the words ''applicable program statutes'' and adding in their place the words ''applicable statutes''; and
■ c. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 76.134 What is the relationship between consolidated and non-consolidated grants?

(a) An Insular Area may request that any State-administered formula grant programs be included in its consolidated grant and may apply separately for assistance under any other of those programs for which it is eligible.

* * * * *

§ 76.136 [Amended]

■ 113. Amend § 76.136 by:
■ a. Removing the words ''programs described in § 76.125(c)'' and adding in their place the words ''State-administered formula grant programs''; and
■ b. Removing the parenthetical authority citation at the end of the section.

■ 114. Revise § 76.140 to read as follows:

§ 76.140 Amendments to a State plan.

(a) If the Secretary determines that an amendment to a State plan is essential during the effective period of the plan, the State must make the amendment.

(b) A State must also amend a State plan if there is a significant and relevant change in the information or the assurances in the plan.

(c) If a State amends a State plan, to the extent consistent with applicable law, the State must use the same procedures as those it must use to prepare and submit a State plan, unless the Secretary prescribes different procedures for submitting amendments based on the characteristics and requirements of a particular State-administered formula grant program.

§§ 76.141 and 76.142 [Removed and Reserved]

■ 115. Remove and reserve §§ 76.141 and 76.142.

§ 76.260 [Amended]

■ 116. Amend § 76.260 by:
■ a. In the section heading, removing the words ''program statute'' and adding in their place the words ''applicable statutes''.
■ b. Removing the words ''the authorizing statute'' wherever they appear and adding in their place the words ''applicable statutes''.
■ 117. Revise § 76.301 to read as follows:

§ 76.301 Local educational agency application in general.

(a) A local educational agency (LEA) that applies for a subgrant under a program subject to this part must have on file with the State an application that meets the requirements of section 442 of GEPA (20 U.S.C. 1232e).

(b) The requirements of section 442 of GEPA do not apply to an LEA's application for a program under the ESEA.

§ 76.400 [Amended]

■ 118. Amend § 76.400 in paragraphs (b)(2), (c)(2), and (d) by removing the words ''Federal statutes'' and adding in their place the words ''applicable statutes''.
■ 119. Revise § 76.401 to read as follows:

§ 76.401 Disapproval of an application—opportunity for a hearing.

(a) *State educational agency hearing regarding disapproval of an application.* When financial assistance is provided to (or through) a State educational agency (SEA) consistent with an approved State plan and the SEA takes final action by disapproving or failing to approve an application for a subgrant in whole or in part, the SEA must provide the aggrieved applicant with notice and an opportunity for a hearing regarding the SEA's disapproval or failure to approve the application.

(b) *Applicant request for SEA hearing.* (1) The aggrieved applicant must request a hearing within 30 days of the final action of the SEA.

(2) The aggrieved applicant's request for a hearing must include, at a minimum, a citation to the specific State or Federal statute, rule, regulation, or guideline that the SEA allegedly violated when disapproving or failing to approve the application in whole or in part and a brief description of the alleged violation.

(3) The SEA must make available, at reasonable times and places to each applicant, all records of the SEA pertaining to the SEA's failure to approve the application in whole or in part that is the subject of the applicant's request for a hearing under this paragraph (b).

(c) *SEA hearing procedures.* (1) Within 30 days after it receives a request that meets the requirements of paragraphs (b)(1) and (2) of this section, the SEA must hold a hearing on the record to review its action.

(2) No later than 10 days after the hearing, the SEA must issue its written ruling, including findings of fact and reasons for the ruling.

(3) If the SEA determines that its action was contrary to State or Federal statutes, rules, regulations, or guidelines that govern the applicable program, the SEA must rescind its action in whole or in part.

(d) *Procedures for appeal of SEA action to the Secretary.* (1) If an SEA does not rescind its final action disapproving or failing to approve an application in whole or in part after the SEA conducts a hearing consistent with paragraph (c) of this section, the

applicant may appeal the SEA's final action to the Secretary.

(2) The applicant must file a notice of appeal with the Secretary within 20 days after the applicant has received the SEA's written ruling.

(3) The applicant's notice of appeal must include, at a minimum, a citation to the specific Federal statute, rule, regulation, or guideline that the SEA allegedly violated and a brief description of the alleged violation.

(4) The Secretary may issue interim orders at any time when considering the appeal, including requesting the hearing record and any additional documentation, such as additional documentation regarding the information provided pursuant to paragraph (d)(3) of this section.

(5) After considering the appeal, the Secretary issues an order either affirming the final action of the SEA or requiring the SEA to take appropriate action, if the Secretary determines that the final action of the SEA was contrary to a Federal statute, rule, regulation, or guideline that governs the applicable program.

(e) *Programs administered by State agencies other than an SEA.* Under programs with an approved State plan under which financial assistance is provided to (or through) a State agency that is not the SEA, that State agency is not required to comply with this section unless specifically required to do so by Federal statute or regulation.

■ 120. Amend § 76.500 by revising paragraph (a) and removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 76.500 Constitutional rights, freedom of inquiry, and Federal statutes and regulations on nondiscrimination.

(a) A State and a subgrantee must comply with the following statutes and regulations:

TABLE 1 TO PARAGRAPH (a)

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin ..	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).	34 CFR part 100.
Discrimination on the basis of disability	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	34 CFR part 104.
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).	34 CFR part 106.
Discrimination on the basis of age	Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*)	34 CFR part 110.

* * * * *

§ 76.532 [Amended]

■ 121. Amend § 76.532 by removing the parenthetical authority citation at the end of the section.

§ 76.533 [Amended]

■ 122. Amend § 76.533 by:

■ a. Removing the words ''the authorizing statute'' and adding in their place the words ''applicable statutes''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 123. Revise § 76.560 to read as follows:

§ 76.560 General indirect cost rates and cost allocation plans; exceptions.

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for—

(1) All grantees, other than hospitals and commercial (for-profit) organizations, at 2 CFR part 200, subpart E;

(2) Hospitals, at 45 CFR part 75, appendix IX; and

(3) Commercial (for-profit) organizations, at 48 CFR part 31.

(b) Except as specified in paragraph (c) of this section, a grantee must have a current indirect cost rate agreement or approved cost allocation plan to charge indirect costs to a grant. To obtain a negotiated indirect cost rate agreement or approved cost allocation plan, a grantee must submit an indirect cost rate proposal or cost allocation plan to its cognizant agency.

(c) A grantee that meets the requirements in 2 CFR 200.414(f) may elect to charge the *de minimis* rate of modified total direct costs (MTDC) specified in that provision, which may be used indefinitely. The *de minimis* rate may not be used on programs that have statutory or regulatory restrictions on the indirect cost rate. No documentation is required to justify the *de minimis* rate.

(1) If the grantee has established a threshold for equipment that is lower than the amount specified in the Uniform Guidance, the grantee must use that threshold to exclude equipment from the MTDC base.

(2) For purposes of the MTDC base and application of the 10 percent rate, MTDC includes up to the amount specified in the definition of MTDC in the Uniform Guidance of each subaward, each year.

(d) If a grantee is required to, but does not, have a federally recognized indirect cost rate or approved cost allocation plan, the Secretary may permit the grantee to charge a temporary indirect cost rate of 10 percent of budgeted direct salaries and wages.

(e)(1) If a grantee fails to submit an indirect cost rate proposal or cost allocation plan to its cognizant agency within the required 90 days, the grantee may not charge indirect costs to its grant from the end of the 90-day period until it obtains a federally recognized indirect cost rate agreement applicable to the grant.

(2) If the Secretary determines that exceptional circumstances warrant continuation of a temporary indirect cost rate, the Secretary may authorize the grantee to continue charging indirect costs to its grant at the temporary rate specified in paragraph (d) of this section even though the grantee has not submitted its indirect cost rate proposal within the 90-day period.

(3) Once a grantee obtains a federally recognized indirect cost rate that is applicable to the affected grant, the grantee may use that indirect cost rate to claim indirect cost reimbursement for expenditures made on or after the date on which the grantee submitted its indirect cost proposal to its cognizant agency or the start of the project period, whichever is later. However, this authority is subject to the following limitations:

(i) The total amount of funds recovered by the grantee under the federally recognized indirect cost rate is reduced by the amount of indirect costs previously recovered under the temporary indirect cost rate specified in paragraph (d) of this section.

(ii) The grantee must obtain prior approval from the Secretary to shift direct costs to indirect costs in order to recover indirect costs at a higher negotiated indirect cost rate.

(iii) The grantee may not request additional funds to recover indirect costs that it cannot recover by shifting direct costs to indirect costs.

(f) The Secretary accepts a negotiated indirect cost rate or approved cost allocation plan but may establish a restricted indirect cost rate or cost allocation plan compliant with §§ 76.564 through 76.569 for a grantee to satisfy the statutory requirements of certain programs administered by the Department.

■ 124. Revise § 76.561 to read as follows:

§ 76.561 Approval of indirect cost rates and cost allocation plans.

(a) If the Department of Education is the cognizant agency, the Secretary approves an indirect cost rate or cost allocation plan for a State agency and for a subgrantee other than a local educational agency. For the purposes of this section, the term ''local educational agency'' does not include a State agency.

(b) Each State educational agency, on the basis of a plan approved by the Secretary, must approve an indirect cost rate for each local educational agency that requests it to do so.

(c) The Secretary generally approves indirect cost rate agreements annually. Indirect cost rate agreements may be approved for periods longer than a year if the Secretary determines that rates will be sufficiently stable to justify a longer rate period.

■ 125. Add § 76.562 to read as follows:

§ 76.562 Reimbursement of indirect costs.

(a) Reimbursement of indirect costs is subject to the availability of funds and statutory or administrative restrictions.

(b) The application of the negotiated indirect cost rate (determination of the direct cost base) or cost allocation plan (charging methodology) must be in accordance with the agreement/plan approved by the grantee's cognizant agency.

(c) Indirect costs for joint applications and projects (see § 76.303) are limited to the amount derived by applying the rate of the applicant, or a restricted rate when applicable, to the direct cost base for the grant in keeping with the terms of the applicant's federally recognized indirect cost rate agreement and program requirements.

§ 76.563 [Amended]

■ 126. Amend § 76.563 by:

■ a. Removing the words ''agencies of State and local governments that are grantees under'';

■ b. Removing the words ''their subgrantees'' and adding in their place the word ''subgrants''; and

■ c. Removing the parenthetical authority citation at the end of the section.

■ 127. Revise § 76.654 to read as follows:

§ 76.564 Restricted indirect cost rate formula.

(a) An indirect cost rate for a grant covered by §§ 76.563 or 75.563 is determined by the following formula: Restricted indirect cost rate = (General management costs + Fixed costs) ÷ (Other expenditures).

(b) General management costs, fixed costs, and other expenditures must be determined under §§ 76.565 through 76.567.

(c) Under the programs covered by § 76.563, a grantee or subgrantee that is not a State or local government agency—

(1) Must use a negotiated restricted indirect cost rate computed under paragraph (a) of this section or cost allocation plan that complies with the formula in paragraph (a) of this section; or

(2) May elect to use an indirect cost rate of 8 percent of the modified total direct costs (MTDC) base if the grantee or subgrantee does not have a negotiated restricted indirect cost rate. MTDC is defined in 2 CFR 200.1. If the Secretary determines that the grantee or subgrantee would have a lower rate as calculated under paragraph (a) of this section, the lower rate must be used for the affected program.

(3) If the grantee has established a threshold for equipment that is lower than the amount specified in the Uniform Guidance, the grantee must use that threshold to exclude equipment from the MTDC base.

(4) For purposes of the MTDC base and application of the 8 percent rate, MTDC includes up to the amount specified in the definition of MTDC in the Uniform Guidance of each subaward, each year.

(d) Indirect costs that are unrecovered as a result of these restrictions may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

§ 76.565 [Amended]

■ 128. Amend § 76.565 by removing the parenthetical authority citation at the end of the section.

§ 76.566 [Amended]

■ 129. Amend § 76.566 by:

■ a. In the introductory text, adding the word ''allowable'' before the words ''indirect costs''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 130. Amend § 76.567 by:

■ a. Revising paragraph (b)(3);

■ b. In paragraph (b)(7), removing the punctuation and word ''; and'';

■ c. Redesignating paragraph (b)(8) as paragraph (b)(9);

■ d. Adding a new paragraph (b)(8); and

■ e. Removing the parenthetical authority citation at the end of the section.

The revision and addition read as follows:

§ 76.567 Other expenditures—restricted rate.

* * * * *

(b) * * *

(3) Subawards exceeding the amount specified in the definition of Modified Total Direct Cost in the Uniform Guidance each, per year;

* * * * *

(8) Other distorting items; and

* * * * *

§ 76.568 [Amended]

■ 131. Amend § 76.568 by:

■ a. In paragraph (c), adding the word ''(denominator)'' after the word ''expenditures''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 132. Amend § 76.569 by:

■ a. Revising paragraph (a) and removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 76.569 Using the restricted indirect cost rate.

(a) Under the programs referenced in §§ 75.563 and 76.563, the maximum amount of indirect costs recovery under a grant is determined by the following formula: Indirect costs = (Restricted indirect cost rate) × (Total direct costs of the grant minus capital outlays, subawards exceeding amount specified in the definition of Modified Total Direct Cost in the Uniform Guidance each, per year, and other distorting or unallowable items as specified in the grantee's indirect cost rate agreement)

* * * * *

§ 76.580 [Amended]

■ 133. Amend § 76.580 by removing the parenthetical authority citation at the end of the section.

■ 134. Revise § 76.600 to read as follows:

§ 76.600 Where to find the construction regulations.

(a) A State or a subgrantee that requests program funds for construction, or whose grant or subgrant includes funds for construction, must comply

with the rules on construction that apply to applicants and grantees under 34 CFR 75.600 through 75.618.

(b) The State must perform the functions of the Secretary for subgrantee requests under 34 CFR 75.601 (Approval of the construction).

(c) The State must perform the functions that the Secretary performs under 34 CFR 75.614(b). The State may consult with the State Historic Preservation Officer and Tribal Historic Preservation Officer to identify and evaluate historic properties and assess effects. The Secretary will continue to participate in the consultation process when:

(1) The State determines that ''Criteria of Adverse Effect'' applies to a project;

(2) There is a disagreement between the State and the State Historic Preservation Officer or Tribal Historic Preservation Officer regarding identification and evaluation or assessment of effects;

(3) There is an objection from consulting parties or the public regarding findings, determinations, the implementation of agreed-upon provisions, or their involvement in a National Historic Preservation Act Section 106 review (see 36 CFR part 800); or

(4) There is the potential for a foreclosure situation or anticipatory demolition as specified in Section 110(k) of the National Historic Preservation Act (see 36 CFR part 800).

(d) The State must provide to the Secretary the information required under 34 CFR 75.614(a) (Preservation of historic sites).

(e) The State must submit periodic reports to the Secretary regarding the State's review and approval of construction or real property projects containing information specified by the Secretary consistent with 2 CFR 200.329(d).

■ 135. Revise the undesignated center heading before § 76.650 and revise § 76.650 to read as follows:

Participation of Private School Children, Teachers or Other Educational Personnel, and Families

§ 76.650 Participation of private school children, teachers or other educational personnel, and families.

If a program provides for participation by private school children, teachers or other educational personnel, and families, and the program is not otherwise governed by applicable regulations, the grantee or subgrantee must provide, as applicable, services in accordance with the requirements under §§ 76.651 through 76.662.

■ 136. Revise § 76.652 to read as follows:

§ 76.652 Consultation with representatives of private school students.

A subgrantee must consult with appropriate private school officials in accordance with the requirements in § 299.7.

§ 76.661 [Amended]

■ 137. Amend § 76.661(c) by removing the word ''insure'' and adding in its place the word ''ensure''.

§ 76.662 [Amended]

■ 138. Amend § 76.662 by removing the word ''insure'' and adding in its place the word ''ensure''.

§ 76.665 [Removed and Reserved]

■ 139. Remove the undesignated center heading ''Equitable Services under the CARES Act'' above § 76.665 and remove and reserve § 76.665.

§§ 76.670 through 76.677 [Removed and Reserved]

■ 140. Remove the undesignated section heading ''Procedures for Bypass'' above § 76.670 and remove and reserve §§ 76.670 through 76.677.

§ 76.682 [Amended]

■ 141. Amend § 76.682 by removing the parenthetical authority citation at the end of the section.

§ 76.702 [Amended]

■ 142. Amend § 76.702 by removing the word ''insure'' and adding in its place the word ''ensure''.

■ 143. Amend § 76.707 by revising paragraph (h) and removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 76.707 When obligations are made.

* * * * *

If the obligation is for—	The obligation is made—
* * * * * * *	
(h) A pre-agreement cost that was properly approved by the Secretary under the cost principles in 2 CFR part 200, subpart E.	On the first day of the grant or subgrant period of performance.

§ 76.708 [Amended]

■ 144. Amend § 76.708 by:

■ a. In paragraph (a) introductory text, removing the words ''the authorizing statute'' and adding in their place the words ''applicable statutes and regulations'', removing the word ''requires'' and adding in its place the word ''require'', and removing the words ''(see § 76.5)'' and adding, in their place, the words ''(see § 76.51(a))'';

■ b. In paragraph (c), removing the words ''the authorizing statute'' and adding in their place the words ''applicable statutes and regulations'' and removing the word ''gives'' and adding in its place the word ''give''; and

■ c. Removing the parenthetical authority citation at the end of the section.

§ 76.709 [Amended]

■ 145. Amend § 76.709 by removing the Note and the parenthetical authority citation at the end of the section.

§ 76.710 [Amended]

■ 146. Amend § 76.710 by removing the Note and the parenthetical authority citation at the end of the section.

§ 76.711 [Amended]

■ 147. Amend § 76.711 by:

■ a. In the section heading, removing the abbreviation ''CFDA'' and adding in its place the abbreviation ''ALN''; and

■ b. Removing the phrase ''Catalog of Federal Domestic Assistance (CFDA)'' and adding in its place the phrase ''Assistance Listing Number (ALN)''.

§ 76.714 [Amended]

■ 148. Amend § 76.714 by adding '', as defined in § 76.52(c)(3),'' after ''Federal financial assistance''.

■ 149. Amend § 76.720 by:

■ a. Revising and republishing paragraph (a) introductory text;

■ b. In paragraph (c)(2), removing the words ''the General Education Provisions Act'' and adding in their place the word ''GEPA''; and

■ c. Removing the parenthetical authority citation at the end of the section.

§ 76.720 State reporting requirements.

(a) This section applies to a State's reports required for monitoring and continuous improvement, including 2 CFR 200.328 (Financial reporting) and 2 CFR 200.329 (Monitoring and reporting

program performance), and other reports required by the Secretary and approved by the Office of Management and Budget (OMB) under the Subpart 1 of Chapter 35 (sections 3501–3521) of Title 44, U.S. Code, commonly known as the ''Paperwork Reduction Act.''

* * * * *

■ 150. Revise § 76.722 to read as follows:

§ 76.722 Subgrantee reporting requirements.

A State may require a subgrantee to submit reports in a manner and format that assists the State in complying with the requirements under 34 CFR 76.720, in carrying out other responsibilities under the program, engaging in periodic review and continuous improvement of the State's plan, and supporting the subgrantee in engaging in periodic review and continuous improvement of the subgrantee's plan.

■ 151. Add a new § 76.732 before the undesignated center heading ''Privacy'' to read as follows:

§ 76.732 Records related to performance.

(a) A grantee must keep records of significant project experiences and results.

(b) The grantee must use the records under paragraph (a) to—

(1) Determine progress in accomplishing project objectives;

(2) Inform periodic review and continuous improvement of the project plans; and

(3) Revise those project objectives, if necessary.

■ 152. Amend § 76.740 by:

■ a. In paragraph (a), removing the number ''438'' in the first sentence and adding in its place the number ''444''; and revising the parenthetical sentence at the end;

■ b. In paragraph (b), removing the number ''439'' and adding in its place the number ''445''; and adding the words ''(20 U.S.C. 1232h; commonly known as the ''Protection of Pupil Rights Amendment'' or ''PPRA'')'' after the words ''of GEPA''; and

■ c. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 76.740 Protection of and access to student records; student rights in research, experimental programs, and testing.

(a) * * * (Section 444 of GEPA (20 U.S.C. 1232g) is commonly referred to as the ''Family Educational Rights and Privacy Act of 1974'' or ''FERPA''.)

* * * * *

§ 76.761 [Amended]

■ 153. Amend § 76.761 in paragraph (b) by removing the words ''the authorizing statute and implementing regulations for the program'' and adding in their place the words ''applicable statutes and regulations''.

■ 154. Amend § 76.783 by:

■ a. In paragraph (a)(1), removing the word ''or'';

■ b. In paragraph (a)(2), removing the period and adding in its place ''; or'';

■ c. Adding paragraph (a)(3);

■ d. Removing the citation ''76.401(d)(2)–(7)'' in paragraph (b) and adding in its place the citation ''76.401(a) through (d)''; and

■ e. Removing the Note and parenthetical authority citation at the end of the section.

The addition reads as follows:

§ 76.783 State educational agency action—subgrantee's opportunity for a hearing.

(a) * * *

(3) Failing to provide funds in amounts in accordance with the requirements of applicable statutes and regulations.

* * * * *

§ 76.785 [Amended]

■ 155. Amend § 76.785 by:

■ a. Removing the words ''section 10306'' and adding in their place the words ''section 4306''; and

■ b. Removing the parenthetical authority citation at the end of the section.

§ 76.786 [Amended]

■ 156. Amend § 76.786 by:

■ a. In paragraph (a), removing the words ''Public Charter Schools Program'' and adding in their place the words ''Charter School State Entity Grant Program''; and

■ b. Removing the parenthetical authority citation at the end of the section.

§ 76.787 [Amended]

■ 157. Amend § 76.787 by:

■ a. In the definition of ''Charter school,'' removing the words ''title X, part C of the ESEA'' and adding in their place the words ''section 4310(2) of the ESEA (20 U.S.C. 7221i(2))'';

■ b. In the definition of ''Covered program,'' removing the words ''an elementary or secondary education program administered by the Department under which the Secretary allocates funds to States on a formula basis'' and adding in their place the words ''a State-administered formula grant program'';

■ c. In the definition of ''Local educational agency,'' removing the words ''the authorizing statute'' and adding in their place the words ''applicable statutes and regulations''; and

■ d. Removing the parenthetical authority citation at the end of the section.

■ 158. Revise the undesignated center heading before § 76.788 to read ''Responsibilities for Notice and Information''.

§ 76.788 [Amended]

■ 159. Amend § 76.788 by:

■ a. In paragraph (c), removing the words ''the authorizing statute or implementing regulations for the applicable covered program'' and adding in their place the words ''applicable statutes or regulations''; and

■ b. Removing the parenthetical authority citation at the end of the section.

§ 76.900 [Amended]

■ 160. Amend § 76.900 by removing ''ED'' in paragraphs (a) and (b) and adding in its place the words ''the Department''.

§ 76.901 [Amended]

■ 161. Amend § 76.901 by:

■ a. In paragraph (a) introductory text, removing the words ''Part E'' and adding in their place the words ''Part D (20 U.S.C. 1234–1234h)''; and

■ b. Removing the parenthetical authority citation at the end of the section.

PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

■ 162. The authority citation for part 77 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 163. Amend § 77.1 by:

■ a. Revising paragraph (b); and

■ b. In paragraph (c):

■ i. In the definition of ''Applicant'', removing the word ''requesting'' and adding in its place the words ''applying for'';

■ ii. In the definition of ''Award'', removing the words ''the definition of'';

■ iii. In the definition of ''Budget'', removing the words ''that recipient's'' and adding in their place ''a recipient's'';

■ iv. Adding in alphabetical order a definition for ''Construction'';

■ v. Adding in alphabetical order a definition for ''Continuous improvement'';

■ vi. Revising the definition of ''Demonstrates a rationale'';

■ vii. Removing the definitions of ''Direct grant program'' and ''Director of the Institute of Museum Services'';

■ viii. Revising the definition of ''Director of the National Institute of Education'';
■ ix. Adding in alphabetical order a definition for ''Evaluation'';
■ x. In the definition of ''Evidence-based'', adding '', for the purposes of 34 CFR part 75,'' after the word ''Evidence-based'';
■ xi. Adding in alphabetical order a definition for ''Evidence-building'';
■ xii. In the definition of ''GEPA'', removing the word ''The'' and adding in its place the word ''the'';
■ xiii. Adding in alphabetical order a definition for ''Independent evaluation'';
■ xiv. Revising the definitions of ''Minor remodeling'', ''Moderate evidence'', and ''National level'';
■ xv. Adding in alphabetical order a definition for ''Peer-reviewed scholarly publication'';
■ xvi. In the definition of ''Project period'', removing the citation ''2 CFR 200.77'' and adding in its place the citation ''2 CFR 200.1'';
■ xvii. Revising the definition of ''Promising evidence'';
■ xviii. Adding in alphabetical order a definition for ''Quality data'';
■ xix. Revising the definitions of ''Regional level'', ''State'', and ''Strong evidence'';
■ xx. Adding in alphabetical order a definition for ''Scientific data'';
■ xxi. In the definition of ''Subgrant'', removing the words ''definition of ''grant or award''' and adding in their place the words ''definitions of ''Grant'' or ''Award''';
■ xxii. Revising the definition of ''What Works Clearinghouse (WWC) Handbooks (WWC Handbooks)''; and
■ xxiii. In the definition of ''Work of art'', removing the word ''facilities'' and adding it its place the words ''a facility''.

The revisions and additions read as follows:

§ 77.1 Definitions that apply to all Department programs.

* * * * *

(b) Unless a statute or regulation provides otherwise, the following definitions in 2 CFR part 200 apply to the regulations in subtitles A and B of this title. The following terms have the definitions given those terms in 2 CFR 200.1. Phrasing given in parentheses references the term or terms used in title 34 that are consistent with the term defined in title 2.

Contract. (See definition in 2 CFR 200.1.)

Equipment. (See definition in 2 CFR 200.1.)

Federal award. (See definition in 2 CFR 200.1.) (The terms ''award,'' ''grant,'' and ''subgrant'', as defined in paragraph (c) of this section, have the same meaning, depending on the context, as ''Federal award'' in 2 CFR 200.1.).

Period of performance. (See definition in 2 CFR 200.1.) (For discretionary grants, the Department uses the term ''project period,'' as defined in paragraph (c) of this section, instead of ''period of performance,'' to describe the period during which funds can be obligated by the grantee.).

Personal property. (See definition in 2 CFR 200.1.)

Real property. (See definition in 2 CFR 200.1.)

Recipient. (See definition in 2 CFR 200.1.)

Subaward. (See definition in 2 CFR 200.1.) (The term ''subgrant,'' as defined in paragraph (c) of this section, has the same meaning as ''subaward'' in 2 CFR 200.1).

Supplies. (See definition in 2 CFR 200.1.)

(c) * * *

Construction means the preparation of drawings and specifications for a facilities project; erecting, building, demolishing, acquiring, renovating, major remodeling of, or extending a facilities project; or inspecting and supervising the construction of a facilities project. Construction does not include minor remodeling.

* * * * *

Continuous improvement means using plans for collecting and analyzing data about a project component's implementation and outcomes (including the pace and extent to which project outcomes are being met) to inform necessary changes throughout the project. These plans may include strategies to gather ongoing feedback from participants and stakeholders on the implementation of the project component.

* * * * *

Demonstrates a rationale means that there is a key project component included in the project's logic model that is supported by citations of high-quality research or evaluation findings that suggest that the project component is likely to significantly improve relevant outcomes.

* * * * *

Director of the Institute of Education Sciences means the Director of the Institute of Education Sciences or an officer or employee of the Institute of Education Sciences acting for the Director under a delegation of authority.

* * * * *

Evaluation means an assessment using systematic data collection and analysis of one or more programs, policies, practices, and organizations intended to assess their implementation, outcomes, effectiveness, or efficiency.

* * * * *

Evidence-building means a systematic plan for identifying and answering questions relevant to programs and policies through performance measurement, exploratory studies, or program evaluation.

* * * * *

Independent evaluation means an evaluation of a project component that is designed and carried out independently of, but in coordination with, the entities that develop or implement the project component.

* * * * *

Minor remodeling means minor alterations in a previously completed facilities project. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed facility. The term may also include related designs and drawings for these projects. The term does not include construction or renovation, structural alterations to buildings, facilities maintenance, or repairs.

Moderate evidence means evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks reporting ''strong evidence'' or ''moderate evidence'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks reporting ''Tier 1 strong evidence'' of effectiveness or ''Tier 2 moderate evidence'' of effectiveness or a ''positive effect'' on a relevant outcome based on a sample including at least 20 students or other individuals from more than one site (such as a State, county, city, local educational agency (LEA), school, or postsecondary campus), or a ''potentially positive effect'' on a relevant outcome based on a sample including at least 350 students or other individuals from more than one site (such as a State, county, city, LEA, school, or postsecondary campus), with no reporting of a ''negative effect'' or

''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC most recently using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks, or otherwise assessed by the Department using version 5.0 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (such as a State, county, city, LEA, school, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet the requirements in paragraphs (iii)(A) through (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

National level means the level of scope or effectiveness of a project component that is able to be effective in a wide variety of communities, including rural and urban areas, as well as groups with different characteristics (such as socioeconomic status, race, ethnicity, gender, disability, language, and migrant status), populations, and settings.

* * * * *

Peer-reviewed scholarly publication means a final peer-reviewed manuscript accepted for publication, that arises from research funded, either fully or partially, by Federal funds awarded through a Department-managed grant, contract, or other agreement. A final peer-reviewed manuscript is defined as an author's final manuscript of a peer-reviewed scholarly paper accepted for publication, including all modifications resulting from the peer review process. The final peer-reviewed manuscript is not the same as the final published article, which is defined as a publisher's authoritative copy of the paper including all modifications from the publishing peer review process, copyediting, stylistic edits, and formatting changes. However, the content included in both the final peer-reviewed manuscript and the final published article, including all findings, tables, and figures should be identical.

* * * * *

Promising evidence means evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC reporting ''strong evidence'', ''moderate evidence'', or ''promising evidence'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting ''Tier 1 strong evidence'' of effectiveness, or ''Tier 2 moderate evidence'' of effectiveness, or ''Tier 3 promising evidence'' of effectiveness, or a ''positive effect,'' or ''potentially positive effect'' on a relevant outcome, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (such as a study using regression methods to account for differences between a treatment group and a comparison group);

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome; and

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report.

* * * * *

Quality data encompasses utility, objectivity, and integrity of the information. ''Utility'' refers to how the data will be used, either for its intended use or other uses. ''Objectivity'' refers to data being accurate, complete, reliable, and unbiased. ''Integrity'' refers to the protection of data from being manipulated.

* * * * *

Regional level means the level of scope or effectiveness of a project component that is able to serve a variety of communities within a State or multiple States, including rural and urban areas, as well as groups with different characteristics (such as socioeconomic status, race, ethnicity, gender, disability, language, and migrant status). For an LEA-based project, to be considered a regional-level project, a project component must serve students in more than one LEA, unless the project component is implemented in a State in which the State educational agency is the sole educational agency for all schools.

* * * * *

Scientific data include the recorded factual material commonly accepted in the scientific community as of sufficient quality to validate and replicate research findings. Such scientific data do not include laboratory notebooks, preliminary analyses, case report forms, drafts of scientific papers, plans for future research, peer reviews, communications with colleagues, or physical objects and materials, such as laboratory specimens, artifacts, or field notes.

* * * * *

State means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

* * * * *

Strong evidence means evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks reporting ''strong evidence'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks reporting ''Tier 1 strong evidence'' of effectiveness or a ''positive effect'' on a relevant outcome based on a sample including at least 350 students or other individuals across more than one site (such as a State, county, city, local educational agency (LEA), school, or postsecondary campus), with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study reviewed and reported by the WWC most recently using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks, or otherwise assessed by the Department using version 5.0 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC

intervention report prepared under version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (such as a State, county, city, LEA, school, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet the requirements in paragraphs (iii)(A) through (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

* * * * *

What Works Clearinghouse (WWC) Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 5.0, or in the WWC Standards Handbook, Version 4.0 or 4.1, or in the WWC Procedures Handbook, Version 4.0 or 4.1, the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference; see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

* * * * *

■ 164. Revise § 77.2 to read as follows:

§ 77.2 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Department of Education (the Department) and the National Archives and Records Administration (NARA). Contact the Department at: Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, 550 12th Street SW, PCP–4158, Washington, DC, 20202–5900; phone: (202) 245–6940; email: *Contact.WWC@ed.gov*. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov*. The following material may be obtained from Institute of Education Sciences, 550 12th Street SW, Washington, DC, 20202; phone: (202) 245–6940; website: *http://ies.ed.gov/ncee/wwc/Handbooks*.

(a) What Works Clearinghouse Procedures and Standards Handbook, WWC 2022008REV, Version 5.0, August 2022; Revised December 2022; IBR approved for § 77.1.

(b) What Works Clearinghouse Standards Handbook, Version 4.1, January 2020, IBR approved for § 77.1.

(c) What Works Clearinghouse Procedures Handbook, Version 4.1, January 2020, IBR approved for § 77.1.

(d) What Works Clearinghouse Standards Handbook, Version 4.0, October 2017, IBR approved for § 77.1.

(e) What Works Clearinghouse Procedures Handbook, Version 4.0, October 2017, IBR approved for § 77.1.

(f) What Works Clearinghouse Procedures and Standards Handbook, Version 3.0, March 2014, IBR approved for § 77.1.

(g) What Works Clearinghouse Procedures and Standards Handbook, Version 2.1, September 2011, IBR approved for § 77.1.

PART 79—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF EDUCATION PROGRAMS AND ACTIVITIES

■ 165. Revise the authority citation for part 79 to read as follows:

Authority: 31 U.S.C. 6506; 42 U.S.C. 3334; and E.O. 12372, unless otherwise noted.

Section 79.2 also issued under E.O. 12372.

■ 166. In part 79, remove the word ''state'' wherever it appears and in its place add the word ''State'' and remove the word ''states'' where it appears and in its place add the word ''States''.

§ 79.1 [Amended]

■ 167. Amend § 79.1 by removing the second sentence in paragraph (a).

■ 168. Amend § 79.2 by:

■ a. Removing the definitions of ''Department'' and ''Secretary''.

■ b. Revising the definition of ''State''.

■ c. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 79.2 What definitions apply to these regulations?

* * * * *

State means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

§ 79.3 [Amended]

■ 169. Amend § 79.3 by:

■ a. In paragraph (a), removing the words ''and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act'';

■ b. In paragraph (c)(6), removing the words ''(*e.g.,* block grants under Chapter 2 of the Education Consolidation and Improvement Act of 1981)''; and

■ c. In paragraph (c)(7), removing the words ''development national'' and adding in their place the words ''development that is national''.

§ 79.4 [Amended]

■ 170. Amend § 79.4 in paragraph (b)(3) by removing the word ''official's'' and adding in its place the word ''officials''.

§ 79.5 [Amended]

■ 171. Amend § 79.5 by removing the word ''assure'' and adding in its place the word ''ensure''.

§ 79.6 [Amended]

■ 172. Amend § 79.6(d) by removing the word ''state's'' and adding in its place the word ''State's''.

§ 79.8 [Amended]

■ 173. Amend § 79.8 by removing paragraph (d).

§ 79.9 [Amended]

■ 174. Amend § 79.9 in paragraph (e) by removing the words ''of this part''.

§ 79.10 [Amended]

■ 175. Amend § 79.10 in paragraph (a)(2) by removing the words ''a mutually agreeable solution with the state process'' and adding in their place the words ''an agreement with the State''.

PART 299—GENERAL PROVISIONS

■ 176. The authority citation for part 299 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3 and 3474, unless otherwise noted.

Section 299.4 also issued under 20 U.S.C. 7821 and 7823.

Section 299.5 also issued under 20 U.S.C. 7428(c), 7801(11), 7901.

Section 299.6 also issued under 20 U.S.C. 7881.

Section 299.7 also issued under 20 U.S.C. 7881.

Section 299.8 also issued under 20 U.S.C. 7881.

Section 299.9 also issued under 20 U.S.C. 7881.

Section 299.10 also issued under 20 U.S.C. 7881.

Section 299.11 also issued under 20 U.S.C. 7881.

Section 299.12 also issued under 20 U.S.C. 7881(a)(3)(B).

Section 299.13 also issued under 20 U.S.C. 7844(a)(3)(C), 7883.

Section 299.14 also issued under 20 U.S.C. 7844(a)(3)(C), 7883.

Section 299.15 also issued under 20 U.S.C. 7844(a)(3)(C), 7883.

Section 299.16 also issued under 20 U.S.C. 7883.

Section 299.17 also issued under 20 U.S.C. 7883.

Section 299.18 issued under 20 U.S.C. 6320(e), 7882, and 7883.

Section 299.19 issued under 20 U.S.C. 6320(e) and 7882(a).

Section 299.20 issued under 20 U.S.C. 6320(b)(6) and (e), 7881(c)(6), 7882, and 7883.

Section 299.21 issued under 20 U.S.C. 7884(a)(1).

Section 299.22 issued under 20 U.S.C. 7884(a)(1).

Section 299.23 issued under 20 U.S.C. 7884(a)(1).

Section 299.24 issued under 20 U.S.C. 7884(a)(1).

Section 299.25 issued under 20 U.S.C. 7884(a)(1).

Section 299.26 issued under 20 U.S.C. 7884(a)(1).

Section 299.27 issued under 20 U.S.C. 7884(a)(2).

Section 299.28 issued under 20 U.S.C. 7884(b).

§§ 299.7 through 299.13 [Redesignated as §§ 299.9 through 299.15]

■ 177. Redesignate §§ 299.7 through 299.13 as §§ 299.9 through 299.15.

■ 178. Add new §§ 299.7 and 299.8 to subpart E to read as follows:

§ 299.7 What are the requirements for consultation?

(a)(1) In order to have timely and meaningful consultation, an agency, consortium, or entity must—

(i) Consult with appropriate private school officials during the design and development of the agency, consortium, or entity's program for eligible private school children and their teachers and other educational personnel; and

(ii) Consult before the agency, consortium, or entity makes any decision that affects the opportunities of eligible private school children and their teachers and other educational personnel to participate in the applicable program.

(2) Such consultation must continue throughout the implementation and assessment of equitable services.

(b) Both the agency, consortium, or entity and private school officials must have the goal of reaching agreement on how to provide equitable and effective programs for private school children and their teachers and other educational personnel, including, at a minimum, on issues such as—

(1) How the agency, consortium, or entity will identify the needs of eligible private school children and their teachers and other educational personnel;

(2) What services the agency, consortium, or entity will offer to eligible private school children and their teachers and other educational personnel;

(3) How and when the agency, consortium, or entity will make decisions about the delivery of services;

(4) How, where, and by whom the agency, consortium, or entity will provide services to eligible private school children and their teachers and other educational personnel;

(5) How the agency, consortium, or entity will assess the services and use the results of the assessment to improve those services;

(6) Whether the agency, consortium, or entity will provide services directly or through a separate government agency, consortium, entity, or third-party contractor;

(7) The size and scope of the equitable services that the agency, consortium, or entity will provide to eligible private school children and their teachers and other educational personnel, the amount of funds available for those services, and how that amount is determined; and

(8) Whether to provide equitable services to eligible private school children and their teachers and other educational personnel—

(i) On a school-by-school basis;

(ii) By creating a pool or pools of funds with all the funds allocated under the applicable program based on the amount of funding allocated for equitable services to two or more participating private schools served by the same agency, consortium, or entity, provided that all the affected private schools agree to receive services in this way; or

(iii) By creating a pool or pools of funds with all the funds allocated under the applicable program based on the amount of funding allocated for equitable services to two or more participating private schools served across multiple agencies, consortia, or entities, provided that all the affected private schools agree to receive services in this way.

(c)(1) Consultation must include—

(i) A discussion of service delivery mechanisms the agency, consortium, or entity can use to provide equitable services to eligible private school children and their teachers and other educational personnel; and

(ii) A thorough consideration and analysis of the views of private school officials on the provision of services through a contract with a third-party provider.

(2) If the agency, consortium, or entity disagrees with the views of private school officials on the provision of services through a contract, the agency, consortium, or entity must provide in writing to the private school officials the reasons why the agency, consortium, or entity chooses not to use a contractor.

(d)(1) The agency, consortium, or entity must maintain in its records and provide to the SEA a written affirmation, signed by officials of each private school with participating children or appropriate private school representatives, that the required consultation has occurred. The written affirmation must provide the option for private school officials to indicate such officials' belief that timely and meaningful consultation has not occurred or that the program design is not equitable with respect to eligible private school children.

(2) If private school officials do not provide the affirmations within a reasonable period of time, the agency, consortium, or entity must submit to the SEA documentation that the required consultation occurred.

(e) A private school official has the right to complain to the SEA that the agency, consortium, or entity did not—

(1) Engage in timely and meaningful consultation;

(2) Give due consideration to the views of the private school official; or

(3) Make a decision that treats the private school or its students equitably as required by this section.

§ 299.8 Use of Private School Personnel.

A grantee or subgrantee may use program funds to pay for the services of an employee of a private school if:

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

■ 179. Transfer newly redesignated § 299.12 from subpart F to subpart E and revise it to read as follows:

§ 299.12 Ombudsman.

To help ensure equity for eligible private school children, teachers, and other educational personnel, an SEA must direct the ombudsman designated under section 1117 of the ESEA and § 200.68 to monitor and enforce the requirements in §§ 299.6 through 299.11.

■ 180. Add §§ 299.16 and 299.17 to subpart F to read as follows:

§ 299.16 What must an SEA include in its written resolution of a complaint?

An SEA must include the following in its written resolution of a complaint under an applicable program:

(a) A description of applicable statutory and regulatory requirements.

(b) A description of the procedural history of the complaint.

(c) Findings of fact supported by citation, including page numbers, to supporting documents under paragraph (h) of this section.

(d) Analysis and conclusions regarding the requirements.

(e) Corrective actions, if applicable.

(f) A statement of applicable appeal rights.

(g) A statement regarding the State's determination about whether it will provide services.

(h) All documents the SEA relied on in reaching its decision, paginated consecutively.

§ 299.17 What must a party seeking to appeal an SEA's written resolution of a complaint or failure to resolve a complaint in 45 days include in its appeal request?

(a) A party appealing an SEA's written resolution of a complaint, or failure to resolve a complaint, must include the following in its request within 30 days of either the SEA's resolution or the 45-day time limit:

(1) A clear and concise statement of the parts of the SEA's decision being appealed, if applicable.

(2) The legal and factual basis for the appeal.

(3) A copy of the complaint filed with the SEA.

(4) A copy of the SEA's written resolution of the complaint being appealed, if one is available, including all supporting documentation required under § 299.16(h).

(5) Any supporting documentation not included as part of the SEA's written resolution of the complaint being appealed.

(b) Unless substantiating documentation identified in paragraph (a) of this section is provided to the Department, the appeal is not considered complete. Statutory or regulatory time limits are stayed until the appeal is complete as determined by the Department.

(c) In resolving the appeal, if the Department determines that additional information is necessary, all applicable statutory or regulatory time limits are stayed pending receipt of that information.

■ 181. Add subpart G, consisting of §§ 299.18 through 299.28 to read as follows:

Subpart G—Procedures for Bypass

Subpart G—Procedures for Bypass

§ 299.18 Applicability.

The regulations in this subpart apply to part A of Title I and applicable programs under section 8501(b)(1) of the ESEA under which the Secretary is authorized to waive the requirements for providing services to private school children, teachers or other educational personnel, and families, as applicable, and to implement a bypass.

§ 299.19 Bypass—general.

(a) The Secretary arranges for a bypass if—

(1) An agency, consortium, or entity is prohibited by law from providing for the participation in programs of children enrolled in, or teachers or other educational personnel from, private elementary and secondary schools, on an equitable basis; or

(2) The Secretary determines that the agency, consortium, or entity has substantially failed, or is unwilling, to provide for that participation as required by section 1117 or 8501 of the ESEA, as applicable.

(b) If the Secretary determines that a bypass is appropriate after following the requirements in §§ 299.21 through 299.26, the Secretary—

(1) Waives the requirements under section 1117 or 8501 of the ESEA, as applicable, for the agency, consortium, or entity; and

(2) Arranges for the provision of equitable services to those children, teachers or other educational personnel, and families, as applicable, through arrangements subject to the requirements of section 1117 or 8501 of the ESEA, as applicable, and sections 8503 and 8504 of the ESEA.

§ 299.20 Requesting a bypass.

(a) A private school official may request a bypass of an agency, consortium, or entity under the following circumstances:

(1) The private school official has—

(i) Filed a complaint with the State educational agency (SEA) under section 1117(b)(6)(A)–(B) or section 8501(c)(6)(A)–(B) of the ESEA and §§ 299.13 through 299.17 that an agency, consortium, or entity other than the SEA has substantially failed or is unwilling to provide equitable services;

(ii) Requested that the SEA provide equitable services on behalf of the agency, consortium, or entity under section 1117(b)(6)(C) or section 8501(c)(6)(C) of the ESEA; and

(iii) Submitted an appeal of the SEA's resolution of the complaint filed under this paragraph (a)(1) to the Secretary under section 8503(b) of the ESEA and § 299.17.

(2) If an SEA has substantially failed, or is unwilling, to provide equitable services, the private school official has—

(i) Filed a complaint with the SEA under section 8503(a) of the ESEA and §§ 299.13 through 299.16; and

(ii) Submitted an appeal to the Secretary under section 8503(b) of the ESEA and § 299.17 of the SEA's resolution of the complaint filed under paragraph (a)(1) of this section in which the private school official requests a bypass.

(b) An agency, consortium, or entity may request that the Secretary implement a bypass if the agency, consortium, or entity is prohibited by law from providing equitable services under section 1117 or section 8501 of the ESEA.

§ 299.21 Notice of intent to implement a bypass.

(a) Before taking any final action to implement a bypass, the Secretary provides the affected agency, consortium, or entity with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed bypass in sufficient detail to allow the agency, consortium, or entity to respond;

(2) Cites the requirement that is the basis for the alleged failure to comply; and

(3) Advises the agency, consortium, or entity that it—

(i) Has a deadline (which must not be fewer than 45 days after receiving the written notice) to submit written objections to the proposed bypass; and

(ii) May request in writing the opportunity for a hearing to show cause why the Secretary should not implement the bypass.

§ 299.22 Filing requirements.

(a) Any written submission under § 299.21 must be filed by hand delivery, mail, or email.

(b) The filing date for a written submission is the date on which the document is—

(1) Hand delivered;

(2) Mailed; or

(3) Emailed.

§ 299.23 Bypass procedures.

Sections 299.24 through 299.26 describe the procedures that the Secretary uses in conducting a show-cause hearing. The hearing officer may modify the procedures for a particular case if all parties agree that the modification is appropriate.

§ 299.24 Appointment and functions of a hearing officer.

(a) If an agency, consortium, or entity requests a hearing to show cause why the Secretary should not implement a bypass, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children, teachers or other educational personnel, or families that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the agency, consortium, or entity and representatives of the private school children, teachers or other educational personnel, or families of the time and place of the hearing.

§ 299.25 Hearing procedures.

(a) The following procedures apply to a show-cause hearing regarding implementation of a bypass:

(1) The hearing officer arranges for a transcript to be created.

(2) The agency, consortium, or entity and representatives of the private school children, teachers or other educational personnel, or families each may—

(i) Be represented by legal counsel; and

(ii) Submit oral or written evidence and arguments at the hearing.

(b) Within 10 days after the hearing, the hearing officer—

(1) Indicates that a decision will be issued based on the existing record; or

(2) Requests further information from the agency, consortium, or entity, representatives of the private school children, teachers or other educational personnel, or families, or Department officials.

§ 299.26 Decision.

(a)(1) Within 120 days after the record of a show-cause hearing is closed, the hearing officer issues a written decision on whether the Secretary should implement a bypass.

(2) The hearing officer sends copies of the decision to the agency, consortium, or entity; representatives of the private school children, teachers or other educational personnel, or families; and the Secretary.

(b) Within 30 days after receiving the hearing officer's decision, the agency, consortium, or entity, and representatives of the private school children, teachers or other educational personnel, or families may each submit to the Secretary written comments on the decision.

(c) The Secretary may adopt, reverse, modify, or remand the hearing officer's decision.

§ 299.27 Judicial review.

If an agency, consortium, or entity is dissatisfied with the Secretary's final action after a proceeding under §§ 299.13 through 299.26, it may, within 60 days after receiving notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which it is located.

§ 299.28 Continuation of a bypass.

The Secretary continues a bypass until the Secretary determines, in consultation with the relevant agency, consortium, or entity and representatives of the affected private school children, teachers or other educational personnel, or families, that there will no longer be any failure or inability on the part of the agency, consortium, or entity to meet the requirements for providing services.

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