

The Department welcomes comments and data to help quantify these transfers.

#### *E. Benefits*

The Department believes that rescinding the Joint Employer Rule would result in benefits to workers and would strengthen wage and hour protections for vulnerable workers. Removing a standard for joint employment that is narrower than the standard applied by courts and WHD's prior standards may enable more workers to collect back wages to which they would already be entitled under the FLSA. This could particularly improve the well-being and economic security of workers in low-wage industries, many of whom are immigrants and people of color, because FLSA violations are more severe and widespread in low-wage labor markets.<sup>155</sup>

The Department welcomes any comments and data on quantifying the benefits associated with this proposed rescission.

#### **V. Regulatory Flexibility Act (RFA) Analysis**

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121 (1996), requires federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Accordingly, the Department examined this proposed rescission to determine whether it would have a significant economic impact on a substantial number of small entities. The most recent data on private sector entities at the time this NPRM was drafted are from the 2017 Statistics of U.S. Businesses (SUSB), which reports 5,996,900 private firms and 7,860,674 private establishments with paid employees.<sup>156</sup> Of these, 5,976,761 firms and 6,512,802 establishments have fewer than 500 employees. Because the

Department is unable to determine how many of these businesses have workers with one or more joint employers, this analysis assumes all businesses will undertake review.

The per-entity cost for small business employers is the regulatory familiarization cost of \$8.43, or the fully loaded mean hourly wage of a Compensation, Benefits, and Job Analysis Specialist (\$50.60) multiplied by  $\frac{1}{6}$  hour (ten minutes). Because this cost is minimal for small business entities, and well below one percent of their gross annual revenues, which is typically at least \$100,000 per year for the smallest businesses, the Department certifies that this proposed rescission will not have a significant economic impact on a substantial number of small entities.

The Department welcomes any comments and data on this Regulatory Flexibility Act Analysis, including the costs and benefits of this proposed rescission on small entities.

#### **VII. Executive Order 13132, Federalism**

The Department has (1) reviewed this proposed rescission in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The proposed rescission would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### **VIII. Executive Order 13175, Indian Tribal Governments**

This proposed rescission would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### **List of Subjects in 29 CFR Part 791**

Wages.

#### **PART 791—[REMOVED AND RESERVED]**

■ For the reasons set forth in the preamble, and under the authority of 29 U.S.C. 201–219, the Department proposes to remove and reserve 29 CFR part 791.

Signed this 4th day of March, 2021.

**Jessica Looman,**

*Principal Deputy Administrator, Wage and Hour Division.*

[FR Doc. 2021-04867 Filed 3-11-21; 8:45 am]

**BILLING CODE 4510-27-P**

## **DEPARTMENT OF EDUCATION**

### **34 CFR Chapter III**

[Docket ID ED–2020–OSERS–0179]

#### **Proposed Priority, Requirement, and Definitions—National Comprehensive Center on Improving Literacy for Students With Disabilities**

**AGENCY:** Offices of Elementary and Secondary Education and Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Proposed priority, requirement, and definitions.

**SUMMARY:** The Department of Education (Department) proposes a priority, requirement, and definitions for the National Comprehensive Center on Improving Literacy for Students with Disabilities (Center) program, Assistance Listing Number 84.283D. The Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA), requires the Secretary to establish a comprehensive center for students at risk of not attaining full literacy skills due to a disability. The Department proposes a priority, requirement, and definitions that the Department may use in fiscal year (FY) 2021 and later years. We intend to use the priority, requirement, and definitions to award a cooperative agreement for a comprehensive center designed to improve literacy skills for students at risk of not attaining full literacy skills due to a disability and ultimately better prepare these students to compete in a global economy.

**DATES:** We must receive your comments on or before April 12, 2021.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

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

- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed priority, requirement, and definitions,

<sup>155</sup> Annette Bernhardt, Ruth Milkman, et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, 2009, available at <https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>.

<sup>156</sup> Statistics of U.S. Businesses 2017, <https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html>, 2016 SUSB Annual Data Tables by Establishment Industry.

address them to Kristen Rhoads, U.S. Department of Education, 400 Maryland Avenue SW, Room 5175, Potomac Center Plaza, Washington, DC 20202–5076.

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

**FOR FURTHER INFORMATION CONTACT:**

Kristen Rhoads, U.S. Department of Education, 400 Maryland Avenue SW, Room 5175, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6715. Email: [Kristen.Rhoads@ed.gov](mailto:Kristen.Rhoads@ed.gov).

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

**SUPPLEMENTARY INFORMATION:**

*Invitation to Comment:* We invite you to submit comments regarding the proposed priority, requirement, and definitions. To ensure that your comments have maximum effect in developing the notice of final priority requirement, and definitions, we urge you to identify clearly the specific section of the proposed priority, requirement, or definition that each comment addresses.

We are particularly interested in comments about whether the proposed priority, requirement, and definitions would be challenging for new applicants to meet and, if so, how the proposed priority, requirement, and definitions could be revised to address potential challenges and reduce burden.

*Directed Question 1:* For the proposed priority, the Department is considering a requirement that would limit the reimbursement of indirect costs based on the grantee's modified total direct cost (MTDC) base, as defined in 2 CFR 200.68.

**Note:** The MTDC is different from the total amount of the grant. Additionally, the MTDC is not the same as a percentage of each specific expenditure category or a specific expenditure category. If the grantee is billing based on the MTDC base, the grantee must make its MTDC documentation available to the program office and the Department's Indirect Cost Unit.

We are considering this requirement based on 2 CFR 200.414(c)(1), which allows a Federal awarding agency to use an indirect cost rate different from the negotiated rate when required by Federal statute or regulation or when approved by a Federal awarding agency

head or delegate head based on documented justification when the Federal awarding agency implements, and makes publicly available, the policies, procedures, and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates. Federal discretionary grantees have historically been reimbursed for indirect costs at the rate that the grantee has negotiated with its cognizant Federal agency, and we believe that use of the negotiated rate is appropriate for most grants in most circumstances. However, the Department analyzed the indirect cost rates for all current comprehensive centers (Assistance Listing Number 84.283) and found a wide range of indirect cost rate agreements in place. The indirect cost rates ranged from 10 percent to over 125 percent, with an average of 52 percent. The percentage of indirect costs charged to the grant compared to total budget amounts varied across the current comprehensive centers from 9 percent to 39 percent, with 33 percent of grantees charging between 20 percent and 35 percent. We are considering limiting the indirect costs to maximize the availability of funds to provide technical assistance (TA) to a variety of stakeholders to meet the needs of students at risk of not attaining full literacy skills due to a disability, including dyslexia.

Consistent with our analysis, we have proposed a requirement that would set a reasonable cap in an amount between 20 percent to 35 percent for those administrative costs that are indirect costs for grantees, including subrecipients.

The Department invites comments on the practical implications of this proposed indirect cost limitation for the grantee and subrecipients, specific comments on the maximum indirect cost rate, including what a reasonable cap would be and the rationale for the proposed amount, and thoughts on allowing programs to seek and justify deviations.

*Directed Question 2:* The Department seeks information on the rigor of the evaluation that should be conducted by the Center. Paragraph (c) of the proposed priority outlines the proposed requirements related to a third-party evaluator. The Department is interested in comments related to the evaluation methods or research designs, cost, and personnel time needed to conduct a rigorous evaluation of the Center's effect on student literacy achievement and the capacity of educators to implement evidence-based (as defined in section 8101(21) of the ESEA) instruction and assessment. Relatedly, the Department

invites comments on the appropriateness of using a “third party” or independent evaluator, particularly for the summative evaluation.

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

During and after the comment period, you may inspect all public comments about the proposed priority, requirement, and definitions by accessing [Regulations.gov](http://Regulations.gov). Due to the current novel coronavirus 2019 (COVID–19) pandemic, the Department buildings are currently not open. However, upon reopening, you may also inspect the comments in person in Room 5175, 550 12th Street SW, Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record:* On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority, requirement, and definitions. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Purpose of Program:* The Comprehensive Centers program supports the establishment of not fewer than 20 comprehensive centers to provide capacity building services to State educational agencies (SEAs), regional educational agencies (REAs), local educational agencies (LEAs), and schools that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction. The purpose of the National Comprehensive Center on Improving Literacy for Students with Disabilities (Center) is to identify or develop evidence-based literacy assessment tools and professional development activities and identify evidence-based instruction, strategies, and accommodations for students at risk

of not attaining full literacy skills due to a disability, including dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning. The Center will also disseminate its products and information on evidence-based literacy to families, SEAs, LEAs, REAs, and schools.

*Program Authority:* Section 203 of the Educational Technical Assistance Act of 2002 (ETAA) (20 U.S.C. 9602) and section 2244 of the ESEA (20 U.S.C. 6674).

### Proposed Priority

This notice contains one proposed priority.

#### *National Comprehensive Center on Improving Literacy for Students With Disabilities*

*Background:* Section 2244 of the ESEA requires the Secretary to establish a comprehensive center on students at risk of not attaining full literacy skills due to a disability. Comprehensive centers are typically administered by the Office of Elementary and Secondary Education (OESE). OESE is funding this Center; however, because of the Center's subject matter, it will be administered jointly by OESE and the Office of Special Education and Rehabilitative Services (OSERS).

The project is designed to improve implementation of evidence-based literacy practices in both teacher classroom and remote learning environments. With respect to remote learning, the proposed priority is intended to ensure that teachers have the training and support they need to implement evidence-based literacy practices during remote instruction for students with disabilities, including students with dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning. Remote learning plays a critical role in regular instruction and can serve as a crucial link allowing high-quality teaching and learning to continue when regular instruction is disrupted.

The project will be awarded and must be operated in a manner consistent with nondiscrimination requirements contained in Federal civil rights laws.

*Proposed Priority:* The purpose of this proposed priority is to fund a cooperative agreement to establish and operate a National Comprehensive Center on Improving Literacy for Students with Disabilities (Center) for children in early childhood education

programs through high school. The Center must—

(a) Identify or develop free or low-cost evidence-based assessment tools for identifying students at risk of not attaining full literacy skills due to a disability, including dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning;

(b) Identify evidence-based literacy instruction, strategies, and accommodations, including assistive technology, designed to meet the specific needs of such students;

(c) Provide families of such students with information to assist such students;

(d) Identify or develop evidence-based professional development for teachers, paraprofessionals, principals, other school leaders, and specialized instructional support personnel to—

(1) Understand early indicators of students at risk of not attaining full literacy skills due to a disability, including dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning;

(2) Use evidence-based screening assessments for early identification of such students beginning not later than kindergarten;<sup>1</sup> and

(3) Implement evidence-based instruction designed to meet the specific needs of such students; and

(e) Disseminate the products of the comprehensive center to regionally diverse SEAs, REAs, LEAs, and schools, including, as appropriate, through partnerships with other comprehensive centers established under section 203 of the Educational Technical Assistance Act of 2002 (20 U.S.C. 9602), and regional educational laboratories established under section 174 of the Education Sciences Reform Act of 2002 (20 U.S.C. 9564).

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Demonstrate, in the narrative section of the application under "Significance," how the proposed project will—

(1) Address current and emerging training and information needs of SEAs, REAs, LEAs, TA centers, schools, and practitioners to select and implement

teacher classroom and remote learning environment evidence-based practices (EBPs) that will improve literacy outcomes for students with disabilities, including students with dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning. To meet this requirement, the applicant must—

(i) Demonstrate knowledge of current and emerging EBPs, which can be used in reading and literacy-related teacher classroom and remote learning environment instruction, screening, assessment, and identification or diagnosis of students at risk for not attaining full literacy skills due to a disability, including dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning. This includes demonstrating knowledge of current and emerging reading and literacy-related EBPs for students who are English learners; students from a variety of settings (e.g., rural, suburban, urban); students from low-income families; and other educationally disadvantaged students; or

(ii) Demonstrate knowledge of, previous experience with, and results of using creative approaches and implementing in-person and virtual TA strategies to provide capacity-building services and disseminate teacher classroom and remote learning environment EBPs to a variety of entities, including parents, SEAs, REAs, LEAs, schools, Head Start, and other early childhood programs;

(2) Demonstrate a record of improving outcomes in literacy achievement for students at risk for not attaining full literacy skills due to a disability, including dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning, in order to better prepare them to compete in a global economy; and

(3) Demonstrate a record of improving the adoption, implementation, and sustainment of teacher classroom and remote learning environment EBPs in literacy instruction for students at risk for not attaining full literacy skills due to a disability, including dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning.

(b) Demonstrate, in the narrative section of the application under

<sup>1</sup> Applicants are encouraged to identify or develop professional development for using evidence-based screening assessments for early identification of children in early childhood or prekindergarten programs as well.

“Quality of project services,” how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, sex, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and  
(ii) Ensure that products and services meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended short-term, intermediate, and long-term outcomes. To meet this requirement, the applicant must provide—

(i) A five-year plan for the Center to identify current and emerging training and information needs and to address the priority;

(ii) Measurable intended project outcomes; and

(iii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended short-term, intermediate, and long-term outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, and describe any underlying concepts, assumptions, expectations, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

**Note:** The following websites provide more information on logic models and conceptual frameworks: [www.osepideasthatwork.org/logicModel](http://www.osepideasthatwork.org/logicModel), [www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework](http://www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework), and [www.govinfo.gov/content/pkg/FR-2019-04-04/pdf/2019-06583.pdf](http://www.govinfo.gov/content/pkg/FR-2019-04-04/pdf/2019-06583.pdf).

(4) Be based on current research and make use of EBP in the development and delivery of its products and services. To meet this requirement, the applicant must describe—

(i) The current research on teacher classroom and remote learning environment EBPs for literacy instruction for students at risk for not attaining full literacy skills due to a disability, including dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning; and

(ii) The current research about adult learning principles in in-person and virtual settings and implementation science that will inform the proposed TA; and

(5) Develop products or refine or update publicly available existing products and provide in-person and virtual services that are of high quality and sufficient intensity and duration to achieve the intended measurable outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base in teacher classroom and remote learning environment literacy instruction for students at risk of not attaining full literacy skills due to a disability;

(ii) Its proposed approach to universal, general TA, which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA, which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach, a description of new or existing publicly available products that may be used and services that the Center proposes to make available, and the expected impact of those products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA, which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services, a description of new or existing publicly available products that may be used and services that the Center proposes to make available, and the expected impact of those products and services under this approach;

(B) Its proposed approach to measure the readiness of the target audiences to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA, REA, LEA, school, and early childhood education program levels;

(C) Its proposed plan for assisting SEAs, REAs, and LEAs to build or enhance in-person and virtual training systems that include capacity-building services and professional development based on adult learning principles and coaching; and

(D) Its proposed plan for working with appropriate levels of the education

system (e.g., SEAs, regional TA providers, districts, schools, early childhood education programs, families) to ensure that there is communication between each level and that there are systems in place to support the use of teacher classroom and remote learning environment EBPs for literacy instruction;

(6) Partner with the National Comprehensive Center and at least one of the other federally funded comprehensive centers, regional educational laboratories, equity assistance centers, OSEP- and other related federally funded TA Centers, parent training and information and community parent resource centers funded by the Department and OSEP (e.g., Center for Parent Information and Resources and Parent Technical Assistance Centers), and other related organizations to refine or develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes; and

(7) Develop a dissemination plan that describes how the applicant will systematically distribute information, products, and services to varied intended audiences, using a variety of in-person and virtual dissemination strategies, to promote awareness and use of the Center's products and services.

(c) In the narrative section of the application under “Quality of the project evaluation,” include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator. The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions, that are linked directly to the project's proposed logic model required in paragraph (b)(2)(iii) of this notice;

(2) Describe how progress in and fidelity of implementation, as well as project short-term, intermediate, and long-term outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the annual performance report (APR); and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in collaboration with a “third-party” evaluator and the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under “Adequacy of resources and quality of project personnel,” how—

(1) The proposed project will ensure equal access for employment for all, including those who are members of groups that have traditionally been underrepresented based on race, color, national origin, sex, age, religion, or disability;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications, subject-matter expertise, and technical experience to carry out the proposed activities, achieve the project’s intended outcomes, and develop ongoing partnerships with leading experts and organizations nationwide to inform project activities;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under “Quality of the management plan,” how—

(1) The proposed management plan will ensure that the project’s intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project’s intended outcomes. The identified project director should be, at

minimum, 0.5 full-time equivalency throughout the project period;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, general and special education teachers, TA providers, researchers, institutions of higher education, and policy makers, among others, in its development and operation.

(f) Address the following additional application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, or virtually, after receipt of the award, and an annual planning meeting in Washington, DC, or virtually, with the OSEP project officer, OESE staff, and other relevant staff during each subsequent year of the project period.

**Note:** Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee’s project director or other authorized representative;

(ii) A two and one-half day project directors’ conference in Washington, DC, or a virtual conference, during each year of the project period;

(iii) Two annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) At least monthly, communicate and collaborate with other Department-funded centers to achieve project objectives;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project’s intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Include a plan for maintaining a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Include a plan for ensuring that annual project progress toward meeting project goals is posted on the project website;

(6) Include, in Appendix A, a letter of agreement from each partnering organization or consultant. The letter of agreement should clearly specify the role of the partnering organization or consultant and the time needed to fulfill the commitment to the project; and

(7) Include, in Appendix A, an assurance to assist OSEP and OESE with the transfer of pertinent resources and products and to maintain the continuity of services to target audiences during the transition to this new award period and at the end of this award period, as appropriate.

### Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

**Absolute priority:** Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

**Competitive preference priority:** Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

**Invitational priority:** Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

### Proposed Requirement

**Background:** We propose a requirement for this grant competition that would limit the reimbursement of indirect costs based on its modified total direct cost (MTDC) base, as defined in 2 CFR 200.68. The cap would apply to indirect administrative costs for grantees and subrecipients.

This requirement is based on 2 CFR 200.414(c)(1), which allows a Federal awarding agency to use an indirect cost rate different from the negotiated rate when required by Federal statute or regulation or when approved by a Federal awarding agency head or delegate head based on documented justification when the Federal awarding

agency implements, and makes publicly available, the policies, procedures, and general decision-making criteria that their programs will follow to seek and justify deviations from negotiated rates.

Federal discretionary grantees have historically been reimbursed for indirect costs at the rate that the grantee has negotiated with its cognizant Federal agency, and we believe that use of the negotiated rate is appropriate for most grants in most circumstances. However, we would limit the indirect costs to maximize the availability of funds to provide TA to a variety of stakeholders and to meet the needs of students at risk of not attaining full literacy skills due to a disability, including dyslexia.

**Requirement:** Indirect costs are limited to no more than 35 percent of costs, based on a modified total direct cost (MTDC) base, as defined in 2 CFR 200.68.

### Proposed Definitions

We propose the following definitions for use with the proposed priority. We propose these definitions to ensure that applicants have a clear understanding of how we are using these terms. We propose to use some definitions the Department has adopted elsewhere and provide the source of existing definitions in parentheses.

**Capacity-building services** means assistance that strengthens an individual's or organization's ability to engage in continuous improvement and achieve expected outcomes. (Final Priorities, Requirements, Definitions, and Performance Measures; Comprehensive Centers Program (84 FR 13122), April 4, 2019)

**Fidelity** means the delivery of instruction in the way in which it was designed to be delivered. (Final Priorities and Definitions; State Personnel Development Grants (77 FR 45944), August 2, 2012)

**Intensive, sustained TA** means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

**Regional educational agency**, for the purposes of this program, means "Tribal Educational Agency" as defined in ESEA section 6132(b)(3), as well as other educational agencies that serve regional areas. (Final Priorities, Requirements, Definitions, and Performance Measures; Comprehensive Centers Program (84 FR 13122), April 4, 2019)

**TA services** are defined as negotiated series of activities designed to reach a valued outcome.

**Targeted, specialized TA** means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

**Third-party evaluator** is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

**Universal, general TA** means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

### Final Priority, Requirement, and Definitions

We will announce the final priority, requirement, and definitions in a document in the **Federal Register**. We will determine the final priority, requirement, and definitions after considering public comments and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

**Note:** This document does *not* solicit applications. In any year in which we choose to use this proposed priority, requirement, and definitions, we will invite applications through a notice in the **Federal Register**.

### Executive Orders 12866 and 13563

#### Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

OMB has determined that this proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

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

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

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

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

(4) To the extent feasible, specify performance objectives, rather than the

behavior or manner of compliance a regulated entity must adopt; and

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

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

We are issuing the proposed priority, requirement, and definitions based on a reasoned determination that the benefits would justify the costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

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

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

In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document.

#### *Clarity of the Regulations*

Executive Order 12866 and the Presidential memorandum “Plain Language in Government Writing” require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make the proposed priority, requirement, and definitions easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?

- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?

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

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

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

#### *Regulatory Flexibility Act*

**Certification:** The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define “small entities” as for-profit or nonprofit institutions with total annual revenue below \$7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

We invite comments from small eligible entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief. The small entities that this proposed regulatory action would affect are public or private nonprofit agencies and organizations, including Indian Tribes and institutions of higher education that may apply. We believe that the costs imposed on an applicant by the proposed priority, requirement, and definitions would be limited to paperwork burden related to preparing an application and that the benefits of the proposed priority, requirement, and definitions would outweigh any costs incurred by the applicant. There are very few entities who could provide the type of TA required under the proposed priority. For these reasons the proposed priority, requirement, and definitions would not impose a burden on a significant number of small entities.

#### *Paperwork Reduction Act of 1995:*

The proposed priority, requirement, and definitions contain information collection requirements that are approved by OMB under OMB control number 1894–0006.

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

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

**Accessible Format:** On request to the 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.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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

#### **David Cantrell,**

*Deputy Director, Office of Special Education Programs, delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.*

#### **Mark Washington,**

*Deputy Assistant Secretary, Office of Elementary and Secondary Education.*

[FR Doc. 2021–05247 Filed 3–10–21; 11:15 am]

**BILLING CODE 4000–01–P**