

DEPARTMENT OF EDUCATION

34 CFR Parts 206, 642, 643, 644, 645, 646, 647, and 694

RIN 1840-AD01

[Docket ID ED-2010-OPE-0002]

High School Equivalency Program and College Assistance Migrant Program, the Federal TRIO Programs, and Gaining Early Awareness and Readiness for Undergraduate Program

AGENCIES: Office of Postsecondary Education and Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend current regulations, and establish new regulations, for the High School Equivalency Program and College Assistance Migrant Program (HEP and CAMP); the Federal TRIO programs (TRIO Programs—Training Program for Federal TRIO Programs (Training), Talent Search (TS), Educational Opportunity Centers (EOC), Upward Bound (UB), Student Support Services (SSS), and the Ronald E. McNair Postbaccalaureate Achievement (McNair) Programs; and the Gaining Early Awareness and Readiness for Undergraduate Program (GEAR UP) program.

The purpose of HEP is to help migrant and seasonal farmworkers and their immediate family members obtain a general educational development (GED) credential, while CAMP assists students from this background to complete their first academic year of college and continue in postsecondary education. The Federal TRIO programs consist of five postsecondary educational opportunity outreach and support programs designed to motivate and assist low-income individuals, first-generation college students, and individuals with disabilities to enter and complete secondary and postsecondary programs of study and enroll in graduate programs, and a training program for project staff working in one or more of the Federal TRIO programs. The purpose of the GEAR UP program is to increase the number of low-income students who are prepared to enter and succeed in postsecondary education.

These proposed regulations are needed to implement provisions of the Higher Education Act of 1965, as amended (HEA) by the Higher Education Opportunity Act of 2008 (HEOA) that relate to the HEP and CAMP, Federal TRIO, and GEAR UP programs.

DATES: We must receive your comments on or before April 22, 2010.

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

- *Federal eRulemaking Portal:* Go to <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 “How To Use This Site.”

- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Pamela Maimer, U.S. Department of Education, 1990 K Street, NW., Room 8014, Washington, DC 20006-8014.

Privacy Note: The Department’s policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at <http://www.regulations.gov>. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: For general information, Pamela J. Maimer, U.S. Department of Education, 1990 K Street, NW., Room 8014, Washington, DC 20006-8014. Telephone: (202) 502-7704 or via the Internet at: Pamela.Maimer@ed.gov.

For information related to HEP and CAMP issues, Nathan Weiss, U.S. Department of Education, Office of Migrant Education, 400 Maryland Ave. SW., Room 3E-321, Washington, DC 20202-6135. Telephone: (202) 260-7496 or via the Internet at: Nathan.Weiss@ed.gov.

For information related to Federal TRIO issues, Frances Bergeron, U.S. Department of Education, 1990 K Street, NW., room 7059, Washington, DC 20006-7059. Telephone: (202) 502-7528 or via the Internet at Frances.Bergeron@ed.gov.

For information related to GEAR UP issues, James Davis, U.S. Department of Education, 1990 K Street, NW., Room 6109, Washington, DC 20006-6109. Telephone: (202) 502-7802 or via the Internet at: James.Davis@ed.gov.

If you use a telecommunications device for the deaf, call the Federal

Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to any of the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

As outlined in the section of this notice entitled *Negotiated Rulemaking*, significant public participation, through six public hearings and three negotiated rulemaking sessions, has occurred in developing this notice of proposed rulemaking (NPRM). In accordance with the requirements of the Administrative Procedure Act, the Department invites you to submit comments regarding these proposed regulations on or before April 22, 2010. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866, including its overall requirements to assess both the costs and the benefits of the proposed regulations and feasible alternatives, and to make a reasoned determination that the benefits of these proposed regulations justify their costs. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in Room 8033, 1990 K Street, NW., 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.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment

for this type of aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary, before publishing any proposed regulations for programs authorized by Title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the discretionary grant programs authorized under title IV of the HEA, the Secretary must subject the proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes on which the negotiators reached consensus must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at: <http://www.ed.gov/policy/highered/leg/hea08/index.html>.

On December 31, 2008, the Department published a notice in the **Federal Register** (73 FR 80314) announcing our intent to establish five negotiated rulemaking committees to prepare proposed regulations. One committee would focus on issues related to lender and general loan issues (Team I—Loans-Lender General Loan Issues). A second committee would focus on school-based loan issues (Team II—Loans-School-based Loan Issues). A third committee would focus on accreditation (Team III—Accreditation). A fourth committee would focus on discretionary grants (Team IV—Discretionary Grants). A fifth committee would focus on general and non-loan programmatic issues (Team V—General and Non-Loan Programmatic Issues). The notice requested nominations of individuals for membership on the committees who could represent the interests of key stakeholder constituencies on each committee.

This NPRM reflects the work of Team IV—Discretionary Grants (Team IV) which met to develop proposed regulations during the months of February through April, 2009. This NPRM proposes regulations relating to the administration of the HEP and CAMP, TRIO, and GEAR UP discretionary grants programs.

The Department developed a list of proposed regulatory provisions based on the provisions contained in the HEOA

and from advice and recommendations submitted by individuals and organizations as testimony to the Department in a series of six public hearings held on—

- September 19, 2008, at the Texas Christian University, in Fort Worth, Texas;
- September 29, 2008, at the University of Rhode Island, in Providence, Rhode Island;
- October 2, 2008, at the Pepperdine University, in Malibu, California;
- October 6, 2008, at Johnson C. Smith University, in Charlotte, North Carolina;
- October 8, 2008, at the U.S. Department of Education, in Washington DC; and
- October 15, 2008, at Cuyahoga Community College, in Warrensville Heights, Ohio.

In addition, the Department accepted written comments on possible regulatory provisions submitted directly to the Department by interested parties and organizations. A summary of all comments received orally and in writing is posted as background material in the docket for this NPRM. Transcripts of the regional meetings can be accessed at <http://www.ed.gov/policy/highered/leg/hea08/index.html>.

Staff within the Department also identified additional issues for discussion and negotiation.

At its first meeting, Team IV reached agreement on its protocols. These protocols provided that for each community of interest identified as having interests that were significantly affected by the subject matter of the negotiations, the non-Federal negotiators would represent the organizations listed after their names in the protocols in the negotiated rulemaking process.

The Discretionary Grant Team IV Negotiated Rulemaking Committee included the following members:

Representing the TRIO Programs

- David Megquier and Maureen Hoyler (alternate), Council for Opportunity in Education.
- Charlene Manco and Larry Letourneau (alternate), National Educational Opportunities Association.
- Laura Qaissaune and R. Renee Hampton (alternate), American Association of Community Colleges.
- Jon Westby, Minneapolis Community and Technical College and Mike Henry, Southwest Virginia Community College (alternate), representing TRIO two-year institutions.
- Deltha Q. Colvin, The Wichita State University and Troy Johnson, University of North Texas (alternate), representing TRIO four-year institutions.

- Brenda Dann-Messier, Dorcas Place Adult & Family Learning Center, representing TRIO community organizations.

Representing the GEAR UP Program

- Teena L. Olszewski, Northern Arizona University, Allison G. Jones, The California State University, and Weiya Liang, Washington Higher Education Coordinating Board (alternate), representing GEAR UP four-year institutions.
- Louis Niro, Cuyahoga Community College, representing GEAR UP two-year institutions.
- Jennifer Martin and Karen McCarthy (alternate), National Association of Student Financial Aid Administrators.
- Linda Shiller, Vermont Student Assistance Corporation representing GEAR UP State grantees.

Representing the HEP and CAMP Programs

- Arturo Martinez and Javier Gonzalez (alternate), The National HEP/CAMP Association.

Representing Students

- Cedric Lawson, United Council of University of Wisconsin, and Gregory A. Cendana (alternate), United States Student Association.

Representing the Federal Government

- Lynn Mahaffie, U.S. Department of Education.

Team IV's protocols also provided that, unless agreed to otherwise, consensus on all of the amendments in the proposed regulations had to be achieved for consensus to be reached on the entire NPRM. Consensus means that there must be no dissent by any member.

During the meetings, Team IV reviewed and discussed drafts of proposed regulations. At the final meeting in April 2009, the team reached tentative agreement on the proposed regulations for the HEP, CAMP and GEAR UP programs as well as on many of the proposed TRIO program regulations. However, some non-Federal negotiators did not agree to the Department's proposed regulations relating to the use of Talent Search grants to pay tuition for students to take courses and the proposed regulations to implement the new statutory requirement for a second review of unsuccessful applications for TRIO grants. Because the committee did not agree on the proposed regulations for the TRIO programs, Team IV did not reach consensus on the proposed regulations in this NPRM.

We propose to accept changes that reflect the tentative agreements made in the negotiation sessions for the HEP, CAMP, and GEAR UP programs in their entirety. In the TRIO proposed regulations, we accepted many of the changes tentatively agreed to in the negotiation sessions.

More information on the work of Team IV can be found at <http://www.ed.gov/policy/highered/reg/hearulemaking/2009/grants.html>.

Summary of Proposed Changes

These proposed regulations would implement changes made by the HEOA to discretionary grant programs authorized by title IV of the HEA, including:

HEP and CAMP Programs

- Expanding eligibility for HEP and CAMP to allow students to qualify for the program through their own qualifying work, or that of an immediate family member, rather than only through their own work or that of a parent, as the statute previously held (*see* section 418A(b)(B)(i) of the HEA).

- Defining the term *immediate family member* to include only individuals who are dependent upon a migrant or seasonal farmworker (*see* section 418A(b)(B)(i) of the HEA).

- Revising the definition of the term *seasonal farmworker* to clarify that the individual's primary employment in migrant and seasonal farmwork must occur for at least 75 days within the past 24 months (*see* section 418A(b)(1)(B)(i) of the HEA).

- Amending the authorized HEP services section to (1) Provide that permissible HEP services include preparation for college entrance examinations; (2) provide that permissible HEP services include all stipends—not only weekly stipends—for HEP participants; (3) add transportation and child care as examples of essential supportive services; and (4) specify that HEP services include other activities to improve persistence and retention in postsecondary education (*see* section 418A(b) of the HEA).

- Amending the authorized CAMP services section to specify that (1) Permissible CAMP services include supportive and instructional services to improve placement, persistence, and retention in postsecondary education; (2) these supportive services include personal, academic, career, economic education, or personal finance counseling as an ongoing part of the program, and (3) permissible CAMP services include internships (*see* section 418A(c)(1) of the HEA).

- Amending the follow-up CAMP services section to include (1) referring CAMP students to on-campus or off-campus providers of counseling services, academic assistance, or financial aid, and coordinating those services, assistance, and aid with other non-program services, assistance, and aid, including services, assistance, and aid provided by community-based organizations, which may include mentoring and guidance, and (2) for students attending two-year institutions of higher education, encouraging the students to transfer to four-year institutions of higher education, where appropriate, and monitoring the rate of transfer of these students (*see* section 418A(c)(2) of the HEA).

- Amending the minimum allocation for HEP and CAMP grants to provide that the Secretary must not allocate an amount less than \$180,000 (*see* section 418A(e) of the HEA).

- Adding to the HEP and CAMP program regulations the criteria the Department considers in evaluating prior experience (*see* section 418A(f) of the HEA).

Federal TRIO Programs

The HEOA made a number of significant changes to the Federal TRIO programs that necessitate changes to the current regulations. The statutory changes to the TRIO programs include:

- Amending or adding definitions for *different campus* and *different population*, which change current regulatory definitions of these terms for the SSS program and current practice with regard to the number of applications an eligible entity may submit under each of the TRIO programs (*see* section 402A(h)(1) and (h)(2) of the HEA).

- Amending the services or activities that projects funded under the Federal TRIO programs must provide and services or activities that these projects may provide (*see* section 402B(b) and (c) (TS); section 402C(b), (c) and (d) (UB); section 402D(b) and (c) (SSS); section 402E(b) and (c) (McNair); section 402F(b) (EOC); and section 402G(b) (Training) of the HEA).

- Adding new categories of participants (foster care youth and homeless children and youth) for whom projects funded under these programs are to provide services (*see* section 402A(e)(3) of the HEA).

- Adding new outcome criteria for most of the TRIO programs (except for the Training program) which the Secretary must use for prior experience determinations: TS (*see* section 402A(f)(3)(A) of the HEA); UB (*see* section 402A(f)(3)(B) of the HEA); SSS

(*see* section 402A(f)(3)(C) of the HEA); McNair (*see* section 402A(f)(3)(D) of the HEA); and EOC (*see* section 402A(f)(3)(E) of the HEA).

- Specifying a new procedure for handling unsuccessful applications using a two-stage process (*see* section 402A(c)(8)(C) of the HEA).

- Revising definitions for some terms and adding new regulatory definitions to implement amendments to the HEA by the HEOA:

- *Financial and economic literacy* (*see* section 402B(b)(6) of the HEA (TS), section 402C(b)(6) of the HEA (UB), section 402D(b)(4) of the HEA (SSS), section 402E(c)(1) of the HEA (McNair)), and section 402F(b)(5) of the HEA (EOC));

- *Foster care youth and homeless children and youth* (*see* sections 402A(e)(3), 402B(c)(7) (TS), 402C(d)(7) (UB), 402D(a)(3) and (c)(6) (SSS), 402F(b)(11) (EOC), and 402G(b)(5) of the HEA (Training)).

- *Graduate center* (*see* sections 101 and 102 of the HEA and section 402E(d)(2) of the HEA); *groups underrepresented in graduate school* (*see* section 402E(d)(2) of the HEA); and *research and scholarly activities* (*see* section 402E(b) of the HEA (McNair)).

- *Individual with disabilities* (*see* sections 402B(c)(7) (TS), 402C(d)(7) (UB), 402D(a)(3) and (c)(6) (SSS), 402F(b)(11) (EOC), and 402G(b)(5) of the HEA (Training)).

- *Individual who has a high risk for academic failure and veteran who has a high risk for academic failure* (*see* sections 402A(f)(3)(B)(iii) and (iv) and 402C(e)(2) of the HEA).

- *Institution of higher education* (*see* sections 101 and 102 of the HEA (All Federal TRIO programs)).

- *Regular secondary school diploma and rigorous secondary school program of study* (*see* sections 402A(f)(3)(A)(iii) and (iv) and 402A(f)(3)(B) of the HEA (TS and UB)).

- *Veteran* (*see* section 402A(h)(5) of the HEA (TS, EOC, and UB)).

Additionally, the regulations for the TRIO programs need to be amended to reflect other changes made by the HEOA, other amendments to the HEA, and established administrative practices. These changes include the following:

- Amending the project period for the TRIO programs. The proposed regulations would define the project period as five years for TS, UB, SSS, McNair, and two years for TRIO Training (*see* section 402A(b)(2)(B) and (C) of the HEA).

- Revising the selection criteria related to "Objectives" for the following TRIO pre-college and college programs:

TS (*see* section 402A(f)(3)(A) of the HEA); UB (*see* section 402A(f)(3)(B) of the HEA); SSS (*see* section 402A(f)(3)(C) of the HEA); McNair (*see* section 402A(f)(3)(D) of the HEA); and EOC (*see* section 402A(f)(3)(E) of the HEA).

- Removing the minimum number of participants in the regulations for TS, EOC, UB, Upward Bound Math and Science, and Veterans Upward Bound projects (*see* sections 402A(f), 402A(b)(3), 402B, 402C, 402F of the HEA). For each grant competition, the Department will establish minimum numbers of participants to be served by a grantee through the **Federal Register** notice inviting application.

- Revising sections of the TRIO Training regulations to reflect current law and practice regarding: (1) The need for the project selection criteria and the process for ranking applications by priority; (2) the use of prior experience points in the ranking of applications for funding; and (3) the number of prior experience points that can be earned (*see* section 402G(2) of the HEA).

GEAR UP

- Providing that the Secretary award competitive preference priority points to an eligible applicant for a State GEAR UP grant that has both carried out a successful State GEAR UP grant prior to August 14, 2008, and prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies; and specifying how the Department determines whether a State GEAR UP grant has been “successful” (*see* section 404A(b)(3) of the HEA).

- Explaining when a GEAR UP grantee is allowed to provide services to students attending an institution of higher education (*see* section 404A(b)(2) of the HEA).

- Requiring grantees that continue to provide services to students through their first year of attendance at an institution of higher education, to the extent practicable, to coordinate with other campus programs in order not to duplicate services (*see* section 404A(b)(2) of the HEA).

- Revising the matching requirement to require that a GEAR UP grantee make substantial progress towards meeting the matching percentage stated in its approved application for each year of the project period. Grantees would no longer be required to meet the matching requirement each year of the project period (section 404C(b)(1) of the HEA).

- Revising the regulations concerning the matching requirement for Partnerships by: (1) Providing authority for the Secretary to waive up to 75

percent of the matching requirement for up to two years under certain circumstances; and (2) creating a multiple-tiered system for different types of waiver requests (*see* section 404C(b)(2) of the HEA).

- Providing for tentative approval of a Partnership applicant’s request for a 50-percent waiver for the entire project period so that a Partnership applicant that meets the conditions for such a waiver has an opportunity to apply for a grant without needing to identify additional sources of match funding in the later years of the project period (*see* section 404C(b)(2) of the HEA).

- Adding a list of required and allowable activities and separating these required and allowable activities into multiple regulatory sections (*see* section 404D of the HEA).

- Specifying that GEAR UP grantees may provide activities that support participating students to develop graduation and career plans and that these graduation and career plans may include career awareness and planning activities as they relate to a rigorous academic curriculum (*see* section 404D(b)(5)(D) of the HEA).

- Clarifying that GEAR UP funds may be used to support the costs of administering a scholarship program as well as the costs of the scholarships themselves (*see* sections 404E(a)(1) and 404D(b)(7) of the HEA).

- Describing the types of services that a grantee may provide to students in their first year of attendance at an institution of higher education and listing examples of these services (*see* section 404D of the HEA).

- Specifying the minimum amount of scholarship funding for an eligible student, and providing that the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount if an eligible student who is awarded a GEAR UP scholarship attends an institution of higher education on a less than full-time basis during any award year (*see* section 404E(d) of the HEA).

- Incorporating the statutory definition of the term *eligible student* (from section 404E(g) of the HEA) in the program regulations.

- Specifying the amount of funds that State grantees that do not receive a waiver of the requirement that States must expend at least 50 percent of their GEAR UP funding on scholarships must hold in reserve for scholarships and how States must use these funds (*see* section 404E(e) of the HEA).

- Clarifying that scholarships must be made to all students who are eligible under the definition in § 694.12(b) and that a grantee may not impose

additional eligibility criteria that would have the effect of limiting or denying a scholarship to an eligible student (*see* section 404E(e) and (g) of the HEA).

- Requiring States awarding scholarships to provide information on the eligibility requirements for the scholarships to all participating students upon the students’ entry into the GEAR UP program (*see* section 404E(c) of the HEA).

- Requiring States to provide scholarship funds to all eligible students who attend an institution of higher education in the State, and allowing States to provide these scholarship funds to eligible students who attend institutions of higher education outside the State (*see* section 404E(e) and (g) of the HEA).

- Specifying that a State or Partnership may award continuation scholarships in successive award years to each student who received an initial scholarship and who is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education (*see* section 404E of the HEA).

- Providing that a GEAR UP Partnership that does not participate in the GEAR UP scholarship component may provide financial assistance for postsecondary education using non-Federal funds obtained to comply with the program’s matching requirement (*see* section 404C(b) of the HEA).

- Specifying the requirements for the return of scholarship funds. Specifically, (1) Providing that scholarship funds held in reserve by States under §§ 694.12 (b)(1) or 694.12(c) or by Partnerships under section 404D(b)(7) of the HEA that are not used by an eligible student within six years of the student’s scheduled completion of secondary school may be redistributed by the grantee to other eligible students; (2) requiring the return of remaining Federal funds within 45 days after the six-year period for expending the scholarship funds expires; (3) requiring grantees to annually furnish information, as the Secretary may require, on the amount of Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of those funds to eligible students until these funds are fully expended or returned to the Secretary; and (4) providing that a scholarship fund under the GEAR UP program is subject to audit or monitoring by authorized representatives of the Secretary throughout the life of the fund (*see* section 404E(e)(4) of the HEA).

- Requiring grantees that receive initial grant awards after the passage of

the HEOA must continue to serve students from a previous grant received by the grantee (*see* sec 404A(b)(3)(B) of the HEA).

- Clarifying whom a grantee must serve if not all students in the cohort attend the same school after the cohort completes the last grade level offered by the school at which the cohort began to receive GEAR UP services (*see* section 404B(d) of the HEA).

- Specifying that 21st Century Scholarship Certificates are to be provided by the grantees (rather than by the Secretary to the grantees), and must indicate the estimated amount.

Significant Proposed Regulations

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses.

Part 206—Special Educational Programs for Students Whose Families Are Engaged in Migrant and Other Seasonal Farmwork—High School Equivalency Program and College Assistance Migrant Program

HEP and CAMP Eligibility

Statute: Sections 408(1)(A) and 408(2)(A)(i)(I) of the HEOA amend sections 418A(b)(1)(B)(i) and 418A(c)(1)(A) of the HEA, respectively, to expand the pool of individuals who may receive HEP and CAMP services from persons who themselves, or whose parents, have spent a minimum of 75 days during the past 24 months in migrant and seasonal farmwork, to persons who themselves or whose immediate family have performed such work. The statute does not define the term “immediate family.”

Current Regulations: Current § 206.3 specifies who is eligible to participate in a HEP or CAMP project. It does not reflect the changes made by the HEOA to the HEP and CAMP eligibility requirements.

Proposed Regulations: We are proposing to revise current § 206.3(a)(1) to specify that in order to be eligible to participate in a HEP or CAMP project a person, or his or her immediate family member, must have spent a minimum of 75 days during the past 24 months as a migrant or seasonal farmworker. Current § 206.3(a)(2), regarding alternative eligibility for HEP and CAMP on the basis of eligibility under the Migrant Education Program authorized under subpart C of Title I of the Elementary and Secondary Education Act (MEP) or the National Farmworkers Jobs Program authorized in section 167 of the Workforce Investment Act of 1998 (NFJP), would remain unchanged except

for updating the reference to the MEP regulations to 34 CFR part 200.

We also are proposing to add to the list of definitions in current § 206.5 (What definitions apply to these programs?) a definition of the term *immediate family member*. Specifically, we would redesignate current § 206.5(c)(5), (c)(6), and (c)(7) as proposed § 206.5(c)(6), (c)(7), and (c)(8), respectively, and then add a new paragraph (c)(5) to define the term *immediate family member* as one or more of the following: a spouse; a parent, step-parent, adoptive parent, foster parent, or anyone with guardianship; or any person who (1) claims the individual as a dependent on a Federal income tax return for either of the previous two years, or (2) resides in the same household as the individual, supports that individual financially, and is a relative of that individual.

Reasons: We are proposing to revise current § 206.3(a) to specify that in order to be eligible to participate in a HEP or CAMP project a person, or his or her immediate family member, must have spent a minimum of 75 days during the past 24 months as a migrant or seasonal farmworker. This proposed regulatory change would reflect the changes made to sections 418A(b)(1)(B)(i) and 418A(c)(1)(A) of the HEA by sections 408(1)(A) and 408(2)(A)(i)(I) of the HEOA, respectively. We propose to use the term *immediate family member* in § 206.3(a), rather than the statutory term “immediate family,” for clarity.

During our negotiated rulemaking sessions, the Department and non-Federal negotiators agreed that defining the term *immediate family member* in these regulations would help ensure consistency in the application of this term across HEP and CAMP projects. In developing a proposed definition for this term, the Department considered examples of similar definitions used by other government programs, as well as the comments of the non-Federal negotiators and previous discussions with stakeholders in the HEP and CAMP community. Most importantly, the Department agreed with the non-Federal negotiators that it is important to ensure that eligibility for the HEP and CAMP programs extends only to an individual who is, or is dependent upon, a migrant or seasonal farmworker, and defined the term *immediate family member* accordingly.

Finally, we are proposing to revise current § 206.3(a)(2) to update the regulatory cross-reference regarding the MEP, which appears in 34 CFR part 200, subpart C, not 34 CFR part 201.

HEP and CAMP Definition of Seasonal Farmworker

Statute: Sections 418A(b)(1)(B)(i) and 418A(c)(1)(A) of the HEA provide that the services authorized for HEP and CAMP include services to reach persons who themselves have spent, or whose immediate family have spent, a minimum of 75 days during the past 24 months in migrant and seasonal farmwork.

Current Regulations: Current § 206.5(c)(7) defines *seasonal farmworker* as a person who, within the past 24 months, was employed for at least 75 days in farmwork, and whose primary employment was in farmwork on a temporary or seasonal basis (that is, not a constant year-round activity). This definition does not define when and for how long the “primary employment” must occur.

Proposed Regulations: We are proposing to amend newly redesignated § 206.5(c)(8) (current § 206.5(c)(7)) to clarify that the term *seasonal farmworker* means a person whose primary employment was in farmwork on a temporary or seasonal basis (that is, not a constant year-round activity) for a period of at least 75 days within the past 24 months.

Reasons: The Department believes that the current definition of *seasonal farmworker* should be revised to clarify that the “primary employment” in migrant and seasonal farmwork must occur for at least 75 days within the past 24 months. While this was the intended meaning of the term in current § 206.5(c)(7), the Department is concerned that some have interpreted or may interpret the current definition to require that a seasonal worker not only have been employed for at least 75 days over the past 24 months in farmwork, but that the person’s primary employment over that entire 24 months have been in farmwork. Because we do not believe this to be required, we propose to clarify the term *seasonal farmworker* and to ensure consistency in its application across HEP and CAMP projects.

Regulations That Apply to HEP and CAMP

Statute: None.

Current Regulations: Current § 206.4 lists the regulations that apply to HEP and CAMP. The list of applicable regulations in this section was last updated in 1993.

Proposed Regulations: We are proposing to amend § 206.4 to add four regulations to the list of regulations that apply to HEP and CAMP. Specifically, we are proposing to (1) add 34 CFR part

84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)); 34 CFR part 97 (Protection of Human Subjects); 34 CFR part 98 (Student Rights in Research Experimental Programs, and Testing) for HEP only; and 34 CFR part 99 (Family Educational Rights and Privacy) to this list, and (2) redesignate two paragraphs in this section.

Reasons: We are proposing to add these four regulations to the list of applicable regulations so that the list of regulations that apply to HEP and CAMP is complete and accurate. In order to maintain this list of applicable regulations in numerical order, we propose to redesignate § 206.4(a)(6) and (a)(7) as § 206.4(a)(7) and § 206.4(a)(8), respectively.

HEP Services

Statute: Section 408(1)(B) through (1)(F) of the HEOA amended section 418A(b) of the HEA to (1) authorize as a HEP service preparation for college entrance examinations, and activities beyond those otherwise identified to improve persistence and retention in postsecondary education (*see* sections 418A(b)(3)(B) and 418A(b)(9) of the HEA, respectively); (2) add transportation and child care as examples of essential supportive services (*see* section 418A(b)(8) of the HEA); and (3) remove the limitation that stipends provided to HEP participants be “weekly” (*see* section 418A(b)(5) of the HEA).

Current Regulations: Current § 206.10(b)(1) specifies the types of services that HEP projects may provide. It does not reflect the changes made to the HEA by the HEOA.

Proposed Regulations: Consistent with the statutory changes made to section 418A(b) of the HEA, we are proposing to amend (1) § 206.10(b)(1)(iii)(B) to provide that permissible HEP services include preparation for college entrance examinations; (2) § 206.10(b)(1)(v) to provide that permissible HEP services include stipends—not only weekly stipends—for HEP participants; (3) § 206.10(b)(1)(viii) to add transportation and child care as examples of essential supportive services; and (4) § 206.10(b)(1)(ix) to specify that HEP services include other activities to improve persistence and retention in postsecondary education.

Reasons: We are proposing to revise current § 206.10(b)(1) to reflect the changes in the HEP services authorized under the HEA, as amended by section 408(1) of the HEOA.

CAMP Services

Statute: Section 408(2) of the HEOA amended section 418A(c) of the HEA to provide that CAMP supportive and instructional services are to improve placement, persistence, and retention in postsecondary education (*see* section 418A(c)(1)(B) of the HEA) and that these supportive services include, as an ongoing part of the program, not only personal, academic, and career counseling, but economic education or personal finance counseling as well (*see* section 418A(c)(1)(B)(i) of the HEA). Section 408(2) of the HEOA also amended section 418A(c) of the HEA to authorize internships as a CAMP service (*see* section 418A(c)(1)(F) of the HEA), and to provide both that other supportive services provided as necessary to ensure the success of eligible students must be “essential”, and that examples of such essential supportive services are transportation and child care (*see* section 418A(c)(1)(G) of the HEA).

Current Regulations: Current § 206.10(b)(2) specifies the types of services that CAMP projects may provide. It does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: Consistent with the statutory changes made to section 418A(c) of the HEA, we are proposing to amend (1) § 206.10(b)(2)(ii) to specify that the permissible CAMP supportive and instructional services are to improve placement, persistence, and retention in postsecondary education; and (2) § 206.10(b)(2)(ii)(A) to specify that these supportive services include, as an ongoing part of the program, economic education, or personal finance counseling as well as the previously authorized personal, academic, and career services. We also propose to redesignate § 206.10(b)(2)(vi) as § 206.10(b)(2)(vii), and to add a new § 206.10(b)(2)(vi) to clarify that permissible CAMP services include internships. We propose to amend newly redesignated § 206.10(b)(2)(vii) to add transportation and child care as examples of what now must be “essential” supportive service.

Reasons: We are proposing to revise current § 206.10(b)(2) to reflect the changes made to permissible CAMP services in section 418A(c) of the HEA by section 408A(2) of the HEOA.

Follow-Up CAMP Services

Statute: Section 408A(2)(B) of the HEOA amended section 418A(c)(2) of the HEA to provide that in addition to previously authorized referrals of CAMP students to on- or off-campus providers of counseling services, academic

assistance, or financial aid, follow-up services to CAMP students may include (1) the coordination of such services, assistance, and aid with other non-program services, assistance, and aid, including services, assistance, and aid provided by community-based organizations, which may include mentoring and guidance; and (2) for students attending two-year IHEs, encouraging the students to transfer to four-year IHEs where appropriate, and monitoring the rate of transfer of these students.

Current Regulations: Current § 206.11 specifies the types of services that CAMP projects must provide. Under current § 206.11(a), CAMP projects must provide “follow-up services” for project participants after they have completed their first year of college. Current § 206.11(b) provides a list of what “follow-up services” may include.

Proposed Regulations: Consistent with the statutory changes made to section 418A(c)(2) of the HEA, we are proposing to amend § 206.11 to provide that follow-up CAMP services may include (1) in addition to the previously authorized referrals of CAMP students to on- or off-campus providers of counseling services, academic assistance, or financial aid, the coordination of those services, assistance, and aid with other non-program services, assistance, and aid, including services, assistance, and aid provided by community-based organizations, which may include mentoring and guidance, and (2) for students attending two-year IHEs, encouraging the students to transfer to four-year IHEs, where appropriate, and monitoring the rate of transfer of these students.

Reasons: We are proposing to revise current § 206.11 to reflect the changes made to mandatory CAMP services in section 418A(c)(2)(B) and (c)(2)(C) of the HEA by section 408A(2)(B) of the HEOA.

Minimum Allocations

Statute: Section 418A(f) of the HEA, as amended by section 408A(4) of the HEOA, increases from \$150,000 to \$180,000 the minimum amount of any allocation the Secretary makes for any HEP or CAMP project.

Current Regulations: Consistent with prior law, current § 206.20(b)(2) requires each applicant for a HEP or CAMP award to include an annual budget of no less than \$150,000.

Proposed Regulations: We are proposing to amend § 206.20(b)(2) to provide that in applying for a HEP or CAMP grant, an applicant’s grant

application must include an annual budget of not less than \$180,000.

Reasons: We are proposing to revise current § 206.20(b)(2) to reflect the changes made to minimum allocations for HEP and CAMP in section 418A(f) of the HEA by section 408A(4) of the HEOA.

Prior Experience Points for HEP and CAMP Service Delivery

Statute: Section 418A(e) of the HEA, as amended by section 408A(3) of the HEOA, provides that in making HEP and CAMP grants, the Department must consider an applicant's prior experience of service delivery under the particular project for which it seeks further funding, and must give this prior experience the same level of consideration it gives to the prior experience of applicants for TRIO grants.

Current Regulations: None.

Proposed Regulations: The Department is proposing to add a new § 206.31(a) to provide that in the case of an applicant for a HEP award, the Secretary considers the applicant's experience in implementing an expiring HEP project with respect to (1) whether the applicant served the number of participants described in its approved application; (2) the extent to which the applicant met or exceeded its funded objectives with regard to project participants, including the targeted number and percentage of (i) participants who received a general educational development (GED) credential; and (ii) GED credential recipients who were reported as entering postsecondary education programs, career positions, or the military; and (3) the extent to which the applicant met the administrative requirements, including recordkeeping, reporting, and financial accountability under the terms of the previously funded award.

We also are proposing to add a new § 206.31(b) to provide that in the case of an applicant for a CAMP award, the Secretary considers the applicant's experience in implementing an expiring CAMP project with respect to (1) Whether the applicant served the number of participants described in its approved application; (2) the extent to which the applicant met or exceeded its funded objectives with regard to project participants, including the targeted number and percentage of participants who (i) successfully completed the first year of college; and (ii) continued to be enrolled in postsecondary education after completing their first year of college; and (3) the extent to which the applicant met the administrative

requirements, including recordkeeping, reporting, and financial accountability under the terms of the previously funded award.

Reasons: The Department proposes adding to the HEP and CAMP program regulations the specific criteria we would consider in evaluating prior experience in order to be consistent with the Department's approach in TRIO. The criteria for evaluating prior experience that we specify in proposed § 206.31 is based on the language in previously approved application packages for HEP and CAMP. The non-Federal negotiators agreed with this approach and reached tentative agreement on this issue.

Note: The TRIO programs have had a longstanding requirement that only applicants with an expiring TRIO project are eligible for the priority for prior experience. Consequently, in providing the same degree of consideration for prior experience as provided under the Federal TRIO programs, we view this aspect of proposed § 206.31(a) to be statutorily required.

Federal TRIO Programs—34 CFR Parts 642 (Training Program for Federal TRIO Programs), 643 (Talent Search), 644 (Educational Opportunity Centers), 645 (Upward Bound Program), 646 (Student Support Services Program), 647 (Ronald E. McNair Postbaccalaureate Achievement Program)

Section 403(a) of the HEOA has amended section 402A of the HEA to include a number of new requirements that apply across the Federal TRIO programs (*i.e.*, the Talent Search (TS), Upward Bound (UB), Student Support Services (SSS), Ronald E. McNair Postbaccalaureate Achievement (McNair), Educational Opportunity Centers (EOC), and Staff Development Activities (Training) programs). Additionally, section 403(b) through (g) of the HEOA amended sections 402B, 402C, 402D, 402E, 402F, and 402G, to make specific changes to the TS, UB, SSS, McNair, EOC, and Training programs, respectively.

Because a number of the statutory changes made to the HEA by the HEOA affect multiple Federal TRIO programs similarly, we have organized the discussion of proposed changes to the Federal TRIO program regulations by first addressing crosscutting issues by subject matter and then discussing program-specific issues on a program-by-program basis. We group the crosscutting issues as follows:

- Number of Applications an Eligible Entity May Submit to Serve Different Campuses and Different Populations.

- Definitions Applicable to More Than One Federal TRIO program.

- Evaluating Prior Experience—Outcome Criteria.

- Review Process for Unsuccessful Federal TRIO Program Applicants.

Our discussion of issues applicable to specific programs follows the order of the Department's regulations for those programs (*i.e.*, 34 CFR parts 642 (Training), 643 (TS), 644 (EOC), 645 (UB), 646 (SSS), and 647 (McNair)).

Number of Applications an Eligible Entity May Submit To Serve Different Campuses and Different Populations

Statute: Section 402A(c)(5) of the HEA, as amended by section 403(a)(2)(C) of the HEOA, provides that the Secretary may not limit the number of applications submitted by an eligible entity under any Federal TRIO program if the additional applications describe programs serving different populations or different campuses. The HEOA changed section 402A(c)(5) of the HEA by replacing the term "campuses" with the term "different campuses".

More significantly, section 403(a)(6) of the HEOA amended section 402A(h) of the HEA by adding definitions for the terms "different campus" and "different population". Section 402A(h)(1) of the HEA defines the term "different campus" as a site of an institution of higher education that is geographically apart from the main campus, is permanent in nature, and offers courses in educational programs leading to a degree, certificate, or other recognized educational credential.

Section 402A(h)(2) of the HEA defines the term "different population" as a group of individuals that an eligible entity desires to serve using a Federal TRIO grant and that is separate and distinct from any other population that the entity has applied to serve, or a population that, while sharing some of the same needs as another population, has distinct needs for specialized services.

Current Regulations: Only two of the Federal TRIO programs, the UB and SSS programs, have regulations that address the number of grant applications an eligible entity may submit.

For the UB program, current § 645.20(a) provides that the Secretary will accept more than one application from an eligible entity as long as any additional application describes a project that serves a different participant population. The current regulations for the UB program do not define the term "different participant population".

For the SSS program, current § 646.10 provides that the Secretary accepts more than one application from an eligible

applicant so long as each additional application describes a project that serves a different campus, or a different population of participants who cannot readily be served by a single project.

Current § 646.7 defines the terms *different campus* and *different population of participants* for purposes of the SSS program. Current § 646.7 defines *different campus* as an institutional site that is geographically apart from and independent of the main campus of the institution. The location of an institution is “independent of the main campus” if it is: Permanent in nature; offers courses in educational programs leading to a degree, certificate, or other recognized credential; has its own faculty and administrative or supervisory organization; or has its own budgetary authority. Current § 646.7 defines *different population of participants* as a group of (1) low-income, first-generation college students, or (2) disabled students.

While the current regulations for the TS, EOC, and UB programs do not specifically address the number of applications an eligible entity may submit or define the terms “different population” or “different campus”, these regulations do provide that the Secretary will consider the “target area” (for the TS, EOC, and UB programs) or “target school” (for the TS and UB programs) proposed to be served by the project when selecting applications (see current §§ 643.21, 644.21, 645.30 and 645.31). Current §§ 643.7(b) (TS), 644.7(b) (EOC), and 645.6(b) (UB) generally define the term *target area* as a geographic area served by a project. Current §§ 643.7(b) (TS) and 645.6(b) (UB) define the term *target school* as “a school designated by the applicant as a focus of project services”.

Proposed Regulations: To reflect the new statutory definitions for the terms *different campus* and *different population* in section 402A(h) of the HEA, we are proposing to amend the definitions sections of the applicable Federal TRIO program regulations to incorporate the statutory definitions of these terms. Specifically, we propose to add the definition of *different population* to current §§ 643.7(b) (TS), 644.7(b) (EOC), 645.6(b) (UB), and 647.7(b) (McNair). We also propose to add the definition of *different campus* to § 647.7 (McNair). For the SSS program, we propose to amend § 646.7 by revising the definition of the term *different campus* and by replacing the definition of the term *different population of participants* with the statutory term *different population*.

To implement section 402A(c)(5) of the HEA, which provides that the

Secretary may not limit the number of applications submitted by an eligible entity if the additional applications describe programs serving different populations or different campuses, we propose to amend each of the Federal TRIO program regulations to clarify when an eligible applicant may submit more than one application. *Specifically:* For the Training program, we propose to add a new § 642.7 to provide that an eligible applicant may submit more than one application for a Training grant as long as each application describes a project that addresses a different absolute priority that is designated in the **Federal Register** notice inviting applications.

For the TS program, we propose to add a new § 643.10(a) to provide that an eligible applicant may submit more than one application for TS grants as long as each application describes a project that serves a different target area or target schools, or another designated different population.

For the EOC program, we propose to add a new § 644.10(a) to provide that an eligible applicant may submit more than one application for EOC grants as long as each application describes a project that serves a different target area or another designated different population.

For the UB program, we propose to revise § 645.20(a) to provide that an eligible applicant may submit more than one application as long as each application describes a project that serves a different target area or target school or another designated different population.

For the SSS program, we propose to revise § 646.10(a) to provide that an eligible applicant may submit more than one application as long as each application describes a project that serves a different campus or a designated different population.

For the McNair program, we propose to add a new § 647.10(a) to provide that an eligible applicant may submit more than one application as long as each application describes a project that serves a different campus or a designated different population.

In addition, for the TS, EOC, UB, SSS, and McNair programs, we propose to add regulatory language that provides that, for each competition, the Secretary designates, in the **Federal Register** notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application (see proposed §§ 643.10(b), 644.10(b), 645.20(b), 646.10(b), and 647.10(b), respectively).

Reasons: During the negotiated rulemaking sessions, the negotiators

discussed whether the new definitions of the terms *different campus* and *different population* should apply only to the SSS program (where these terms are currently used) or to all of the Federal TRIO programs. The current regulations for the Federal TRIO programs reflect the fact that the concept of a different campus is only relevant for the SSS and McNair programs, which serve college students. The TS, EOC, and UB programs are pre-college programs that do not necessarily target different campuses. In addition, for the TS, EOC, and UB programs, the traditional administrative practice has been to focus on different populations of students by identifying where those students live (target area) or where they attend school (target schools).

Some non-Federal negotiators recommended that the Department continue its current practice and only apply the new definitions of *different campus* and *different population* to the SSS program. Other non-Federal negotiators disagreed, noting that the HEA now allows applicants applying under both the pre-college programs (TS, EOC, and UB) and the college programs (SSS and McNair) to submit separate applications to serve different populations of students. We agree that the HEA allows applicants under the TS, EOC, UB, SSS and McNair programs to submit more than one application as long as each application proposes to serve a different population.

For this reason, we are proposing to amend the regulations for the TS, EOC, UB, SSS and McNair programs to incorporate the statutorily defined term *different population*. We propose to use this term in conjunction with the terms *target area* and *target school* from the current regulations for TS, EOC, and UB. By clarifying that applicants can submit more than one application if each application proposes to serve a “different target area or target schools or another designated different population” and incorporating the statutory definition of the term *different population*, we would retain the current practice of funding separate projects to serve different target areas and target schools. We would also ensure that the regulations are consistent with the statutory definition of the term *different population* in the HEA.

In determining how to reflect the definition for the term *different population* in the proposed regulations, we also considered how we would manage applications proposing to serve different populations. While grantees must be able to serve more students and to tailor services to meet the distinct needs of different populations (as

defined in 402A(h) of the HEA), it is necessary for the Department to establish some limitations on the number of separate applications an eligible entity may submit for each competition to serve different populations. Without such limitations, adding the definition of the term *different population* to the regulations could have the unintended consequence of disproportionately increasing funding at some institutions, agencies, and organizations that submit several applications while limiting the funds available to expand program services to other areas, schools, and institutions. To mitigate this risk and ensure fairness and consistency in the application process, the Department proposes to amend the regulations for each of the TRIO programs. The proposed regulations would provide that the Department will define, for each competition, the different populations of participants for which an eligible entity can submit separate applications in the **Federal Register** notice inviting applications and other published application materials for the competition.

This approach would give the Department the flexibility to designate the different populations for each competition based on changing national needs. It also would permit the Department to manage more effectively the program competitions within the available resources.

For these reasons, under the proposed regulations, an entity applying for more than one grant under the TS, EOC, and UB programs would be able to submit separate applications to serve different target areas and different target schools, and would also be able to submit separate applications to serve one or more of the different populations of participants designated in the **Federal Register** notice inviting applications. Entities applying for grants under the SSS and McNair programs would be able to submit separate applications to serve different campuses and also would be able to submit separate applications to serve one or more of the different populations of participants designated in the **Federal Register** notice inviting applications for the competition.

Finally, we are proposing to amend the Training program regulations by adding a new § 642.7 to provide that an eligible applicant may submit more than one application for grants as long as each application describes a project that addresses a different absolute priority. This proposed change reflects the amendments made by the HEOA as well as the Department's current practices.

Definitions Applicable to More Than One Federal TRIO Program (Newly Redesignated § 642.6 and §§ 643.7, 644.7, 645.6, 646.7, and 647.7)

As a result of the changes made by the HEOA to sections 402A, 402B, 402C, 402D, 402E, 402F, and 402G of the HEA, the Department proposes to add new definitions to the Federal TRIO program regulations and to revise other definitions in those regulations. We also propose to add to the TRIO Program regulations certain terms and their definitions that are in other portions of the HEA and the Department's regulations. In the following section, we discuss those proposed changes to definitions used in more than one of the Federal TRIO program regulations. For proposed changes to definitions that apply to only one or two programs, we address those proposed changes under the specific programs.

Disconnected Students

The HEOA amended the HEA to provide that each of the TRIO programs may provide services to "disconnected students," but the term "disconnected students" is never defined in the statute. "Disconnected students" is a broad term that could apply to a broad spectrum of students, and could vary depending on the goals of the particular project. In these circumstances, we do not believe it is useful to define the term in these proposed regulations. Instead, we believe it is more appropriate for an applicant proposing to provide programs and activities specifically designed for "disconnected students" to define the term for its proposed project and to identify and describe in its application the specific needs of the "disconnected students" to be served by the project.

Different Campus and Different Population

Refer to the discussion of these terms earlier in this preamble, under the heading *Number of Applications an Eligible Entity May Submit to Serve Different Campuses and Different Populations*.

Financial and Economic Literacy

Statute: Section 402 of the HEOA amended the HEA to include education and counseling services designed to improve the financial and economic literacy of students as (1) a required service for TS grantees (*see* section 402B(b)(6) of the HEA), UB grantees (*see* section 402C(b)(6) of the HEA), and SSS grantees (*see* section 402D(b)(4) of the HEA), and (2) a permissible service for McNair grantees (*see* section 402E(c)(1) of the HEA) and EOC projects (*see*

section 402F(b)(5) of the HEA). Section 402A(f)(1) of the HEOA also amended section 402F(a)(3) of the HEA to provide that a purpose of the EOC program is to improve the financial and economic literacy of students. The HEA does not define the term "financial and economic literacy."

Current Regulations: None.

Proposed Regulations: We propose to define the term *financial and economic literacy* as knowledge about personal financial decision-making, including but not limited to knowledge about—

- (1) Personal and family budget planning;
- (2) Understanding credit building principles to meet long-term and short-term goals (including loan to debt ratio, credit scoring, negative impacts on credit scores);
- (3) Cost planning for secondary education (*e.g.*, spending, saving, personal budgeting);
- (4) College cost of attendance (*e.g.*, public vs. private, tuition vs. fees, personal costs);
- (5) Scholarship, grant and loan education (*e.g.*, searches, application processes, and the differences between private and government loans); and
- (6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

We propose to include this definition in § 643.7 (TS); § 644.7 (EOC); § 645.6 (UB); § 646.7 (SSS); and § 647.7 (McNair).

Reasons: The proposed definition of the term *financial and economic literacy* is needed to implement the statutory requirement that TS, EOC, UB, SSS, and McNair grantees teach and counsel participants and, as appropriate, their families, about personal financial decision making, including financial planning for postsecondary education.

Foster Care and Homeless Youth

Statute: Section 403(a)(3)(B) of the HEOA amended section 402A(e)(3) of the HEA by adding the following two groups of students that grantees are encouraged to serve under the Federal TRIO programs: foster care youth and homeless children and youth, as defined in section 725 of the McKinney-Vento Homeless Assistance Act. Sections 402B(c)(7), 402C(d)(7), 402D(a)(3) and (c)(6), 402F(b)(11), and 402G(b)(5) of the HEA, as amended by the HEOA, include, among the permissible services that TRIO projects may provide, programs and activities that are specifically designed for homeless children and youth and students who are in foster care or are aging out of the foster care system.

Current Regulations: None.

Proposed Regulations: We propose to add definitions of the terms *foster care youth* and *homeless children and youth* to the following Federal TRIO program regulations: newly redesignated § 642.6 (Training); § 643.7 (TS); § 644.7 (EOC); § 645.6 (UB); and § 646.7 (SSS). We propose to define *foster care youth* as youth who are in foster care or are aging out of the foster care system. For the definition of *homeless children and youth*, we propose to add a cross-reference to the definition of that term in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

Reasons: The HEOA requires projects funded under the Federal TRIO programs to make services available to youth in or aging out of foster care and to homeless children and youth. Providing definitions of the terms *foster care youth* and *homeless children and youth* helps ensure that these groups are appropriately served under each of the Federal TRIO programs. The definition of *foster care youth* is based on the use of the term in sections 402A(e)(3), 402B(c)(7), 402C(d)(7), 402D(c)(7), and 402F(b)(11), and 402G(b)(5) of the HEA. Consistent with sections 402A(e)(3), 402B(c)(7), 402C(d)(7), 402D(c)(7), and 402F(b)(11), and 402G(b)(5) of the HEA, the proposed definition of *homeless children and youth* would reference the definition in the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

We do not propose to include the definitions of *foster care youth* and *homeless children and youth* in the regulations for the McNair program because section 402E of the HEA, which authorizes the McNair program, does not include these two terms.

Individual With Disabilities

Statute: Sections 402B(c)(7), 402C(d)(7), 402D(a)(3) and (c)(6), 402F(b)(11), and 402G(b)(5) of the HEA, as amended by the HEOA, include among the permissible services that TRIO projects may provide programs and activities that are specifically designed for students with disabilities. Other sections of the HEA relating to the TRIO programs refer to “individuals with disabilities” (e.g., 402A(f)(2) and 402D(e)(1)(A), (e)(2), and (e)(3) of the HEA).

Current Regulations: Current § 646.7 (SSS) defines the term *individual with disabilities* as a person who has a diagnosed physical or mental impairment that substantially limits that person’s ability to participate in the educational experiences and opportunities offered by the grantee institution. None of the Department’s

current regulations for the other Federal TRIO programs define the terms *individual with disabilities* or *students with disabilities*.

Proposed Regulations: We are proposing to use a slightly modified version of the definition of the term *individual with disabilities* that is in current § 646.7 (for the SSS program) for all Federal TRIO programs, except for the McNair program, which does not use that term. Under the proposed definition, an *individual with disabilities* would be a person who has a diagnosed physical or mental impairment that substantially limits that person’s ability to participate in educational experiences and opportunities. We would no longer provide that the impairment must limit the person’s ability to participate in “educational experiences and opportunities offered at the grantee institution.” We propose to incorporate this definition in newly redesignated § 642.6 (Training), § 643.7 (TS), § 644.7 (EOC), § 645.6 (UB), and § 646.7 (SSS).

Proposed § 642.11(b)(5), newly redesignated § 642.24(a)(21), and proposed §§ 643.4(b)(7), 644.4(k), 645.12(f), and 646.4(b)(6) would be amended to refer to students or participants who are individuals with disabilities.

Reasons: For consistency across the Federal TRIO programs, we propose to use the same definition of the term *individual with disabilities* for the Training, TS, EOC, UB, and SSS program regulations. As noted earlier in this discussion, we are proposing to use the definition of *individual with disabilities* from the current SSS regulations except to drop the phrase “offered at the grantee institution” so that the definition would be applicable to the other Federal TRIO programs, some of which serve individuals not enrolled at the grantee institution. This proposed definition would help ensure that the services and activities that TRIO projects provide for individuals with disabilities address the educational needs of individuals with a diagnosed physical or mental impairment so that they are able to benefit from the educational services provided by the projects.

Institution of Higher Education

Statute: Sections 101 and 102 of the HEA define the term institution of higher education.

Current Regulations: The definition of the term *institution of higher education* in current §§ 642.5(b), 643.7(b), 644.7(b), 645.6(b), 646.7(a), and 647.7(b) refers to sections 481 and 1201(a) of the HEA.

Proposed Regulations: We are proposing to correct the cross-references in the definition of the term *institution of higher education* to reference the definitions provided in sections 101 and 102 of the HEA (see newly redesignated § 642.6 (Training) and proposed §§ 643.7 (TS), 644.7 (EOC), 645.6 (UB), 646.7 (SSS), and 647.7 (McNair)).

Reasons: To correct obsolete cross-references, we propose to amend the current regulatory definition of the term *institution of higher education* for each of the Federal TRIO program regulations.

Veteran

Statute: Section 403(a)(7)(C)(iii) of the HEOA amended section 402A(h)(5) of the HEA, which defines the term “veteran eligibility” for purposes of the Federal TRIO programs. The amended definition of veteran eligibility provides that veterans of the Armed Forces Reserves will not be deemed ineligible to participate in the Federal TRIO programs because of age if they served on active duty for a period of more than 30 days (see section 402A(h)(5)(C) of the HEA) or in support of a contingency operation on or after September 11, 2001 (see section 402A(h)(5)(D) of the HEA).

Current Regulations: The term *veteran* is defined in current §§ 643.7 (TS), 644.7 (EOC), and 645.6 (UB) as a person who served on active duty as a member of the Armed Forces of the United States (1) for a period of more than 180 days, any part of which occurred after January 31, 1955, and who was discharged or released from active duty under conditions other than dishonorable or (2) after January 31, 1955, and who was discharged or released from active duty because of a service-connected disability. This definition was based on the statutory definition of the term “veteran eligibility” prior to the enactment of the HEOA. The definition is not included in § 642.6 (Training), § 646.7 (SSS), and § 647.7 (McNair).

Proposed Regulations: We propose to replace the current definition of the term *veteran* in §§ 643.7(b), 644.7(b), and 645.6(b) with the following definition, which tracks the language in section 402A(h)(5) of the HEA: A *veteran* means a person who: (a) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable; (b) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability; (c) Was a member of a reserve component of the

Armed Forces of the United States and was called to active duty for a period of more than 30 days; or (d) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

Reasons: These changes are made to reflect the changes made to the definition of the term veteran eligibility in section 402A(h)(5) of the HEA. This provision only affects TS, EOC, and UB grants that have otherwise applicable statutory age requirements.

Evaluating Prior Experience—Outcome Criteria

Statute: Section 402A(c)(2)(A) of the HEA requires the Secretary to consider, when making Federal TRIO grants, each applicant's prior experience of high quality service delivery (PE) under the program for which funds are sought. Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, now identifies the specific outcome criteria to be used to determine an entity's PE under the TS (*see* section 402A(f)(3)(A) of the HEA), UB (*see* section 402A(f)(3)(B) of the HEA), SSS (*see* section 402A(f)(3)(C) of the HEA), McNair (*see* section 402A(f)(3)(D) of the HEA), and EOC (*see* section 402A(f)(3)(E) of the HEA) programs. These are the same outcome criteria that the Secretary must use for reporting annually to Congress on the performance of each of the Federal TRIO programs (*see* 402A(f)(4) of the HEA). The HEA does not establish specific outcome criteria for the Training program and does not specify the distribution of the PE points among the outcome criteria for any of the Federal TRIO programs.

Current Regulations: Current §§ 642.32 (Training), 643.22 (TS), 644.22 (EOC), 645.32 (UB), 646.22 (SSS), and 647.22 (McNair) explain how the Secretary evaluates PE and awards PE points to applicants in grant competitions for each program. These regulations include the specific criteria (measurements) the Secretary uses to evaluate an applicant's performance and the maximum number of points the applicant may earn for each PE criterion.

Proposed Regulations: We are proposing to revise the outcome criteria for awarding PE points in §§ 643.22 (TS), 644.22 (EOC), 645.32 (UB), 646.22 (SSS), and 647.22 (McNair) to incorporate the statutorily required outcome measures in section 402A(f)(3) of the HEA, and to distribute the PE

points among the new outcome criteria for these programs.

With regard to the Training program's outcome criteria for awarding PE points, we are proposing to make minor changes to the outcome criteria as well as changes to reflect the maximum number of PE points a Training program grantee may earn. The maximum number of PE points in the Training program would change from 8 to 15 (*see* proposed § 642.22(b)(1)).

The following is a list of the proposed outcome criteria for evaluating PE, organized by regulatory provision, and the point distribution among the outcome criteria for evaluating PE under each of the Federal TRIO programs.

Training (§ 642.22(e))

Number of participants (4 points).
Training objectives (8 points).
Administrative requirements (3 points).

Talent Search (§ 643.22(d))

Number of participants (3 points).
Secondary school persistence (3 points).
Secondary school graduation (regular secondary school diploma) (3 points).
Secondary school graduation (rigorous secondary school program of study) (1.5 points).
Postsecondary enrollment (3 points).
Postsecondary completion (1.5 points).

Educational Opportunity Centers (§ 644.22(d))

Number of participants (3 points).
Secondary school diploma (3 points).
Postsecondary enrollment (6 points).
Financial aid assistance (1.5 points).
College admission assistance (1.5 points).

Upward Bound (§ 645.32(e))

Regular Upward Bound and Upward Bound Math and Science Centers

Number of participants (3 points).
Academic Performance (3 points).
Secondary school retention and graduation (3 points).
Rigorous secondary school program of study (1.5 points).
Postsecondary enrollment (3 points).
Postsecondary completion (1.5 points).

Veterans Upward Bound

Number of participants (3 points).
Academic improvement on standardized test (3 points).
Education program retention and completion (3 points).
Postsecondary enrollment (3 points).
Postsecondary completion (3 points).

Student Support Services (§ 646.22(e))

Number of participants (3 points).
Postsecondary retention (4 points).
Good academic standing (4 points).
Degree completion (4 points) (for an applicant institution of higher education offering primarily a baccalaureate or higher degree) or
Degree completion and transfer (for an applicant institution of higher education offering primarily an associate degree) (4 points).

McNair (§ 647.22(e))

Number of participants (3 points).
Research and scholarly activities (3 points).
Graduate school enrollment (3 points).
Continued enrollment in graduate school (4 points).
Doctoral degree attainment (2 points).
Under the proposed regulations, we would award PE points for each outcome criterion by determining whether the grantee met or exceeded the applicable project objectives. This determination would be based on the information in the grantee's annual performance report (*see* proposed §§ 642.22(a)(2) (Training), 643.22(a)(2) (TS), 644.22(a)(2) (EOC), 645.32(a)(2) (UB), 646.22(a)(2) (SSS), and 647.22(a)(2) (McNair)).

Proposed §§ 642.22 (Training), 643.22 (TS), 644.22 (EOC), 645.32 (UB), 646.22 (SSS), and 647.22 (McNair) also would describe the process the Secretary uses to award PE points. For example, a grantee that does not serve at least 90 percent of the approved number of participants to be served in a given project year would not be eligible to receive any PE points for that year (*see* proposed §§ 642.22(c) (Training), 643.22(b) (TS), 644.22(b) (EOC), 645.32(b) (UB), 646.22(b) (SSS), and 647.22(b) (McNair)).

Under proposed §§ 642.22(d) (Training), 643.22(c) (TS), 644.22(c) (EOC), 645.32(c) (UB), 646.22(c) (SSS), and 647.22(c) (McNair), a grantee that does not serve its approved number of participants in a given year would not receive any PE points for the number of participants criterion for that year.

For any PE outcome criterion that measures the performance of all participants served in a given project year (*e.g.*, academic improvement and secondary school retention and graduation for UB), the Secretary would use the actual number of participants served in a given year or the approved number of participants to be served, whichever is greater, as the denominator for calculating whether the applicant has met its approved objectives (*see*

proposed §§ 645.32(d), 646.22(d), and 647.22(d)).

For a grantee that served less than the approved number of participants but at least 90 percent of the approved number to be served in a given year, the approved number to be served, not the actual number served, would be used as the denominator in calculating whether the applicant met its approved objectives (see proposed §§ 645.32(d), 646.22(d), and 647.22(d)).

For any PE outcome criterion related to measuring outcomes based on a cohort of students (see proposed §§ 643.22(d)(3) through (d)(6); 644.22(d)(3); 645.32(e)(1)(ii) through (e)(1)(vi) and 645.32(e)(2)(iii) through (e)(2)(v); 646.22(e)(2), (4), and (5); 647.22(e)(3) through (e)(5)), the grantee would be required to report on all the participants in the cohort. To report on these participants, the grantee would need to track the academic progress of these participants for the time period specified in the approved objectives.

Consistent with section 402A(f)(1) of the HEA, we are proposing to specify in §§ 643.22(d); 644.22(d); 645.32(e); 646.22(e); and 647.22(e) that the new outcome criteria for evaluating PE would be used to evaluate the performance of a grantee on any new grant that is awarded after January 1, 2009. We also propose to modify the PE outcome criteria to make them consistent across all Federal TRIO programs (see proposed §§ 642.22 (Training), 643.22 (TS), 644.22 (EOC), 645.32 (UB), 646.22 (SSS), and 647.22 (McNair)).

Reasons: We are proposing to revise the outcome criteria in §§ 643.22 (TS), 644.22 (EOC), 645.32 (UB), 646.22 (SSS), and 647.22 (McNair) and to redistribute the 15 PE points among the new criteria in each of these TRIO programs to reflect the new outcome criteria in section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA.

First, we propose to make technical changes to the PE criteria in the current regulations so that the criteria align with section 402A(f)(3) of the HEA and are consistent (to the extent possible) across programs.

Second, we are proposing to change the maximum number of PE points a Training program grantee may earn from 8 points to 15 points to be consistent with the maximum PE points for the other Federal TRIO programs. Section 402A(c)(2) of the HEA provides that the Secretary must give the PE factor for the TS, UB, SSS, McNair and EOC programs the same level of consideration given to the PE factor for those programs during fiscal years 1994 through 1997. The

Department's regulations for the TS, UB, SSS, McNair, and EOC programs already specify that the maximum number of PE points is 15 and this is the amount used for the period of time referenced in section 402A(c)(2). Therefore, the Department believes it is appropriate to use the 15 point maximum for all programs.

We are proposing to provide that PE points are awarded by determining whether the grantee met or exceeded applicable project objectives that have been agreed upon by the grantee and the Department, to: (1) Be consistent with section 402A(f)(3) of the HEA; (2) establish clear performance standards; (3) promote accountability; and (4) reward the performance of a grantee that meets or exceeds its approved objectives (see proposed §§ 642.22 (Training), 643.22 (TS), 644.22 (EOC), 645.32 (UB), 646.22 (SSS), and 647.22 (McNair)).

To ensure that PE points are awarded only to grantees that have met high performance standards, we propose to establish an annual performance threshold that a grantee must meet to receive any PE points for that year. A grantee that does not serve at least 90 percent of the approved number of participants to be served in a given year will not be eligible for any PE points for that year (see proposed §§ 642.22(c) (Training), 643.22(b) (TS), 644.22(b) (EOC), 645.32(b) (UB), 646.22(b) (SSS), and 647.22(b) (McNair)).

In addition, we believe that in specifying when the actual number of participants and when the approved number of participants are used to calculate a grantee's PE points (as reflected in proposed §§ 645.32(d) (UB); § 646.22(d) (SSS); and § 647.22(d) (McNair), the Department can clearly identify the performance standards and help to ensure that PE points are awarded in a fair and equitable manner. These regulatory changes also would help ensure that all grantees are held to the same high standards and that applicants and grantees understand these standards.

The new statutorily required PE outcome criteria will be used to evaluate the performance of a grantee under its expiring grant if that expiring grant was awarded after January 1, 2009.

In reviewing the PE sections of the current regulations, we noted some differences in the format and regulatory language used among the six programs. For consistency and to improve clarity, we propose standardizing the regulatory language and the format for the PE outcome criteria (e.g., we propose using the same language to describe the number of participant criterion and to put this criterion as the first PE criterion

for all programs). We also propose to revise the PE criteria to clarify how each of the criteria would be measured (e.g., for the UB program, we explain that postsecondary enrollment criterion is measured by the percentage of current and prior-year participants with an expected high school graduation date in the project year) to assist applicants in understanding the process so they can set project objectives that are both ambitious and attainable (see proposed §§ 642.22 (Training), 643.22 (TS), 644.22 (EOC), 645.32 (UB), 646.22 (SSS), and 647.22 (McNair)).

TRIO Outcome Criteria—Tracking Participants for Talent Search and Upward Bound Programs

Statute: Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides that the outcome criteria for the TS and UB programs must include, to the extent practicable, the postsecondary education completion of students served by the TS and UB programs, respectively.

Current Regulations: Current § 643.22 specifies how the Secretary evaluates PE for the TS program. Current § 645.32 specifies how the Secretary evaluates PE for the UB program. These provisions do not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We propose to amend the regulations to address the postsecondary education completion of students served. The proposed regulations would provide that one and one-half PE points would be awarded for postsecondary completion under the TS program in proposed § 643.22(d)(6) and under the regular UB and UB Math and Science Centers programs in proposed § 645.32(e)(1)(vi). Three PE points will be awarded for postsecondary completion under the Veterans UB program in proposed § 645.32(e)(2)(v).

For regular UB and Upward Bound Math and Science (UBMS), under proposed § 645.32(e)(1)(vi), and for Veterans UB, under proposed § 645.32(e)(2)(v), grantees would be required to track the academic progress of all project participants that enrolled in postsecondary education for the number of years specified in the approved objectives to determine if the applicant met or exceeded its objective regarding the completion by its students of a program of postsecondary education.

For the TS program, under proposed § 643.22(d)(6), we would determine whether an applicant met or exceeded its objective regarding the completion of a program of postsecondary education within the number of years specified in

the approved objective by requiring the grantee to track the postsecondary degree completion of a randomly selected sample of participants in accordance with parameters established by the Secretary in the notice inviting applications published in the **Federal Register**. TS grantees would not be required to track all project participants through completion of postsecondary degrees.

Reasons: Section 402A(f)(3)(B)(vii) of the HEA requires that a grantee, to the extent practicable, report on the postsecondary completion of project participants. Based on the relatively small number of students served each year by each UB grantee and the availability of a variety of databases and other means for tracking a participant's postsecondary progress, we believe it is practicable for UB grantees to track participants through completion of a postsecondary degree.

Section 402A(f)(3)(A)(vi) of the HEA also requires that a grantee, to the extent practicable, report on the postsecondary completion of project participants. Unlike UB, however, we do not believe that tracking all TS project participants through postsecondary completion is practicable due to the large number of participants in TS grant projects. Historically, TS projects have served large numbers of participants and we expect that TS will continue to do so. We believe it would be very difficult for TS grantees to track all of their project participants. Therefore, we are proposing to permit TS grantees to track and report on the postsecondary completion of a randomly selected sample of project participants. To ensure consistency in the methodology used among projects to select the sample, we would issue guidance to TS projects on sample selection.

Review Process for Unsuccessful Federal TRIO Program Applicants

Statute: Section 402A(c)(8)(C) of the HEA, as amended by section 403(a)(2) of the HEOA, requires the Department to establish a formal process for reviewing unsuccessful applications for TRIO program grants. Section 402A(c)(8)(C)(i) of the HEA provides that with respect to any competition for a grant under the Federal TRIO program, an applicant which has otherwise met all of the requirements for submission of the application may request a review by the Secretary if the applicant has evidence of a specific technical, administrative, or scoring error made by the Department, an agent of the Department, or a peer reviewer, with respect to the scoring or processing of a submitted application.

Section 402A(c)(8)(C)(ii) of the HEA provides that in the case of evidence of a technical or administrative error, the Secretary must review the evidence and provide a timely response to the applicant. If the Secretary determines that a technical or administrative error was made by the Department or an agent of the Department, the application must be reconsidered in the peer review process for the applicable grant competition.

Section 402A(c)(8)(C)(iii) of the HEA provides that in the case of evidence of a scoring error, when the error relates to either the calculation of PE points or to the calculation of the final score of an application, the Secretary must review the evidence and provide a timely response to the applicant. If the Secretary determines that a scoring error was made by the Department or a peer reviewer, the Secretary will adjust the PE points or the final score of the application appropriately and quickly, so as not to interfere with the timely awarding of grants for the applicable grant competition.

Section 402A(c)(8)(C)(iv)(I) of the HEA states that in the case of a peer review process error, if the Secretary determines that points were withheld for criteria not required in a Federal statute, regulation, guidance governing the Federal TRIO programs, or the application for a grant from the Federal TRIO programs, or determines that information pertaining to the selection criteria was wrongly determined missing from an application by a peer reviewer, then the Secretary must refer the application to a secondary review panel.

Section 402A(c)(8)(C)(iv)(II) of the HEA provides that the secondary review panel must conduct its review in a timely fashion, and the score resulting from the secondary review must replace the score from the initial peer review.

Section 402A(c)(8)(C)(iv)(III) of the HEA states that the secondary review panel must be composed of reviewers, each of whom: Did not review the application in the original peer review; is a member of the cohort of peer reviewers for the grant program that is the subject of the secondary review; and, to the extent practicable, has conducted peer reviews in not less than two previous competitions for the grant program that is the subject of the secondary review.

Section 402A(c)(8)(C)(iv)(IV) of the HEA provides that the final peer review score of an application subject to a secondary review must be adjusted appropriately and quickly using the score awarded by the secondary review

panel, so as not to interfere with the timely awarding of grants.

Section 402A(c)(8)(C)(iv)(V) of the HEA states that to qualify for a secondary review under section 402A(c)(8)(C)(iv) of the HEA, an applicant must have evidence of a scoring error and must demonstrate that (1) points were withheld for criteria not required in any statute, regulation, or guidance governing the Federal TRIO programs or the application for a grant for these programs; or (2) information pertaining to the selection criteria was wrongly determined to be missing from the application.

Section 402A(c)(8)(C)(v)(I) of the HEA states that a determination by the Secretary under section 402A(c)(8)(C)(i), (c)(8)(C)(ii), or (c)(8)(C)(iii) of the HEA is not reviewable by any officer or employee of the Department.

Section 402A(c)(8)(C)(v)(II) of the HEA provides that the score awarded by a secondary review panel under 402A(c)(8)(C)(iv) of the HEA is not reviewable by any officer or employee of the Department other than the Secretary.

Section 402A(c)(8)(C)(vi) states that to the extent feasible based on the availability of appropriations, the Secretary will fund applications with scores that are adjusted upward under 402A(c)(8)(C)(ii), (c)(8)(C)(iii), or (c)(8)(C)(iv) of the HEA to equal or exceed the minimum cut off score for the applicable grant competition.

Current Regulations: None.

Proposed Regulations: The Secretary proposes to add new §§ 642.25 (Training); 643.24 (TS); 644.24 (EOC); 645.35 (UB); 646.24 (SSS); and 647.24 (McNair) to implement the new review process for unsuccessful applicants. Specifically, proposed §§ 642.25(a)(1) (Training); 643.24(a)(1) (TS); 644.24(a)(1) (EOC); 645.35(a)(1) (UB); 646.24(a)(1) (SSS); and 647.24(a)(1) (McNair) would provide that an applicant whose grant application was not evaluated during a competition may request that the Secretary review the application if the applicant had met all of the application submission requirements in the **Federal Register** notice inviting applications and the other published application materials for the competition, and the applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

Proposed §§ 642.25(a)(2) (Training); 643.24(a)(2) (TS); 644.24(a)(2) (EOC); 645.35(a)(2) (UB); 646.24(a)(2) (SSS); and 647.24(a)(2) (McNair) specify what is considered a technical or

administrative error in the processing of an application.

Proposed §§ 642.25(a)(3) (Training); 643.24(a)(3) (TS); 644.24(a)(3) (EOC); 645.35(a)(3) (UB); 646.24(a)(3) (SSS); and 647.24(a)(3) (McNair) would provide that if the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary will have the application reconsidered and scored, and if the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary will fund the application prior to the re-ranking of applications based on the second peer review of applications described in proposed §§ 642.25(c) (Training); 643.24(c) (TS); 644.24(c) (EOC); 645.35(c) (UB); 646.24(c) (SSS); and 647.24(c) (McNair).

Proposed §§ 642.25(b)(1) (Training); 643.24(b)(1) (TS); 644.24(b)(1) (EOC); 645.35(b)(1) (UB); 646.24(b)(1) (SSS); and 647.24(b)(1) (McNair) would provide that an applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if the applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application, and the final score assigned to the application is within the funding band described in proposed §§ 642.25(d) (Training); 643.24(d) (TS); 644.24(d) (EOC); 645.35(d) (UB); 646.24(d) (SSS); and 647.24(d) (McNair).

Proposed §§ 642.25(b)(2) (Training); 643.24(b)(2) (TS); 644.24(b)(2) (EOC); 645.35(b) (UB); 646.24(b)(2) (SSS); and 647.24(b)(2) (McNair) would provide that an administrative error that would require a second review has to be an error that relates to either the determination of PE points for the application or the determination of the scores assigned to the application by the peer reviewers. These regulations specify that an administrative error relating to the determination of PE points includes (1) mathematical errors made by the Department or by the Department's agent in the calculation of the PE points or (2) a failure to correctly add the earned PE points to the peer review score. An administrative error relating to the determination of the peer review score would include an error made by applying the wrong peer reviewer scores to an application.

Proposed §§ 642.25(b)(3) (Training); 643.24(b)(3) (TS); 644.24(b)(3) (EOC); 645.35(b)(3) (UB); 646.24(b)(3) (SSS);

and 647.24(b)(3) (McNair) would provide that a scoring error would require a second review if it relates to the peer review process. A scoring error includes errors caused by a reviewer who, in assigning points (1) uses criteria not required by the applicable law or regulations, the **Federal Register** notice inviting applications, other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary, or (2) does not consider relevant information included in the appropriate section of the application.

Proposed §§ 642.25(c) (Training); 643.24(c) (TS); 644.24(c) (EOC); 645.35(c) (UB); 646.24(c) (SSS); and 647.24(c) (McNair) would establish the following procedures for the second review of applications:

(1) After the peer review of applications, the Secretary sets aside a percentage of the total funds allotted for the competition to be awarded after the second review is completed and establishes a funding band. The funding band for each competition includes the applications with a rank-order score after the first review that is below the lowest score of applications funded after the first review and that would be funded if the Secretary had 150 percent of the amount of funds that were set aside for the second review of applications.

(2) The Secretary makes new awards in rank order as described in proposed §§ 642.20 (Training); 643.20 (TS); 644.20 (EOC); 645.30 (UB); 646.20 (SSS); and 647.20 (McNair) based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants after the first review, the Secretary notifies in writing each unsuccessful applicant whose rank-order score is within the funding band as to the status of its application and provides the applicant with copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding during the competition as described in proposed §§ 642.25(c)(2) (Training); 643.24(c)(2) (TS); 644.24(c)(2) (EOC); 645.35(c)(2) (UB); 646.24(c)(2) (SSS); and 647.24(c)(2) (McNair) and whose application received a score within the funding band as described in proposed §§ 642.25(d) (Training); 643.24(d) (TS); 644.24(d) (EOC); 645.35(d) (UB); 646.24(d) (SSS); and 647.24(d) (McNair), may request a second review if the applicant demonstrates that the Department, the Department's agent, or

a peer reviewer made an administrative or scoring error.

(5) An applicant whose application was not funded during the competition as described in proposed §§ 642.25(c)(2) (Training); 643.24(c)(2) (TS); 644.24(c)(2) (EOC); 645.35(c)(2) (UB); 646.24(c)(2) (SSS); and 647.24(c)(2) (McNair) and whose application received a score within the funding band as described in proposed §§ 642.25(d) (Training); 643.24(d) (TS); 644.24(d) (EOC); 645.35(d) (UB); 646.24(d) (SSS); and 647.24(d) (McNair) would have fifteen (15) calendar days after receiving the written notification that its application was not funded to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to a designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to PE points, as described in proposed §§ 642.25(b)(2)(i) (Training); 643.24(b)(2)(i) (TS); 644.24(b)(2)(i) (EOC); 645.35(b)(2)(i) (UB); 646.24(b)(2)(i) (SSS); and 647.24(b)(2)(i) (McNair), the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in proposed §§ 642.25(c)(9) (Training); 643.24(c)(9) (TS); 644.24(c)(9) (EOC); 645.35(c)(9) (UB); 646.24(c)(9) (SSS); and 647.24(c)(9) (McNair).

(8) If the Secretary determines that the Department, the Department's agent or a peer reviewer made an administrative error that relates to the peer review score, as described in proposed §§ 642.25(b)(2)(ii) (Training); 643.24(b)(2)(ii) (TS); 644.24(b)(2)(ii) (EOC); 645.35(b)(2)(ii) (UB); 646.24(b)(2)(ii) (SSS); and 647.24(b)(2)(ii) (McNair), the Secretary would adjust the applicant's peer review score to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer

review of applications described in proposed §§ 642.25(c)(9) (Training); 643.24(c)(9) (TS); 644.24(c)(9) (EOC); 645.35(c)(9) (UB); 646.24(c)(9) (SSS); and 647.24(c)(9) (McNair).

(9) If the Secretary determines that a peer reviewer made a scoring error, the Secretary would convene a second panel of peer reviewers in accordance with section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review would be used in the second ranking of applications. The average score obtained from the second peer review panel would be the final peer review score for the application and will be used even if it is a lower score than the score in the initial review).

(11) The Secretary would fund applications in the funding band in rank order based on any adjusted scores and the amount of funds that have been set aside for the second review of applications.

Proposed §§ 642.25(d) (Training); 643.24(d) (TS); 644.24(d) (EOC); 645.35(d) (UB); 646.24(d) (SSS); and 647.24(d) (McNair) would provide that (1) for each competition, the Secretary would establish a funding band for the second review of applications; (2) the Secretary would establish the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications; (3) the funding band would include those applications with a rank-order score before the second review that is below the lowest score of applications funded after the first review and that would be funded if the Secretary had 150 percent of the amount of funds that were set aside for the second review of applications for the competition.

Proposed §§ 642.25(e) (Training); 643.24(e) (TS); 644.24(e) (EOC); 645.35(e) (UB); 646.24(e) (SSS); and 647.24(e) (McNair) would provide that: (1) the Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application would be final and not subject to further appeal or challenge; and (2) an application that scored below the established funding band for the competition would not be eligible for any further review.

Reasons: Section 402A(c)(8)(C) of the HEA, as amended by section 403(a)(2) of the HEOA, requires the Department to establish a formal process for reviewing unsuccessful grant applications in the TRIO programs. Proposed §§ 642.25 (Training), 643.24 (TS), 644.24 (EOC), 645.35 (UB), 646.24 (SSS), and 647.24

(McNair) would implement this requirement and ensure that the review process is clear, understandable, and transparent.

We are proposing the funding band approach to the review process to ensure that we can meet our fiduciary responsibility to the taxpayers to manage the grant programs based on the appropriated resources available at the time of each competition. This approach would also minimize the impact of the second review on our ability to provide timely notice of grant awards.

We believe that the process we are proposing will provide fair, equitable, specific, clear, and understandable procedures for applicants to be notified about the status of their application, eligibility for a second review, how to request a second review, and other information regarding a second review.

We decided to propose a funding band and determined the specific parameters for the funding band based on the Department's experience and historical information. In past competitions, adjustments for administrative and scoring errors have increased scores no more than two or three points; therefore, the funding band has been designed to include only those applications that would have a reasonable chance of being funded if the second review of the application results in an adjustment to the score. By selecting only those applications most likely to have a chance of being funded after a second review, we would be better able to effectively manage the grant competition and make timely funding decisions to ensure that the funds for the competition are obligated within the fiscal year.

One of the non-Federal negotiators objected to the Department's proposal to set aside a small portion of the appropriation for the second review. This negotiator stated that the Department should commit the full amount of appropriated funds for the program prior to the second review of applications and then request that Congress appropriate additional funds in the current or next fiscal year to support any applications that score in the funding range following the second review. This negotiator objected to the fact that the Department's proposal to re-rank applications in the funding band after the second review might result in an application that would have been funded if there was not a second review process not being funded after the second review. To avoid creating a contentious situation, the negotiator recommended that any application that received a second review and whose new score would have resulted in

funding during the competition should only be funded if the Congress provided additional funds for the program. The negotiator asserted that this approach would be consistent with the HEA, as amended by the HEOA.

We do not agree with this recommendation. Congress specifically chose to require the Secretary to develop a review process for unsuccessful applications. In doing so, Congress clearly intended that applicants whose scores increased to within the funding range should be funded. Otherwise, the review process would provide no significant benefit to an applicant whose scores were increased since there would be no assurance of increased funding from Congress. Furthermore, we have a fiduciary responsibility to manage the grant competitions using the limited funds appropriated by Congress for the competition year. The Department cannot incur costs or make financial commitments from potential subsequent appropriations.

Training Program for Federal TRIO Programs, 34 CFR Part 642

Project Period (Proposed § 642.4)

Statute: Section 402A(b)(2)(B) of the HEA provides that Training program grants must be awarded for a period of two years.

Current Regulations: None.

Proposed Regulations: We are proposing to add § 642.4 to provide that a project period under the Training program is two years.

Reasons: We are proposing to add § 642.4 to the Training program regulations to be consistent with section 402A(b)(2)(B) of the HEA.

Applicable Regulations (Current § 642.4, Proposed § 642.5)

Statute: None.

Current Regulations: Current § 642.4 contains an outdated list of applicable regulations.

Proposed Regulations: We are proposing to amend the list of regulations that apply to the Training program. We also propose to exclude section 34 CFR 75.215 through 75.221 from the list of regulations that apply.

Reasons: We are proposing these changes so that the list of regulations that apply to the program is comprehensive and accurate. We are proposing to exclude the regulations in 34 CFR 75.215 to 75.221 that include general rules for handling applications and specific rules for handling applications that are not funded through a regular competition. The proposed new rules governing the process for a

second review of unsuccessful TRIO applications would make the process outlined in these regulations unnecessary.

Definitions (Current § 642.5, Proposed § 642.6)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for the proposed regulations with regard to the definitions of *foster care youth, homeless children and youth, individual with disabilities, institution of higher education, and veteran in the Definitions Applicable to More Than One Federal TRIO Program* section of the preamble.

Number of Applications (Proposed § 642.7)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes regarding the number of applications an eligible entity may submit to apply for a grant under the Training program in the *Number of Applications an Eligible Entity May Submit to Serve Different Campuses and Different Populations* section of the preamble.

Required and Permissible Services

Statute: Section 402G(b) of the HEA, as amended by section 403(g) of the HEOA, expands the types of training that grantees are required to provide under the Training program.

Current Regulations: Current § 642.10 specifies the types of training that a grantee is required to provide and the types of training that a grantee is permitted to provide under the Training program.

Proposed Regulations: Proposed § 642.11 would identify the training that Training program grantees must provide and would reflect the training requirements in section 402G(b)(5) of the HEA, as amended by section 403(g) of the HEOA. Specifically, in proposed § 642.11, we would add the following to the list of topics that Training program grantees must provide for new project directors: (1) The use of appropriate educational technology in the operation of projects funded under the Federal TRIO programs; and (2) strategies for recruiting and serving hard-to-reach populations, including students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

Proposed § 642.12 would describe the types of training that Training program

grantees may provide. This section would include all permissible Training program services listed under current § 642.10 and add the following two services to that list: On-site training and on-line training.

Reasons: Currently we address both required and permissible training that Training program grantees provide in § 642.10. We propose to describe the required training and permissible training in two separate regulations for greater clarity. We are also proposing to modify the regulations to reflect the changes in required and permissible training made by section 403(g) of the HEOA.

We also propose to add on-site and on-line training as permissible activities to reflect our current administrative practice and recognize current educational practices.

Ranking Applications by Priority (Current § 642.30, Proposed § 642.20(c) and (d))

Statute: Section 402A(c)(3) exempts the Training program from the requirement that the Secretary must award Federal TRIO program grants in the order of the scores received by applications in the peer review process and adjusted for PE.

Current Regulations: Current § 642.30 does not address how the Secretary ranks applications for the Training program grants.

Proposed Regulations: We propose to redesignate current § 642.30 as § 642.20 and modify it to allow in proposed § 642.20(c) the Secretary to select Training program applications for funding by absolute priority in rank order on the basis of the average peer review score. Under proposed § 642.20(d), for each absolute priority, if there are insufficient funds to fund all applications at a particular peer review score, we will add each application's PE score to its peer review score to determine an adjusted total score for each application. Under this proposed regulation, for applications with the same peer review score at the funding cut-off level, we would then use the adjusted total score to determine which of the tied applicants will receive funding. If a tie score still exists, the Secretary would select for funding the applicant that has the greatest capacity to provide training to eligible participants in all regions of the nation.

Reasons: We are proposing § 642.20 to reflect the Department's current practice and provide a specific, understandable, and fair method for funding new awards under the Training program. Specifically, we are proposing to establish regulations to fund

applications by absolute priority to ensure that one or more training grants will be funded under each published priority. In addition, in proposed § 642.20 we would specify how we would handle a tie score.

Evaluation of an Application for a New Award (Current §§ 642.30 and 642.31, Proposed §§ 642.20 and 642.21)

Statute: None.

Current Regulations: Current § 642.30(a)(1) provides that, in evaluating applications for Training program grants, the Secretary awards up to 100 points based on the selection criteria in § 642.31. Section 642.31(f) specifies a selection criterion worth 25 points that requires an applicant to show the need for its proposed Training program project.

Proposed Regulations: Proposed §§ 642.20 and 642.21 would change the total number of points that may be awarded in a Training program competition to 75 instead of 100 points. Specifically, we are proposing to remove the selection criteria in current § 642.31(f), which is worth 25 points.

Reasons: Current § 642.31(f) provides that we award up to 25 points to an applicant that shows a need for its Training program project. However, every applicant is required to address one of the absolute priorities established in the **Federal Register** notice inviting applications for the competition. With the absolute priorities, the Department establishes the need for the proposed training. Thus, a selection criterion that requires an applicant to show the need for its proposed training is no longer necessary.

Prior Experience (Current § 642.32, Proposed § 642.22)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes regarding PE for the Training program in the *Evaluating Prior Experience—Outcome Criteria* section of the preamble.

Review Process for Unsuccessful Federal TRIO Program Applicants (§ 642.25)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for adding new § 642.25 in the *Review Process for Unsuccessful Federal TRIO Program Applicants* section of the preamble.

Amount of a Grant (§ 642.26)

Statute: Section 402A(b)(3) of the HEA, as amended by section 403(a)(1)(C) of the HEOA, sets the minimum Training grant amount at \$170,000.

Current Regulations: None.

Proposed Regulations: We are proposing to amend the regulations to add a new section that explains how the Secretary sets the amount of a grant. This section will specify that the Secretary uses the available funds to set the amount of the grant at the lesser of \$170,000 or the amount requested by the applicant.

Reasons: We are proposing this change to reflect the change to section 402A(b)(3) of the HEA by the HEOA.

Talent Search (TS) Program, 34 CFR Part 643

Sections 403(a) and (b) of the HEOA amended sections 402A and 402B of the HEA.

Changes to the Purpose of Talent Search (§ 643.1)

Statute: Section 403(b) of the HEOA amended Section 402B of the HEA to reflect changes to the purposes of the TS program.

Current Regulations: Current § 643.1 does not reflect the changes made to the purposes of the TS program by the HEOA.

Proposed Regulations: We propose to amend § 643.1 to provide that one of the purposes of the TS program is to have grantees publicize the availability of, and facilitate the application for, student financial assistance and to encourage persons who have not completed secondary or postsecondary education to enter, or reenter, and complete such programs.

Reasons: The proposed amendment would conform current § 643.1 to the changes made to section 402B of the HEA, by the HEOA.

Applicant Eligibility (§ 643.2)

Statute: Section 402A(b)(1) of the HEA, as amended by section 403(a)(1)(A)(ii) of the HEOA, lists the types of entities that are eligible for TS grants. Prior to enactment of the HEOA, a secondary school could apply for a TS grant under “exceptional circumstances.” The HEOA eliminates this restriction on the eligibility of a secondary school. Further, the HEOA modified the definition of the public and private agencies and organizations that are eligible for grants to include community-based organizations with experience in serving disadvantaged youth.

Current Regulations: Current § 643.2 specifies who is eligible to apply for a TS grant. This provision does not reflect the changes made by the HEOA.

Proposed Regulations: We are proposing to amend § 643.2 to reflect the statutory changes to the rules on

applicant eligibility. Under the revised regulations, a secondary school would be eligible to apply for a TS grant without having to demonstrate “exceptional circumstances.” In addition, a community-based organization with experience in serving disadvantaged youth may apply for a TS grant.

Reasons: We are proposing to revise current § 643.2 to reflect the changes made to the applicant eligibility provisions for the TS program in section 402A(b)(1) of the HEA, as amended by the HEOA.

Participant Eligibility (§ 643.3)

Statute: Section 403(b)(1)(B) of the HEOA amended section 402B(a)(3) of the HEA by deleting the requirement that a participant must have the ability to complete a program of secondary or postsecondary education.

Section 402A(f)(3)(A)(iv) of the HEA, as amended by section 403(a)(5) of the HEOA, includes a new outcome criterion for TS that requires projects to report on participants who complete a rigorous secondary school program of study. The statute does not specify eligibility criteria for participants enrolled in a rigorous secondary school program of study.

Current Regulations: Current § 643.3(a)(3)(i) requires that a participant in a TS program have potential for a program of postsecondary education. Current § 643.3(a)(3)(ii) requires that a participant have the ability to complete a program of postsecondary education. The current regulations do not include eligibility requirements for participants receiving support to complete a rigorous secondary school program of study.

Proposed Regulations: We are proposing to amend the TS participant eligibility regulations in § 643.3(a)(3)(i) by removing the requirement that a participant have the potential for a program of postsecondary education. We are also proposing to amend § 643.3(a)(3)(ii) by removing the requirement that a participant who has undertaken, but is not presently enrolled in, a program of postsecondary education have the ability to complete such a program.

We are proposing to add participant eligibility requirements for TS participants who receive support from a TS grantee to complete a rigorous secondary school program of study. Those participants must be accepted into the TS program by the end of the first term of the tenth grade, be enrolled in or be preparing to enroll in a rigorous secondary school program of study as defined by his or her State of residence,

and be designated as enrolled in a rigorous secondary school program of study on the grantee’s reports to the Secretary.

Reasons: To reflect the changes made to section 402B(a)(3) of the HEA and in response to comments made by the non-Federal negotiators during the negotiated rulemaking sessions, we are proposing: (1) To remove the current regulatory language that requires potential participants who have not entered into postsecondary education to have potential for a program of postsecondary education; and (2) to remove regulatory language that requires potential participants who have previously dropped out of postsecondary education to have the ability to complete such a program.

We are also proposing to add eligibility requirements for participants receiving support to complete a rigorous secondary school program of study to help ensure that they receive sufficient services from the TS project to achieve at the level needed to be eligible for grants under the Academic Competitiveness Grant (ACG) program. This change would be consistent with the new HEOA outcome criteria in section 402A(f)(3)(A)(4) of the HEA for the TS program, which measures the extent to which project participants complete a rigorous secondary school program of study that would make these students eligible for programs such as the ACG program.

Required and Permissible Services (§ 643.4)

Statute: The HEA lists certain services or activities that projects funded under the TS program must provide and services or activities that these projects may provide. Section 403(b) and (c) of the HEOA amended section 402B(b) and (c) of the HEA relating to required and permissible services or activities for TS program grantees.

Current Regulations: Current § 643.4 specifies what services a TS project may provide. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to amend § 643.4 to revise the list of required and permissible services or activities to be provided by projects funded under the TS program to reflect changes made by the HEOA. The proposed regulations would list the services or activities that projects must provide and the services or activities that projects may provide.

We are proposing to amend the TS program regulations to require that projects provide the following services: (1) Connecting participants to high

quality academic tutoring services to enable participants to complete secondary or postsecondary courses; (2) providing advice and assistance to participants in secondary school course selection and, if applicable, initial postsecondary course selection; (3) providing assistance to participants in preparing for college entrance examinations and completing college admission applications; (4) providing (i) information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships and (ii) assistance in completing financial aid applications, including the Free Application for Federal Student Aid; (5) providing participants with guidance on and assistance in secondary school reentry, alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma, entry into general educational development (GED) programs, or entry into postsecondary education; and (6) connecting participants to education or counseling services designed to improve the financial literacy and economic literacy of participants or the participants' parents, including financial planning for postsecondary education.

We are proposing to specify that the following are permissible services for TS projects: (1) Academic tutoring, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects; (2) personal and career counseling or activities; (3) information and activities designed to acquaint youth with the range of career options available to them; (4) exposure to the campuses of institutions of higher education, as well as cultural events, academic programs, and other sites or activities not usually available to disadvantaged youth; (5) workshops and counseling for families of participants served; (6) mentoring programs involving elementary or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons; and (7) the programs and activities described in items (1) through (6) that are specially designed for participants who are limited English proficient, from groups that are traditionally underrepresented in postsecondary education, individuals with disabilities, homeless children and youths, foster care youth, or other disconnected participants.

Reasons: The proposed amendments would conform the regulations to the

statutory amendments made by the HEOA to section 402B of the HEA. Prior to enactment of the HEOA projects funded under the TS program could choose from a number of permissible activities and services to provide participants. Section 403(b) of the HEOA amended section 402B of the HEA to require grantees to provide certain services and give grantees the option of providing other services. The proposed amendments reflect these statutory changes.

Project Period (§ 643.5)

Statute: Prior to enactment of the HEOA, TS grants were generally awarded for four years. Grantees whose peer-review scores were in the highest ten percent of the scores of all applicants, received five year grants. The HEOA amended the HEA so that all TS grants are for five years.

Current Regulations: Current § 643.5 specifies the length of a TS project period. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to amend the regulations to define the project period as five years for all grantees.

Reasons: The change is made to conform the regulations to section 402A(b)(2) of the HEA.

Applicable Regulations (§ 643.6)

Statute: None.

Current Regulations: Section 643.6 contains an outdated list of applicable regulations.

Proposed Regulations: We are proposing to update the list of regulations that apply to the TS program. We also propose to exclude 34 CFR 75.215 through 221 from the list of regulations that apply.

Reasons: We discuss the reasons for the proposed amendments in the discussion of *Applicable Regulations* for the Training Program for Federal TRIO Programs section of this preamble (current § 642.4, proposed § 642.5).

Definitions (§ 643.7)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the definitions of *institution of higher education* and *veteran* and for the addition of *different population*, *financial and economic literacy*, *foster care youth*, *homeless children and youth*, and *individual with disabilities* in the *Definitions Applicable to More Than One Federal TRIO Program* section of the preamble. We are also proposing to define two additional terms applicable to the TS program in

these regulations: *regular secondary school diploma* and *rigorous secondary school program of study*.

Regular Secondary School Diploma

Statute: Section 402A(f)(3)(A)(iii) of the HEA was amended by section 403(a)(5) of the HEOA to include a new outcome criterion for TS that requires grantees to report on the graduation of participants who complete secondary school with a regular secondary school diploma in the standard number of years.

Current Regulations: None.

Proposed Regulations: We are proposing to amend § 643.7(b) to define *regular secondary school diploma* to mean a level attained by individuals who meet or exceed the coursework and performance standards for high school completion established by the individual's State.

Reasons: We are proposing the addition of the definition of *regular secondary school diploma* to ensure that there is a clear and consistent understanding of the term in the TS program.

Rigorous Secondary School Program of Study

Statute: Section 402A(f)(3)(A)(iv) of the HEA, as amended by section 403(a)(5) of the HEOA, includes a new outcome criterion for TS that requires projects to report on participants who complete a rigorous secondary school program of study. The term rigorous secondary school program of study is not defined in the statute.

Current Regulations: None.

Proposed Regulations: We are proposing to amend § 643.7(b) to include a definition of *rigorous secondary school program of study*. The proposed regulations would define *rigorous secondary school program of study* to mean a program of study that is—

(1) Established by a State educational agency (SEA) or local educational agency (LEA) and recognized as a rigorous secondary school program of study by the Secretary through the process described in 34 CFR § 691.16(a) through § 691.16(c) for the ACG Program;

(2) An advanced or honors secondary school program established by States and in existence for the 2004–2005 school year or later school years;

(3) Any secondary school program in which a student successfully completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level

class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English;

(4) A secondary school program identified by a State-level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado;

(5) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of a "4" or higher on the examinations for at least two of those courses; or

(6) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of "3" or higher on the College Board's Advanced Placement Program Exams for at least two of those courses.

Reasons: We are proposing the addition of a definition of *rigorous secondary school program of study* to ensure a clear and consistent understanding of the term for the TS program and with other Department programs.

Number of Applications (§ 643.10)

We discuss the statutory authority, proposed regulations, and reasons for adding new § 643.10, Number of applications, in the *Number of Applications an Eligible Entity May Submit to Serve Different Campuses and Different Populations* section of the preamble.

Assurances (Current § 643.10; Proposed § 643.11)

Statute: Section 402B(d)(1) of the HEA requires that, as part of its application, a TS grantee provide an assurance that two-thirds of the participants it will serve in its project will be low-income individuals who are first generation college students. Section 402B(d)(3) of the HEA requires that a TS grantee provide an assurance that individuals participating in the project will not have access to services from another TS grantee or an EOC project.

Current Regulations: Current § 643.10 specifies what assurances an applicant must include in an application. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to re-number the regulations establishing the required assurances as § 643.11 and to amend paragraph (a) to require that a TS grantee provide an assurance that at least two-thirds of the subset of participants selected for the rigorous academic component of the grant project will be low-income individuals who are potential first-generation college students.

We are also proposing to amend paragraph (b) to require TS grantees to provide an assurance that they will not provide the same services to participants as projects funded by programs serving similar populations, such as GEAR UP, UB, UBMS, or EOC.

Reasons: We are proposing to amend the TS project assurances to reflect the requirements of section 402B(d) of the HEA. Specifically, we are proposing to modify the regulations to require that at least two-thirds of the participants selected for the rigorous secondary school program of study component of the project must be low-income individuals who are potential first-generation college students. This assurance would require projects, in selecting participants for the rigorous secondary school program of study component, to apply the statutory requirement that at least two-thirds of the project participants be both low-income individuals and potential first-generation college students to ensure an equitable and appropriate approach to participant selection.

We are also proposing to amend the TS project assurances to require a grantee to provide an assurance that it will not provide the same services to participants that they would receive under other programs serving similar populations, such as GEAR UP, UB, UBMS, or EOC to avoid the duplication of services between a TS project and similar projects.

Making New Grants (§ 643.20)

Statute: Section 402A(c)(2)(A) of the HEA requires the Secretary to consider, when making Federal TRIO grants, each applicant's prior experience (PE) of high quality service delivery under the program for which funds are sought. Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, now identifies the specific outcome criteria to be used to determine an entity's PE under the TS (*see* section 402A(f)(3)(A) of the HEA). The HEA does not establish specific procedures for awarding PE points.

The HEA, as amended, no longer includes provisions for awarding additional points to an application for a

project in designated territories of the United States.

Prior to enactment of the HEOA, the Secretary had the discretion to decide whether or not to consider an application from an applicant that carried out a project involving the fraudulent use of program funds. The HEOA amended the HEA to eliminate that discretion and prohibit the Secretary from considering an application from such a party.

Current Regulations: Current § 643.20 specifies the procedures the Secretary uses to award new grants.

Proposed Regulations: We propose that the Secretary evaluate the PE of an applicant for each of three project years, as designated by the Secretary in the **Federal Register** notice inviting applications. We also propose that the Secretary may award an applicant up to 15 PE points for each of the three years for which the annual performance report was submitted. The average of the scores for the three project years would be the final PE score for the applicant.

We also propose to remove § 643.20(a)(3) and to amend the wording in § 643.20(d) to specify that the Secretary will not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

Reasons: To provide more transparency in the process the Secretary will use to award PE points, we are proposing to amend § 643.20(a)(2). We also are proposing to remove § 643.20(a)(3) because there is no longer any statutory authority for this provision. We also are proposing to amend § 643.20(d) to reflect the statutory change that provides that the Secretary may not consider an application from an applicant that carried out a project involving the fraudulent use of program funds.

Selection Criteria (§ 643.21)

Statute: Section 402A(f)(3)(A) of the HEA, as amended by section 403(a)(5) of the HEOA, requires the Secretary to use specific outcome criteria to measure the performance of Federal TRIO grants, including those under the TS program. Specifically, pursuant to section 402A(f)(3)(A) of the HEA, the Secretary must measure the performance of TS grants by examining the extent to which the entity met or exceeded the entity's objectives (as established in the entity's approved application) regarding—

(1) Delivery of service to a total number of students served by the program;

(2) Continued secondary school enrollment of such students;

(3) Graduation of such students from secondary school with a regular secondary school diploma in the standard number of years;

(4) Completion by such students of a rigorous secondary school program of study that will make such students eligible for grants under programs such as the ACG program;

(5) Enrollment of such students in an institution of higher education; and

(6) To the extent practicable, the postsecondary education completion of such students.

These statutory changes necessitate changes in the grant selection criteria regarding "Need for the project" (§ 643.21(a)), "Objectives" (§ 643.21(b)), and "Plan of operation" (§ 643.21(c)).

Further, section 403(a) of the HEOA amended section 402A of the HEA to eliminate the provision that limited secondary school eligibility for the TS program to exceptional circumstances.

Current Regulations: Current § 643.21 specifies the selection criteria the Secretary uses to evaluate an application for a TS grant. This provision does not reflect the changes made by the HEOA to the HEA applicable to the following selection criteria: Need for the project (§ 643.21(a)); Objectives (§ 643.21(b)); Plan of operation (§ 643.21(c)); and Applicant and community support (§ 643.21(d)).

Proposed Regulations (Need for the project): We are proposing to amend § 643.21(a) to provide that when evaluating an application for a new grant the Secretary will evaluate the need for the proposed project. To evaluate the need for the project, we would distribute 24 points in the following manner:

(1) Six points for a high number or high percentage of (a) low-income families residing in the target area, or (b) students attending the target schools who are eligible for free or reduced priced lunch, as described in sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act.

(2) Two points for low rates of high school persistence among individuals in the target schools, as evidenced by the annual student persistence rates in the proposed target schools for the most recent year for which data are available.

(3) Four points for low rates of students in the target school's graduating high school with a regular secondary school diploma in the standard number of years for the most recent year for which data are available.

(4) Six points for low postsecondary enrollment and completion rates among individuals in the target area and schools, as evidenced by (a) low rates of

enrollment in programs of postsecondary education by graduates of the target schools in the most recent year for which data are available, and (b) a high number or high percentage of individuals residing in the target area with education completion levels below the baccalaureate degree level.

(5) Two points for the extent to which the target secondary schools do not offer their students the courses or academic support to complete a rigorous secondary school program of study or have low participation by low-income or first generation students in such courses.

(6) Four points for other indicators of need for a TS project, including a high ratio of students to school counselors in the target schools and the presence of unaddressed academic or socio-economic problems of eligible individuals, including foster care youth and homeless children and youth, in the target schools or the target area.

Reasons: We are proposing to amend § 643.21(a) (Need for the project) to reflect the changes made to section 402A(f)(3)(A) of the HEA by section 403(a)(5) of the HEOA regarding the outcome criteria to be used to measure the performance of TS program grantees. We are proposing to modify the need for the TS project selection criteria because we believe that the revised criteria would be consistent with the purpose and goals of the TS program, as reflected in the outcome criteria established by Congress. In the application, the applicant would document the extent of the need for the proposed TS project in the proposed target area and would provide baseline data for the new outcome criteria that the applicant would use to establish project objectives that are ambitious and attainable.

In addition, based on concerns expressed by some non-Federal negotiators during the negotiated rulemaking sessions regarding the availability of reliable data from the target schools for purposes of calculating some of the need criteria, the proposed regulations would give applicants options for providing the number or percentage of low-income individuals in the proposed target area. To meet this requirement the applicant may provide data on either the number or the percentage of low-income families residing in the target area or the number or percentage of students attending the target schools who are eligible for free or reduced priced lunch. Further, to reduce burden, an applicant would only need to provide data on high school persistence, graduation, and postsecondary enrollment for the most recent year for which data are available;

current regulations require data for the three most recent years.

The proposed regulations would also address a concern some non-Federal negotiators raised about the current requirement that an applicant provide data to show a high student dropout rate in the proposed target schools in the preceding three years. These non-Federal negotiators expressed concern that this provision could penalize applicants with existing projects that serve target schools that have already improved their dropout rates. We are not proposing to remove the dropout rate from the criteria. However, in light of the new statutory outcome criteria related to the "continued secondary school enrollment of participants," we have also included a criterion that requires the applicant to provide data on the annual high school persistence rates of students in the proposed target schools.

Proposed Regulations (Objectives): We are proposing to amend § 643.21(b) to provide that, in evaluating applications for TS grants, the Secretary consider the quality of the applicant's proposed objectives on the basis of the extent to which they are both ambitious and attainable, given the project's plan of operation, budget, and other resources. We propose to distribute eight points for this criterion in the following manner:

(1) Two points for secondary school persistence.

(2) Two points for secondary school graduation (regular secondary school diploma).

(3) One point for secondary school graduation (rigorous secondary school program of study).

(4) Two points for postsecondary education enrollment.

(5) One point for postsecondary degree attainment.

Reasons: We are proposing to amend § 643.21(b) (Objectives) to reflect the changes made to section 402A(f)(3)(A) of the HEA by section 403(a)(5) of the HEOA regarding the outcome criteria to be used to measure performance of the TS program. We are proposing to reflect the statutory TS outcome criteria in § 643.21(b) as selection criteria because we believe that the focus at the outset of the TS discretionary grant process (*i.e.*, evaluating applications using TS selection criteria) should be on the ultimate outcomes the TS program is intended to attain.

Moreover, during the grant period, section 402A(f)(4) of the HEA requires that the Secretary measure the performance of the grantee based on a comparison of the targets agreed upon for the outcome criteria established in

the applicant's approved application to the actual results achieved during the grant period. For these reasons, we believe it is appropriate to use the outcome criteria from section 402A(f)(3)(A) of the HEA in the selection criteria for the TS program.

Outcome criteria are also used to evaluate an applicant's PE and to assign PE points to an application. We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to evaluating an applicant's PE in the *Evaluating Prior Experience—Outcome Criteria* section of the preamble.

Proposed Regulations (Plan of operation): We are proposing to amend § 643.21(c) to provide that the Secretary, in evaluating an application for a TS grant, evaluate the quality of the applicant's proposed plan of operation as one of the selection criteria. We would distribute thirty points for this criteria in the following manner:

(1) Three points for the plan to inform the residents, schools, and community organizations in the target area of the purpose, objectives, and services of the project and the eligibility requirements for participation in the project.

(2) Three points for the plan to identify and select eligible project participants, including the project's plan and criteria for selecting individuals who would receive support to complete a rigorous secondary school program of study.

(3) Ten points for the plan for providing the services delineated in § 643.4 as appropriate based on the project's assessment of each participant's need for services.

(4) Six points for the plan to provide services to students in need of services to complete a rigorous secondary school program of study.

(5) Six points for the plan to ensure the proper and efficient administration of the project, including timelines, personnel, and other resources, and the project's organizational structure; the time commitment of key project staff; financial, personnel, and records management; and, where appropriate, coordination with other programs for disadvantaged youth.

(6) Two points for the plan to follow former participants as they enter, continue in, and complete postsecondary education.

Reasons: We are proposing to amend § 643.21(c) (Plan of operation) to reflect the changes made to section 402A(f)(3)(A) of the HEA by section 403(a)(5) of the HEOA regarding the outcome criteria to be used to measure performance of the TS program. We are proposing to include the revised TS

plan of operation criteria in § 643.21(c) as a selection criteria because the revised criteria would be consistent with the purpose and goals of the TS program outcome criteria. The requested information would document the project's plans with regard to the criteria relating to a rigorous secondary school program of study and for following the academic progress of former participants through postsecondary education.

Proposed Regulations (Applicant and community support): We are proposing to amend § 643.21(d) to require written commitments from institutions of higher education, in addition to the current requirement for written commitments from schools and community organizations, to provide resources to supplement the grant and enhance project services.

Reasons: We are proposing to amend § 643.21(d) (Applicant and community support) to reflect the changes made to section 402A(b)(1) of the HEA by section 403(a)(5) of the HEOA, which eliminated the limitation on the eligibility of secondary schools for TS grants. We agreed with some of the non-Federal members of the negotiated rulemaking committee who expressed concern that the current selection criterion that requires applicants to have written commitments from schools, community organization, and others may provide an advantage to secondary schools or community organization applicants for TS grants over institutions of higher education. Without a change, institutions of higher education applying for a TS grant would have to get letters of commitment from their potential competitors for grants while secondary schools and community organizations would not have a similar requirement. To ensure a fair and equitable competition and to ensure that schools and community organizations have the full scope of partners necessary to provide appropriate services, we would require those applicants to get letters of commitment from institutions of higher education.

Prior Experience Criteria (§ 643.22)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the PE criteria in the *Evaluating Prior Experience—Outcome Criteria* section of the preamble.

Amount of a Grant (§ 643.23)

Statute: Section 402A(b)(3)(B) of the HEA, as amended by section 403(a)(1) of the HEOA, increased the minimum TS grant from \$180,000 to \$200,000.

Current Regulations: Current § 643.23 specifies how the Secretary sets the amount of a TS grant. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to amend the regulations to update the statutory minimum grant amount.

Reasons: We are proposing this change to reflect the changes to section 402A(b)(3) of the HEA by section 403(a)(3) of the HEOA.

Review Process for Unsuccessful Federal TRIO Program Applicants (New § 643.24)

We discuss the statutory authority, proposed regulations, and reasons for adding new § 643.24 in the *Review Process for Unsuccessful Federal TRIO Applicants* section of the preamble.

Allowable and Unallowable Costs (§§ 643.30 and 643.31)

Transportation, Equipment and Supplies, and Tuition

Statute: Section 403A(b) of the HEOA amended section 403B(b) of the HEA and expanded the list of services a TS grantee may provide to include instruction in reading, writing, study skills, mathematics, science, and other subjects. Section 403A(b) of the HEOA amended sections 402A and 402B of the HEA and included outcome criteria to evaluate the quality and effectiveness of TS projects. The new outcome criteria require that TS projects report data on the graduation of participants from secondary school with a regular high school diploma in the standard number of years, the completion by participants of a rigorous secondary school program of study that would make them eligible for grants under the ACG program, and the completion by participants of postsecondary education.

Current Regulations: Current § 643.30 permits a TS project to use grant funds to pay certain costs. Current § 643.30(a) permits a grantee to pay some participant transportation costs. Current § 643.30(f) requires a grantee to obtain approval from the Department to purchase computers and other equipment. Current § 643.31(a) prohibits the payment of tuition for participants.

Proposed Regulations: We are proposing to amend § 643.30(a)(4) to permit a TS grantee, under certain circumstances, to pay the transportation costs for a participant receiving instruction that is part of a rigorous secondary school program of study. We also are proposing to revise § 643.30 (f) and add paragraph (g) to allow grantees to use grant funds for the purchase,

lease, or rental of computer hardware that supports the delivery of services to participants, including technology used by participants in a rigorous secondary school program of study, and for project administration and recordkeeping.

We are proposing to add paragraph (h) to § 643.30 to permit a TS grantee to pay tuition, under certain circumstances, for a participant to take a course that is part of a rigorous secondary school program of study. Specifically, we propose to allow TS funds to be used to pay tuition costs for a course that is part of a rigorous secondary school program of study if—

(1) The course or a similar course is not offered at the secondary school that the participant attends or at another school within the participant's school district;

(2) The grantee demonstrates to the Secretary's satisfaction that using grant funds to pay for tuition is the most cost-effective way to deliver the course or courses necessary for the completion of a rigorous secondary school program of study for program participants;

(3) The course is taken at an institution of higher education;

(4) The course is comparable in content and rigor to courses that are part of a rigorous secondary school program of study as defined in § 643.7(b);

(5) The secondary school accepts the course as meeting one or more of the course requirements for obtaining a high school diploma;

(6) A waiver of the tuition costs is unavailable;

(7) The tuition is paid with TS grant funds to an institution of higher education on behalf of a participant; and

(8) The TS project pays for no more than the equivalent of two courses for a participant each school year.

We also propose to drop "tuition" from the list of unallowable costs in § 643.31(a).

During the negotiated rulemaking sessions, many of the non-Federal negotiators noted that they had data to demonstrate that participants in TS projects needed tuition support to complete a rigorous program of study. In light of these statements we are seeking public comments and data on the need to permit TS projects to pay tuition for participants to take courses that are part of a rigorous secondary school program of study. We are requesting data on the availability of rigorous coursework offerings at target schools or in target areas, which may include, but are not limited to: The number of schools or districts within the State that do not provide rigorous curricula; the number of students who do not have access to the rigorous coursework or do not take

rigorous courses available to them; and student demographic data on rigorous course-taking patterns in the target schools or areas.

We are also requesting information on how the lack of access to rigorous programs has impacted the educational opportunities available to individuals served by TS projects. We are also requesting cost estimates, based on existing TS projects, as to the amount and percentage of the project budget that might be used for tuition, if allowable, and the estimated number of participants that might benefit each year from this service. We may reexamine the need for or scope of this proposal based on the comments and data that we receive.

Reasons: Based on comments and information we received during the negotiated rulemaking sessions we believe that it is appropriate for grantees to use TS funds to pay for computer equipment and software. Authorizing this use of funds will permit grantees to deliver services more efficiently. We believe that prior approval for these expenditures is no longer necessary. With the new statutory outcome criterion related to a rigorous course of study, a TS project also may need to rent, lease, or purchase technology used by participants in a rigorous academic program.

Some non-Federal negotiators recommended revisions to the TS regulations to allow grantees to pay transportation and tuition costs for participants who are trying to complete a rigorous secondary school program of study when the course or courses are not offered at the secondary school the participant attends or at another school within the school district.

A number of legal and policy concerns were discussed regarding this provision. A significant policy concern discussed was whether TS is the appropriate mechanism for addressing the lack of rigorous courses in some secondary schools given other new Federal initiatives and funding to help all school districts provide a rigorous program of study. Also of concern was the potential cost of this provision and whether this would result in TS projects being able to serve fewer students.

At the final negotiated rulemaking session, the Department noted that we could consider authorizing the use of funds to pay tuition, but that we needed more data on the issue before we would consider including this authority in the regulations. We pointed out the Federal policy goal that every secondary school should offer a rigorous program of study to its students. We also noted that other Federal programs support the

establishment of rigorous programs of study. Accordingly, we were not convinced that the limited TS funds should be used for this purpose. The non-Federal negotiators disagreed, stating that it is unreasonable to measure the performance of a TS grantee on the extent to which participants complete a rigorous secondary school program of study if a grantee cannot use project funds to support this activity. The non-Federal negotiators also provided examples of areas and target schools served by TS projects that lack courses needed to meet the State standards for a rigorous secondary school program of study. If TS projects serving these areas could not provide participants with access to these courses, the non-Federal negotiators opined, some TS participants would be denied the opportunity to qualify for ACG funds. They also noted that research has shown that students who take rigorous coursework in high school are more likely to enter and complete postsecondary education.

After further consideration, we understand that the availability of rigorous coursework may be an issue in some schools and communities served by TS projects and, thus, we have reconsidered our position on this issue. We propose to include, under certain conditions, the payment of tuition for courses that would allow project participants to complete a rigorous secondary school program of study. Providing opportunities for high school students to complete a rigorous secondary school program of study is important to ensuring opportunity and success in postsecondary education.

Nonetheless, we need data to understand the extent to which areas and schools served by TS projects lack rigorous coursework. Further, we need data to perform cost-benefit analyses that help us determine whether to permit the use of limited TS grant funds for this purpose. We cannot base policy decisions on the appropriate use of limited program funds on anecdotal evidence. The TS program has a national scope, and we must consider the cost implications of this proposal. The use of TS funds for tuition and other related costs would reduce the availability of funding for other program services and would reduce the number of participants that could be served by a TS project. Additionally, as the Department seeks improvements in education, we need to ensure that Federal programs are used in a coordinated way to leverage educational reform and opportunities that would benefit all students. Therefore, we are

requesting that commenters provide us with information and data regarding the tuition provisions in these proposed regulations.

To ensure that TS funds are only used to pay tuition in exceptional situations, the proposed regulations would permit the payment of tuition for courses that are part of a rigorous secondary school program of study only if the: course to be taken by the participant or a similar course is not offered in the school district; the participant takes the course at an institution of higher education; the course is comparable in rigor to courses that are part of the State's rigorous secondary school program of study; and the course is accepted by the participant's secondary school as meeting one or more of the course requirements for a high school diploma. We would also require an applicant proposing to use TS funds for tuition to provide detailed information in their application on the appropriateness and cost effectiveness of using the TS funds for this purpose.

What Other Requirements Must a Grantee Meet? (§ 643.32)

Changes to Number of Participants (643.32(b))

Statute: Section 402A(b)(3) of the HEA, as amended by the HEOA, establishes a minimum grant of \$200,000 for TS. The HEA does not specify the number of participants a project must serve.

Current Regulations: Section 643.32(b) requires a TS project to serve a minimum of 600 participants; the Secretary may reduce this number if the amount of the grant for the budget period is less than \$180,000, which was the minimum TS grant amount prior to the HEOA amendments.

Proposed Regulations: We are proposing to amend § 643.32(b) to remove the current requirement that a TS grantee serve a specific minimum number of participants and to redesignate the paragraphs that follow.

Reasons: We are proposing to remove the minimum number of participants from regulations so the Department has flexibility in each competition to establish the number of participants, and to adjust these numbers in subsequent competitions based on experience, cost analyses, and other factors.

The Department is committed to encouraging TS grantees to identify and adopt the most cost-effective strategies for disadvantaged youth to complete secondary school programs, enroll in or reenter education programs at the postsecondary level, and complete

postsecondary education programs. The Department intends to design future TS grant competitions to achieve this objective. Future grant competition notices will set parameters that are consistent with the statute to encourage adoption of cost effective practices using the best available evidence. This may include setting a minimum number of program participants for each competition to promote adoption of cost-effective practices.

We intend to stipulate the minimum and maximum grant award amounts and to address the number of participants a TS project will be expected to serve each year of the grant cycle through the **Federal Register** notice inviting applications for the competition. We also intend to establish a per-participant cost in the **Federal Register** notice to be used to determine the amount of the grant for an applicant proposing to serve fewer participants than required for the minimum grant award for the competition.

Changes to Recordkeeping Requirements (§ 643.32(b))

Statute: Section 402A(f)(3)(A)(iv) of the HEA, as amended by section 403(a)(5) of the HEOA, includes a new outcome criterion for TS that requires projects to report on participants who complete a rigorous secondary school program of study.

Current Regulations: Current § 643.32(c) specifies the recordkeeping requirements for TS grantees. This provision does not reflect the changes made by the HEOA to the goals and services of the TS program.

Proposed Regulations: We are proposing to redesignate current paragraph (c) as (b) and to amend newly redesignated § 643.32(b) to include new recordkeeping requirements for TS program participants in a rigorous secondary school program of study.

Reasons: We are proposing to amend the recordkeeping requirements to reflect the changes made to the TS program by the HEOA. The proposed change to the regulations is also consistent with the recommendation of the non-Federal negotiators during the negotiated rulemaking sessions to require a grantee to keep a list of courses taken by participants who are enrolled in a rigorous secondary school program of study. This change would ensure that a TS project grantee maintain the documentation needed to determine that participants in a rigorous secondary school program of study have taken the courses needed to qualify for ACG grants, as required by section 402A(f)(3)(A)(iv) of the HEA.

Changes to Full-Time Director Requirement (§ 643.32(d))

Statute: Section 402A(c)(6) of the HEA requires that the Secretary permit the Director of a Federal TRIO program to administer one or more additional programs for disadvantaged students.

Current Regulations: Current § 643.32(d) requires a grantee to employ a full-time project director unless the grantee requests a waiver.

Proposed Regulations: We are proposing to amend § 643.32(d) to amend the provision that required a grantee to have a full time Project Director unless the project met certain conditions and requested a waiver. Specifically, under the proposed regulations, a waiver would not be required for a Director who is less than full-time on the project if the Director is also administering one or two additional programs for disadvantaged students. A grantee would have to request a waiver of the full-time director requirement for the Director to administer more than three programs.

Reasons: The proposed regulations would be consistent with section 402A(c)(6) of the HEA. In addition, the change would reduce the administrative burden on grantees by eliminating the requirement that a grantee request a waiver of the full-time director requirement under certain circumstances.

Educational Opportunity Centers (EOC), 34 CFR Part 644

Changes to the EOC Program Purpose (§ 644.1)

Statute: Section 403(f)(1)(C) of the HEOA amended section 402F(a) of the HEA and modified the purposes of the EOC program.

Current Regulations: Current § 644.1 specifies the purpose of the EOC program. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We propose to amend § 644.1 by adding a new paragraph (c) containing the following text: "To improve the financial literacy and economic literacy of participants on topics such as basic personal income, household money management, and financial planning skills and basic economic decision-making skills."

Reasons: We are proposing to revise current § 644.1 to reflect the changes made by the HEOA to the EOC program authority statement in section 402F(a) of the HEA.

Applicant Eligibility (§ 644.2)

Statute: Section 402A(b)(1) of the HEA, as amended by section

403(a)(1)(A) of the HEOA lists the types of entities that are eligible for EOC grants. Prior to enactment of the HEOA, a secondary school could apply for an EOC grant under "exceptional circumstances." The HEOA eliminates this limitation on the eligibility of a secondary school. Further, the HEOA defines public and private agencies and organizations that may apply for a grant to include community-based organizations with experience in serving disadvantaged youth.

Current Regulations: Current § 644.2 specifies who is eligible to apply for an EOC grant. This provision does not reflect the changes made to applicant eligibility by the HEOA.

Proposed Regulations: We are proposing to amend § 644.2 to conform to the statutory changes to applicant eligibility. Under the proposed regulations, a secondary school would be able to apply for an EOC grant without having to demonstrate "exceptional circumstances." In addition, a community-based organization with experience in serving disadvantaged youth may apply for a grant.

Reasons: We are proposing to revise current § 644.2 to conform to the changes made by the HEOA in applicant eligibility in section 402A(b)(1) of the HEA.

Required and Permissible Services (§ 644.4)

Statute: Section 403(f)(2) of the HEOA amended section 402F(b) of the HEA, which defines the permissible services or activities in the EOC program. As amended, the HEA lists certain services or activities that projects funded under the program may provide.

Current Regulations: Current § 644.4 specifies what services an EOC project may provide. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to amend § 644.4 and add to the permissible services that projects may provide under the EOC program in accordance with the changes made by the HEOA. Specifically, we propose to remove personal counseling services from the list of permissible services and replace it with individualized personal, career, and academic counseling services. We are also proposing to specify that permissible services includes programs and activities described in § 644.4 that are specially designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary education, participants who are

individuals with disabilities, participants who are homeless children and youth, participants who are foster care youth, or other disconnected participants. Finally, we are proposing to add education or counseling services designed to improve the financial literacy and economic literacy of participants to the list of permissible services for EOC projects.

Reasons: The proposed regulations would amend § 644.4 to revise the list of services that EOC projects are allowed to provide to conform with section 402F(b) of the HEA.

Project Period (§ 644.5)

Statute: Section 402A(b)(2) of the HEA, as amended by section 403(a)(1)(B)(i) of the HEOA, provides that all EOC grants are for five years. Prior to enactment of the HEOA, EOC grants were awarded for four years, except for applicants whose peer review scores were in the highest 10 percent of the scores of all applicants; those applicants received five-year grants.

Current Regulations: Current § 644.5 specifies the length of an EOC project period. This provision does not reflect the change made by the HEOA to the HEA.

Proposed Regulations: We are proposing to revise the regulations to define the project period under the EOC program as five years for all grantees.

Reasons: The change is made to conform § 644.5 with section 402A(b)(2) of the HEA, as amended by the HEOA.

Applicable Regulations (§ 644.6)

Statute: None.

Current Regulations: Section 644.6 specifies which regulations apply to the EOC program. This provision contains an outdated list of applicable regulations.

Proposed Regulations: We are proposing to update the list of regulations that apply to the EOC program. We also propose excluding §§ 75.215 through 75.221 from the list of regulations that apply.

Reasons: We discuss the reasons for the changes in the *Applicable Regulations* for the Training program section of the preamble.

Definitions (§ 644.7)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the definitions of *institution of higher education* and *veteran* and for the addition of definitions of *different population*, *financial and economic literacy*, *foster care youth*, *homeless children and youth*, and *individual with disabilities* in the *Definitions Applicable*

to More Than One Federal TRIO Program section of the preamble.

Number of Applications (New § 644.10)

We discuss the statutory authority, proposed regulations, and reasons for adding new § 644.10, *Number of Applications, in the Number of Applications an Eligible Entity May Submit to Serve Different Campuses and Different Populations* section of the preamble.

Assurances (Current § 644.10, Proposed § 644.11)

Statute: Section 402F(c)(3) of the HEA requires that EOC grantees provide an assurance that individuals participating in the project do not have access to services from another EOC or a TS project.

Current Regulations: Current § 644.10 specifies what assurances an applicant must include in an application.

Proposed Regulations: We are proposing to re-number the regulations establishing the required assurances as § 644.11 and to revise paragraph (b) to require EOC grantees to provide an assurance that they will not provide the same services to participants as projects funded by programs serving similar populations, such as Veterans Upward Bound (VUB), and TS.

Reasons: We are proposing to amend the EOC project assurances to prohibit EOC projects from providing the same services to participants that the participants would receive under other programs serving similar populations, such as VUB and TS, to avoid the duplication of services between an EOC project and similar projects.

Making New Grants (§ 644.20)

Statute: Section 402A(c)(2)(A) of the HEA requires the Secretary to consider, when making Federal TRIO grants, each applicant's prior experience (PE) of high quality service delivery under the program for which funds are sought. Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, now identifies the specific outcome criteria to be used to determine an entity's PE under the EOC (*see* section 402A(f)(3)(E) of the HEA). The HEA does not establish specific procedures for awarding PE points.

The HEA, as amended, no longer includes provisions for awarding additional points to an application for a project in designated territories of the United States.

Prior to enactment of the HEOA, the Secretary had the discretion to decide whether or not to consider an application from an applicant that carried out a project involving the

fraudulent use of program funds. The HEOA amended the HEA to eliminate that discretion and prohibit the Secretary from considering an application from such a party.

Current Regulations: Current § 644.20 specifies the procedures the Secretary uses to make new grants. Section 644.20(a)(2) needs to be expanded to specify the procedures the Secretary will use to award PE points.

Proposed Regulations: Proposed § 644.20 would be expanded to specify the procedures the Secretary would use to award PE points. We are proposing that the Secretary evaluate the PE of an applicant for each of three project years as designated by the Secretary in the **Federal Register** notice inviting applications. We also propose that an applicant may earn up to 15 PE points for each of the three years for which the annual performance report was submitted. The average of the scores for the three project years will be the final PE score for the applicant.

We also propose to remove § 644.20(a)(3) and to amend the wording in § 644.20(d) to specify that the Secretary will not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

Reasons: To provide more transparency in the process the Secretary will use to award PE points, we are proposing to amend § 644.20(a)(2). We also are proposing to remove § 644.20(a)(3) because there is no longer statutory authority for this provision and to amend § 644.20(d) to reflect the statutory change that provides that the Secretary may not consider an application from an applicant that carried out a project involving the fraudulent use of program funds.

Selection Criteria (§ 644.21)

Statute: Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, requires the Secretary to use specific outcome criteria to measure the performance of Federal TRIO grants, including those under the EOC program. Specifically, pursuant to section 402A(f)(3)(E) of the HEA, the Secretary must measure the performance of EOC grantees by examining the extent to which the grantee met or exceeded the grantee's objectives (as established in the entity's approved application) regarding: (1) The enrollment of students without a secondary school diploma or its recognized equivalent and who were served by the program in programs leading to a diploma or its equivalent; (2) the enrollment of secondary school graduates who were

served by the program in programs of postsecondary education; (3) the delivery of services to the total number of students served by the program, as agreed to by the entity and the Secretary; and (4) the provision of assistance to students served by the program in completing financial aid applications and college admission applications. These statutory changes necessitate a change in the grant selection criteria for "Objectives" (§ 644.21(b)).

Further, section 402A(b) of the HEA, as amended by section 403(a)(1) of the HEOA, eliminated the "in exceptional circumstances clause" that limited secondary school eligibility to apply for an EOC grant. This statutory change necessitates a change in the grant selection criteria regarding "Applicant and community support" (§ 644.21(d)).

Current Regulations: Current § 644.21 specifies the selection criteria the Secretary uses to evaluate an application for an EOC grant. This provision does not reflect the changes made by the HEOA to the HEA applicable to the following selection criteria: Objectives (§ 644.21(b)) and Applicant and community support (§ 644.21(d)).

Proposed Regulations (Objectives): We are proposing to amend § 644.21(b) to provide that, in evaluating applications for EOC grants, the Secretary will consider the quality of the applicant's proposed objectives and proposed targets (percentages) on the basis of the extent to which they are both ambitious and attainable, given the project's plan of operation, budget, and other resources. We propose to distribute eight points for this criterion in the following manner: (1) Two points for enrollment of participants who do not have a secondary school diploma or its recognized equivalent in programs leading to a secondary school diploma or its equivalent; (2) four points for postsecondary enrollment; (3) one point for applying for student financial aid assistance; and (4) one point for students applying for college admission assistance.

Reasons: We are proposing to amend § 644.21(b) to reflect the changes made to section 402A(f)(3)(E) of the HEA by section 403(a)(5) of the HEOA regarding the outcome criteria to be used to measure the performance of the EOC program. We are proposing to reflect the statutory EOC outcome criteria in § 644.21(b) as selection criteria because we believe that the focus of the process of selecting EOC grant applications should be on the ultimate outcomes the EOC program is designed to attain.

Moreover, during the grant period, section 402A(f)(4) of the HEA requires the Secretary to measure the performance of the grantee based on a comparison of the targets agreed upon for the outcome criteria established in the applicant's approved application to the actual results achieved during the grant period. For this reason, we believe it is appropriate to use the outcome criteria from section 402A(f)(3)(E) of the HEA as the selection criteria for the EOC program.

Outcome criteria are also used to evaluate an applicant's PE and to assign PE points to an application. We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to evaluating an applicant's PE in the *Evaluating Prior Experience—Outcome Criteria* section of the preamble.

Proposed Regulations (Applicant and community support): We are proposing to amend § 644.21(d) to require written commitments from institutions of higher education, in addition to the current requirement for written commitments from schools and community organizations, to provide resources to supplement the grant and enhance project services. In paragraph (d) of this section, we also clarify that the current requirement for written commitments applies to secondary schools by adding the word "secondary" to the regulations.

Reasons: We discuss the reasons for the proposed changes to the *Selection Criteria—Applicant and Community Support* in the TS section of the preamble.

Prior Experience Criteria (§ 644.22)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the PE criteria in the *TRIO Outcome Criteria—Prior Experience* section of the preamble.

Amount of a Grant (§ 644.23)

Statute: Section 402A(b)(3)(B) of the HEA, as amended by section 403(a)(1)(C) of the HEOA, increased the minimum EOC grant from \$180,000 to \$200,000.

Current Regulations: Current § 644.23 specifies how the Secretary sets the amount of a grant. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to amend the regulations to update the statutory minimum grant amount to \$200,000.

Reasons: We are proposing this change to reflect the changes to section 402A(b)(3)(B) of the HEA by section 403(a)(1)(C) of the HEOA.

Review Process for Unsuccessful Federal TRIO Program Applicants (New § 644.24)

We discuss the statutory authority, proposed regulations, and reasons for adding a new review process for unsuccessful applicants, in the *Review Process for Unsuccessful Federal TRIO Program Applicants* section of the preamble.

Allowable Costs (§ 644.30)

Statute: The statute does not specifically address allowable costs in the EOC program.

Current Regulations: Current § 644.30 allows EOC funds to be used for participant field trips for observing persons employed in various career fields only if the trips are within the target area. Current § 644.30 requires a grantee to obtain prior approval from the Secretary to use program funds to purchase computer and other equipment.

Proposed Regulations: We are proposing to revise § 644.30(a)(3) by removing the words “in the target area” and by rewording the paragraph for clarity; we also are proposing to revise § 644.30(f) to allow grantees to use program funds for the purchase, lease, or rental of computer hardware, computer software, or other equipment for participant development, project administration, or project recordkeeping without requesting prior approval.

Reasons: We discuss the reasons for permitting EOC grantees to purchase computer equipment without prior approval in the *Changes to the Allowable Costs* section of the TS part of this preamble. We also believe that career field trips should not be limited to the grant target area, as this might limit EOC participants’ exposure to various careers.

Other Requirements of a Grantee (§ 644.32)

Changes to Number of Participants (§ 644.32(b))

Statute: The HEA does not stipulate the number of participants a project must serve.

Current Regulations: Section 644.32(b) requires an EOC project to serve a minimum of 1,000 participants; however, the Secretary may reduce this number if the amount of the grant for the budget period is less than \$180,000 (which was the minimum grant amount in the EOC program prior to enactment of the HEOA).

Proposed Regulations: We are proposing to amend § 644.32(b) to remove the requirement that an EOC

grantee serve a minimum number of participants.

Reasons: We are proposing to remove from the regulations the requirement that an EOC grantee serve a minimum number of participants to give the Department flexibility to establish the number of participants to be served based on the available resources for each competition and to adjust these amounts for subsequent competitions based on experience. We intend to stipulate the minimum and maximum grant award amounts and address the number of participants an EOC project is expected to serve each year of the grant cycle through the **Federal Register** notice inviting applications for the competition. The **Federal Register** notice would also establish a per participant cost to be used to determine the amount of the grant for an applicant proposing to serve fewer participants than required for the minimum grant award for the competition.

Changes to Full-Time Director Requirement (Old § 644.32(d); New § 644.32(c))

Statute: Section 402A(c)(6) of the HEA requires that the Secretary permit the Director of a Federal TRIO program to administer one or more additional programs for disadvantaged students.

Current Regulations: Section 644.32(d) requires a grantee to employ a full-time project director unless the grantee requests a waiver.

Proposed Regulations: We propose to reorganize section 644.32 by removing paragraph (d), redesignating § 644.32(c) as § 644.32(b), and adding a new § 644.32(c). The new § 644.32(c) would include some of the provisions in current § 644.32(d), but would not include the requirement that a grantee request a waiver if the Project director is administering one or two additional programs for disadvantaged students. Specifically, a grantee would not need a waiver from the Secretary to have a director that is less than full-time on the project if the director is also administering one or two additional programs for disadvantaged students. Under the proposed regulation, however, a grantee would be required to request a waiver of the full-time director requirement for the director to administer more than three programs.

Reasons: We discuss the reasons for permitting the Director of a Federal TRIO program to administer one or more additional programs for disadvantaged students in the *Changes to Full-Time Director Requirement* in the TS section of the preamble.

Upward Bound (UB) Program, 34 CFR Part 645

Applicant Eligibility (§ 645.2)

Statute: Section 402A(b)(1) of the HEA, as amended by section 403(a)(1)(A) of the HEOA, lists the types of entities that are eligible for UB grants. Prior to enactment of the HEOA, a secondary school would be eligible to apply for a UB grant if it could show “exceptional circumstances.” The HEOA eliminates this limitation. Further, the HEOA defines public and private agencies and organizations that may apply for a grant to include community-based organizations with experience in serving disadvantaged youth.

Current Regulations: Current § 645.2 specifies who is eligible to apply for an UB grant. This provision does not reflect the changes made to applicant eligibility by the HEOA.

Proposed Regulations: We are proposing to amend § 645.2 to conform to the statutory changes to applicant eligibility. As with other eligible applicants, a secondary school may apply for an UB grant without having to demonstrate “exceptional circumstances.” In addition, under proposed § 645.2, a community-based organization with experience in serving disadvantaged youth may apply.

Reasons: We are proposing to amend current § 645.2 to conform to section 402A(b)(1) of the HEA, as amended by the HEOA.

Grantee Requirements (§ 645.4)

Statute: Section 402A(e)(1) and (2) of the HEA provides lists of acceptable documentation of a participant’s status as a low-income individual. The HEOA made no substantive changes to this section of the statute.

Current Regulations: Section 645.4(a) duplicates requirements in § 645.21. In addition, the heading for § 645.4 is not descriptive of the requirements in it.

Proposed Regulations: We are proposing to remove § 645.4(a) of the current regulations and redesignate the paragraphs that follow. We also propose to revise the section heading to read as follows: “What are the grantee requirements for documenting the low-income and first-generation status of participants?”

Reasons: Except for paragraph (a), the current regulation reflects the statutory requirements for documenting a participant’s low-income and potential first-generation status. Therefore, we are proposing to revise the heading for this section to clearly describe the grantee’s documentation requirements with regard to participant eligibility. We are proposing to remove paragraph (a) of

this section because it duplicates requirements in § 645.21.

Applicable Regulations (§ 645.5)

Statute: None.

Current Regulations: Section 645.5(a) contains an outdated list of applicable regulations.

Proposed Regulations: We are proposing to update the list of regulations that apply to the UB program. We also propose to specifically exclude 34 CFR 75.215 through 75.221 from the list of applicable regulations that apply.

Reasons: We discuss the reasons for the changes in the *Applicable Regulations* for the Training program section of the preamble.

Definitions (§ 645.6)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the definitions of *institution of higher education* and *veteran* and for the addition of *different population, financial and economic literacy, foster care youth, homeless children and youth, and individual with disabilities* in the *Definitions Applicable to More Than One Federal TRIO Program* section of the preamble. In addition, we propose to include definitions for two terms applicable to both the TS and UB programs (*regular secondary school diploma* and *rigorous secondary school program of study*) and two terms applicable to new UB requirements (*individual who has a high risk for academic failure* and *veteran who has a high risk for academic failure*).

Regular Secondary School Diploma

Statute: Section 402C(b) of the HEA, as amended by section 403(c)(1) of the HEOA, requires a UB grantee to provide: “guidance on and assistance in alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma.”

Current Regulations: None.

Proposed Regulations: We are proposing to amend § 645.6(b) to include a definition of *regular secondary school diploma*. The proposed regulations would define regular secondary school diploma to mean a level attained by individuals who meet or exceed the coursework and performance standards for high school completion established by the individual’s State.

Reasons: We discuss the reasons for this new definition in the *Definitions* in the TS section of the preamble.

Rigorous Secondary School Program of Study

Statute: Section 402A(f)(3)(B)(v) of the HEA, as amended by section 403(a)(5) of the HEOA, includes a new outcome criterion for UB that requires the Secretary to consider to the extent to which a grantee met or exceeded its objectives on project participants that complete a rigorous secondary school program of study that will make such students eligible for programs such as the ACG program.

Current Regulations: None.

Proposed Regulations: We are proposing to amend the definitions in § 645.6(b) to include a definition of *rigorous secondary school program of study*. The proposed regulations would define *rigorous secondary school program of study* to mean a program of study that is—

(1) Established by a State educational agency (SEA) or local educational agency (LEA) and recognized as a rigorous secondary school program of study by the Secretary through the process described in 34 CFR § 691.16(a) through § 691.16(c) for the ACG Program;

(2) An advanced or honors secondary school program established by States and in existence for the 2004–2005 school year or later school years;

(3) Any secondary school program in which a student successfully completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English;

(4) A secondary school program identified by a State-level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado;

(5) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of a “4” or higher on the examinations for at least two of those courses; or

(6) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of “3” or higher on the

College Board’s Advanced Placement Program Exams for at least two of those courses.

Reasons: We discuss the reasons for this new definition in the *Definitions* in the TS section of the preamble. *Individual who has a high risk for academic failure* and *veteran who has a high risk for academic failure*

Statute: The HEOA amended section 402C(e)(2) of the HEA to include “students who have a high risk for academic failure” as a group eligible to be served by an UB project.

Current Regulations: None.

Proposed Regulations: We are proposing to add a definition of an *individual who has a high risk for academic failure* for participants in regular UB projects and a definition of a *veteran who has a high risk for academic failure* for participants in a VUB project.

For regular UB, an *individual who has a high risk for academic failure* would mean an individual who: (1) Has not achieved at the proficient level on State assessments in reading or language arts; (2) has not achieved at the proficient level on State assessments in math; (3) has not completed pre-algebra, algebra, or geometry; or (4) has a grade point average of 2.5 or less (on a 4.0 scale) for the most recent school year for which grade point averages are available.

For VUB, a *veteran who has a high risk for academic failure* would mean a veteran who: (1) Has been out of high school or dropped out of a program of postsecondary education for five or more years; (2) has scored on standardized tests below the level that demonstrates a likelihood of success in a program of postsecondary education; or (3) meets the definition of an individual with disabilities as defined in 645.6(b).

Reasons: We have proposed a definition of a high risk student based on our experience in administering the TRIO programs and that we believe appropriately identifies students most in need of academic assistance.

During the negotiated rulemaking sessions, we initially proposed that only regular UB projects be required to include students who are at high risk of academic failure as eligible participants. Because of the different populations served by UBMS and VUB projects, we did not think this provision should apply to these two project types. Many of the non-Federal negotiators agreed that UBMS projects should not be required to serve high-risk students since UBMS projects are special focus projects designed to prepare high school students for postsecondary education

programs that lead to careers in math and science fields.

Many of the non-Federal negotiators, however, felt that the requirement to serve high-risk students should apply to VUB projects. The proposed definition of a *veteran who has a high risk for academic failure* reflects the suggestions of some of the non-Federal negotiators. This proposed change is intended to ensure that VUB projects help veterans who can most benefit from the services offered. Additionally, to ensure that disabled veterans can benefit from the educational services and activities the VUB project provides, the VUB definition would include individuals who meet the proposed definition of an *individual with disabilities*.

UB Required Services (§ 645.11)

Statute: Section 403(c) of the HEOA amended sections 402C of HEA and modified the required services or activities for a UB grantee.

Current Regulations: Current § 645.11 does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: To conform with the HEA, we are proposing to amend the regulations to require that UB grantees provide the following services: (1) Academic tutoring to enable students to complete secondary or postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects; (2) advice and assistance in secondary and postsecondary course selection; (3) assistance in preparing for college entrance examinations and completing college admission applications; (4)(i) providing information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and (ii) assistance in completing financial aid applications, including the Free Application for Federal Student Aid described in section 483(e) of the HEA; (5) guidance on and assistance in secondary school reentry, alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma, entry into general educational development (GED) programs, or entry into postsecondary education; and (6) education or counseling services designed to improve the financial literacy and economic literacy of students or the student's parents, including financial planning for postsecondary education.

Reasons: We are proposing these changes to align the regulations with section 402C of the HEA as amended by

the HEOA. Prior to enactment of the HEOA, UB grantees could choose participants services from among a number of permissible activities and services. Section 403(c) of the HEOA, however, amended the HEA to require grantees to provide certain services. The proposed amendments reflect the statutory change.

UB and UBMS Permissible Services (§ 645.12)

Statute: Section 403(c)(4) of the HEOA amended section 402C(d) of the HEA, which defines the permissible services or activities in the UB program.

Current Regulations: Current § 645.11(b) specifies what services an UB project may provide. This provision does not reflect changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to reflect the changes made by the HEOA and specify that UB and UBMS grantees may provide the following permissible services: (1) Exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth; (2) information, activities, and instruction designed to acquaint youth participating in the project with the range of career options available to the youth; (3) on-campus residential programs; (4) mentoring programs involving elementary school or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons; (5) work-study positions where youth participating in the project are exposed to careers requiring a postsecondary degree; and (6) programs and activities described in (1) through (5) above and are specially designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary education, participants with disabilities, participants who are homeless children and youths, participants who are foster care youth, or other disconnected participants.

Reasons: We are proposing these changes to align the regulations with section 402C(d) of the HEA as amended by the HEOA. Prior to enactment of the new law, projects funded under the UB program could choose from among a number of permissible activities and services to provide participants. Section 403(c) of the HEOA, however, amended section 402C of the HEA to require grantees to provide certain services to provide participants and gives grantees the option of providing other services. The proposed amendments would

reflect the statutory changes relating to permissible services or activities.

VUB Permissible Services (§ 645.15)

Statute: Section 403(c) of the HEOA amended section 402C of the HEA governing the UB program which defines the required and permissible services or activities for VUB grantees.

Current Regulations: Current regulations do not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to modify § 645.15 to specify that VUB grantees may provide special services, including mathematics and science preparation, to enable veterans to make the transition to postsecondary education.

Reasons: We are proposing this change to align the regulations with the statutory amendment made by section 403(c) of the HEOA to section 402C of the HEA.

Number of Applications (§ 645.20)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the number of applications an eligible applicant may submit (§ 645.20) in the *Number of Applications an Eligible Entity May Submit To Serve Different Campuses and Different Populations* section of the preamble.

Assurances (§ 645.21)

Statute: Section 403(c)(5) of the HEOA amended section 402C(e) of the HEA, which requires UB grantees to provide certain assurances as part of the application process. Prior to enactment of the HEOA, a UB grantee had to provide an assurance that all participants in its project would be either low-income or first-generation college students with at least two-thirds of the participants a being both low-income and first-generation. The remaining participants could be either low-income individuals or first-generation college students. The HEOA amended section 402C(e) of the HEA, to modify this last group to include individuals who are at high risk for academic failure as a separate group of eligible participants. The HEOA also requires applicants to provide an assurance that no student will be denied participation in the applicant's UB project because the student entered the project after completing the 9th grade.

Current Regulations: Current § 645.21 specifies what assurances an applicant for a UB grant must include in an application. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We propose to amend § 645.21 to include assurances for each of the three project types: UB, UBMS, and VUB. We are also proposing to add a new provision that would require that a UB grantee provide an assurance that the project will not provide participants the same services they are receiving from other programs serving similar populations.

An applicant for a regular UB grant would have to provide assurances that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be low-income individuals, potential first-generation college students, or individuals who have a high risk for academic failure;

(3) No student will be denied participation in a project because the student will enter the project after the 9th grade;

(4) Individuals who are receiving services from a GEAR UP project under 34 CFR part 694, another UB or UBMS project under 34 CFR part 645, a TS project under 34 CFR part 643, an EOC project under 34 CFR part 644, or a project under other programs serving similar populations will not receive the same services under the proposed project.

An applicant for an UBMS grant would have to provide assurances that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be either low-income individuals or potential first-generation college students; and

(3) No student will be denied participation in a project because the student would enter the project after the 9th grade; and

(4) Individuals who are receiving services from a GEAR UP project under 34 CFR part 694, a regular UB or another UBMS project under 34 CFR part 645, a TS project under 34 CFR part 643, EOC under 34 CFR part 644, or a project under other programs serving similar populations will not receive the same services under the proposed project.

An applicant for a VUB grant must have to provide assurances to the Secretary that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be low-income individuals, potential first-generation college students, or veterans

who have a high risk for academic failure; and

(3) Individuals who are receiving services from another VUB project under 34 CFR part 645, a TS project under 34 CFR part 643, an EOC project under 34 CFR part 644, or a project under other programs serving similar populations will not receive the same services under the proposed project.

Reasons: The changes to the listing of required assurances in § 645.21 are needed to conform the regulations to the changes made to the HEA. Also, to ensure no duplication of services between an UB project and other similar programs, we are proposing that UB grantees provide an assurance that they will not provide the same service to a participant also participating, as applicable, in a project funded by GEAR UP, UB, UBMS, VUB, TS, EOC, or other programs serving similar populations.

Making New Grants (§ 645.30)

Statute: Section 402A(c)(2)(A) of the HEA requires the Secretary to consider, when making Federal TRIO grants, each applicant's prior experience (PE) of high quality service delivery under the program for which funds are sought. Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, now identifies the specific outcome criteria to be used to determine an entity's PE under the UB programs (*see* section 402A(f)(3)(B) of the HEA). The HEA does not establish specific procedures for awarding PE points.

Prior to enactment of the HEOA, the Secretary had the discretion to decide whether or not to consider an application from an applicant that carried out a project involving the fraudulent use of program funds. The HEOA amended the HEA to eliminate that discretion and prohibit the Secretary from considering an application from such a party.

Current Regulations: Current § 645.30 specifies the procedures the Secretary uses to make new grants. Section 645.30(a)(2) needs to be expanded to specify the procedures the Secretary will use to award PE points.

Proposed Regulations: Proposed § 645.30 would be expanded to specify the procedures the Secretary would use to award PE points. We are proposing that the Secretary evaluate the PE of an applicant for each of three project years as designated by the Secretary in the **Federal Register** notice inviting applications. We also propose that an applicant may earn up to 15 PE points for each of the three years for which the annual performance report was submitted. The average of the scores for

the three project years will be the final PE score for the applicant.

We also propose to amend the wording in § 645.30(d) to specify that the Secretary will not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

Reasons: To provide more transparency in the process the Secretary will use to award PE points, we are proposing to amend § 645.30(a)(2). We also are proposing to amend § 645.30(d) to reflect the statutory change that provides that the Secretary may not consider an application from an applicant that carried out a project involving the fraudulent use of program funds.

Selection Criteria (§ 645.31)

Statute: Section 402A(f)(3)(B) of the HEA, as amended by section 403(a)(5) of the HEOA, requires the Secretary to use specific outcome criteria to measure the performance of Federal TRIO grants, including those funded under the UB program. Specifically, pursuant to section 402A(f)(3)(B) of the HEA, the Secretary must measure the performance of UB grantees by examining the extent to which the grantee met or exceeded the grant's objectives (as established in the grantee's approved application) regarding: (1) The delivery of service to the total number of students served by the program, as agreed upon by the entity and the Secretary for the period; (2) the students' school performance, as measured by the students' grade point average, or its equivalent; (3) the students' academic performance, as measured by standardized tests, including tests required by the students' State; (4) the retention in, and graduation from, secondary school of the students; (5) the completion by these students of a rigorous secondary school program of study that will make these students eligible for programs such as the ACG; (6) the enrollment of the students in an institution of higher education; and, (7) to the extent practicable, the postsecondary education completion of the students. These statutory changes necessitate a change in the grant selection criteria for "Objectives" (§ 645.31(b)).

Further, section 402A(b) of the HEA, as amended by section 403(a)(1) of the HEOA, eliminated the "in exceptional circumstances clause" that limited the eligibility of secondary schools to apply for grants. This statutory change necessitates a change in the grant selection criteria regarding "Applicant and community support" (§ 645.31(d)).

Current Regulations: Current § 645.31 specifies the selection criteria the Secretary uses to evaluate an application for an UB grant. This provision does not reflect the changes made by the HEOA to the HEA applicable to the following selection criteria: Objectives (§ 645.31(b)) and Applicant and community support (§ 645.31(d)).

Proposed Regulations (Objectives): We are proposing to amend § 645.31(b) to provide that, in evaluating UB grant applications, the Secretary will consider the quality of the applicant's proposed objectives and proposed targets (percentages) on the basis of the extent to which they are both ambitious and attainable, given the project's plan of operation, budget, and other resources. We propose to distribute nine points for this criterion in the following manner for UB and UBMS: (1) One point for academic performance (GPA); (2) one point for academic performance (standardized test scores); (3) two points for secondary school graduation (with regular secondary school diploma); (4) one point for completion of a rigorous secondary school program of study; (5) three points for postsecondary enrollment; and (6) one point for postsecondary completion.

For VUB, we propose to distribute nine points for this criterion in the following manner: (1) Two points for academic performance (standardized test scores); (2) three points for education program retention and completion; (3) three points for postsecondary enrollment; and (4) one point for postsecondary completion.

Reasons: We are proposing to amend § 645.31(b) to reflect the changes made to section 402A(f)(3)(B) of the HEA by section 403(a)(5) of the HEOA regarding the outcome criteria to be used to measure the performance of the UB program. We are proposing to reflect the statutory UB outcome criteria in § 645.31(b) as selection criteria because we believe that the focus at the outset of the UB discretionary grant process (*i.e.*, the evaluation of applications using UB selection criteria) should be on the ultimate outcomes the UB program is intended to attain.

Moreover, during the grant period, section 402A(f)(4) of the HEA requires the Secretary to measure the performance of the grant based on a comparison of the targets agreed upon for the outcome criteria established in the applicant's approved application to the actual results achieved during each year of the grant period. For this reason, we believe it is appropriate to reflect the outcome criteria from section

402A(f)(3)(B) of the HEA as the selection criteria for the UB program.

Outcome criteria are also used to evaluate an applicant's PE and assign PE points to an application. We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to evaluating an applicant's PE in the *Evaluating Prior Experience—Outcome Criteria* section of the preamble.

Proposed Regulations (Applicant and community support): We are proposing to amend § 645.31(d)(2) to require written commitments from institutions of higher education, in addition to the current requirement for written commitments from schools and community organizations, to provide resources to supplement the grant and enhance project services.

Reasons: We discuss the reasons for the proposed changes to the *Selection Criteria—Applicant and Community Support* in the TS section of the preamble.

Prior Experience Criteria (§ 645.32)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the PE criteria in § 645.32 in the *TRIO Outcome Criteria—Prior Experience* section of the preamble.

Amount of a Grant (§ 645.33)

Statute: Section 402A(b)(3)(B) of the HEA, as amended by section 403(a)(1)(C) of the HEOA, increased the minimum UB grant from \$190,000 to \$200,000.

Current Regulations: Current § 645.33 specifies how the Secretary sets the amount of a grant. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to amend the regulations to reflect the statutory minimum grant amount.

Reasons: We are proposing this change to reflect the changes made to section 402A(b)(3)(B) of the HEA by the HEOA.

Project Period (§ 645.34)

Statute: Section 402A(b)(2) of the HEA, as amended by section 403(a)(1)(B)(i) of the HEOA, provides that all UB grants are for five years. Prior to the HEOA, UB grants were awarded for four years, except for applicants whose peer review scores were in the highest 10 percent of the scores of all applicants; these applicants received five year grants.

Current Regulations: Current § 645.34 specifies the length of an UB project period. This provision does not reflect

the change made by the HEOA to the HEA.

Proposed Regulations: We are proposing to revise the regulations to define the project period under the UB program as five years for all grantees.

Reasons: The change is made to conform § 645.34 with section 402A(b)(2) of the HEA as amended by the HEOA.

Review Process for Unsuccessful Federal TRIO Program Applicants (§ 645.35)

We discuss the statutory authority, proposed regulations, and reasons for providing a new review process for unsuccessful applicants in the *Review Process for Unsuccessful Federal TRIO Program Applicants* section of the preamble.

Allowable Costs (§ 645.40)

Statute: The statute does not address the use of UB program funds to purchase equipment.

Current Regulations: Current § 645.40(n) requires a grantee to obtain prior approval from the Secretary to purchase computer and other equipment.

Proposed Regulations: We are proposing to revise § 645.40(n), redesignate § 645.40(o) as § 645.40(p), and add a new § 645.45(o) to permit an UB grantee, under certain circumstances, to purchase, lease or rent computer hardware, software, and other equipment and supplies that support the delivery of services to participants, including technology used by participants in a rigorous secondary school program of study and for project administration and recordkeeping without requiring prior approval from the Department.

Reasons: We discuss the reasons for permitting an UB grantee to purchase, lease, or rent computer equipment without prior approval in the *Changes to the Allowable Costs* section of the TS preamble.

Stipends (§ 645.42)

Statute: Section 403(c)(6) of the HEOA amended section 402C(f) of the HEA regarding the payment of stipends to UB project participants. The HEOA amended the HEA by deleting the words "during June, July, and August" and replacing them with "during the summer school recess, for a period not to exceed three months."

Current Regulations: Current § 645.42 specifies the terms of the payment of stipends in the UB program. This provision does not reflect changes made by the HEOA to the HEA.

Proposed Regulations: We propose to amend the current regulations to state that the stipend may not exceed \$60 per month for the summer school recess for a period not to exceed three months except for participants in a work-study position who may be paid \$300 per month during the summer recess.

Reasons: The proposed change would amend the regulations to reflect the change to section 402C(f) of the HEA by section 403(c)(6) of the HEOA.

Other Requirements of a Grantee (§ 645.43)

In these proposed regulations, current § 645.43(a) and (b) would be removed, a new § 645.43(a) would be added, and § 645.43(c) would be redesignated as § 645.43(b).

Changes to Number of Participants (Current § 645.43(a) Would Be Removed)

Statute: Section 402A(b)(3) of the HEA, as amended by the HEOA, establishes a minimum grant of \$200,000 for UB. The HEA does not establish a minimum number of participants a UB project must serve.

Current Regulations: Current § 645.43(a)(1) and (2) require a regular UB project to serve between 50 and 150 participants; a UBMS project to serve between 50 and 75 participants; and a VUB project to serve a minimum of 120 participants. Current § 645.43(a)(3) gives the Secretary the authority to waive the number of participant requirements if the applicant demonstrates that the project will be more cost effective and consistent with the objectives of the program if a greater or lesser number of participants will be served.

Proposed Regulations: We propose to remove current § 645.43(a).

Reasons: We are proposing to remove from the regulations the requirement that UB grantees serve a minimum number of participants to give the Department the flexibility to establish the number of participants to be served based on the available resources for each competition and to adjust these numbers for subsequent competitions based on experience, changing priorities, and cost analyses.

We plan to stipulate the minimum and maximum grant award amounts and address the number of participants a UB project is expected to serve each year of the grant cycle through the **Federal Register** notice inviting applications for the competition. The **Federal Register** notice would also establish a per participant cost to be used to determine the amount of the grant for an applicant proposing to serve fewer participants

than required for the minimum grant award for the competition.

Changes to Full-Time Director Requirement (New § 645.43(a))

Statute: Section 402A(c)(6) of the HEA requires that the Secretary permit the Director of a Federal TRIO program to administer one or more additional programs for disadvantaged students.

Current Regulations: Current § 645.43(b) requires a grantee to employ a full-time project director unless the grantee requests a waiver.

Proposed Regulations: We propose to add a new § 645.43(a), that would include some of the provisions in current § 645.43(b), but would eliminate the requirement for a waiver if a project director is administering one or two programs for disadvantaged students. A grantee would not need a waiver from the Secretary to have a director that is less than full-time on the project if the director is also administering one or two additional programs for disadvantaged students. A grantee would be required to request a waiver of the full-time director requirement for the director to administer more than three programs.

Reasons: We discuss the reasons for permitting the Director of a Federal TRIO program to administer one or more additional programs for disadvantaged students in the *Changes to Full-Time Director Requirement* in the TS section of the preamble.

Student Support Services (SSS), 34 CFR Part 646

SSS Program Purpose (§ 646.1)

Statute: Section 403(d)(1) of the HEOA amended section 402D(a) of the HEA, and modified the purpose of the SSS program.

Current Regulations: Current § 646.1(c) does not reflect the changes made by the HEOA.

Proposed Regulations: We propose to amend § 646.1(c) and add paragraph (d) as follows:

(c) Foster an institutional climate supportive of the success of students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students with disabilities, students who are homeless children and youth, students who are in foster care or are aging out of the foster care system, or other disconnected students; and

(d) Improve the financial literacy and economic literacy of students in areas such as—

(1) Basic personal income, household money management, and financial planning skills; and

(2) Basic economic decision-making skills.

Reasons: The proposed changes are necessary to conform the regulations to section 402D(a)(3) of the HEA.

Required and Permissible Services (§ 646.4)

Statute: Section 403(b) of the HEOA amended section 402D of the HEA to require SSS grantees to provide certain services and to permit them to offer other permissible services.

Current Regulations: Current § 646.4 specifies what services a SSS grantee may provide. Prior to the changes made by the HEOA, SSS grantees could choose from among a number of permissible activities and services to provide participants. The current regulations do not identify any required services or activities that an SSS grantee must provide.

Proposed Regulations: The proposed regulations would revise § 646.4 to reflect the required and permissible services or activities for SSS grantees under the HEA.

Consistent with section 402D of the HEA, proposed § 646.4 would require that SSS projects provide the following services and activities: (1) Academic tutoring, directly or through other services provided by the institution, to enable students to complete postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects; (2) advice and assistance in postsecondary course selection; (3)(i) information on both the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships, and (ii) assistance in completing financial aid applications, including the Free Application for Federal Student Aid; (4) education or counseling services designed to improve financial literacy and economic literacy of students, including financial planning for postsecondary education; (5) activities designed to assist students participating in the project in applying for admission to, and obtaining financial assistance for enrollment in, graduate and professional programs; and (6) activities designed to assist students enrolled in two-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, a four-year program of postsecondary education.

The proposed regulations would specify the following permissible services or activities for SSS projects: (1) individualized counseling for personal, career, and academic matters provided

by assigned counselors; (2) information, activities, and instruction designed to acquaint students participating in the project with the range of career options available to the students; (3) exposure to cultural events and academic programs not usually available to disadvantaged students; (4) mentoring programs involving faculty or upper class students, or a combination thereof; (5) securing temporary housing during breaks in the academic year for students who are homeless children and youths (as that term is defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 1134a)) or were formerly homeless children and youths, and students who are in foster care or are aging out of the foster care system; and (6) programs and activities described in items (1) through (5) above that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

Reasons: We are proposing to revise § 646.4 to conform to changes made by the HEOA.

Project Period (§ 646.5)

Statute: Section 403a(1)(B)(i) of the HEOA amended the HEA to provide that all SSS grants are for five years. Prior to enactment of the HEOA, SSS grants were awarded for four years, except for applicants whose peer review scores are in the highest ten percent of the scores of all applicants. Applicants with peer review scores in the highest ten percent of all applicants receive five-year grants.

Current Regulations: Current § 646.5 specifies the length of an SSS project period. This provision does not reflect the change made by the HEOA to the HEA.

Proposed Regulations: We are proposing to revise § 646.5 to define the project period as five years for all grantees.

Reasons: The proposed changes are necessary to conform to section 402A(b)(2) of the HEA, as amended by the HEOA.

Applicable Regulations (§ 646.6)

Statute: None.

Current Regulations: Section 646.6 specifies which regulations apply to the SSS program. This provision contains an outdated list of applicable regulations.

Proposed Regulations: We are proposing to update the list of regulations that apply to the SSS

program. We also propose to exclude §§ 75.215 to 75.221 from the list of applicable regulations.

Reasons: We discuss the reasons for the changes elsewhere in this preamble under the *Applicable Regulations* heading for the Training program.

Definitions (§ 646.7)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the definition of *institution of higher education* and *individual with disabilities* and for the addition of *different campus*, *different population*, *financial and economic literacy*, *foster care youth*, and *homeless children and youth* in the *Definitions Applicable to More Than One Federal TRIO Program* section of the preamble. In addition, we propose to include definitions of the terms *low-income individual* and *first generation college student*.

Statute: Section 402A(h) of the HEA includes definitions of the terms “low-income individual” and “first generation college student.”

Current Regulations: Section 646.7(a) currently includes cross-references to statutory definitions of low-income individual and first-generation college student, but does not include those definitions. Current § 646.7(b) includes a list of the terms used in Part 646 that are defined in 34 CFR 77.1. Current § 646.7(c) defines certain terms, some of which apply to all of the Federal TRIO programs, and some that are specific to the SSS program.

Proposed Regulations: Current § 646.7(a), which includes references to terms defined in the HEA, would be removed, and the definitions of the terms currently listed in § 646.7(a) would be included in proposed § 646.7(c). Current § 646.7(b) would be redesignated as § 646.7(a) and would include the list of terms defined in 34 CFR 77.1 that apply to the SSS program. Finally, current § 646.7(c) would be redesignated as § 646.7(b), and would include definitions of terms that apply to the SSS program, some of which apply to all the Federal TRIO programs, as discussed elsewhere in this preamble. We also propose to add the definitions of *low-income individual* and *first-generation college student* to § 646.7(c).

Reasons: We are proposing to revise § 646.7 and add the definitions for *low-income individual* and a *first-generation college student* to provide for consistency across the regulations for the Federal TRIO programs.

Number of Applications (§ 646.10)

We discuss the statutory authority, current regulations, proposed

regulations, and reasons for modifying § 646.10 in the *Number of Applications an Eligible Entity May Submit to Serve Different Campuses and Different Populations* section of the preamble.

Assurances (§ 646.11) (Title To Be Changed to: “What Assurances and Other Information Must an Applicant Include in an Application?”)

Statute: Under section 402D(e) of the HEA as amended by the HEOA, the Secretary, in approving applications, shall consider an SSS applicant’s past history in providing sufficient financial assistance to meet the full financial need of each student in the project and maintaining loan burden of each student at a manageable level. Prior to this amendment section 402D(e) of the HEA specified certain assurances that an applicant must provide to the Secretary.

Current Regulations: Section 646.11 does not reflect the statutory requirement that an applicant provide information on its efforts in providing sufficient financial assistance to meet the full financial need of each student in the project and maintaining the loan burden of each student at a manageable level.

Proposed Regulations: Proposed § 646.11 would require an applicant to describe, in its application, its efforts, and where applicable, its past history, in providing sufficient financial assistance to meet the full financial need of each student in the project and maintaining the loan burden of each student at a manageable level. In addition, we propose to change the section heading to “What assurances and other information must an applicant include in an application?”

Reasons: The proposed changes are necessary to reflect statutory requirements. We are proposing the change to the heading for § 646.11 to include a reference to “other information” because the proposed regulations would require an applicant to include information that is not an assurance.

Making New Grants (§ 646.20)

Statute: Section 402A(c)(2)(A) of the HEA requires the Secretary to consider, when making Federal TRIO grants, each applicant’s prior experience (PE) of high quality service delivery under the program for which funds are sought. Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, now identifies the specific outcome criteria to be used to determine an entity’s PE under the SSS (see section 402A(f)(3)(C) of the HEA). The HEA does not establish specific procedures for awarding PE points.

Prior to enactment of the HEOA, the Secretary had the discretion to decide whether or not to consider an application from an applicant that carried out a project involving the fraudulent use of program funds. The HEOA amended the HEA to eliminate that discretion and prohibit the Secretary from considering an application from such a party.

Current Regulations: Current § 646.20 specifies the procedures the Secretary uses to make new grants. Section 645.30(a)(2) needs to be expanded to specify the procedures the Secretary will use to award PE points.

Proposed Regulations: Proposed § 646.20 would be expanded to specify the procedures the Secretary would use to award PE points. We are proposing that the Secretary evaluate the PE of an applicant for each of three project years as designated by the Secretary in the **Federal Register** notice inviting applications. We also propose that an applicant may earn up to 15 PE points for each of the three years for which the annual performance report was submitted; the average of the scores for the three project years will be the final PE score for the applicant.

We also propose to amend § 646.20(d) to specify that the Secretary will not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

Reasons: We are proposing to amend § 646.20(a)(2) to provide more transparency in the process the Secretary will use to award PE points. We are also proposing to modify § 646.20(d) to be consistent with the language used for similar provisions in the proposed regulations for the other Federal TRIO programs.

Selection Criteria (§ 646.21)

Statute: Section 402A(f)(3) of the HEA, as amended by section 403(a) of the HEOA, requires the Secretary to use specific outcome criteria to measure the performance of Federal TRIO grantees, including grantees who receive funding under the SSS program. Specifically, pursuant to section 402A(f)(3)(C) of the HEA, the Secretary must measure the performance of SSS grantees by examining the extent to which the grantee met or exceeded the grant's objectives (as established in the grantee's approved application) concerning: (1) The delivery of service to the total number of students served, as agreed upon by the entity and the Secretary for the period; (2) retention in postsecondary education of the students served by the SSS project; (3) students served by the SSS project who remain in good academic standing; and (4)

completion of postsecondary education degrees or certificates, and transfer to institutions of higher education that offer baccalaureate degrees of project participants. These statutory changes necessitate changes to § 646.21(b).

Current Regulations: Current § 646.21 specifies the selection criteria the Secretary uses to evaluate an application for a SSS grant. The regulations do not reflect the changes made by the HEOA.

Proposed Regulations: We are proposing to amend § 646.21(b) to provide that, in evaluating SSS grant applications, the Secretary will consider the quality of the applicant's proposed objectives on the basis of the extent to which they are both ambitious and attainable, given the project's plan of operation, budget, and other resources. We propose to distribute eight points for this criterion in the following manner: (1) Three points for retention in postsecondary education; (2) two points for students in good academic standing at the grantee institution; (3) for two-year institutions only: (a) one point for certificate or degree completion; and (b) two points for certificate or degree completion and transfer to a four-year institution; or (4) for four year institutions only, three points for completion of a baccalaureate degree.

Reasons: We are proposing to amend § 646.21(b) to reflect the changes made to section 402A(f)(3)(C) of the HEA by section 403(a) of the HEOA regarding the outcome criteria to be used to measure performance of the SSS program. We are proposing to reflect the revised SSS outcome criteria in § 646.21(b) as selection criteria because we believe that the focus at the outset of the SSS discretionary grant process (*i.e.*, the evaluation of applications using SSS selection criteria) should be on the ultimate outcomes the SSS program is designed to attain.

Moreover, section 402A(f)(3)(C) of the HEA requires the Secretary to measure the performance of the grantee based on a comparison of the targets agreed upon for the outcome criteria established in the applicant's approved application to the actual results achieved during the grant period. For this reason, we believe it is appropriate to reflect the outcome criteria from section 402A(f)(3)(C) of the HEA in the selection criteria for the SSS program.

Outcome criteria are also used to evaluate an applicant's PE and assign PE points to an application. We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to evaluating an applicant's PE in the *Evaluating Prior Experience—*

Outcome Criteria section of the preamble.

Prior Experience Criteria (§ 646.22)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the SSS PE criteria in the *TRIO Outcome Criteria—Prior Experience* section of the preamble.

Amount of a Grant (§ 646.23)

Statute: Section 402A(b)(3)(B) of the HEA, as amended by section 403(a)(1) of the HEOA, increased the minimum SSS grant from \$170,000 to \$200,000.

Current Regulations: Current § 646.23 specifies how the Secretary sets the amount of a grant. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to amend the regulations to update the statutory minimum grant amount to \$200,000.

Reasons: We are proposing this change to reflect the change made by the HEOA.

Review Process for Unsuccessful Federal TRIO Program Applicants (§ 646.24)

We discuss the statutory authority, current regulations, proposed regulations, and reasons adding a new review process for unsuccessful applicants in the *Review Process for Unsuccessful Federal TRIO Program Applicants* section of the preamble.

Allowable and Unallowable Costs (§§ 646.30 and 646.31)

Statute: The HEOA amended section 402D(d)(1) of the HEA to allow a recipient of an SSS grant that undertakes any of the permissible services in section 402D(c) to use its grant funds to provide grant aid to students under certain circumstances. Further, the HEOA amended section 402D(c)(5) of the HEA to include, in the list of permissible services in the SSS program, securing temporary housing during breaks in the academic year for participants who are homeless, or were formerly homeless, or who are in foster care. The statute does not address the use of grant funds to purchase computers and other equipment.

Current Regulations: Current § 646.30(f) does not reflect the new statutory provisions. Current § 646.30(f) requires a grantee to obtain prior approval from the Secretary to use grant funds to purchase computers and other equipment. Current § 646.31(b) prohibits the use of program funds for tuition, fees, stipends, and other forms

of direct financial support for staff and participants.

Proposed Regulations: We are proposing to amend § 646.30 by revising paragraph (f) to include as an allowable cost the purchase, lease or rental of computer hardware for participant development, project administration, and recordkeeping without requiring prior approval by the Secretary. We are also proposing to add as allowable costs the use of SSS funds for grant aid in a new paragraph (i) and to pay the costs of temporary housing for homeless and foster care youth in a new paragraph (j).

Reasons: We discuss the reasons for permitting a SSS project to purchase computer equipment without prior approval from the Secretary in the *Changes to the Allowable Costs* section of the TS preamble.

The HEOA placed significant emphasis on the need for SSS grantees to provide services for homeless and foster care youth to help eliminate the barriers these students face in pursuing their educational goals. In addition, because securing temporary housing during breaks in the academic year for participants who are homeless, or were formerly homeless, or who are in foster care is now included in the list of permissible services in section 402D(c)(5) of the HEA, we believe that the use of SSS funds for these purposes should be included as an allowable cost. The proposed change to allow grant funds to be used for grant aid for participants is to conform to the regulations to the statute.

Other Requirements of a Grantee (§ 646.32)

Changes to Full-Time Director Requirement (§ 646.32(c))

Statute: Section 402A(c)(6) of the HEA requires that the Secretary permit the Director of a Federal TRIO program to administer one or more additional programs for disadvantaged students.

Current Regulations: Current § 646.32(c) requires a grantee to employ a full-time project director unless the grantee requests a waiver to allow the Director to administer more than one program for disadvantaged students.

Proposed Regulations: We propose to amend § 646.32(c) to eliminate the requirement for a waiver if a Director is administering one or two additional programs for disadvantaged students. A grantee must request a waiver of the full-time director requirement for the Director to administer more than three programs.

Reasons: We discuss the reasons for permitting the Director of a Federal TRIO program to administer one or

more additional programs for disadvantaged students in the *Changes to Full-Time Director Requirement* in the TS section of the preamble.

Matching Requirements for Grant Aid (§ 646.33)

Statute: Section 402D(d)(1) of the HEA permits a grantee to use SSS funds to provide grant aid to students who meet the requirements in section 402D(d)(2) and (3) of the HEA. Section 402D(d)(4) of the HEA stipulates that grantees that use program funds for grant aid must provide a non-Federal match, in cash, of not less than 33 percent of the Federal funds used for grant aid. A grant recipient that is an institution of higher education eligible to receive funds under part A or part B of title III of the HEA or under title V of the HEA, is not required to match the Federal funds used for grant aid. Section 402D(d)(5) limits the percentage of SSS program funds that may be used for grant aid to no more than 20 percent of the SSS funds.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 646.33 that would specify the statutory matching and other requirements for a grantee that uses SSS funds for grant aid.

Reasons: These changes are necessary to reflect statutory changes.

Ronald E. McNair Postbaccalaureate Achievement (McNair) Program, 34 CFR Part 647

Required and Permissible Services (§ 647.4)

Statute: Section 403(b) of the HEOA amended section 402E of the HEA to require McNair grantees to provide certain services that were previously permissible and by adding a new list of permissible services.

Current Regulations: Current § 647.4 includes a list of permissible services under the program.

Proposed Regulations: Consistent with section 402E(b) of the HEA, proposed § 647.4(a) would require that McNair grantees provide: (1) Opportunities for research or other scholarly activities at the grantee institution or at graduate centers that are designed to provide students with effective preparation for doctoral study; (2) summer internships; (3) seminars and other educational activities designed to prepare students for doctoral study; (4) tutoring; (5) academic counseling; and (6) assistance to students in securing admission to, and financial assistance for, enrollment in graduate programs.

Consistent with section 402E(c) of the HEA, proposed § 647.4(b) would specify

that the following are permissible services or activities for McNair grantees: (1) Education or counseling services designed to improve the financial literacy and economic literacy of students, including financial planning for postsecondary education; (2) mentoring programs involving faculty members at institutions of higher education, students, or a combination of faculty members and students; and (3) exposure to cultural events and academic programs not usually available to disadvantaged students.

Reasons: We are proposing these changes to align the regulations with the statutory amendments made by section 403(b) of the HEOA to section 402E(b) and (c) of the HEA.

Project Period (§ 647.5)

Statute: Section 403(a)(1)(B)(i) of the HEOA amended section 402A(b)(2) of the HEA to provide that all grants under the McNair program will be for five years. Prior to enactment of the HEOA, McNair grants were awarded for four years except for applications that score in the highest ten percent of all applications approved for new grants, which are for five years.

Current Regulations: Current § 647.5 specifies the length of a McNair project period. This provision does not reflect the change made by the HEOA to the HEA.

Proposed Regulations: Proposed § 647.5 would reflect the statutory change that establishes the project period as five years for all grantees.

Reasons: The change is made to conform to section 402A(b)(2) of the HEA, as amended by the HEOA.

Applicable Regulations (§ 647.6)

Statute: None.

Current Regulations: Section 647.6 specifies which regulations apply to the McNair program. This provision contains an outdated list of regulations.

Proposed Regulations: We are proposing to update the list of regulations that apply to the McNair program. We also propose to exclude sections 75.215 to 75.221 from the list of applicable regulations.

Reasons: We discuss the reasons for these changes in the *Applicable Regulations* for the Training program section of the preamble.

Definitions (§ 647.7)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the definition of *institution of higher education* and for the addition of *different campus, different population, and financial and economic literacy*, in

the *Definitions Applicable to More Than One Federal TRIO Program* section of the preamble.

We are also proposing to revise the definitions for three additional terms that are applicable only to the McNair program: *graduate center*; *groups underrepresented in graduate school*; and *research or scholarly activity*.

Graduate Center

Statute: Sections 101 and 102 of the HEA define the term institution of higher education.

Current Regulations: The definition of *graduate center* in current § 647.7(b) includes outdated statutory citations to the definition of an educational institution.

Proposed Regulations: The definition of *graduate center* in § 647.7 would be revised to reference the definitions provided in sections 101 and 102 of the HEA.

Reasons: This proposed change is necessary to correct incorrect cross-references.

Groups Underrepresented in Graduate School

Statute: Section 402E(d)(2) of the HEA, as amended by the HEOA, specifically identifies Alaska Natives, Native Hawaiians, and Native American Pacific Islanders as groups underrepresented in graduate education.

Current Regulations: The definition of *groups underrepresented in graduate school* in current § 647.7(b) includes Black (non-Hispanic), Hispanic, and American Indian/Alaskan Native.

Proposed Regulations: We are proposing to modify § 647.7(b) to add Alaska Natives, Native Hawaiians, and Native American Pacific Islanders to the list of groups underrepresented in graduate education. Consistent with section 402E(d)(2) of the HEA, the proposed definition would reference the definition of Alaska Native in section 7306 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), the definition of Native Hawaiians in section 7207 of the ESEA, and the definition of Native American Pacific Islanders as defined in section 320 of the HEA.

Reasons: The changes are necessary to conform to statutory changes.

Research or Scholarly Activity

Statute: Section 402E(b) of the HEA requires McNair grantees to provide opportunities for students to participate in research and other scholarly activities at the institution or at graduate centers designed to provide students with effective preparation for doctoral study. Section 402A(f)(3)(D) of the HEA, which

includes the outcome criteria for the McNair program, also refers to the provision of appropriate scholarly research activities for students served by the McNair program.

Current Regulations: The term *research and scholarly activities* is not defined in current § 647.7.

Proposed Regulations: Proposed § 647.7 would define *research and scholarly activity* as an educational activity that is more rigorous than is typically available to undergraduates in a classroom setting, that is definitive in its start and end dates, contains appropriate benchmarks for completion of various components, and is conducted under the guidance of an appropriate faculty member with experience in the relevant discipline.

Reasons: We are proposing the addition of the definition of *research and scholarly activity* to provide for a clear and consistent understanding of the term. Because the term is used in the outcome criteria that will be used to evaluate a grantee's performance under the McNair program, it is important that grantees understand what constitutes *research and scholarly activities*. The proposed definition is similar to the one currently used in the McNair annual performance report and the McNair grant application package.

Number of Applications (§ 647.10)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the number of applications that an entity can submit under the McNair program in the *Number of Applications an Eligible Entity May Submit to Serve Different Campuses and Different Populations* section of the preamble.

Making New Grants (§ 647.20)

Statute: Section 402A(c)(2)(A) of the HEA requires the Secretary to consider, when making Federal TRIO grants, each applicant's prior experience (PE) of high quality service delivery under the program for which funds are sought. Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, now identifies the specific outcome criteria to be used to determine an entity's PE under the McNair program (*see* section 402A(f)(3)(D) of the HEA). The HEA does not establish specific procedures for awarding PE points.

Prior to enactment of the HEOA, the Secretary had the discretion to decide whether or not to consider an application from an applicant that carried out a project involving the fraudulent use of program funds. The HEOA amended the HEA to eliminate that discretion and prohibit the

Secretary from considering an application from such a party.

Current Regulations: Current § 647.20 specifies the procedures the Secretary uses to make new grants. Section 647.20(a)(2) needs to be expanded to specify the procedures the Secretary will use to award PE points.

Proposed Regulations: Proposed § 647.20 would be expanded to specify the procedures the Secretary would use to award PE points. We are proposing that the Secretary evaluate the PE of an applicant for each of the three project years as designated by the Secretary in the **Federal Register** notice inviting applications. We also propose that an applicant may earn up to 15 PE points for each of the three years for which the annual performance report was submitted. The average of the scores for the three project years will be the final PE score for the applicant.

We also propose to amend the wording in § 647.20(d) to specify that the Secretary will not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

Reasons: We are proposing to amend § 647.20(a)(2) to provide more transparency in the process the Secretary will use to award PE points. We also are proposing to amend § 647.20(d) to reflect the statutory change that provides that the Secretary may not consider an application from an applicant that carried out a project involving the fraudulent use of program funds.

Selection Criteria (§ 647.21)

Statute: Section 402A(f)(3)(D) of the HEA, as amended by section 403(a)(5) of the HEOA, requires the Secretary to use specific outcome criteria to measure the performance of Federal TRIO grants, including those under the McNair program. Specifically, pursuant to section 402A(f)(3)(D) of the HEA, the Secretary must measure the performance of McNair grantees by examining the extent to which the grantee met or exceeded the grant's objectives (as established in the grantee's approved application) regarding: (1) The delivery of service to the total number of students served by the program, as agreed upon by the entity and the Secretary for the period; (2) the provision of appropriate scholarly and research activities for the students served by the program; (3) the acceptance and enrollment of these students in graduate programs; and (4) the continued enrollment of such students in graduate study and the attainment of doctoral degrees by former program participants. These statutory

changes necessitate a change in the grant selection criteria for “Objectives” (§ 647.21(b)).

Current Regulations (Objectives): Current § 647.21 specifies the selection criteria the Secretary uses to evaluate an application for a McNair grant. This regulation does not reflect the changes made by the HEOA.

Proposed Regulations: We are proposing to amend § 647.21(b) to provide that, in evaluating McNair applications, the Secretary considers the quality of the applicant’s proposed objectives on the basis of the extent to which they are both ambitious and attainable, given the project’s plan of operation, budget, and other resources. We propose to distribute nine points in the following manner: (1) Two points for research; (2) three points for enrollment in a graduate program; (3) two points for continued enrollment in graduate study; and (4) two points for doctoral degree attainment.

Reasons: We are proposing to amend § 647.21(b) to reflect the changes made to section 402A(f)(3)(D) of the HEA by section 403(a)(5) of the HEOA regarding the outcome criteria to be used to measure performance of the McNair program. We are proposing to reflect the statutory McNair outcome criteria in § 647.21(b) in the selection criteria because we believe that the focus at the outset of the McNair discretionary grant process (*i.e.*, evaluating applications using McNair selection criteria) should reflect the ultimate outcomes the McNair program is designed to attain.

Moreover, section 402A(f)(4) of the HEA requires the Secretary to measure the performance of the grantee during the grant period based on a comparison of the targets agreed upon for the outcome criteria established in the applicant’s approved application to the actual results achieved during the grant period. For this reason, we believe it is appropriate to reflect the outcome criteria from section 402A(f)(3)(D) of the HEA in the selection criteria for the McNair program.

Outcome criteria are also used to evaluate an applicant’s PE and assign PE points to an application. We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to evaluating an applicant’s PE in the *Evaluating Prior Experience—Outcome Criteria* section of the preamble.

Prior Experience Criteria (§ 647.22)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the PE criteria under the McNair program in the *TRIO Outcome Criteria—*

Prior Experience section of this preamble.

Review Process for Unsuccessful Federal TRIO Program Applicants (§ 647.24)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for adding a review process for unsuccessful TRIO applicants under the McNair program in the *Review Process for Unsuccessful Federal TRIO Program Applicants* section of this preamble.

Allowable Costs (§ 647.30)

Statute: Section 402E(f) of the HEA provides that students participating in research under a McNair project may receive an award that includes a stipend not to exceed \$2,800 per year. The statute does not address the use of grant funds to purchase equipment.

Current Regulations: Under current § 647.30(b) of the regulations the maximum stipend for students participating in research is \$2,400. Current § 647.30(d) of the regulations requires a grantee to obtain approval from the Secretary to use McNair funds to purchase computer and other equipment.

Proposed Regulations: We are proposing to increase the maximum stipend amount in § 647.30(b) to \$2,800. We also are proposing to revise paragraph (d) to allow grantees to use grant funds for the purchase, lease, or rental of computer hardware for participant development, project administration, and recordkeeping without prior approval from the Secretary.

Reasons: The change in the maximum stipend amount is necessary to conform to the statute. We discuss the reasons for permitting a McNair project to purchase computer equipment without prior approval in the *Changes to the Allowable Costs* section of the TS preamble.

Part 694—Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP)

Funding Rules

Statute: None.

Current Regulations: Current § 694.1 describes how the Secretary calculates the maximum amount that the Secretary may award each fiscal year to a Partnership or a State under the GEAR UP program.

Proposed Regulations: The Department proposes to amend current § 694.1 to clarify that the Secretary may establish in a notice published in the **Federal Register** the maximum amount that may be awarded for each fiscal year

to any GEAR UP Partnership grantee. Although the Secretary already has the authority to set a maximum award for a grant under 34 CFR 75.101(a)(2) and 75.104 of the Education Department General Administrative Regulations (EDGAR), the proposed provision would provide explicit regulatory authority for the Secretary to set a maximum award for GEAR UP Partnership grants. Under current § 694.1, the Secretary already sets a maximum award for State GEAR UP grants by publication of a notice in the **Federal Register**.

Proposed § 694.1(a) would also specify that the maximum amount for which a Partnership may apply may not exceed the lesser of the maximum amount established by the Secretary, if applicable, or, as in § 694.1(a) as currently exists, the amount calculated by multiplying \$800 by the number of students the Partnership proposes to serve that year, as stated in the Partnership’s plan.

Reasons: Although the Secretary already has the authority to set a maximum award for GEAR UP Partnership grants under 34 CFR 75.101(a)(2) and 75.104, the proposed changes to § 694.1(a) would provide explicit regulatory authority for the Secretary to set a maximum award for GEAR UP Partnership grants. Our proposal would apprise the public of the Secretary’s authority in this area by having § 694.1 address establishment of a maximum award for both State grants and Partnership grants.

We propose to keep the \$800 per student cap in § 694.1(a), because regardless of whether the Secretary decides to set a maximum Partnership award through a notice published in the **Federal Register**, we believe that it is important to ensure that the amount of a grant is proportionate to the number of students served and that excessive costs are discouraged. The \$800 per student cap has proven to be sufficient for current GEAR UP Partnership grantees, and its retention ensures some consistency across grants with regard to the intensity of services provided to students.

Changes in the Cohort

Statute: Sections 404B(d) and 404C(a)(2)(F) of the HEA, as amended, address the cohort approach but do not specify which students a State or Partnership must serve when there are changes in the cohort.

Section 404B(d) of the HEA continues to provide that, under the cohort approach, Partnership grantees must provide services to (1) at least one grade level of students, beginning not later than seventh grade, in a participating

school that has a seventh grade and in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the Richard B. Russell National School Lunch Act or, (2) if a State or a Partnership determines that it would promote the effectiveness of a program, an entire grade level of students, beginning not later than seventh grade, who reside in public housing as defined in section 3(b)(1) of the United States Housing Act of 1937. Under section 404C(a)(2)(F) of the HEA, as amended by section 404(c)(2) of the HEOA, a State that chooses to use a cohort approach or a Partnership must include in its application a description of how it will define the cohorts of students to be served, and how it will serve the cohorts through grade 12.

Current Regulations: Current § 694.4 describes which students a State or Partnership must serve when there are changes in the cohort. Specifically, if not all of the students in the cohort attend the same school after the cohort completes the last grade level offered by the school at which the cohort began to receive GEAR UP services, it requires a State or a Partnership to continue to provide GEAR UP services to at least those students in the cohort who attend participating schools that enroll a substantial majority of the students in the cohort.

Proposed Regulations: The Department is proposing to amend § 694.4 to provide that if not all students in the cohort attend the same school after the cohort completes the last grade level offered by the school at which the cohort began to receive GEAR UP services, a Partnership or a State must continue to provide GEAR UP services to at least those students in the cohort who attend one or more participating schools that together enroll a substantial majority of the students in the cohort.

Reasons: We are proposing to revise current § 694.4 in this manner in response to a request by the non-Federal negotiators to clarify who a grantee must serve if not all students in the cohort attend the same school after the cohort completes the last grade level offered by the school at which the cohort began to receive GEAR UP services.

Changes to Matching Requirements

Statute: Section 404C(b)(1) of the HEA, as amended by section 404(c)(3) of the HEOA, changes the GEAR UP matching requirement by permitting a GEAR UP grantee's required matching funds from State, local, institutional or private funds to be accrued over the full duration of the grant award period provided that the grantee makes "substantial progress" towards meeting

the matching requirement in each year of the grant award period.

Current Regulations: Current § 694.7 is the regulatory provision addressing matching fund requirements and it does not reflect changes made to the HEA by the HEOA. Current § 694.7(a)(2) requires that the Partnership comply with the matching percentage stated in its application for each year of the project period. In addition, § 694.7(b)(2) contains authority for a Partnership with three or fewer IHEs as members to have a matching requirement of 30 to 50 percent of total project costs.

Proposed Regulations: Proposed § 694.7(a)(2) would require that a GEAR UP grantee make substantial progress towards meeting the matching percentage stated in its approved application for each year of the project period. We would remove the provision regarding reduction of the match requirement for Partnerships with three or fewer IHEs from current § 694.7(b), and address both reduction and waiver of the matching requirement in new proposed §§ 694.8 and 694.9.

Reasons: The Department proposes to amend § 694.7 and to address reduction and waiver of the matching requirement in new proposed §§ 694.8 and 694.9 to more closely align these regulations with the corresponding matching requirements in the HEA, and to ensure that the regulations are clear and understandable to the public. The following section entitled *Waiver of Matching Requirements* discusses, in more detail, the statutory basis and rationale for the Department's proposal to add new §§ 694.8 and 694.9.

Waiver of Matching Requirements

Statute: Section 404C(b)(2) of the HEA, prior to the enactment of the HEOA, allowed the Secretary to modify, by regulation, the matching requirement applicable to a Partnership. Section 404C(b)(2) of the HEA, as amended by section 404(c)(3)(C) of the HEOA, retains this provision and also authorizes the Secretary to approve the following types of requests for reduction to the matching requirement: (1) Requests made at the time of an application, if the applicant demonstrates a significant economic hardship that precludes it from meeting the matching requirement, (2) requests made at the time of application by a Partnership applicant to count contributions to scholarship funds established under section 404E of the HEA on a two-to-one basis, and (3) requests made by a grantee demonstrating that the matching funds identified in its approved application are no longer available, and the grantee

has exhausted all revenues for replacing these matching funds.

Current Regulations: Current § 694.7(b)(2) specifies the circumstances under which the Department permits an eligible Partnership grantee to reduce its obligation to match funds to less than 50 percent of the total cost over the project period. It does not reflect changes made to section 404C(b)(2) of the HEA by the HEOA.

Proposed Regulations: As discussed in the previous section, the Department proposes to remove paragraph (b)(2) from current § 694.7. The Department also proposes to add new § 694.8 (Under what conditions may the Secretary approve a request from a Partnership applying for a GEAR UP grant to waive a portion of the matching requirement?). Proposed § 694.8(a) would provide that the Secretary may approve a Partnership applicant's request for a waiver of up to 75 percent of the matching requirement for up to two years if the applicant demonstrates in its application a significant economic hardship that stems from a specific, exceptional, or uncontrollable event, such as a natural disaster, that has a devastating effect on the members of the Partnership and the community in which the project would operate. For purposes of this preamble, we refer to this waiver as the "75 Percent Waiver."

Proposed § 694.8(b) would provide that the Secretary may approve a Partnership applicant's request to waive up to 50 percent of the matching requirement for up to two years if the applicant demonstrates in its application a pre-existing and an on-going significant economic hardship that precludes the applicant from meeting its matching requirement. For purposes of this preamble, we refer to this waiver as the "50 Percent Waiver." Proposed § 694.8(b)(2) would specify that in determining whether an applicant is experiencing an on-going economic hardship that is significant enough to justify a 50 Percent Waiver, the Secretary considers documentation of applicable factors and lists examples of these factors. Proposed § 694.8(b)(3) would state that, at the time of application, the Secretary may provide tentative approval of an applicant's request for a 50 Percent Waiver for all remaining years of the project period. This proposed section would specify that grantees that receive tentative approval of a 50 Percent Waiver for more than two years under § 694.8(b)(3) must submit to the Secretary every two years, by such time as the Secretary may direct, documentation that demonstrates that (1) the significant economic hardship upon which the waiver was

granted still exists; and (2) the grantee tried diligently, but unsuccessfully, to obtain contributions needed to meet the matching requirement.

Consistent with section 404C(c)(1) of the HEA, proposed § 694.8(c) would provide that the Secretary may approve a Partnership applicant's request in its application to match its contributions to its scholarship fund, established under section 404E of the HEA, on the basis of two non-Federal dollars for every one Federal dollar of GEAR UP funds.

Also, similar to provisions in current § 694.7(b)(2), proposed § 694.8(d) would provide that the Secretary may approve a request by a Partnership applicant that has three or fewer institutions of higher education as members to waive up to 70 percent of the matching requirement if the Partnership applicant meets the criteria set forth in proposed § 694.8(d)(1) through (3).

We propose to add new § 694.9 (Under what conditions may the Secretary approve a request from a Partnership that has received a GEAR UP grant to waive a portion of the matching requirement?). This section would provide that after a grant is awarded, the Secretary may approve a Partnership grantee's written request for a waiver of up to (1) 50 percent of the matching requirement for up to two years if the grantee demonstrates that the matching contributions described for those two years in the grantee's approved application are no longer available and the grantee has exhausted all funds and sources of potential contributions for replacing the matching funds; or (2) 75 percent of the matching requirement for up to two years if the grantee demonstrates that matching contributions from the original application are no longer available due to an uncontrollable event, such as a natural disaster, that has a devastating economic effect on members of the Partnership and the community in which the project would operate.

Proposed § 694.9(b) would also specify that in determining whether the grantee has exhausted all funds and sources of potential contributions for replacing matching funds, the Secretary considers the grantee's documentation of key factors. This section would include a list of examples of these factors (e.g., a reduction of revenues from State government, County government, or the local educational agency; an increase in local unemployment rates; and significant reductions in the operating budgets of institutions of higher education that are participating in the grant).

Proposed § 694.9(c) would provide that if a grantee has received one or

more waivers under §§ 694.8 or 694.9, the grantee may request an additional waiver of the matching requirement under § 694.9 no earlier than 60 days before the expiration of the grantee's existing waiver. Finally, proposed § 694.9(d) would provide that the Secretary may grant additional waiver requests for up to 50 percent of the matching requirement for a period of up to two years upon the expiration of any previous waivers.

In order to accommodate these new proposed provisions, we propose to redesignate current §§ 694.8 and 694.9 as §§ 694.10 and 694.11, respectively. We also propose to redesignate current § 694.12 as § 694.17. We made no substantive changes to these three provisions when redesignating them.

Reasons: The Department is proposing to add new §§ 694.8 and 694.9 to incorporate suggestions made by non-Federal negotiators to (1) limit the waiver of the matching requirement to 50 to 75 percent of the requirement; (2) limit the period of the waiver to two years, unless the grantee reapplies for another waiver; and (3) create a multiple-tiered system for different types of waiver requests. We are proposing this new regulatory language because we believe that it will help preserve the integrity of the GEAR UP program as a partnership model with a significant matching requirement component, and balance this aspect of the program with fair, understandable, statutorily-based waiver options. In this regard, the 50 Percent and 75 Percent Waivers that we are proposing are consistent with the views expressed by the non-Federal negotiators. Also consistent with their views, we believe that while a maximum 50 percent waiver is reasonable for projects with partners and communities facing chronic economic difficulties, a larger waiver is appropriate where areas are facing significant economic hardship due to events such as a natural disaster. In accordance with the recommendation of the non-Federal negotiators, we propose a maximum 75 percent waiver for these circumstances, believing as the non-Federal negotiators expressed, that with the availability of in-kind matching contributions the Partnership should still be able to provide a 25 percent annual matching contribution.

Proposed § 694.8(b)(3) would specify that, at the time of application, the Secretary may provide tentative approval of an applicant's request for a 50 Percent Waiver for the entire project period. This would allow an applicant that meets the conditions for a waiver to apply for a grant without needing to identify additional sources of match

funding for the later years of the project period. On-going significant economic hardship may preclude an applicant from being able to identify additional sources of match funding in a proposed budget for later years of the project and we do not believe that this should bar the applicant from obtaining a grant. Proposed § 694.8(b)(3) would require that grantees who received tentative approval of a waiver for more than two years submit documentation to the Secretary every two years with regard to continuation of significant economic hardship and efforts to meet the matching requirement. We believe that this proposal both will encourage grantees to seek alternative sources of match during their project period, and help the Department to provide appropriate oversight concerning the 50 Percent Waiver.

The non-Federal negotiators provided examples of factors the Secretary may consider in determining whether to provide an applicant or grantee a 50 Percent Waiver of the matching requirement. The Department incorporated the non-Federal negotiators' examples in proposed §§ 694.8(b)(2) and 694.9(b) because we believe that these examples will help the public, including applicants and grantees, to better understand the process for seeking a waiver of a portion of a GEAR UP Partnership matching requirement, and the Department's expectations in reviewing any waiver requests. We included regulatory language regarding additional waiver requests in proposed § 694.9(c) and (d) to allow grantees that continue to meet the conditions for a waiver to request and receive a waiver for a period of up to two additional years. Because no waiver of more than two years would be granted, the Secretary has an opportunity at least every two years to review whether a grantee continues to meet the conditions for a waiver.

The Department is proposing to divide the matching provisions into two separate sections, with provisions for Partnership applicants in § 694.8 and provisions for Partnership grantees in § 694.9 to make these provisions easier to follow and understand. The Department also is proposing to move the waiver provision in current § 694.7(b)(2) to new § 694.8, and is proposing slight modifications to the wording of that provision so that it aligns with the new waiver provisions in proposed §§ 694.8 and 694.9.

Scholarship Component

Statute: Section 404E(b)(1) of the HEA, as amended by section 404(e) of the HEOA, requires GEAR UP grantees

to use not less than 25 percent and not more than 50 percent of GEAR UP grant funds for activities described in section 404D of the HEA, *i.e.*, required and permissible pre-college or university activities, (except for the activity described in section 404D(a)(4) of the HEA, *i.e.*, a State's use of funds for scholarships under section 404E), with the remainder of the funds to be used for a scholarship program under section 404E of the HEA. However, section 404E(b)(2) allows a GEAR UP grantee to use more than 50 percent of GEAR UP grant funds for pre-college or university activities if (1) it demonstrates that it has another means of providing the students with the financial assistance described in section 404E of the HEA, and (2) describes these means in its project application.

Section 404E(c) of the HEA, as amended by section 404(e) of the HEOA, mandates that each grantee providing scholarships under section 404E must provide information on the eligibility requirements for the scholarships to all participating students upon the students' entry into the GEAR UP program.

Section 404(e) of the HEOA amended section 404E(d) of the HEA regarding the minimum amount of a GEAR UP scholarship. Now the HEA states that the minimum amount of a GEAR UP scholarship for each fiscal year is the minimum Federal Pell Grant award under section 401 of the HEA for that award year. Prior law had made the minimum scholarship amount for each fiscal year the lesser of 75 percent of the average cost of attendance for an in-State student in a 4-year instructional program at an IHE in each State or the maximum Federal Pell grant for that year.

Section 404E(e)(1) and (2) of the HEA, as amended by section 404(e) of the HEOA, provides that States that receive a GEAR UP grant must hold in reserve funds for scholarships for eligible students, as defined in section 404E(g) of the HEA, in an amount that is not less than the minimum scholarship amount multiplied by the number of students that the State estimates will (1) complete a secondary school diploma, its recognized equivalent, or another recognized alternative standard for individuals with disabilities, and (2) enroll in an IHE. We address the definition of an "eligible student" in our discussion of proposed § 694.13(d) under the "Proposed Regulations" part of this section.

Finally, section 401(c) of Public Law 111-39, technical amendments to the HEOA enacted into law on July 1, 2009, amended section 404 of the HEOA to

provide that section 404E(e) of the HEA is not applicable to grants made before August 14, 2008, except that the recipient of a grant made prior to that date may elect to apply the requirements contained in section 404E if the recipient informs the Secretary of this election. Section 401(c) of Public Law 111-39 goes on to provide that a grant recipient may make this election only if the election does not decrease the amount of the scholarship promised to an individual student under the grant.

Current Regulations: Current § 694.10 is the regulatory provision that specifies the requirements for GEAR UP scholarships under the HEA, as previously authorized. Current § 694.11 provides that GEAR UP Partnership grantees that do not participate in the GEAR UP scholarship component may provide financial assistance for postsecondary education with GEAR UP funds, or non-Federal funds used to comply with the matching requirement, to students who participate in the early intervention component of GEAR UP if (1) the financial assistance is directly related to, and in support of, other activities of the Partnership under the early intervention component, and (2) it complies with the requirements for scholarship awards in § 694.10. These sections do not reflect the changes made by the HEOA to the statutorily required priorities.

Proposed Regulations: To accommodate the proposed addition of regulatory provisions, as discussed elsewhere in this preamble, the Department proposes to redesignate current §§ 694.10 and 694.11 as proposed §§ 694.13 and 694.15. We also propose to add a new § 694.12 and § 694.14 to address the changes made by section 401(c) of Public Law 111-39.

Specifically, proposed § 694.12(a) would provide that (1) State grantees must establish or maintain a financial assistance program that awards section 404E scholarships to students in accordance with the requirements of § 694.13 or § 694.14, as applicable, and (2) Partnership grantees that choose to award scholarships to eligible students pursuant to section 404E of the HEA must likewise comply with the requirements of § 694.13 or § 694.14, as applicable. Consistent with section 401(c) of Public Law 111-39, proposed § 694.12(b) would clarify that a State or Partnership grantee providing section 404E scholarships with GEAR UP funds that were awarded to it prior to August 14, 2008, must provide such scholarships in accordance with the requirements of § 694.13 unless it (1) elects to provide the scholarships in

accordance with the requirements of § 694.14 (which governs grantees with initial GEAR UP awards made on or after August 14, 2008), and (2) pursuant to § 694.12(b)(2), notifies the Secretary of this election, and ensure that the election does not decrease the amount of a GEAR UP scholarship that had been promised to a student. Finally, proposed § 694.12(c) would clarify that a State or Partnership grantee making section 404E scholarship awards using GEAR UP funds that were awarded on or after August 14, 2008, must provide such scholarships in accordance with the requirements of § 694.14.

Newly redesignated § 694.13 would provide basic requirements for section 404E scholarships for grantees who received their initial GEAR UP grant awards prior to August 14, 2008, and who choose not to make the election described in the paragraph above. Specifically, § 694.13(a) would provide that (1) the maximum scholarship amount that an eligible student may receive under this section must be established by the grantee; (2) the minimum scholarship amount that an eligible student receives in a fiscal year pursuant to this section must not be less than the lesser of (a) 75 percent of the average cost of attendance for an in-State student, in a four-year program of instruction, at public IHEs in the student's State, or (b) the maximum Federal Pell Grant award under section 401 of the HEA for the award year in which the scholarship is awarded; and (3) if an eligible student who is awarded a GEAR UP scholarship attends an IHE on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount, but the percentage reduction in the scholarship may not be greater than the percentage reduction in tuition and fees charged to that student.

Like § 694.10(e) of the current regulations, proposed § 694.13(b) would provide that scholarships made in accordance with the requirements of § 694.13 may not be considered for the purpose of awarding Federal grant assistance under title IV of the HEA. Proposed § 694.13(b), like current § 694.10(c), would go on to clarify that in no case may the total amount of student financial assistance awarded to a student under title IV of the HEA exceed the student's total cost of attendance.

Proposed § 694.13(c)(1) would specify that grantees providing section 404E scholarship awards in accordance with § 694.13 must award GEAR UP scholarships first to students who will receive, or are eligible to receive, a

Federal Pell Grant during the award year in which the GEAR UP scholarship is being awarded. Proposed § 694.13(c)(2) would specify that if a grantee providing section 404E scholarship awards in accordance with § 694.13 has funds remaining after awarding scholarships to students under § 694.13(c)(1), it may award GEAR UP scholarships to other eligible students (*i.e.*, students who are not eligible to receive a Federal Pell Grant) after considering the need of those students for GEAR UP scholarships. These proposed provisions are similar to § 694.10(b)(1) and (2) of the current regulations.

Proposed § 694.13(d) would provide that for purposes of § 694.13, an eligible student is a student who (1) Is less than 22 years old at the time of award of the student's first GEAR UP scholarship; (2) has received a secondary school diploma or its recognized equivalent on or after January 1, 1993; (3) is enrolled or accepted for enrollment in a program of undergraduate instruction at an IHE that is located within the State's boundaries, except that, at the grantee's option, a State or a Partnership may offer scholarships to students who attend IHE outside the State; and (4) has participated in the activities under §§ 694.21 or 694.22.

Proposed § 694.13(e) (like proposed § 694.14(d)) would provide that States using a priority approach may award scholarships under § 694.13(a) to eligible students identified by priority at any time during the grant award period rather than reserving scholarship funds for use only in the seventh year of a project or after the grant award period.

Proposed § 694.13(f) would provide that a State or a Partnership that provides scholarship awards in accordance with § 694.13 must award continuation scholarships in successive award years to each student who received an initial scholarship and who is enrolled or accepted for enrollment in a program of undergraduate instruction at an IHE. This provision is similar to current § 694.10(d).

New § 694.14 would establish requirements for section 404E scholarship awards made by grantees whose initial GEAR UP grant awards were made on or after August 14, 2008. Proposed § 694.14(a) would provide that (1) the maximum scholarship amount that an eligible student may receive under section 404E must be established by the grantee; (2) the minimum scholarship amount that an eligible student receives in a fiscal year must not be less than the minimum Federal Pell Grant award under section 401 of the HEA at the time of award; and (3)

if an eligible student who is awarded a GEAR UP scholarship attends an IHE on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount, but in no case may the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

Proposed § 694.14(b) would repeat the description of eligible student that we propose in § 694.13(d), except that the fourth element of proposed § 694.14(b) would differ from proposed § 694.13(d)(4). The fourth element of section 694.14(b) would specify that the student must have participated in the activities required under § 694.21 while the fourth element of § 694.13(d) would require that the student participated in activities under §§ 694.21 or 694.22.

Proposed § 694.14(c) would provide that (1) by the time students who have received services from a State grant have completed the twelfth grade, a State that has not received a waiver under section 404E(b)(2) of the HEA of the requirement to spend at least 50 percent of its GEAR UP funds on scholarships must have in reserve an amount that is not less than the minimum Federal Pell Grant multiplied by the number of students the State estimates will enroll in an institution of higher education; (2) consistent with §§ 694.14(a) and 694.16(a), States must use funds held in reserve to make scholarships to eligible students; (3) scholarships must be made to all students who are eligible under the definition in § 694.14(b); and (4) a grantee may not impose additional eligibility criteria that would have the effect of limiting or denying a scholarship to an eligible student.

Proposed § 694.14(d) would specify that States using a priority approach may award scholarships under § 694.14(a) to eligible students identified by priority at any time during the grant award period rather than reserving scholarship funds for use only in the seventh year of a project or after the grant award period.

Proposed § 694.14(e) would require States awarding scholarships under this provision to provide information on the eligibility requirements for the scholarships to all participating students upon the students' entry into the GEAR UP program.

Proposed § 694.14(f) would specify that a State must provide scholarship funds as described in this section to all eligible students who attend an IHE in the State, and may provide these scholarship funds to eligible students who attend IHEs outside the State.

Proposed § 694.14(g) would permit a State or a Partnership that chooses to participate in the scholarship component of the GEAR UP program in accordance with section 404E of the HEA to award continuation scholarships in successive award years to each student who received an initial scholarship and who is enrolled or accepted for enrollment in a program of undergraduate instruction at an IHE.

Proposed § 694.14(h), like proposed § 694.13(b) and current § 694.10(e), would specify that a GEAR UP scholarship provided under section 404E of the HEA may not be considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA, except that in no case may the total amount of student financial assistance awarded to a student under title IV of the HEA exceed the student's total cost of attendance.

Finally, we would redesignate current § 694.11 as § 694.15, and would revise it to provide that a GEAR UP Partnership that does not participate in the GEAR UP scholarship component may provide financial assistance for postsecondary education with non-Federal funds in satisfaction of the matching requirement in section 404C(b) of the HEA.

Reasons: The Department is proposing to revise newly redesignated § 694.13 and add new §§ 694.12 and 694.14 to implement section 404E of the HEA, as amended by section 404(e) of the HEOA, and section 401(c) of Public Law 111–39. Proposed § 694.12 would specify under what conditions State and Partnership GEAR UP grantees make section 404E scholarship awards.

Specifically, proposed § 694.12(a) would identify the different rules that State GEAR UP grantees must follow with regard to these awards, and that Partnership GEAR UP grantees must follow if they choose to make GEAR UP scholarship awards under section 404E. Proposed § 694.12(b) would (1) distinguish between section 404E scholarship awards made by grantees who received their initial GEAR UP grant awards prior to August 14, 2008, and section 404E scholarship awards made by grantees who received their initial GEAR UP grant awards on or after August 14, 2008, and (2) identify the applicable regulatory provision (*i.e.*, § 694.13 or § 694.14) for each group of grantees.

In doing so, § 694.12(b) and (c) implement section 401(c) of Public Law 111–39, which makes section 404E scholarship requirements inapplicable to grantees who received their initial award before that date unless a grantee elected to apply the new requirements

without decreasing the amount of scholarship provided to individual students. In this regard, proposed § 694.12(b)(2) would specify when and how GEAR UP grantees who received initial grant awards prior to August 14, 2008, may elect to apply the rules for GEAR UP grantees that received their initial grant awards on or after August 14, 2008. Public Law 111–39 does not address this matter. We are proposing to add these provisions to ensure the public understands the responsibilities of, and options available to, all State and Partnership grantees with regard to the scholarship component of the GEAR UP program.

Consistent with section 401(c) of Public Law 111–39, we propose to revise newly redesignated § 694.13 to identify the scholarship requirements governing State and Partnership GEAR UP grantees who received their initial awards prior to August 14, 2008. The provisions in proposed § 694.13 make the requirements in section 404E as it existed prior to the effective date of the HEOA applicable to such scholarship awards unless a grantee chooses to make the election that section 401(c) authorizes. As discussed more fully below in our reasons for proposing § 694.14(d), we propose adding a new paragraph (e) to these provisions, which would clarify that a State using a priority approach to select participating students may award scholarships to eligible students at any time during the grant award period (rather than holding these funds in reserve until the seventh year of the grant award period). We do so because a State selecting students using the priority approach may provide initial GEAR UP services much later than seventh grade, and so would need to be able to award scholarships much earlier in its multiyear project period than would a State grantee that used a cohort approach to select students.

Similarly, we are proposing to add a new § 694.14 to implement and clarify the scholarship requirements in section 404E of the HEA, as amended, that apply to scholarship awards made by grantees who received initial GEAR UP awards on or after August 14, 2008. We are proposing to include in § 694.14(a)(1) and (a)(2) regulatory language regarding maximum and minimum scholarship amounts to reflect the language in 404E(d) of the HEA, as amended by section 404(e) of the HEOA. As with proposed § 694.13(a)(3), proposed § 694.14(a)(3) would retain the requirement in current § 694.10(a)(2) regarding the extent a scholarship awarded to a student attending an IHE on less than a full-time basis may be reduced.

We are also proposing to incorporate the statutory definition of an *eligible student* from section 404E(g) of the HEA in both proposed § 694.13(d) and § 694.14(b). Except for removing the phrase “early intervention” before the word “activities” in the fourth element of the definition and requiring that eligible students have participated in the new required activities under section 404D(a) (*see* proposed § 694.21) rather than in what had been the early intervention activities, section 404(e) of the HEOA did not change the definition of this term from what it had been in section 404E(d) of the HEA, as previously authorized. While we did not include a definition of *eligible student* in the existing regulations, we believe that including a definition of the term that reflects the statutory definition in section 404E(g) of the HEA in both proposed regulations would make them clearer and more understandable for the public.

The regulatory language the Department is proposing to include in § 694.14(c)(1) and (c)(2) regarding funds that a State grantee must hold in reserve for GEAR UP scholarships reflects statutory requirements in section 404E(b), (d), and (e) of the HEA, as amended by section 404(e) of the HEOA. In addition, in response to a request by non-Federal negotiators, we are proposing to clarify, in § 694.14(c)(3), that grantees must provide scholarships to all eligible students under section 404E of the HEA. In this regard, we agree with the non-Federal negotiators that the new minimum scholarship provision in section 404E(d) of the HEA is intended to ensure that all grantees (that receive initial awards on or after August 14, 2008) provide scholarships to each eligible student in an amount that is at least the Federal Pell Grant minimum. For this reason, we also are proposing in § 694.14(c)(3) to prohibit a grantee from establishing additional eligibility criteria that would have the effect of limiting or denying a scholarship to an eligible student.

We are proposing to include, in § 694.14(d), regulatory language clarifying that a State using a priority approach to select participating students (*see* section 404D(d) of the HEA, as amended by section 404(d) of the HEOA) may award scholarships to eligible students at any time during the grant award period (rather than holding these funds in reserve until the seventh year of the grant award period). We do so because under the priority approach, which by law is available only to State GEAR UP grantees, initial services may be provided much later than seventh grade. Hence, a State grantee that

selected students using the priority approach would need to be able to award scholarships much earlier in its multiyear project period than would a State grantee that selected students using a cohort approach.

The Department’s proposal in § 694.14(e), to incorporate the requirement that grantees provide information on eligibility requirements for scholarships to participating students when they enter the GEAR UP program, reflects section 404E(c) of the HEA, as amended by 404(e) of the HEOA. Similarly, its proposal in § 694.14(f), that State grantees must provide scholarships to GEAR UP students attending IHEs in the State and may do so to students attending IHEs out-of-State, reflects section 404E(e)(2) and (g) of the HEA, as amended by 404(e) of the HEOA. We propose both provisions to help the public better understand the various requirements affecting GEAR UP scholarships.

Proposed § 694.14(g) would remove from the current regulations the requirement that a State, or a Partnership that chooses to participate in the GEAR UP scholarship component in accordance with section 404E of the HEA, award continuation scholarships in successive award years to each student who received an initial scholarship and who continues to be eligible for a scholarship. Rather than mandating this action, the proposed regulations would allow a State or Partnership to make these awards. We are proposing this change because we believe that there may not be sufficient funds available to provide continuation scholarships in successive award years to every student who received an initial scholarship and continues to be eligible for a scholarship. Grants that have sufficient funds to provide continuation scholarships to their students would be encouraged to do so.

Proposed § 694.14(g), regarding the prohibition against considering the amount of a GEAR UP scholarship in determining a student’s eligibility for other grant assistance under Title IV of the HEA, and the proviso that the total amount of Federal assistance not exceed the student’s total cost of attendance, reflects new section 404E(f) of the HEA (formerly section 404E(e) of the HEA). Here again, we propose the provision to help the public better understand the various requirements affecting GEAR UP scholarships.

Finally, proposed § 694.15 would permit a Partnership that does not implement the section 404E scholarship component to still provide scholarship assistance to GEAR UP students with non-Federal funds as a matching

contribution. Proposed § 694.15 is similar to current § 694.11 with regard to non-Federal funds. However, proposed § 694.15 omits language in the existing regulation that specifically authorizes GEAR UP Partnership grantees that do not participate in the section 404E scholarship component to use Federal or non-Federal funds for scholarship awards as part of their early intervention services. We would omit this language because section 404D of the HEA, as amended by section 404(d) of the HEOA, no longer authorizes such a use of Federal grant funds. We propose to clarify in § 694.15 that these non-Federal funds may still be used to satisfy the matching requirement.

Redistribution or Return of Unused Scholarship Funds/Reporting on Scholarship Monies After the Grant Period

Statute: Section 404E(e)(4)(A)(i) of the HEA, as amended by section 404(e)(5) of the HEOA, specifies that grantees may redistribute any funds not used by eligible students within six years of their completion of secondary school to other eligible students. Section 404E(e)(4)(A)(ii) of the HEA, as amended, now requires grantees to return scholarship funds not used by eligible students within the applicable timeframe and not redistributed to other eligible students to the Secretary for distribution to other grantees.

Current Regulations: None.

Proposed Regulations: The Department is proposing to add new § 694.16, and to provide in § 694.16(a) that scholarship funds held in reserve by States under § 694.14(c) or by Partnerships under section 404D(b)(7) of the HEA, and which are not used by an eligible student as defined in § 694.14(b) within six years of the student's scheduled completion of secondary school, may be redistributed by the grantee to other eligible students. Consistent with section 401(c) of Public Law 111-39, proposed § 694.16 would clarify that requirements in this section apply only to funds reserved for section 404E scholarship awards by grantees whose (1) initial GEAR UP grant awards were made on or after August 14, 2008, or (2) whose initial GEAR UP grant awards were made prior to August 14, 2008, but who, pursuant to proposed § 694.12(b)(2), elect to meet the § 694.14 scholarship requirements (rather than the § 694.13 requirements).

To implement requirements in section 404E(e)(4)(A)(ii) of the HEA governing return of unused funds to the Department, proposed § 694.16(b) would provide that any Federal

scholarship funds that are not used by an eligible student within six years of the student's scheduled completion of secondary school, and are not redistributed by the grantee to other eligible students, must be returned to the Secretary within 45 days after the six-year period for expending the scholarship funds expires. Furthermore, proposed § 694.16(c) and (d) would provide that (1) grantees that reserve funds for scholarships must annually furnish information, as the Secretary may require, on the amount of Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds to eligible students until these funds are fully expended or returned to the Secretary; and (2) a scholarship fund is subject to audit or monitoring by authorized representatives of the Secretary throughout the life of the fund.

Reasons: The Department proposes to add new § 694.16 to implement the mandates in 404E(e)(4)(A) of the HEA and the technical amendments reflected in section 401(c) of Public Law 111-39, as well as to promote reasonable fiscal oversight.

Except for two aspects of the return-of-funds provision in proposed § 694.16(b), proposed § 694.16(a) and (b) reflects the statutory provisions in section 404E(e)(4)(A)(i) and (ii) of the HEA, as amended. One way in which paragraph § 694.16(b) supplements the statute is the application of the requirement to Federal funds only. While section 404E(e)(4)(A)(ii) of the HEA refers only to the return of unused scholarship funds held in reserve, we do not believe it would be appropriate for the Department to require the return of any unused non-Federal funds that had been contributed to the GEAR UP scholarship fund. For this reason, the language of proposed § 694.16(b) reflects our understanding that the statutory provision was intended to apply only to unused Federal GEAR UP funds that a grantee holds in reserve.

The other regulatory issue embedded in proposed § 694.16(b)(2) concerns when a grantee must return unused Federal funds held in reserve to the Department. The Department is proposing to require the return of Federal funds within 45 days after the six-year period for expending the scholarship funds expires. We believe this time-frame, which would be reflected in proposed § 694.16(b), is appropriate because the 45-day period is consistent with other Title IV, HEA programs.

In addition, in proposed § 694.16(c), the Department proposes to require

grantees to annually furnish information, as the Secretary may require, on the amount of Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of those funds to eligible students until these funds are fully expended or returned to the Secretary. We believe that this requirement would increase the accountability of grantees as well as the Department's ability to track and monitor the large amounts of Federal funds and non-Federal matching funds that grantees reserve for GEAR UP scholarships. We understand that depending on the amount of scholarship funding to be disbursed, the number of eligible recipients, and the scholarship amount each recipient would receive, a grantee's reporting period may well extend beyond its project period. However, grantees were to have obligated these funds during the project period to irrevocable trusts or other mechanisms for ultimate disbursement, and the reasonable and necessary costs associated with providing the reports that proposed § 694.16(c) would require would be legitimate administrative expenses that grantees or those administering the scholarship funds may charge to Federal funds held in reserve. We therefore believe it is reasonable to expect all grantees to make arrangements for implementing proposed § 694.16 before the end of their project period.

For similar reasons, the Department also proposes in § 694.16(d) to clarify that a GEAR UP scholarship fund is subject to audit or monitoring by authorized representatives of the Secretary throughout the life of the fund. Reasonable and necessary costs associated with making appropriate records available for inspection after the project period has ended would likewise be legitimate charges against Federal funds held in reserve.

21st Century Scholar Certificates

Statute: Section 404F of the HEA, as amended by 404(f) of the HEOA, provides that each GEAR UP grantee must provide a 21st Century Scholar Certificate to all participating students served by the project. It also provides that the 21st Century Scholar Certificate must be personalized for each student and indicate the amount of Federal financial aid for college and the estimated amount of any scholarship provided under section 404E of the HEA, if applicable, that a student may be eligible to receive.

Current Regulations: Current § 694.13 addresses 21st Century Scholarship Certificates, but does not reflect changes

made to section 404C(b)(2) of the HEA by the HEOA.

Proposed Regulations: The Department is proposing to redesignate current § 694.13 as proposed § 694.18 and amend newly redesignated § 694.18 to (1) specify that the grantee, rather than the Department, will prepare the 21st Century Certificate, and (2) provide that 21st Century Scholarship Certificates must indicate the estimated amount of any scholarship provided under section 404E of the HEA, if applicable, that a student may be eligible to receive.

Reasons: This amendment is necessary to reflect the changes made to section 404F(b) of the HEA by section 404(f) of the HEOA.

Requirements Applicable to State GEAR UP Grantees That Serve Students Under the National Early Intervention Scholarship and Partnership Program (NEISP)

Statute: Section 404A of the HEA, as amended by the Higher Education Amendments of 1998, provided that in making awards to States under this program, the Secretary must ensure that students served under this chapter on the day before the date of enactment of the Higher Education Amendments of 1998 continue to receive assistance through the completion of secondary school. This statutory requirement no longer exists in the HEA.

Current Regulations: Current § 694.14 provides that any State that receives a GEAR UP grant and that served students under the NEISP program on October 6, 1998, must continue to provide services under this part to those students until they complete secondary school.

Proposed Regulations: None.

Reasons: We propose to remove the requirements reflected in current § 694.14 because this regulatory provision is obsolete. The NEISP program has not been authorized since 1998 and any students served under that program are well beyond traditional high school age.

Priority

Statute: Section 404A(b)(3)(A) of the HEA, as amended by section 404(a)(2) of the HEOA, gives a priority in funding to a State that (1) has carried out successful GEAR UP programs prior to enactment of the HEOA, and (2) has a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies. Section 404A(b)(3)(B) of the HEA, as amended, provides that, in making GEAR UP grant awards to States, the Secretary must ensure that students

served under the GEAR UP program prior to the enactment of the HEOA continue to receive assistance through the completion of secondary school.

Current Regulations: Current § 694.15 is the regulatory provision that specifies the priorities the Secretary establishes for the GEAR UP program. It does not reflect the changes made by the HEOA to the statutorily required priorities.

Proposed Regulations: The proposed regulations would redesignate current § 694.15 (What priorities does the Secretary establish for a GEAR UP grant?) as proposed § 694.19 to accommodate the proposed addition of other regulatory provisions, as discussed elsewhere in this preamble. Under newly redesignated § 694.19, the Secretary would award competitive preference priority points to an eligible applicant for a State GEAR UP grant that has both carried out a successful State GEAR UP grant prior to August 14, 2008, and prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies. Under proposed § 694.19(a), whether a State GEAR UP grant is deemed successful would be determined on the basis of data (including outcome data) submitted by the applicant as part of its annual and final performance reports, and the applicant's history of compliance with applicable statutory and regulatory requirements relating to the grant.

Reasons: We are proposing to revise newly redesignated § 694.19, which addresses the priorities the Secretary establishes for a GEAR UP grant, to reflect the changes made by the HEOA to section 404A(b)(3)(A) of the HEA. In order to notify the public of how these priorities will work, we propose to clarify that the Department will implement these statutorily required priorities by using them as competitive preference priorities in the award-making process. In addition, in response to comments received from non-Federal negotiators, we are proposing to specify in this section how the Department will determine whether a State GEAR UP grant has been "successful" under section 404A(b)(3)(A)(i) of the HEA. Thus, proposed § 694.19(a) would specify that the Secretary will determine whether a GEAR UP grant has been successful based upon data (including outcome data) submitted as part of the applicant's annual and final performance reports for the grant it previously carried out, and its history of compliance with statutory and regulatory requirements relating to that grant. The Secretary would determine the extent to which an applicant has a

"prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies" on the basis of information included in its GEAR UP application.

More information about the award process, including the priorities given in the competitions for State GEAR UP grants, may be included in the notices inviting applications for the State GEAR UP grant competitions that the Department publishes in the **Federal Register**. However, we believe that general information about how the priorities will be implemented (*i.e.*, as competitive preference priorities), and how the Department will assess whether an applicant has carried out a successful State GEAR UP Grant prior to August 14, 2008, are best addressed in the program regulations. Proposed § 694.19 would incorporate language from section 404A(b)(3)(A) of the HEA, but not the requirement in section 404A(b)(3)(B) of the HEA that the Secretary ensure that students served by State GEAR UP grants before the enactment of the HEOA continue to receive services through completion of secondary school. Though this requirement appears in the same statutory section as the priority that is given to eligible entities for a State GEAR UP grant, the statutory language does not require the Secretary to give a priority to eligible entities that would continue to serve these students. The requirement in section 404a(b)(3)(B) of the HEA is addressed in more detail under the *Continuity of Student Services* section elsewhere in this preamble.

Duration of Awards

Statute: Section 404A(b)(2) of the HEA, as amended by section 404(a)(2) of the HEOA, provides that the Secretary may award a GEAR UP grant for six years or, seven years in the case of a State or Partnership that applies for a seven-year GEAR UP grant to enable it to provide services to a student through the student's first year of attendance at an IHE.

Current Regulations: None.

Proposed Regulations: The Department is proposing to add § 694.20 and § 694.24. Specifically, proposed § 694.20(a) would provide that the Secretary authorizes an eligible State or Partnership to provide GEAR UP services to students attending an IHE if the State or Partnership (1) applies for and is awarded a new award after August 14, 2008, and (2) in its application, requests a seventh year so that it may continue to provide services to students through their first year of

attendance at an IHE. Proposed § 694.20(b) would specify that a State grantee that uses a priority (rather than or in addition to a cohort) approach to identify participating students may, consistent with its approved application and at any time during the project period, provide services to students during their first year of attendance at an IHE, as long as the grantee continues to provide all required early intervention services throughout the Federal budget period. Proposed § 694.20(c) provides that if a grantee is awarded a seven year grant, consistent with the grantee's approved application, during the seventh year of the grant the grantee (1) would need to provide services to students in their first year of attendance at an IHE; and (2) may choose to provide services to high school students who have yet to graduate. Proposed § 694.20(d) provides that grantees that continue to provide services to students through their first year of attendance at an IHE must, to the extent practicable, coordinate with other campus programs, including academic support services to enhance, not duplicate service.

Finally, § 694.24 would clarify that, consistent with its approved applications and § 694.20, a GEAR UP grantee may provide any services to students in their first year of attendance at an IHE that will help those students succeed in school, and that do not duplicate services otherwise available to them. The proposed regulation would also provide a large number of specific examples of such services.

Reasons: Throughout the negotiating rulemaking process, the Department sought feedback from the non-Federal negotiators on: (1) Whether we should regulate on the types of services that should be provided by GEAR UP grantees during the seventh year of the grant and to whom those services should be provided, (2) whether GEAR UP grantees that are providing a seventh year of services should be required to serve a certain percentage of their students during the seventh year, (3) whether GEAR UP grantees should be required to collaborate with other providers (such as TRIO grantees) when providing services during the seventh year, and (4) whether GEAR UP grantees using a multiple cohort approach should be able to serve students in high school during a seventh year.

In response to comments provided by non-Federal negotiators and tentative agreement reached by the Committee, the Department has proposed to add new § 694.20. The proposal reflects the language of section 404A(b)(2) of the HEA, as amended, which authorizes

GEAR UP funding for this seventh project year only for new grantees. We are proposing to include, in § 694.20(a), language that clarifies that in order to be eligible for a seventh year of funding, State or Partnership applicants must apply for and be awarded a new GEAR UP grant after August 14, 2008, and must request in their applications a seventh year of funding to provide services to students through their first year of attendance at an IHE. We propose to include this provision to be consistent with section 404A(b)(2) of the HEA, and to ensure that grantees from the very beginning have planned to implement strong student services in the seventh year of the grant.

Just as proposed § 694.14(d) would permit grantees using the priority approach (rather than or in addition to a cohort approach) to provide scholarship awards before the seventh year, under § 694.20(b) grantees using a priority approach would be able to serve students in their first year of attendance at an IHE before the seventh year of the grant. The provision would simply require that provision of these services (1) is consistent with the grantees' approved application, and (2) does not undermine grantees' provision of all required services throughout the Federal budget period to GEAR UP students still enrolled in a local educational agency. We propose the latter condition in order not to detract from the basic purpose of GEAR UP—to help increase the numbers of students in economically deprived areas get ready for, and enroll in, postsecondary education.

Proposed § 694.20(c) would specify that if a grantee is awarded a seventh year of GEAR UP funding, the grantee must provide services to students in their first year of attendance at an IHE, and may choose to provide services to high school students who have yet to graduate. While the provision would have limited applicability to projects that use the cohort approach, we are proposing it specifically to allow grantees that are serving multiple cohorts of students to continue providing services to students who are in high school during the seventh year of the project period. The Department believes that this approach will encourage continuity of services to all students served by the grant.

Non-Federal negotiators expressed the belief that proper coordination between GEAR UP grantees and available campus programs is important so that GEAR UP students are provided the supports they need, and limited GEAR UP funds enhance rather than duplicate services available to GEAR UP students after enrollment in an IHE. Some

negotiators also expressed the belief that various factors, including the distance between IHEs graduates would attend and the grantee, the number of different IHEs that graduates would attend, and a grantee's efforts to obtain information about and coordinate with the providers of other services at those IHEs, could create significant challenges. We agree with both of these considerations, and in balancing them propose § 694.20(d). This provision would require GEAR UP grantees that continue to provide services to students through their first year of attendance at an IHE to coordinate, to the extent practicable, with other campus programs to enhance, not duplicate services. We propose to identify academic support services as one kind of other campus programs given the pivotal role of academic support to many GEAR UP students.

Finally, we propose to add new § 694.24 to provide examples of the types of services that a grantee may provide to students in their first year of attendance at an IHE and to list examples of these services. We believe that this information would be helpful to applicants and grantees as they plan and implement the type of IHE-level services that are most appropriate for each GEAR UP student.

Required and Allowable Activities

Statute: Section 404D of the HEA, as amended by section 404(d) of the HEOA, modifies the GEAR UP program statute by identifying certain activities and services that GEAR UP grantees must provide, and other activities and services that are permissible and thus ones that projects may offer using GEAR UP funds.

Current Regulations: None.

Proposed Regulations: The Department is proposing to add §§ 694.21, 694.22, 694.23, and 694.24 to address required and allowable activities. Proposed § 694.21 would identify the services that, under section 404D(a) of the HEA, all GEAR UP projects must offer. Consistent with section 404D(b) of the HEA, proposed § 694.22 would list examples of other services and activities that all GEAR UP projects may provide. Proposed § 694.23 would incorporate the language from 404D(c) of the HEA, and describe additional activities that are allowable for State GEAR UP projects. Finally, as noted elsewhere in this preamble, proposed § 694.24 would describe the additional services that, consistent with proposed § 694.20 and its approved application, a GEAR UP project may provide to students in their first year of attendance at an IHE.

Reasons: Currently, the GEAR UP program regulations do not list examples of permissible or required GEAR UP services or activities. The non-Federal negotiators suggested—and we agreed—that it would be helpful for applicants and grantees if the Department included in its GEAR UP regulations the examples of required and allowable activities provided in section 404D of the HEA. Also, based on suggestions from the non-Federal negotiators, we are proposing to separate the required and permissible activities into multiple regulatory sections. We believe that this structure will increase the clarity and comprehensibility of the regulatory language for applicants and grantees.

For the most part, proposed §§ 694.21, 694.22, and 694.23 would reflect the statutory language in section 404D(a) through (c) of the HEA. In addition to a few minor, non-substantive differences between these regulations and that statutory provision, please note the following.

First, section 404D(a)(4) of the HEA would require a State grantee to provide for the scholarships under section 404E. We are concerned that some will question whether this provision requires States to use GEAR UP funds for GEAR UP scholarships even though section 404E(b) permits the Secretary to waive the requirement that GEAR UP funds be used for scholarships if the State demonstrates that it has another means of providing the financial assistance section 404 requires, and describes such means in its program application. To avoid any confusion, we have included the exception for this State “waiver” in proposed § 694.21(d).

Furthermore, in response to the suggestion of a non-Federal negotiator, we would clarify in proposed § 694.22(e)(4) that the work grantees may perform in assisting GEAR UP students to develop their graduation and career plans may include activities related to helping students with career awareness and planning activities as they relate to a rigorous academic curriculum. We believe that providing examples of what graduation and career plans may include would both enhance the understanding of the public, as well as GEAR UP applicants and grantees, of the types of services that may be provided in this area, and foster creativity with regard to grantees’ provision of career-related services.

In addition, non-Federal negotiators expressed concerns that the statutory language in section 404D of the HEA was ambiguous as to whether the costs of administering a scholarship fund are allowable. The HEA specifies in

404(C)(c)(1)(B) that the costs of administering a scholarship program may count towards the matching requirement, but the HEA does not speak directly to whether Federal funds may be used to support scholarship administration. We believe that such costs of administering authorized activities are allowable under applicable cost principles contained in OMB Circulars A–21 and A–87. However, to clarify the matter, we have included in proposed § 694.22(g) the express authority for grantees to use GEAR UP funds to support the costs of administering a scholarship program.

As discussed elsewhere in this preamble, we propose to add § 694.24 to explain the types of services that a grantee may provide to GEAR UP students in their first year of attendance at an IHE and to list examples of these services. We believe that this information will be helpful to applicants and grantees as they evaluate the type of services that are appropriate to provide to these students.

Continuity of Student Services

Statute: Section 404A(b)(3)(B) of the HEA, as amended by section 404(a)(2) of the HEOA, provides that in making awards to eligible States, the Secretary must ensure that students served under the GEAR UP program prior to the enactment of the HEOA continue to receive assistance through the completion of secondary school. Section 404B(d)(1)(C) of the HEA, as amended by section 404(b) of the HEOA, further requires the Secretary to ensure that eligible Partnerships provide services to students who received services under a previous GEAR UP grant award but have not yet completed the 12th grade. Prior to the enactment of the HEOA, there was no requirement for either State or Partnership grantees to serve students served under a previous grant.

Current Regulations: None.

Proposed Regulations: The Department is proposing to add § 694.25 to implement sections 404A(b)(3)(B) and 404B(d)(1)(C) of the HEA. In doing so we are proposing that the provisions have effect only where the initial and subsequent grants are both awarded on or after August 14, 2008, the effective date of the HEOA. Specifically, proposed § 694.25 would provide that if (1) a Partnership or State is awarded a GEAR UP grant on or after that date (*i.e.*, initial grant), (2) the grant ends before all students who received GEAR UP services under the grant have completed the twelfth grade, and (3) the grantee receives a new award in a subsequent GEAR UP competition (*i.e.*, new grant), the grantee must continue to provide

services required by § 694.21 and authorized under §§ 694.22 and 694.23 to all students who received GEAR UP services under the initial grant and remain enrolled in secondary schools until they complete the twelfth grade. The grantee would be able to provide these services by using GEAR UP funds awarded for the new grant or funds from the non-Federal matching contribution required under the new grant.

Reasons: We are proposing to add § 694.25 to implement and clarify sections 404A(b)(3)(B) and 404B(d)(1)(C) of the HEA, as amended by sections 404(a)(2) and 404(b) of the HEOA, respectively.

Section 404A(b)(3)(B) of the HEA provides that in making awards to eligible State grantees, the Secretary will ensure that GEAR UP students served on the day before the date of enactment of the HEOA continue to receive assistance through the completion of secondary school. Absent legislative language to the contrary, we interpret the phrase “making awards” in this section as referring to making new GEAR UP awards. We do so because, without evidence of congressional intent that the new requirement apply to continuation awards for grantees that had received initial GEAR UP grants prior to the date of enactment of the HEOA, we do not believe Congress intended that grantees should assume the costs and burdens of activities newly required in the HEOA that they had no legal responsibility to bear when they applied for their GEAR UP grants before the enactment of the HEOA. For this reason, with regard to State GEAR UP grants, proposed § 694.25 would apply only to recipients of new grants.

Proposed § 694.25 would contain a similar requirement for Partnerships that receive new GEAR UP awards. Prior to the changes made by the HEOA, a Partnership grantee was not required to continue to assist students who had not completed the 12th grade after the project period ended. As we stated in the preceding paragraph, in the absence of clear legislative intent that Congress intended to impose the costs and burdens of activities newly required in the HEOA on recipients of GEAR UP continuation grants, we do not believe we can impose such a requirement. For this reason, with regard to Partnership GEAR UP grants, proposed § 694.25 similarly would apply only to recipients of new grants.

With regard to States and Partnerships that receive an initial GEAR UP grant on or after August 14, 2008, the date of enactment of the HEOA, we interpret sections 404A(b)(3)(B) and 404B(d)(1)(C) of the HEA to require those grantees to

continue to provide services required by § 694.21 and authorized under §§ 694.22 and 694.23 to those students who are enrolled in secondary schools until they complete the twelfth grade if (1) the initial grant ends before all students who received GEAR UP services under the grant have completed the twelfth grade, and (2) the grantee receives a new award in a subsequent GEAR UP competition.

We do not interpret sections 404A(b)(3)(B) and 404B(d)(1)(C) of the HEA to require grantees to provide Federal GEAR UP services outside of the six- or seven-year grant period for the Federal GEAR UP award (see section 404A(b)(2) of the HEA, as amended by section 404(a)(2) of the HEOA) because this would result in an untenable situation. We believe that this situation would be untenable because, were the Secretary to interpret the law as applying outside of the six- or seven-year authorized grant period, the Secretary would be mandating specific grantee action without the ability to adequately enforce the requirement. In this regard, the only means the Secretary would have available to seek enforcement of these provisions, including any needed grantee reporting and follow-up, would be to use formal administrative and judicial procedures to seek the return of Federal GEAR UP funds years after their expenditure. Absent evidence to the contrary, we do not believe that the Congress intended the statute to have this effect.

Therefore, proposed § 694.25 provides that only a grantee that receive both an initial and new award on or after August 14, 2008, must, during the Federal funding period, continue to provide GEAR UP services to students who received services under the previous GEAR UP grant award but have not yet completed the twelfth grade.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is “significant” and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an

“economically significant” rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive order. Pursuant to the Executive order, it has been determined that this regulatory action will have an annual effect on the economy of more than \$100 million because the amount of government transfers provided through these discretionary grant programs will exceed that amount. Therefore, this action is “economically significant” and subject to OMB review under section 3(f)(1) of the Executive order.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits of this proposed regulatory action, we have determined that the benefits of the proposed priorities, requirements, definition, and selection criteria justify the costs.

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

HEP and CAMP Programs

The Secretary has concluded that there is no need to discuss the changes to the regulations for HEP and CAMP in the *Regulatory Impact Analysis* because the changes to regulations for these programs were minor. The most significant changes to these regulations address who can be considered an immediate family member of a migrant individual in order to be eligible for program services. The Department determined that providing clarity to the term “immediate family member” would help ensure there is a uniform standard of eligibility for these programs.

Federal TRIO Programs

Need for Federal Regulatory Action

These proposed Federal TRIO program regulations are needed to implement provisions of the HEOA, which changed certain features of the TRIO program. In proposing these regulations, the Secretary has endeavored to regulate only where necessary, and in ways that to the extent

possible reflect the recommendations of the non-Federal negotiators:

- *Number of Applications:* The HEA stipulates that entities may submit multiple applications for grants under each TRIO program “if the additional applications describe programs serving different populations or different campuses.” The HEA, as amended by the HEOA, defines “different populations” and “different campuses.”

- *Section 643.30: Rigorous Secondary School Program of Study:* The HEOA modified the HEA’s outcome criteria for Talent Search by adding the completion of a “rigorous secondary school program of study” as one of the criteria to be considered in calculating prior experience points.

- *Section 643.32: Changes to Minimum Number of Participants Served in Talent Search:* In order to provide it with greater flexibility to establish the minimum number of participants in each TS grant competition, the Department proposes to eliminate the current regulatory requirement that TS projects serve a minimum number of individuals.

- *Sections 643.30, 644.30, 645.40, 646.30, 647.30: Changes to Allowable Costs (Computer Hardware and Software) (TS)(EOC)(UB)(SSS)(McNair):* The requirement that grantees must seek prior approval for purchases of computer equipment was not addressed in the statute. However, during negotiated rulemaking, negotiators reached a consensus that computer equipment and software are necessary costs for grantees to deliver services. Accordingly, the Department proposes to change its regulations with respect to the purchase of computer equipment.

Regulatory Alternatives Considered

Sections 643.7, 646.7, 643.10, 644.10, 645.20, 646.10, 647.10: Number of Applications: Branch Campuses and Different Populations

The HEA stipulates that entities may submit multiple applications “if the additional applications describe programs serving different populations or different campuses.” Section 402A(h)(1) and (2) of the HEA defines “different campus” and “different population.” A “different campus” is defined as a site of an institution of higher education that: Is geographically apart from the main campus of the institution; is permanent in nature; and offers courses in educational programs leading to a degree, certificate, or other recognized credential. A “different population” is defined in section 402A(h)(2) of the HEA as a group of individuals that an eligible entity

desires to serve through an application for a TRIO grant that is: Separate and distinct from any other population that the entity has applied for a TRIO grant; and while sharing some of the same needs as another population that the entity has applied to serve, has distinct needs for specialized services.

The proposed regulations would clarify that, for the purposes of the TS and UB programs, applicants will be allowed to submit multiple applications if they plan to serve different target schools. For the SSS and McNair programs, applicants can submit multiple applications if they propose to serve different campuses.

The proposed regulations would use a definition of “different campus” that is different from the definition of “different campus” currently included in the SSS regulations. Current SSS regulations require a “different campus” to have separate budget and hiring authority to be an eligible applicant. However, HEA, as amended by HEOA, defined “different campus” as a site of an institution of higher education that is: “geographically apart from the main campus of the institution,” “permanent,” and one that offers courses leading to an educational credential. The proposed regulations would implement this definition in accordance with the amended statute. With respect to the implementation of the HEA’s definition of “different populations,” initially, during the negotiated rulemaking sessions, the Department proposed to implement this change consistent with its current practice. Currently, all of the TRIO programs except for SSS prohibit an applicant from submitting an application proposing to serve a different population within the same target area, school, campus, etc. The

SSS program allows an entity to submit a separate application to serve individuals with disabilities. However, the non-Federal negotiators disagreed with this approach and argued that the HEA permits applicants to submit multiple applications that propose to serve different populations, even in the same target area, school, or campus. Ultimately, the Secretary agreed with the non-Federal negotiators. Under the proposed regulations, therefore, an applicant planning to serve a separate population would be permitted under certain circumstances to apply for a separate grant to serve this population even if it also applies to serve a different population of students on the same campus.

While grantees must be able to serve more students and to tailor services to meet the distinct needs of different populations the Department needs to establish some limitations on the number of separate applications an eligible entity may submit for each competition. Without such limitations, adding the definition of the term *different population* to the regulations could have the unintended consequence of disproportionately increasing funding at some institutions, agencies, and organizations that submit several applications while limiting the funds available to expand program services to other areas, schools, and institutions. To mitigate this risk and to ensure fairness and consistency in the application process, the Department proposes to amend the regulations for each of the TRIO programs to provide that the Department will define, for each competition, the different populations of participants for which an eligible entity can submit separate applications and publish this information in the

Federal Register notice inviting applications and other application materials for the competition.

This approach would give the Department the flexibility to designate the different populations for each competition based on changing national needs. It also would permit the Department to more effectively manage the program competitions within the available resources.

For these reasons, under the proposed regulations, an entity applying for more than one grant under the TS, EOC, and UB programs would be able to submit separate applications to serve different target areas and different target schools, and would also be able to submit separate applications to serve one or more of the different populations of participants designated in the **Federal Register** notice inviting applications. Entities applying for grants under the SSS and McNair programs would be able to submit separate applications to serve different campuses and would also be able to submit separate applications to serve one or more of the different populations of participants designated in the **Federal Register** notice inviting applications for the competition.

These regulatory changes are expected to increase the number of grant applications for SSS (and other TRIO) grants. For the SSS program, the Department estimates an increase of about 450 applicants (from 1,200 to 1,650) for each competition. With 450 new applicants devoting approximately 34 hours to the process, the Department expects that the amount of money spent on applications by applicants would increase by \$742,950. (Note, however, that the cost to individual applicants is not expected to increase).

INCREASE IN AGGREGATE APPLICANT COSTS

Burden	Calculations	Estimated increase
Professional Staff	(450 additional applications * 27 hours * \$30 per hour) + Overhead at 50% of salary.	\$546,750
Clerical Staff	(450 additional applications * 7 hours * \$12 per hour) + Overhead at 50% of salary	56,700
Use of Computer Equipment	450 additional applications * (\$200 for computer time + \$10 for printing)	94,500
Operation Cost	450 additional applications * \$100 cost of finding and maintaining application materials.	45,000
Total	742,950

Note: Cost estimations are based on the “Supporting Statement for the Application for Grants Under the Student Support Services Program, HEOA of 2008, Title IV–A.”

In addition, the cost of administering SSS grant competition would likely increase. In particular, the Department estimates that variable costs of processing and reviewing applications

will increase 37.5 percent. The cost of retaining outside reviewers should increase to \$555,000 from \$404,000 while application processing costs should increase from approximately

\$25,000 to \$34,560. Costs associated with staff time for conducting the supervised review process are expected to increase from \$377,000 to \$518,000. Finally, costs associated with financing

workshops, field reading and slate preparation are expected to increase from \$917,000 to \$1,260,625. In sum,

the Department estimates the expected increase in grant applications to

increase administration costs by approximately \$646,000.

INCREASE IN COST TO FEDERAL GOVERNMENT

Burden	Calculations	Estimated increase
Field Reviewers	Proportional increase in field reviewers as a result of increase in applications * \$1,100 (\$1,000 honorarium, \$100 for expenses).	\$151,364
Processing applications	Proportional increase in staff or staff hours as a result of increase in applications ...	9,426
Contractor logistical support for workshops, achieving prior unfunded applications, application processing, field reading and slate preparation.	Proportional increase in contract costs as a result of increase in applications	343,807
Staff time for conducting supervised review.	Proportional increase in staff costs hours as a result of increase in applications	141,382
Total	645,978

Note: Cost estimations are based on the “Supporting Statement for the Application for Grants Under the Student Support Services Program, HEOA of 2008, Title IV–A.”

The primary beneficiaries of the regulatory change related to different populations will be students with special needs. To the extent that college completion strategies vary across different populations of students, allowing applicants to submit separate applications for different populations would increase the delivery of the right kinds of services to students. SSS projects geared specifically towards ESL students, for instance, would be able to provide highly specialized services to these students in a more efficient and effective manner than would a general SSS project.

Section 643.30: Rigorous Secondary School Program of Study: Adding Tuition as an Allowable Cost in the TS Program

The HEOA modified the HEA’s outcome criteria for the TS program. These outcome criteria are used to determine the award of prior experience points for grantees that choose to apply for future awards. One of the new outcome criteria added to the statute requires grantees to report on the number of all TS participants who complete a rigorous secondary school program of study that will make the students eligible for Academic Competitiveness Grants (ACG). This new statutory criterion in and of itself does not require that TS projects provide more intensive services: It could be interpreted simply as requiring the Department to track whether TS students, with proper counseling on course selection and with referrals to tutoring services, enroll in the coursework that would qualify them for an ACG grant. (In most States, students can qualify for an ACG grant if they complete four years of English; three

years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics; three years of science, including at least two of three specific courses, biology, chemistry, and physics; three years of social studies; and one year of a language other than English. Under the ACG program, there are other options for meeting the rigorous course of study requirement, including taking International Baccalaureate or Advanced Placement courses.)

Non-Federal negotiators contended that some schools served by TS grantees do not provide the type of curriculum necessary for students to meet the requirements of a “rigorous secondary school program of study.” Consequently, they argued, grantees serving students in these schools are at a disadvantage with respect to meeting this criterion. They specifically requested that grantees be permitted to use grant funds to enable participants in the TS program to attend classes at other schools to help grantees satisfactorily meet this new outcome criterion. For example, a TS grantee would be permitted to provide funds to a student whose high school offers only biology and not chemistry or physics so that the student could attend a local community college or take an online course to take chemistry or physics.

During the negotiated rulemaking sessions, the negotiators did not reach agreement on this issue. The Department has decided to propose to allow TS grantees to use grant funds to pay a participant’s tuition for a course that is part of a rigorous secondary school program of study if a similar course is not offered at a school within his or her LEA provided that several

conditions are met. The Department has also decided to propose regulations that would allow TS grantees to pay for a student’s transportation to a school not regularly attended by that student in order for that student to take a course that is part of a rigorous program of study.

To determine the impact of these proposed regulations, we need to estimate the number of TS participants who do not have access to a rigorous secondary school program of study at their high school and the cost of providing these participants with the requisite curriculum (whether through tuition or transportation). We also need to estimate the extent to which grantees that are serving schools with these participants would elect to incur these costs because, under the proposed rules, grantees would not be required to provide tuition or transportation assistance.

According to recent program data from the ACG 2007–2008 End of the Year Report, 54 percent of ACG recipients qualified under a rigorous coursework component, 41 percent under a State designated curriculum, and four percent under the Advanced Placement or International Baccalaureate Program courses. The Department does not have data on the availability of curricula that would satisfy the rigorous secondary school program of study requirement. Therefore, we are asking the public for data on the extent to which rigorous coursework offerings that would meet the ACG requirements are not available at the schools or areas that are targeted under the TS program and the number of potential TS participants in these schools or areas that would be unable to meet the requirements because of the unavailability of the curriculum.

Although we do not have data on the number of affected students, we do have some data on the cost of providing tuition assistance. Based on data collected by the American Association of Community Colleges (AACC) in 2008, we estimate that the cost of providing a student with one course per semester, including required textbooks, would be approximately \$560 to \$1,280. AACC data indicate that the per credit costs for public community college ranges from about \$20 in California to \$180 in Vermont. This compares to an average grantee cost per TS participant of approximately \$402 in 2008, which means that the opportunity cost of providing tuition for one TS participant to take one class at a community college is roughly equal to what it costs on average to serve 1 to 3 additional participants under the TS program prior to the enactment of HEOA. Because we do not know the extent to which grantees would elect to use funds for this purpose or the actual costs of providing access to this coursework, we are asking current TS grantees to provide estimates regarding the amount of the project budget that might be used for tuition and the estimated number of participants that might benefit each year from this service if the grantee elected to provide it. These data would enable us to better estimate the effect of using TS funds for this purpose on program measures, including the cost per successful outcome.

With respect to the benefits of this proposed regulatory change, the Secretary believes that students enrolled in schools with curricula that do not meet the State's definition of a rigorous program of study will be the primary beneficiaries. TS participants in schools that do not offer all of coursework needed to satisfy this requirement (e.g., a physics or chemistry course) may be afforded the opportunity to take such coursework at a local institution of higher education. Given the body of research suggesting that students who take rigorous classes in high school are more likely to enroll in and complete postsecondary education, providing this benefit to TS participants could improve their educational outcomes. A 2003 GAO report, for instance, reported that students taking a highly rigorous secondary school program of study were 1.7 times more likely to earn a bachelor's degree than students that took a basic high school curriculum.¹ However, grantees will need to balance the opportunity costs of providing these

opportunities to individual students with the expected educational benefits to avoid an unnecessary increase in the cost of successful outcomes under this program.

Section 643.32: Changes to Minimum Number of Participants Served in Talent Search

The proposed regulations would remove the regulatory requirement that TS projects serve a minimum number of individuals. Current regulations require that any grantee receiving an award of \$180,000 or more must serve a minimum of 600 individuals. The Department proposes to remove this requirement.

The Department proposes to take this action to provide it flexibility in each competition to establish the number of participants, and to adjust these numbers in subsequent competitions based on experience, cost analyses, and other factors.

The Department is committed to encouraging TS grantees to identify and adopt the most cost-effective strategies for disadvantaged youth to complete secondary school programs, enroll in or reenter education programs at the postsecondary level, and complete postsecondary education programs. The Department intends to design future TS grant competitions to achieve this objective. Future grant competition notices will set parameters that are consistent with the statute to encourage adoption of cost effective practices using the best available evidence. This may include setting a minimum number of program participants for each competition to promote adoption of cost-effective practices.

The Department intends to address the number of participants a TS project will be expected to serve each year of the grant cycle through the **Federal Register** notice inviting applications for the competition. The Department also intends to establish a per-participant cost in the **Federal Register** notice that would be used to determine the amount of the grant for an applicant proposing to serve fewer participants than required for the minimum grant award for the competition.

Sections 643.30, 644.30, 645.40, 646.30, 647.30: Changes to Allowable Costs (Computer Hardware and Software) (TS)(EOC)(UB)(SSS)(McNair)

Under the proposed regulations, TRIO projects no longer would be required to obtain the Secretary's approval before purchasing computer and software equipment. This regulatory change would remove administrative costs associated with obtaining this approval.

GEAR UP

Need for Federal Regulatory Action

The proposed GEAR UP regulations are needed to implement provisions of the HEOA, which changed certain features of the GEAR UP program. We identify those statutory changes that have prompted us to propose significant changes in regulations. In proposing these regulations, the Secretary has endeavored to regulate only where necessary, and in ways that to the extent possible reflect the recommendations of the non-Federal negotiators:

- *Section 694.19—Priority:* Section 404A(b)(3)(A) of the HEA now requires that priority be given to those States that have “carried out successful [GEAR UP] programs” prior to enactment of HEOA, and have a “prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.”

- *Section 694.8—Waiver of Matching Requirements:* Section 404C(b)(2) of the HEA, as amended by the HEOA, permits the Secretary to waive the matching requirement for a Partnership in whole or in part if, at the time of application, the Partnership (a) demonstrates significant economic hardship that precludes it from meeting the matching requirement, or requests that its contributions to the scholarship fund under section 404E of the HEA be matched on a two-for-one basis. Section 404C(b)(2) of the HEA also permits the Secretary to waive the matching requirement for any Partnership grantee that demonstrates that the matching funds described in its application are not available, and that it has exhausted all revenues for replacing these matching funds.

- *Sections § 694.12 and § 694.13—Scholarship Component:* Section 404E(e)(1) of the HEA, as amended by HEOA, requires each State grantee to reserve an amount of money that is not less than the minimum scholarship amount described in section 404E(d) of the HEA, multiplied by the number of students the grantee estimates will complete a secondary school diploma or its equivalent as may be required for the students' admission at an IHE, and enroll in an IHE. The Department interprets this new statutory provision along with the new requirement in section 404E(d) of the HEA that all eligible students (as defined in section 404E(g) of the HEA), whether served by a State or Partnership grantee, who enroll in an IHE receive at least the minimum Federal Pell Grant award, to require any GEAR UP grantee subject to the section 404E requirements to

¹ GAO, “Additional Efforts Could Help Education With its Education Goals,” May 2003. (<http://www.gao.gov/new.items/d03568.pdf>).

provide this minimum award to all GEAR UP students enrolled in an IHE. This statutory change led the Department to revisit its current regulations governing the provision of continuation scholarships.

• *Section § 694.16—Return of Unused Scholarship Funds:* Section 404(e)(4)(A)(ii) of the HEA, as amended by HEOA, now requires State grantees either to redistribute to other eligible students scholarship funds that are not used by eligible students within six years of the student's completion of secondary school or return those funds to the Secretary for distribution to other grantees in accordance with the funding rules described in section 404B(a) of the HEA.

Regulatory Alternatives Considered

Section 694.17: Priority

Proposed § 694.17 clarifies how the Department would implement the statute's requirement that priority in making awards be given to those States that (1) prior to enactment of HEOA have "carried out successful GEAR UP programs" and (2) have a "prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies." While the Department could seek to implement this priority by having applicants address in their applications how they met both aspects, we believe that imposing this kind of data burden is unnecessary.

We are proposing instead to rely, where possible, on reports that applicants previously submitted in implementing their prior GEAR UP projects. Thus, to implement this statutory requirement, the Department would grant "priority preference points" to State applicants, based, in part, on their prior submission of data, including outcome data, about their projects and other information available to the Department. At present, the Department is considering implementing the second element of the priority, which concerns a prior, demonstrated commitment to early intervention leading to college access, through review of the new GEAR UP application itself given that we do not know how else the Department would obtain the information it needs to determine the extent to which applicants would meet the second element of the priority. Moreover, should the Department determine that it needs applicants to provide more information in their applications that reflect this second element, the Department believes that the additional burden would be very small, and that

the costs of this additional administrative burden would be far outweighed by the benefits from ensuring that the Department is able to give priority to the most deserving State applicants.

Sections 694.8 and 694.9: Waiver of Matching Requirements

Consistent with section 404C(b) of the HEA, as amended by the HEOA, these proposed sections would specify the circumstances in which the Secretary would consider requests from applicants for a waiver of the GEAR UP's matching requirement based on significant economic hardship, and from grantees based on the unavailability of matching funds as described in section 404C(b)(2)(A) and (B) of the HEA. (Section 404C(b)(2)(A)(i) of the HEA also authorizes a Partnership applicant to request that contributions to scholarship funds established under section 404E of the HEA be matched on a two-to-one basis, but our proposed § 694.8(c) simply repeats this statutory provision.)

The proposed regulations that would govern waiver requests by applicants (proposed § 694.8) and by grantees (proposed § 694.9) would provide significant benefit to the public, and do so in numerous ways. First, they provide that the Secretary would entertain waiver requests of significant amounts from applicants and grantees—up to 75 percent for up to two years in the case of an applicant that demonstrates a significant economic hardship stemming from a specific, exceptional, or uncontrollable event, and up to 50 percent for up to two years in the case of an applicant with a pre-existing and on-going significant economic hardship that precludes them from meeting the matching requirement. Second, by providing clarifying examples of the kinds of economic situations and events that would give rise to approval of an applicant's or grantee's waiver requests, the proposed regulations would advise the public of the considerations the Secretary will examine upon receipt of a waiver request.

Finally, for an applicant in an area that faces chronic economic challenges expected to affect the life of the GEAR UP project, proposed § 694.8(b)(3) would permit the Secretary to grant tentative approval of the waiver for the entire project period, subject to the Partnership's submission of documentation every two years that confirms (1) the continued economic hardship, and (2) the Partnership's continuing and unsuccessful attempts to secure matching contributions. This

latter proposal would both eliminate this applicant's need to prepare a non-Federal budget as part of its application, and upon initial approval of the waiver request, would provide a basis for predicting whether or not the Secretary would be expected to extend the waiver in future years.

Thus, these regulatory provisions would provide a substantial benefit to grantees meeting the proposed criteria. For example, in 2009, the average GEAR UP grant award made to a Partnership was approximately \$1.1 million. Because, absent a waiver, GEAR UP grantees must match the amount of Federal expenditures, the average annual matching requirement for a Partnership was also \$1.1 million in 2009. However, under proposed §§ 694.8(b) and 694.9(a)(1), a Partnership applicant that can demonstrate an ongoing significant economic hardship that precludes it from meeting the matching requirement, or a Partnership grantee that can demonstrate that its matching contributions are no longer available and that it has exhausted all fund and sources of potential replacement contributions, could receive a waiver up to 50 percent, or on average up to \$600,000 per year. And, under proposed §§ 694.8(a) and 694.9(a)(2), a Partnership that can demonstrate the unavailability of match due to an uncontrollable event such as a natural disaster that has had a devastating impact on members of the Partnership and the community in which they operate may receive a waiver of up to 75 percent—thus creating a benefit (*i.e.*, a lessened private commitment) on average of up to \$900,000 per year. Given the current national economic climate, such waiver requests seem likely. Moreover, for grantees that would not be able to continue operating their GEAR UP projects without these waivers, these proposed regulations would enable the participating students to continue to receive GEAR UP services, albeit at a reduced level given the smaller matching contributions.

In considering the amount of match subject to possible waiver, the non-Federal negotiators opposed waivers of greater size. They stressed the importance of a vibrant and committed partnership in GEAR UP projects required partners to maintain a commitment of their own resources to help provide needed GEAR UP services. Moreover, the non-Federal negotiators also noted that even under current economic conditions, partners committed to the GEAR UP projects should be able to secure substantial in-kind matching contributions.

Accordingly, they rejected options under which the Secretary might provide a waiver of the matching contributions for one or more years of the project because of economic conditions or a one-time exceptional or uncontrollable event waiver of up to 100 percent.

We agree with the non-Federal negotiators on this issue. We believe that our proposal to allow the Secretary to grant waivers of the program's matching requirement of up to 50 and 75 percent strikes the right balance between (a) providing relief where circumstances beyond the control of a Partnership affect its ability to maintain its required match, and (b) the need for members of the Partnership to be truly committed to helping to provide the services that participating GEAR UP students need.

Sections 694.12 and 694.13: Scholarship Component

Proposed § 694.14(g) would make the current regulatory requirement that grantees participating in the scholarship component must grant continuation scholarships to each student who was granted an initial scholarship (and who remains eligible) inapplicable to grantees that receive their initial GEAR UP awards on or after August 14, 2008. Our proposal to remove this financial burden from these grantees recognizes that by requiring each eligible student to receive at least the Federal Pell Grant minimum award, section 404E of the HEA, as amended by the HEOA, will leave grantees with insufficient scholarship funds to meet the current regulatory requirement. While GEAR UP students may bear a corresponding cost by not having these continuation awards available to them, these costs—like our proposal to omit the requirement in current § 694.10(d) from proposed § 694.14—results from the new statutory requirement that all eligible students receive at least the Pell Grant minimum award. Because the minimum scholarship amount is equal to the minimum Federal Pell Grant award, (which is defined in section 401(a)(1)(C) of the HEA as 10 percent of the maximum Pell Grant award), the benefit to grantees as a result of this proposed regulation would be equal to at least 10 percent of the appropriated maximum Pell grant award in a given year, multiplied by the number of individuals the grantee rejects for continuation awards. Importantly, because removing the continuation award requirement from these regulations would only apply to new awards, no GEAR UP students in newly funded projects would have the

expectation of receiving a GEAR UP continuation scholarship.

Section 694.16: Return of Unused Scholarship Funds

Section 404(e)(4)(A)(ii) of HEA, as amended by HEOA, requires grantees to return to the Secretary any scholarship funds that remain after they have first redistributed unused funds to eligible students. To enable the Department to monitor these scholarship accounts and ensure that Federal funds reserved for scholarships are expended as intended, the Department proposes to add § 694.16(c), which would require grantees participating in the scholarship component of the program to provide annual information, as the Secretary may require, on the amount of Federal and non-Federal funds reserved for GEAR UP scholarships, and the disbursement of those scholarship funds to eligible GEAR UP students. These annual reports would need to be submitted until all of the funds are either disbursed or returned to the Secretary.

This requirement imposes an administrative burden on the grantees. Grantees would be able to charge some of these administrative costs to their award of Federal GEAR UP grant funds because some of these annual reports would be prepared and submitted during the project period. Other annual reports would need to be prepared and submitted after the six- or seven-year GEAR UP project period has ended (by which time it is possible that the Partnerships have dissolved). In order to pay the costs of post-project reports, grantees would be able to (1) reserve additional amounts during each project period for the future costs of preparing and submitting post-project reports, or (2) authorize those administering the GEAR UP scholarship accounts to deduct such amount from the amount held in reserve for GEAR UP scholarships (assuming that all eligible students will still be able to receive a minimum Federal Pell Grant award).

Because the Department has not yet established detailed reporting requirements for this regulatory provision, it is difficult to estimate the costs that grantees could charge to GEAR UP funds. The Department solicits information from the public regarding the potential costs associated with this provision and the content and format of the future collection of information. The Secretary believes that the costs introduced by this proposed regulatory provision are justified by the Department's need to have the necessary information to monitor the millions of

dollars of Federal funds obligated to GEAR UP scholarship accounts.

Accounting Statement: As required by OMB Circular A-4 (available at <http://www.Whithouse.gov/omb/Circulars/a004/a-4.pdf>), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed regulatory action. This table provides our best estimate of the Federal payments to be made to Institutions of Higher Education, public and private agencies and organizations, and secondary schools under these programs as a result of this proposed regulatory action. Expenditures are classified as transfers to those entities.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers (in millions)
Annual Monetized Transfers. From Whom to Whom.	\$1,218. Federal Government to Institutions of Higher Education, public and private agencies and organizations, and secondary schools.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not adversely impact a substantial number of small entities. The proposed regulations would affect institutions of higher education, States, LEAs and nonprofit organizations. The U.S. Small Business Administration Size Standards define entities as "small" if they are for-profit or nonprofit institutions with total annual revenue below \$5,000,000 or if they are institutions controlled by small governmental jurisdictions, which are comprised of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.

HEP and CAMP

The Secretary believes that the minor changes proposed to the HEP and CAMP regulations will not affect small entities.

Federal TRIO Programs

The Secretary believes that the proposed regulations will not adversely impact any small entities receiving TRIO grants. The Department has determined that approximately 141 of the 2,887 TRIO grantees are defined as "small entities" under the U.S. Small Business Administration's size standards. Of these 141 entities, 133 are

nonprofit organizations that receive less than \$5,000,000 in total annual revenue, 7 are LEAs or Tribes with jurisdictions containing fewer than 50,000 people, and one is a secondary school. The Secretary believes that the proposed regulations will not negatively impact these small entities and, in fact, believes that small grantees will benefit from these regulations. The removal of the minimum students served requirement under the Talent Search program will benefit small entities, whose typically smaller budgets make it difficult to serve large numbers of students. In addition, the elimination of the requirement for grantees to obtain the Secretary's approval before purchasing computer equipment would particularly benefit small grantees, for which administrative costs are most burdensome. Most importantly, given that TRIO programs are competitive grant programs, all costs of participating are reimbursed by the grant.

GEAR UP

The Secretary believes that the proposed regulations will not adversely impact any small entities receiving GEAR UP grants. The 42 States receiving grants are not small entities because each State has a population exceeding 50,000. Thirty of the fiscal agents for the 154 Partnership grants are local educational agencies; according to the U.S. Census Bureau, 6 of these LEAs have jurisdiction over an area with fewer than 50,000 residents, and as such, are defined as "small entities" under the U.S. Small Business Administration size standards. However, the Secretary believes that these small entities will not be adversely impacted by the proposed regulations. In accordance with statutory changes, the Secretary's proposed regulations regarding matching requirement waivers should particularly benefit small fiscal agents, which are more vulnerable to economic hardship than large fiscal agents, and, therefore, more likely to qualify for waivers. Most importantly, given that GEAR UP is a competitive grant program, all costs of participating are reimbursed by the grant.

The Secretary invites comments from small institutions as to whether they believe the proposed regulations would have a significant impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

Proposed §§ 642.21, 642.22, and 642.25 of the Training Program for Federal TRIO Programs (Training) regulations; §§ 643.21, 643.22, 643.24

and 643.32 of the Talent Search (TS) regulations; §§ 644.21, 644.22, and 644.24 of the Educational Opportunity Centers (EOC) regulations; §§ 645.31; 645.32, and 645.35 of the Upward Bound (UB) regulations; §§ 646.21, 646.22, 646.24, and 646.33 of the Student Support Services (SSS) regulations; §§ 647.21, 647.22 and 647.24 of the Ronald E. McNair Postbaccalaureate Achievement Program (McNair); and §§ 694.7, 694.8, 694.9, 694.14, 694.19, and 694.20 of the GEAR UP regulations contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

Parts 642, 643, 644, 645, 646, 647— Federal TRIO Programs

Recent grant application packages for the Training, SSS, TS, EOC, UB, and McNair programs have been or will be discontinued; new application packages for these programs will be developed prior to their next competitions, and will reflect any regulatory changes included in the final regulations that will be published in 2010. For each new application, a separate 30-day **Federal Register** notice will be published to solicit comment on the new application several months prior to the next scheduled competition for the program.

Likewise, any regulatory changes applicable to the annual performance reports (APRs) will affect grants awarded under competitions conducted after the enactment of the HEOA. The APRs for the first year of a new grant will be due approximately 15 months after the beginning of the new grant period. Until new grants are awarded, the Department will continue to use the existing APR for the program. A new APR for each program that addresses the new HEOA requirements will be developed for the new grant period. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form for each program prior to its usage.

Sections 642.21 and 642.25 (Training)— Selection Criteria the Secretary Uses To Evaluate an Application for a New Grant and the Second Review Process for Unsuccessful Applicants

The proposed regulations for the Training Program would amend the selection criteria the Secretary would use to evaluate an application for a new grant to conform to current practice. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, has

added requirements for a formal second review process for unsuccessful applicants. Therefore, the proposed regulations would add a new section that establishes processes and procedures for a second review of unsuccessful applications. The new application would include the changes to the selection criteria and describe the processes and procedures for the second review of unsuccessful applications.

Specifically, we propose to drop the *Need* criterion from the selection criteria for the Training Program (current § 642.31(f)) to conform to current practice. An applicant for a Training grant would need to address one of the absolute priorities established in the **Federal Register** notice inviting applications for the competition. With the absolute priorities, the Department would establish the "need" for the proposed training; thus, it would be redundant to require an applicant to provide data in the application to support the need for the training project. Therefore, the *Need* selection criterion is no longer necessary. The proposed change would reduce the amount of information an applicant must include in its application.

In addition, the application will describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the proposed regulations, only those applicants in the proposed "funding band" would be eligible to request a second review. As described in the proposed regulations, the Department would notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's prior experience (PE) scores, if applicable. The applicant would be given 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant would need to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, would not be able to submit any additional data or information that was not included in its original application.

The proposed regulatory change to the selection criteria would reduce the amount of information an applicant must include in its application,

resulting in an estimated burden reduction of 240 hours. In addition, we estimate that approximately ten percent of the applications received under each competition for Training grants will score within the “funding band.” For each applicant in the “funding band” that requests a second review, we estimate an additional burden of two hours for a burden increase of 12 hours, which includes the time an applicant would need to review the peer reviewers’ evaluations and, if applicable, the PE assessment and submit a written request for a second review.

Taken together, the proposed increase and decrease in burden would result in a net total burden reduction of 228 hours, reflected in OMB Control Number 1840–NEW1.

**Sections 643.21 and 643.25 (TS)—
Selection Criteria the Secretary Uses To
Evaluate an Application for a New
Grant and the Second Review Process
for Unsuccessful Applicants**

The proposed regulations would amend the selection criteria the Secretary uses to evaluate an application for a new TS grant to address statutory changes resulting from the HEOA. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, has added requirements for a formal second review process for unsuccessful applicants. Therefore, the proposed regulations would add a new section that establishes processes and procedures for a second review of unsuccessful applications. The new application would include the changes to the selection criteria and the processes and procedures for the second review of unsuccessful applications.

The HEOA has made significant changes to the purpose and goals of the TS program as reflected in changes to applicant eligibility, the list of required and permissible services, and the outcome criteria. To better align the selection criteria with these statutory changes, we propose to revise the following selection criteria: §§ 643.21(a) (Need for the project); 643.21(b) (Objectives); 643.21(c) (Plan of operation); and 643.21(d) (Applicant and community support). The revised selection criteria would replace the existing criteria in §§ 643.21(a) 643.21(b), 643.21(c), and 643.21(d).

In addition, the application would describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the proposed regulations, only those applicants in the proposed “funding band” would be eligible to request a second review. As described in the

proposed regulations, the Department would notify an unsuccessful applicant in writing as to the status of its application and the “funding band” for the second review and provide copies of the peer reviewers’ evaluations of the application and the applicant’s prior experience (PE) scores, if applicable. The applicant would be given 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary’s written notification. To be considered for a second review, an applicant would need to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, would not be able to submit any additional data or information that was not included in its original application.

The Department does not expect that proposed changes to the selection criteria to increase an applicant’s paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for TS grants will score within the “funding band”. For each applicant in the “funding band” that requests a second review, we estimate an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers’ evaluations and, if applicable, the PE assessment and submit a written request for a second review. This would result in a total burden increase of 60 hours for the revised application, which would be reflected in a new OMB Control Number 1840–NEW2. A separate 30-day **Federal Register** notice will be published to solicit public comment on the new application form to be used for the next competition for new TS grants currently scheduled for fall 2010.

**Sections 644.21 and 644.24 (EOC)—
Selection Criteria the Secretary Uses To
Evaluate an Application for a New
Grant and the Second Review Process
for Unsuccessful Applicants**

The proposed regulations for the EOC Program amend the selection criteria the Secretary uses to evaluate an application for a new grant to address statutory changes resulting from the HEOA. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, has added requirements for a formal second review process for unsuccessful applicants. Therefore, the proposed regulations would establish processes

and procedures for a second review of unsuccessful applications. The new application would include the changes to the selection criteria and describe the processes and procedures for the second review of unsuccessful applications.

Revisions in the selection criteria are needed to address the statutory changes resulting from the HEOA. The HEOA has made changes to applicant eligibility and the outcome criteria. To better align the selection criteria with these statutory changes, we propose to revise the following selection criteria: §§ 644.21(b) (Objectives) and 644.21(d)(2) (Applicant and community support). The revised selection criteria would replace existing criteria.

In addition, the application would describe the procedures an unsuccessful applicant would need to follow to request a second review of its application. Under the proposed regulations, only those applicants in the proposed “funding band” would be eligible to request a second review. As described in the proposed regulations, the Department would notify an unsuccessful applicant in writing as to the status of its application and the “funding band” for the second review and provide copies of the peer reviewers’ evaluations of the application and the applicant’s prior experience (PE) scores, if applicable. The applicant would be given 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary’s written notification. To be considered for a second review, an applicant would need to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, would not be able to submit any additional data or information that was not included in its original application.

The Department does not expect that these proposed changes to the selection criteria would increase an applicant’s paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for EOC grants will score within the “funding band.” For each applicant in the “funding band” that requests a second review, we estimate an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers’ evaluations and, if applicable, the PE assessment and submit a written request for a second

review. This will result in a total burden increase of 20 hours for the revised application, which will be reflected in a new OMB Control Number 1840–NEW3. A separate 30-day **Federal Register** notice will be published to solicit public comment on the new application form to be used for the next competition for new EOC grants currently scheduled for fall 2010.

Sections 645.31 and 642.35 (UB)—Selection Criteria the Secretary Uses To Evaluate an Application for a New Grant and the Second Review Process for Unsuccessful Applicants

The proposed UB regulations would amend the selection criteria the Secretary uses to evaluate an application for a new grant to address statutory changes resulting from the HEOA. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, has added requirements for a formal second review process for unsuccessful applicants. Therefore, the proposed regulations would establish processes and procedures for a second review of unsuccessful applications. The new application would include the changes to the selection criteria and describe the processes and procedures for the second review of unsuccessful applications.

The HEOA has made changes to applicant eligibility and the outcome criteria. To better align the selection criteria with these statutory changes, we propose to revise the following selection criteria: §§ 645.31(b) (Objectives) and 645.31(d)(2) (Applicant and community support). The revised selection criteria would replace existing criteria in §§ 645.31(b) and 645.31(d)(2).

In addition, the application would describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the proposed regulations, only those applicants in the proposed “funding band” would be eligible to request a second review. As described in the proposed regulations, the Department would notify an unsuccessful applicant in writing as to the status of its application and the “funding band” for the second review and provide copies of the peer reviewers’ evaluations of the application and the applicant’s prior experience (PE) scores, if applicable. The applicant would be given 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary’s written notification. To be considered for a second review, an applicant would need to provide evidence demonstrating

that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, would not be permitted to submit any additional data or information that was not included in its original application.

The Department does not expect these proposed changes to the selection criteria will increase an applicant’s paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for UB grants will score within the “funding band.” For each applicant in the “funding band” that requests a second review, we estimate an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers’ evaluations and, if applicable, the PE assessment and submit a written request for a second review. This would result in a total burden increase of 80 hours for the revised application, which would be reflected in a new OMB Control Number 1840–NEW4. A separate 30-day **Federal Register** notice will be published to solicit public comment on the new application form to be used for the next competition for new UB grants currently scheduled for either fall 2010 or fall 2011.

Sections 646.11; 646.21 and 646.25 (SSS)—The Assurances and Other Information an Applicant Must Include in an Application, the Selection Criteria the Secretary Uses To Evaluate an Application for a New Grant and the Second Review Process for Unsuccessful Applicants

The proposed SSS regulations amend the selection criteria the Secretary uses to evaluate an application for a new grant to address statutory changes resulting from the HEOA and add the statutory requirement that an applicant include in its application a description of its efforts in providing participants with sufficient financial assistance. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, has added requirements for a formal second review process for unsuccessful applicants. Therefore, the proposed regulations add a new section that establishes processes and procedures for a second review of unsuccessful applications. The new application will include the changes to the selection criteria and describe the processes and procedures for the second review of unsuccessful applications.

The HEOA made changes to the outcome criteria. To better align the selection criteria with these statutory

changes and current practice, we propose to revise § 646.21(b) (Objectives). The revised selection criteria will replace existing criteria. Further, the revised § 646.11 will include the requirement that the applicant discuss in its application its efforts to provide participants sufficient financial assistance.

In addition, the application will describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the proposed regulations, only those applicants in the proposed “funding band” are eligible to request a second review. As described in the proposed regulations, the Department will notify an unsuccessful applicant in writing as to the status of its application and the “funding band” for the second review and provide copies of the peer reviewers’ evaluations of the application and the applicant’s prior experience (PE) scores, if applicable. The applicant will be given 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary’s written notification. To be considered for a second review, an applicant must provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative, or scoring error in the processing or review of the application. The applicant, however, cannot submit any additional data or information that was not included in its original application.

The Department does not expect the proposed changes to the selection criteria to increase an applicant’s paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for SSS grants will score within the “funding band” and be eligible for a second review. For each applicant in the “funding band” that requests a second review, we estimate an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers’ evaluations and, if applicable, the PE assessment and submit a written request for a second review. This would result in a total burden increase of 66 hours for the revised application, which would be reflected in a new OMB Control Number 1840–NEW5. A separate 30-day **Federal Register** notice will be published to solicit public comment on the new application form to be used for the next

competition for new SSS grants currently scheduled for fall 2013.

Sections 647.21 and 647.25 (McNair)—Selection Criteria the Secretary Uses To Evaluate an Application for a New Grant and the Second Review Process for Unsuccessful Applicants

The proposed McNair regulations would amend the selection criteria the Secretary uses to evaluate an application for a new grant to address statutory changes resulting from the HEOA. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, has added requirements for a formal second review process for unsuccessful applicants. Therefore, the proposed regulations would establish processes and procedures for a second review of unsuccessful applications. The new application would describe the changes to the selection criteria and the processes and procedures for the second review of unsuccessful applications.

The HEOA has made changes to the outcome criteria. To better align the selection criteria with these statutory changes and current practice, we propose to revise § 647.21(b) (Objectives). The revised selection criteria would replace the current criteria in § 647.21(b).

In addition, the application will describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the proposed regulations, only those applicants in the proposed “funding band” would be eligible to request a second review. As described in the proposed regulations, the Department would notify an unsuccessful applicant in writing as to the status of its application and the “funding band” for the second review and provide copies of the peer reviewers’ evaluations of the application and the applicant’s prior experience (PE) scores, if applicable. The applicant would be given 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary’s written notification. To be considered for a second review, an applicant would need to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, would not be permitted to submit any additional data or information that was not included in its original application.

The Department does not expect proposed changes to the selection

criteria to increase an applicant’s paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for McNair grants will score within the “funding band.” For each applicant in the “funding band” that requests a second review, we estimate an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers’ evaluations and, if applicable, the PE assessment and submit a written request for a second review. This would result in a total burden increase of 16 hours for the revised application, which would be reflected in a new OMB Control Number 1840–NEW6. A separate 30-day **Federal Register** notice will be published to solicit public comment on the new application form for the next competition for new McNair grants currently scheduled for either fall 2010 or fall 2011.

Section 642.22 (Training)—How Does the Secretary Evaluate Prior Experience?

The HEA, as amended, does not establish specific outcome criteria for the Training program; the program outcome criteria for evaluating a grantee’s prior experience (PE) are established in current regulations.

Under the proposed regulations, we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its APR. The proposed regulations amend the prior experience criteria the Secretary uses to award PE points as follows.

For Training (Newly redesignated § 642.20 and 642.22), we propose to clarify the PE criteria and to update the regulations to reflect the maximum number of PE points a Training program grantee may earn. The maximum number of points would change from 8 points to 15 points.

The burden hour estimate associated with this APR is reported under OMB Control Number 1894–0003, the Department’s generic performance report Standard 524B form. The Department does not expect these proposed editorial changes to increase burden.

Section 643.22 (TS)—How Does the Secretary Evaluate Prior Experience? and Section 643.32 Includes a New Recordkeeping Requirement

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome

criteria to be used to determine an entity’s prior experience (PE) of high quality service delivery and for the purpose of reporting annually to the Congress on the performance of the TS program. Prior to the enactment of the HEOA, the PE criteria were established in regulations.

Under the proposed regulations, we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its APR. The proposed regulations would amend the criteria the Secretary uses to award PE points.

The proposed regulations would amend the PE criteria to address statutory changes resulting from the HEOA. The new statutory outcome and PE criteria for TS require grantees to report on: (1) Secondary school persistence of participants; (2) secondary school graduation of participants with regular secondary school diploma; (3) secondary school graduation of participants in a rigorous secondary school program of study; (4) the postsecondary enrollment of participants; and (5) the postsecondary completion of participants.

We also propose to amend the recordkeeping requirements in § 643.32 to require grantees to maintain a list of courses taken by participants receiving support to complete a rigorous secondary school program of study.

Currently one APR form is used for both the TS and EOC programs. Because of the proposed changes to TS, the Department plans to develop a new APR for TS. The Department expects the proposed reporting and recordkeeping requirements to increase the reporting burden for this new data collection to 15 hours for each grantee. This would result in a total burden increase of 7,050 hours for the new APR, which would be reflected in a new OMB Control Number 1840–NEW7. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in fall 2012.

Section 644.22 (EOC)—How Does the Secretary Evaluate Prior Experience?

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria to be used to determine an entity’s prior experience (PE) of high quality service delivery and for the purpose of reporting annually to the Congress on the performance of the EOC

program. Prior to the HEOA, the PE criteria were established in regulations.

Under the proposed regulations, we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its APR. The proposed regulations would amend the criteria the Secretary uses to award PE points.

The new statutory PE criteria are similar to the current regulatory PE criteria (*see* current § 644.22); therefore, the Department does not expect the proposed changes to increase burden on a EOC grantee. However, when a new TS APR is developed, the current TS/EOC form would not be used by TS grantees; therefore, we expect a total burden decrease for this data collection of 2,820 hours, which would be reflected in a new OMB Control Number 1840–NEW8.

A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in fall 2012.

Section 645.32 (UB)—How Does the Secretary Evaluate Prior Experience?

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria to be used to determine an entity's prior experience (PE) of high quality service delivery and for the purpose of reporting annually to the Congress on the performance of the UB program. Prior to the enactment of the HEOA, the PE criteria were established in regulations.

Under the proposed regulations, we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its APR. The proposed regulations would amend the criteria the Secretary uses to award PE points.

Revisions in the PE criteria are needed to address statutory changes resulting from the HEOA. The new statutory outcome PE criteria for UB requires grantees to report on: (1) The academic performance of participants; (2) secondary school retention and graduation of participants; (3) completion by participants of a rigorous secondary school program of study; (4) the postsecondary enrollment of participants; and (5) the postsecondary completion of participants.

The Department expects the new requirements that a grantee report on the completion of a rigorous secondary school program of study and postsecondary completion of participants would increase the reporting burden for this data collection by six hours for each grantee. This would result in a total burden increase of 6,858 hours for the revised APR, which would be reflected in a new OMB Control Number 1840–NEW9.

A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in either fall 2012 or fall 2013.

Section 646.22 (SSS)—How Does the Secretary Evaluate Prior Experience? and New Section 646.33 Adds the Statutory Matching Requirements for Grantees That Use Federal SSS Funds for Grant Aid

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria to be used to determine an entity's prior experience of high quality service delivery and for the purpose of reporting annually to Congress on the performance of the SSS program. Prior to the HEOA, the PE criteria were established in regulations.

Under the proposed regulations, we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its APR. The proposed regulations would amend the criteria the Secretary uses to award PE points.

Revisions in the PE criteria are needed to address statutory changes resulting from the HEOA. The statutory outcome PE criteria for the SSS program requires grantees to report on baccalaureate degree competition for participants at four-year institutions and certificate and associate degree completion and transfers to four-year institutions for participants at two-year institutions. The Department expects that these requirements for tracking the academic progress of SSS participants through degree completion to increase the reporting burden by six hours for each grantee.

We also propose to add new § 646.33 to incorporate the statutory provisions that permit a grantee to use Federal grant funds to provide grant aid to students. Many grantees that use program funds for grant aid must provide a non-Federal match, in cash, of not less than 33 percent of the Federal

funds used for grant aid. A grant recipient that is an institution of higher education eligible to receive funds under part A or B of title III or title V of the HEA, as amended, is not required to match the Federal funds used for grant aid. For those grantees that are required to provide matching funds for grant aid (estimated at 50 percent of SSS grantees), we estimate that the proposed regulations will increase the burden by two hours per grantee. The combined increase would result in a total burden increase of 6,720 hours for the revised APR, which would be reflected in a new OMB Control Number 1840–NEW10. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in fall 2011.

Section 647.22 (McNair)—How Does the Secretary Evaluate Prior Experience?

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria for the McNair Program to be used to determine an entity's prior experience of high quality service delivery and for the purpose of reporting annually to Congress on the performance of the McNair program. Prior to the HEOA, the PE criteria were established in regulations.

Under the proposed regulations, we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its APR. The proposed regulations would amend the criteria the Secretary uses to award PE points.

The Department expects the new statutory requirements that include long-term tracking of the academic progress of McNair participants through completion of the doctoral degree will increase the reporting burden for this data collection by 4 hours per grantee. This will result in a total burden increase of 760 hours for the revised APR, which will be reflected in a new OMB Control Number 1840–NEW11. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in either fall 2012 or 2013.

Part 694—GEAR UP**Sections 694.7, 694.8 and 694.9—
Matching Requirements for GEAR UP
Grants**

The proposed regulations provide that an applicant for GEAR UP funding must state in its application the percentage of the cost of the GEAR UP project that the applicant will provide from non-Federal funds. The proposed regulations also provide that the Secretary may waive a portion of the matching requirement in response to a grantee's written request for a waiver of the match. The proposed regulations further provide the conditions that must be met for the Secretary to approve a request to waive a portion of the matching requirement and that if the Secretary grants a tentative waiver to a new grantee for the full project period because of a pre-existing or ongoing economic hardship, the recipient will need to submit documentation every two years to demonstrate that conditions have not changed.

We estimate that the proposed changes would increase burden by 12.5 hours for each GEAR UP applicant in OMB Control Number 1840–NEW12, for a total burden increase of 6,250 hours, based on 500 applicants. A separate 30-day **Federal Register** notice will be published to solicit public comment on the revised application form prior to its usage, currently estimated to be fall 2010.

We estimate that the proposed changes would decrease burden by 500 hours for each GEAR UP grantee in OMB Control Number 1840–NEW13, resulting in a total burden decrease of 7,860 hours, and likewise in OMB Control Number 1840–NEW14, resulting in a total burden decrease of 5,625. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public

comment on the revised APR and FPR forms prior to their usage, currently estimated to be spring 2011 or spring 2012. If granted a waiver of the matching requirement, GEAR UP grantees will spend significantly less time collecting and documenting matching funds.

**Section 694.16(c)—Scholarship
Reporting Requirements**

The proposed regulations require grantees whose initial GEAR UP grant awards were made on or after August 14, 2008 and grantees whose initial GEAR UP grant awards were made prior to August 14, 2008, but who, pursuant to 694.12(b)(2), elect to make scholarships pursuant to the HEOA requirements in to furnish information as the Secretary may require on the amount of any Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds. Reporting would be required until these funds are fully expended or, if Federal funds, returned to the Secretary.

We estimate that these proposed changes would increase burden by 400 hours for each GEAR UP grantee in OMB Control Number 1840–NEW13, resulting in a total burden increase of 8,760, and by 800 hours for each grantee in OMB Control Number 1840–NEW14, resulting in a total burden increase of 6,925. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the revised APR and FPR forms prior to their usage, currently estimated to be spring 2011 or spring 2012.

**Section 694.19—Priorities for GEAR UP
Grants**

The proposed regulations would provide that the Secretary awards competitive preference priority points to

an eligible applicant for a State grant that has carried out a successful State GEAR UP grant prior to August 14, 2008 and has a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

Applicants would respond to these priorities as part of their applications in OMB Control Number 1840–NEW12, which would increase total burden by 6,250 hours. A separate 30-day **Federal Register** notice will be published to solicit public comment on the revised application form prior to its usage, currently estimated to be fall 2010.

**Section 694.20—When May a GEAR UP
Grantee Provide Services to Students
Attending an Institution of Higher
Education?**

Under the proposed regulations, GEAR UP applicants would be permitted to request in their applications a seventh year of funding so that the State or Partnership may continue to provide services to students through their first year of attendance at an institution of higher education.

We estimate that the proposed changes would increase burden by 300 hours in OMB Control Number 1840–NEW12 for each GEAR UP applicant for a total burden increase of 150,000 hours. A separate 30-day **Federal Register** notice will be published to solicit public comment on the revised application form prior to its usage, currently estimated to be fall 2010.

Consistent with this discussion, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the collections that the Department will submit to OMB for approval and public comment under the Paperwork Reduction Act of 1995.

Regulation section	Information section	Collection OMB Control No.
Sections 642.21 and 642.25 (Training).	The proposed regulations would amend the selection criteria the Secretary uses to evaluate an application for a Training grant. The proposed regulations also would add a new section that establishes processes and procedures for a review of unsuccessful applications.	<p>1840–NEW1 (Training) This is a new collection. The Department has submitted the new application form for public comment to be used for the next competition for new Training grants scheduled for spring/summer 2010.</p> <p>The proposed regulations would affect applicant burden in two ways. First, the proposed elimination of the <i>Need</i> selection criterion would reduce the amount of information an applicant must include in its application, resulting in an estimated burden reduction of 240 hours.</p> <p>Additionally, the proposed regulatory processes and procedures for a second review of unsuccessful applications would lead to an estimated burden increase of 12 hours (or, an estimated two burden hour increase for each of the estimated six applicants that will fall within an estimated 10 percent funding band under the second review process).</p> <p>In total, there would be an estimated decrease in burden of 228 hours.</p>
Sections 643.21 and 643.24 (TS).	The proposed regulations would amend the selection criteria the Secretary uses to evaluate an application for a TS grant. The proposed regulations also would add a new section that establishes processes and procedures for a review of unsuccessful applications.	<p>1840–NEW2 (TS) This would be a new collection. A separate 30-day Federal Register notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2010.</p> <p>The Department does not expect that proposed amendments to the selection criteria would change an applicant's paperwork burden. The proposed regulatory processes and procedures for a second review of unsuccessful applications would lead to an estimated burden increase of 60 hours (or, an estimated two burden hour increase for each of the estimated 30 applicants that will fall within an estimated two percent funding band under the second review process).</p> <p>In total, there would be an estimated burden increase of 60 hours.</p>
Sections 644.21 and 644.24 (EOC).	The proposed regulations would amend the selection criteria the Secretary uses to evaluate an application for an EOC grant. The proposed regulations also would add a new section that establishes processes and procedures for a review of unsuccessful applications.	<p>1840–NEW3 (EOC) This would be a new collection. A separate 30-day Federal Register notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2010.</p> <p>The Department does not expect that proposed amendments to the selection criteria would change an applicant's paperwork burden. The proposed regulatory processes and procedures for a second review of unsuccessful applications would lead to an estimated burden increase of 20 hours (or, an estimated two burden hour increase for each of the estimated 10 applicants that will fall within an estimated two percent funding band under the second review process).</p> <p>In total, there would be an estimated burden increase of 20 hours.</p>
Sections 645.31 and 645.35 (UB).	<p>The proposed regulations would amend the selection criteria the Secretary uses to evaluate an application for a UB grant.</p> <p>The proposed regulations also would add a new section that establishes processes and procedures for a review of unsuccessful applications.</p>	<p>1840–NEW4 (UB) This would be a new collection. A separate 30-day Federal Register notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2010 or 2011.</p> <p>The Department does not expect that proposed amendments to the selection criteria would change an applicant's paperwork burden. The proposed regulatory processes and procedures for a second review of unsuccessful applications would lead to an estimated burden increase of 80 hours (or, an estimated two burden hour increase for each of the estimated 40 applicants that will fall within an estimated two percent funding band under the second review process).</p> <p>In total, there would be an estimated burden increase of 80 hours.</p>

Regulation section	Information section	Collection OMB Control No.
Sections 646.11; 646.21 and 646.24 (SSS).	<p>The proposed regulations would amend the selection criteria the Secretary uses to evaluate an application for a SSS grant and amend the assurance and other information an applicant must include in its application.</p> <p>The proposed regulations also would add a new section that establishes processes and procedures for a review of unsuccessful applications.</p>	<p>1840–NEW5 (SSS) This would be a new collection. A separate 30-day Federal Register notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2013.</p> <p>The Department does not expect that proposed amendments to the selection criteria or the assurance and other information an applicant must include in its application would change an applicant's paperwork burden. The proposed regulatory processes and procedures for a second review of unsuccessful applications would lead to an estimated burden increase of 66 hours (or, an estimated two burden hour increase for each of the estimated 33 applicants that will fall within an estimated two percent funding band under the second review process).</p> <p>In total, there would be an estimated burden increase of 66 hours.</p>
Sections 647.21 and 647.24 (McNair).	<p>The proposed regulations would amend the selection criteria the Secretary uses to evaluate an application for a McNair grant.</p> <p>The proposed regulations also would add a new section that establishes processes and procedures for a review of unsuccessful applications.</p>	<p>1840–NEW6 (McNair) This would be a new collection. A separate 30-day Federal Register notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2010 or 2011.</p> <p>The Department does not expect that proposed amendments to the selection criteria would change an applicant's paperwork burden. The proposed regulatory processes and procedures for a second review of unsuccessful applications would lead to an estimated burden increase of 16 hours (or, an estimated two burden hour increase for each of the estimated eight applicants that will fall within an estimated two percent funding band under the second review process).</p> <p>In total, there would be an estimated burden increase of 16 hours.</p>
Section 642.22 (Training)	<p>The proposed regulations would amend the prior experience (PE) criteria the Secretary uses to award PE points. Under the proposed regulations, we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its annual performance report.</p>	<p>1894–0003 (Training) The Department would continue to use the Department's generic performance report for the Training program. Proposed changes would be editorial in nature.</p> <p>There would be no increase in estimated burden hours.</p>
Sections 643.22 (TS) and 643.32.	<p>The proposed regulations would amend the prior experience (PE) criteria the Secretary uses to award PE points. Under the proposed regulations we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its annual performance report.</p> <p>The proposed regulations also amend the record-keeping requirements for TS.</p>	<p>1840–NEW7 (TS) This would be a new collection. A separate 60-day Federal Register notice will be published to solicit comments on this form following the next competition for new TS grants.</p> <p>The revised APR is needed for fall 2012 data collection.</p> <p>The proposed regulations would increase grantee data collection and reporting requirements in two ways. First, the proposed regulatory amendments to the PE criteria, which address statutory changes that expand outcome and PE criteria for TS grantees to include such measures as the postsecondary completion of participants, are expected to increase grantees' reporting burden. Additionally, the proposed regulatory amendments to recordkeeping requirements would require grantees to maintain a list of courses taken by participants receiving support to complete a rigorous secondary school program of study, a new data collection that would also increase grantees' burden hours. The Department expects these two proposed changes to result in an increase of 15 burden hours per grantee.</p> <p>In total, there would be an estimated burden increase of 7,050 hours.</p>

Regulation section	Information section	Collection OMB Control No.
Section 644.22 (EOC)	The proposed regulations would amend the prior experience (PE) criteria the Secretary uses to award PE points. Under the proposed regulations we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its annual performance report.	1840–NEW8 (EOC) This would be a new collection. A separate 60-day Federal Register notice will be published to solicit comments on this form following the next competition for new EOC grants. The revised APR is needed for fall 2012 data collection. Because the new statutory PE criteria are similar to the current regulatory PE criteria, the Department does not expect the proposed changes to affect the burden on EOC grantees. However, the Department expects that burden hours would be reduced as a result of the development of a new TS APR form, since such a form would allow the current TS/EOC APR form to be used exclusively by EOC grantees. In total, there would be an estimated burden decrease of 2,820 hours.
Section 645.32 (UB)	The proposed regulations would amend the prior experience (PE) criteria the Secretary uses to award PE points. Under the proposed regulations we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its annual performance report.	1840–NEW9 (UB) This would be a new collection. A separate 60-day Federal Register notice will be published to solicit comments on this form following the next competition for new UB grants. The revised APR is needed for fall 2012 or 2013 data collection. The proposed regulatory amendments to the PE criteria, which address statutory changes that expand outcome and PE criteria for UB grantees to include such measures as the postsecondary completion of participants, are expected to increase grantees' reporting burden. The Department expects proposed changes to result in an increase of six burden hours per grantee. In total, there would be an estimated burden increase of 6,858 hours.
Sections 646.22 and 646.33 (SSS).	The proposed regulations would amend the prior experience (PE) criteria the Secretary uses to award PE points. Under the proposed regulations we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its annual performance report. The proposed regulations also add a new section on matching requirements for SSS.	1840–NEW10 (SSS) This would be a new collection. A separate 60-day Federal Register notice will be published to solicit comments on this form following the next competition for new SSS grants. The revised APR is needed for fall 2011 data collection. The proposed regulations would increase grantee data collection and reporting requirements in two ways. First, the proposed regulatory amendments to the PE criteria, which address statutory requirements for tracking the academic progress of SSS participants through degree completion, would increase the reporting burden by six hours for each grantee. Additionally, for those grantees that are required to provide matching funds for grant aid (estimated at 50 percent of SSS grantees), the proposed regulations would increase burden by an estimated two hours per grantee. In total, there would be an estimated burden increase of 6,720 hours.
Section 647.22 (McNair)	The proposed regulations would amend the prior experience (PE) criteria the Secretary uses to award PE points. Under the proposed regulations we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its annual performance report.	1840–NEW11 (McNair) This would be a new collection. A separate 60-day Federal Register notice will be published to solicit comments on this form following the next competition for new McNair grants. The revised APR is needed for fall 2012 or 2013 data collection. The proposed regulatory amendments to the PE criteria, which address statutory requirements for long-term tracking of the academic progress of McNair participants through completion of the doctoral degree, would increase the reporting burden by four hours for each grantee. In total, there would be an estimated burden increase of 760 hours.

Regulation section	Information section	Collection OMB Control No.
<p>694.7, 694.8, and 694.9 GEAR UP.</p>	<p>The proposed regulations would provide that an applicant for GEAR UP funding must state in its application the percentage of the cost of the GEAR UP project that the application will provide from non-Federal funds.</p> <p>The proposed regulations also would provide that the Secretary may waive a portion of the matching requirement in response to a written request for a waiver of the match. This written request can be included in the application or submitted separately.</p> <p>The proposed regulations also would provide the conditions that must be met for the Secretary to approve a request to waive a portion of the matching requirement.</p>	<p>1840–NEW12 This would be a new collection. A separate 30-day Federal Register notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2010.</p> <p>There would be an estimated burden increase of 6,250 hours.</p> <p>1840–NEW13 This would be a new collection. A separate 60-day Federal Register notice will be published to solicit comments on this form following the next competition for new GEAR UP grants. There would be an estimated burden decrease of 7,860 hours.</p> <p>1840–NEW14 This would be a new collection. A separate 60-day Federal Register notice will be published to solicit comments on this form following the next competition for new GEAR UP grants. There would be an estimated burden decrease of 5,625 hours.</p> <p>The proposed regulations provide that an applicant for GEAR UP funding must state in its application the percentage of the cost of the GEAR UP project that the applicant will provide from non-Federal funds. The proposed regulations also provide that the Secretary may waive a portion of the matching requirement in response to a grantee’s written request for a waiver of the match. The proposed regulations further provide the conditions that must be met for the Secretary to approve a request to waive a portion of the matching requirement and that if the Secretary grants a tentative waiver to a new grantee for the full project period because of a pre-existing or ongoing economic hardship, the recipient will need to submit documentation every two years to demonstrate that conditions have not changed.</p>
<p>694.14(c)</p>	<p>The proposed regulations would require grantees whose initial GEAR UP grant awards were made on or after August 14, 2008 and grantees whose initial GEAR UP grant awards were made prior to August 14, 2008 to furnish information on the amount of any Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds until these funds are fully expended or returned to the Secretary.</p>	<p>1840–NEW13 This would be a new collection. A separate 60-day Federal Register notice will be published to solicit comments on this form following the next competition for new GEAR UP grants. There would be an estimated burden increase of 8,760 hours.</p> <p>1840–NEW14 This would be a new collection. A separate 60-day Federal Register notice will be published to solicit comments on this form following the next competition for new GEAR grants. There will be an estimated burden increase of 6,925 hours.</p> <p>The proposed regulations require grantees whose initial GEAR UP grant awards were made on or after August 14, 2008 and grantees whose initial GEAR UP grant awards were made prior to August 14, 2008, to provide information as the Secretary may require on the amount of any Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds. Reporting would be required until these funds are fully expended or, if Federal funds, returned to the Secretary.</p>
<p>694.19</p>	<p>The proposed regulations provide that the Secretary awards competitive preference priority points to an eligible applicant for a State grant that has carried out a successful State GEAR UP grant prior to August 14, 2008 and has a prior, demonstrated commitment to early intervention, leading to college access through collaboration and replication of successful strategies.</p>	<p>1840–NEW12 This would be a new collection. A separate 30-day Federal Register notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2010.</p> <p>There would be an estimated burden increase of 6,250 hours.</p> <p>The proposed regulations would provide that the Secretary awards competitive preference priority points to an eligible applicant for a State grant that has carried out a successful State GEAR UP grant prior to August 14, 2008 and has a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.</p>

Regulation section	Information section	Collection OMB Control No.
694.20	Under the proposed regulations, GEAR UP applicants would be permitted to request in their applications a seventh year of funding so that the State or Partnership may continue to provide services to students through their first year of attendance at an institution of higher education.	1840–NEW12 This would be a new collection. A separate 30-day Federal Register notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2010. Burden would increase by 300 hours. Under the proposed regulations, GEAR UP applicants would be permitted to request in their applications a seventh year of funding so that the State or Partnership may continue to provide services to students through their first year of attendance at an institution of higher education.

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to OIRA_DOCKET@omb.eop.gov or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;

- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;

- Enhancing the quality, usefulness, and clarity of the information we collect; and

- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened

federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

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

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(Catalog of Federal Domestic Assistance Numbers HEP/CAMP: 84.141A, 84.149A; TRIO: 84.042A, 84.044A, 84.047A, 84.047M, 84.047V, 84.066A, 84.103A, 84.217A; GEAR UP: 84.334A, 84.334S.)

List of Subjects in 34 CFR Parts 206, 642, 643, 644, 645, 646, 647, and 694

Colleges and universities, Disadvantaged students, Educational programs, Discretionary grants,

Reporting and recordkeeping requirements, Training.

Dated: March 3, 2010.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 206, 642, 643, 644, 645, 646, 647, and 694 of title 34 of the Code of Federal Regulations as follows:

PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCY PROGRAM AND COLLEGE ASSISTANCE MIGRANT PROGRAM

1. The authority citation for part 206 continues to read as follows:

Authority: 20 U.S.C. 1070d–2, unless otherwise noted.

2. Section 206.3 is amended by:

A. In paragraph (a)(1), removing the word “parent” and adding, in its place, the words “immediate family member”.

B. Revising paragraph (a)(2).

The revision reads as follows:

§ 206.3 Who is eligible to participate in a project?

(a) * * *

(2) The person must have participated (with respect to HEP within the last 24 months), or be eligible to participate, in programs under 34 CFR part 200, subpart C (Title I—Migrant Education Program) or 20 CFR part 633 (Employment and Training Administration, Department of Labor—Migrant and Seasonal Farmworker Programs).

* * * * *

3. Section 206.4 is amended by:

A. Redesignating paragraphs (a)(6) and (a)(7) as paragraphs (a)(7) and (a)(8), respectively.

B. Adding a new paragraph (a)(6).

C. Adding new paragraphs (a)(9) through (a)(11).

The additions read as follows:

§ 206.4 What regulations apply to these programs?

* * * * *

(a) * * *

(6) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

* * * * *

(9) 34 CFR part 97 (Protection of Human Subjects).

(10) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing).

(11) 34 CFR part 99 (Family Educational Rights and Privacy).

* * * * *

4. Section 206.5 is amended by:

A. Redesignating paragraphs (c)(5), (c)(6), and (c)(7) as paragraphs (c)(6), (c)(7), and (c)(8), respectively.

B. Adding a new paragraph (c)(5).

C. In newly redesignated paragraph (c)(7), removing the citation “(c)(7)” and adding, in its place, the citation “(c)(8)”.

D. Revising newly redesignated paragraph (c)(8).

E. In paragraph (d)—

1. Removing the citation “34 CFR 201.3” and adding, in its place, the citation “34 CFR 200.81”; and

2. Removing the words “Chapter 1” and adding, in their place, the words “Title I”.

The addition and revisions read as follows:

§ 206.5 What definitions apply to these programs?

* * * * *

(c) * * *

(5) *Immediate family member* means one or more of the following:

(i) A spouse.

(ii) A parent, step-parent, adoptive parent, foster parent, or anyone with guardianship.

(iii) Any person who—

(A) Claims the individual as a dependent on a Federal income tax return for either of the previous two years, or

(B) Resides in the same household as the individual, supports that individual financially, and is a relative of that individual.

* * * * *

(8) *Seasonal farmworker* means a person whose primary employment was in farmwork on a temporary or seasonal basis (that is, not a constant year-round activity) for a period of at least 75 days within the past 24 months.

* * * * *

5. Section 206.10 is amended by:

A. In paragraph (b)(1)(iii)(B), adding the words “(including preparation for college entrance examinations)” after the word “program”.

B. In paragraph (b)(1)(v), removing the words “Weekly stipends” and adding, in their place, the word “Stipends”.

C. In paragraph (b)(1)(viii), adding the words “(such as transportation and child care)” after the word “services”.

D. In paragraph (b)(1), adding a new paragraph (ix).

E. In paragraph (b)(2)(ii) introductory text, adding the words “to improve placement, persistence, and retention in postsecondary education” after the word “services”.

F. In paragraph (b)(2)(ii)(A), by—

1. Removing the word “and”; and

2. Adding the words “economic education, or personal finance” before the word “counseling”.

G. Redesignating paragraph (b)(2)(vi) as paragraph (b)(2)(vii).

H. Adding a new paragraph (b)(2)(vi).

I. In newly redesignated paragraph (b)(2)(vii), removing the words “support services”, and adding, in their place, the words “essential supportive services (such as transportation and child care).”.

The additions read as follows:

§ 206.10 What types of services may be provided?

* * * * *

(b) * * *

(1) * * *

(ix) Other activities to improve persistence and retention in postsecondary education.

(2) * * *

(vi) Internships.

* * * * *

6. Section 206.11 is amended by:

A. In paragraph (b)(1), removing the word “and” after the punctuation “,”.

B. In paragraph (b)(2), removing the punctuation “.” after the word “aid” and adding, in its place, the words “, and coordinating those services, assistance, and aid with other non-program services, assistance, and aid, including services, assistance, and aid provided by community-based organizations, which may include mentoring and guidance; and”.

C. Adding a new paragraph (b)(3).

The addition reads as follows:

§ 206.11 What types of CAMP services must be provided?

* * * * *

(b) * * *

(3) For students attending two-year institutions of higher education, encouraging the students to transfer to four-year institutions of higher education, where appropriate, and monitoring the rate of transfer of those students.

* * * * *

§ 206.20 [Amended]

7. Section 206.20(b)(2) is amended by removing the amount “\$150,000” and adding, in its place, the amount “\$180,000”.

8. Section 206.31 is added to subpart D of part 206 to read as follows:

§ 206.31 How does the Secretary evaluate points for prior experience for HEP and CAMP service delivery?

(a) In the case of an applicant for a HEP award, the Secretary considers the applicant’s experience in implementing an expiring HEP project with respect to—

(1) Whether the applicant served the number of participants described in its approved application;

(2) The extent to which the applicant met or exceeded its funded objectives with regard to project participants, including the targeted number and percentage of—

(i) Participants who received a general educational development (GED) credential; and

(ii) GED credential recipients who were reported as entering postsecondary education programs, career positions, or the military; and

(3) The extent to which the applicant met the administrative requirements, including recordkeeping, reporting, and financial accountability under the terms of the previously funded award.

(b) In the case of an applicant for a CAMP award, the Secretary considers the applicant’s experience in implementing an expiring CAMP project with respect to—

(1) Whether the applicant served the number of participants described in its approved application;

(2) The extent to which the applicant met or exceeded its funded objectives with regard to project participants, including the targeted number and percentage of participants who—

(i) Successfully completed the first year of college; and

(ii) Continued to be enrolled in postsecondary education after completing their first year of college; and

(3) The extent to which the applicant met the administrative requirements, including recordkeeping, reporting, and financial accountability under the terms of the previously funded award.

(Authority: 20 U.S.C. 1070d–2(e))

PART 642—TRAINING PROGRAM FOR FEDERAL TRIO PROGRAMS

9. The authority citation for part 642 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–17, unless otherwise noted.

Subpart A of Part 642—[Amended]

10. Section 642.1 is revised to read as follows:

§ 642.1 What is the Training Program for Federal TRIO Programs?

The Training Program for Federal TRIO programs, referred to in these regulations as the Training program, provides Federal financial assistance to train the leadership personnel and staff employed in, or preparing for employment in, Federal TRIO program projects.

(Authority: 20 U.S.C. 1070a–17)

11. Section 642.2 is amended by revising the section heading to read as follows:

§ 642.2 Who are eligible applicants?

* * * * *

12. Section 642.3 is amended by:

A. Revising the section heading.

B. In paragraph (a), adding the word “funded” after the word “projects”.

C. In paragraph (b) by removing the words “staff or”; adding the words “or staff” after the word “personnel”; and adding the word “funded” after the word “projects”.

The revision reads as follows:

§ 642.3 Who are eligible participants?

* * * * *

§§ 642.4 and 642.5 [Redesignated as §§ 642.5 and 642.6]

13. Sections 642.4 and 642.5 are redesignated as §§ 642.5 and 642.6.

14. A new § 642.4 is added to read as follows:

§ 642.4 How long is a project period?

A project period under the Training program is two years.

(Authority: 20 U.S.C. 1070a–17(b))

15. Newly redesignated § 642.5 is amended by:

A. Revising the section heading.

B. Revising paragraph (a).

The revisions read as follows:

§ 642.5 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215–75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

16. Newly redesignated § 642.6 is amended by:

A. Revising the section heading.

B. In paragraph (b) by revising the introductory text; revising definitions of “Federal TRIO programs”, “Institution of higher education”, “Leadership personnel”; adding, in alphabetical

order, new definitions for “Foster care youth”, “Homeless children and youth”, “Individual with disabilities”, and “Veteran”; and removing the authority citation following the definition of “Federal TRIO programs”; and

C. Adding an authority citation at the end of the section.

The revisions and additions read as follows:

§ 642.6 What definitions apply?

* * * * *

(b) *Definitions that apply to this part.*

* * * * *

Federal TRIO programs means those programs authorized under section 402A of the Act: the Upward Bound, Talent Search, Student Support Services, Educational Opportunity Centers, and Ronald E. McNair Postbaccalaureate Achievement programs.

Foster care youth means youth who are in foster care or who are aging out of the foster care system.

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

Individual with disabilities means a person who has a diagnosed physical or mental impairment that substantially limits that person’s ability to participate in educational experiences and opportunities.

* * * * *

Institution of higher education means an educational institution as defined in sections 101 and 102 of the Act.

Leadership personnel means project directors, coordinators, and other individuals involved with the supervision and direction of projects funded under the Federal TRIO programs.

Veteran means a person who—

(1) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(2) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(3) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(4) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

(Authority: 20 U.S.C. 1001 *et seq.*, 1070a–11, 1070–17(b), 1088, 1141, and 1144a)

17. Section 642.7 is added to subpart A of part 642 to read as follows:

§ 642.7 How many applications may an eligible applicant submit?

An applicant may submit more than one application for Training grants as long as each application describes a project that addresses a different absolute priority that is designated in the **Federal Register** notice inviting applications.

(Authority: 20 U.S.C. 1070d, 1070d–1d; 20 U.S.C. 1221e–3)

18. Subpart B of part 642 is revised to read as follows:

Subpart B—What Types of Projects and Activities Does the Secretary Assist under this Program?

Sec.

642.10 What types of projects does the Secretary assist?

642.11 What activities does the Secretary assist?

642.12 What activities may a project conduct?

Subpart B—What Types of Projects and Activities Does the Secretary Assist under this Program?**§ 642.10 What types of projects does the Secretary assist?**

The Secretary assists projects that train the leadership personnel and staff of projects funded under the Federal TRIO Programs to enable them to operate those projects more effectively.

(Authority: 20 U.S.C. 1070a–17)

§ 642.11 What activities does the Secretary assist?

(a) Each year, one or more Training Program projects must provide training for new project directors.

(b) Each year, one or more Training Program projects must offer training covering the following topics:

(1) The legislative and regulatory requirements for operating projects funded under the Federal TRIO programs.

(2) Assisting students to receive adequate financial aid from programs assisted under title IV of the Act and from other programs.

(3) The design and operation of model programs for projects funded under the Federal TRIO programs.

(4) The use of appropriate educational technology in the operation of projects funded under the Federal TRIO programs.

(5) Strategies for recruiting and serving hard-to-reach populations, including students who are limited English proficient, students from groups

that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

(Authority: 20 U.S.C. 1070a-17)

§ 642.12 What activities may a project conduct?

A Training program project may include on-site training, on-line training, conferences, internships, seminars, workshops, and the publication of manuals designed to improve the operations of Federal TRIO program projects.

(Authority: 20 U.S.C. 1070a-17(b))

PART 642—[AMENDED]

19. Part 642 is amended by redesignating subparts D and E as subparts C and D, respectively.

Subpart C of Part 642—[Amended]

§§ 642.30, 642.31, 642.32, 642.33, and 642.34 [Redesignated as §§ 642.20, 642.21, 642.22, 642.23, and 642.24]

20. Newly redesignated subpart C of part 642 is amended by redesignating §§ 642.30, 642.31, 642.32, 642.33, and 642.34 as §§ 642.20, 642.21, 642.22, 642.23, and 642.24, respectively.

21. Newly redesignated § 642.20 is amended by:

- A. Revising the section heading.
- B. In the introductory text of paragraph (a), removing the citation “§ 642.31” and adding, in its place, the citation “§ 642.21”.

C. In paragraph (a)(1), removing the number “100” and adding, in its place, the number “75”.

- D. Revising paragraph (b).
- E. Adding new paragraphs (c), (d), and (e).

The additions and revisions read as follows:

§ 642.20 How does the Secretary evaluate an application for a new award?

* * * * *

(b) In addition, for an applicant who is conducting a Training program in the fiscal year immediately prior to the fiscal year for which the applicant is applying, the Secretary evaluates the applicant’s prior experience (PE) of high quality service delivery, as provided in § 642.22, based on the applicant’s performance during the first project year of that expiring Training program grant.

(c) The Secretary selects applications for funding within each specific absolute priority established for the competition in rank order on the basis of the score received by the application in the peer review process.

(d) Within each specific absolute priority, if there are insufficient funds to fund all applications at the next peer review score, the Secretary adds the PE points awarded under § 642.22 to the peer review score to determine an adjusted total score for those applications. The Secretary makes awards at the next peer review score to the applications that have the highest total adjusted score.

(e) In the event a tie score still exists, the Secretary will select for funding the applicant that has the greatest capacity to provide training to eligible participants in all regions of the Nation, consistent with § 642.23.

* * * * *

22. Newly redesignated § 642.21 is amended by:

- A. Revising the section heading.
- B. Revising paragraph (a)(2)(v)(C).
- C. Revising paragraph (b)(2)(iv)(C).
- D. Removing paragraph (f).
- E. Adding an OMB control number parenthetical following the section.

The revisions and addition read as follows:

§ 642.21 What selection criteria does the Secretary use?

* * * * *

- (a) * * *
- (2) * * *
- (v) * * *
- (C) Individuals with disabilities; and
- * * * * *
- (b) * * *
- (2) * * *
- (iv) * * *
- (C) Individuals with disabilities; and
- * * * * *

(Approved by the Office of Management and Budget under control number 1840-NEW1)

* * * * *

23. Newly redesignated § 642.22 is revised to read as follows:

§ 642.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 642.20(b), the Secretary—
(1) Evaluates the applicant’s performance under its expiring Training program grant;

(2) To determine the number of PE points to be awarded, uses the approved project objectives for the applicant’s expiring Training program grant and the information the applicant submitted in its annual performance report (APR); and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicate the APR data used to calculate PE are incorrect.

(b)(1) The Secretary may add from 1 to 15 points to the point score obtained

on the basis of the selection criteria in § 642.21, based on the applicant’s success in meeting the administrative requirements and programmatic objectives of paragraph (e) of this section.

(2) The maximum possible score for each criterion is indicated in the parentheses preceding the criterion.

(c) The Secretary awards no PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(d) For the criterion specified in paragraph (e)(1) of this section (Number of participants), the Secretary awards no PE points if the applicant did not serve the approved number of participants.

(e) The Secretary evaluates the applicant’s PE on the basis of the following criteria:

(1) (4 points) Number of participants. Whether the applicant provided training to the approved number of participants.

(2) Training objectives. Whether the applicant met or exceeded its objectives for:

(i) (4 points) Assisting the participants in developing increased qualifications and skills to meet the needs of disadvantaged students.

(ii) (4 points) Providing the participants with an increased knowledge and understanding of the Federal TRIO Programs.

(3) (3 points) Administrative requirements. Whether the applicant met all the administrative requirements under the terms of the expiring grant, including recordkeeping, reporting, and financial accountability.

(Approved by the Office of Management and Budget under control number 1894-0003.)

(Authority: 20 U.S.C. 1070a-11)

24. Newly redesignated § 642.23 is amended by revising the section heading to read as follows:

§ 642.23 How does the Secretary ensure geographic distribution of awards?

* * * * *

25. Newly redesignated § 642.24 is revised to read as follows:

§ 642.24 What are the Secretary’s priorities for funding?

(a) The Secretary, after consultation with regional and State professional associations of persons having special knowledge with respect to the training of Special Programs personnel, may select one or more of the following subjects as training priorities:

(1) Basic skills instruction in reading, mathematics, written and oral communication, and study skills.

(2) Counseling.

(3) Assessment of student needs.

(4) Academic tests and testing.

(5) College and university admissions policies and procedures.

(6) Cultural enrichment programs.

(7) Career planning.

(8) Tutorial programs.

(9) Retention and graduation

strategies.

(10) Strategies for preparing students for doctoral studies.

(11) Project evaluation.

(12) Budget management.

(13) Personnel management.

(14) Reporting student and project performance.

(15) Coordinating project activities with other available resources and activities.

(16) General project management for new directors.

(17) Statutory and regulatory requirements for the operation of projects funded under the Federal TRIO programs.

(18) Assisting students in receiving adequate financial aid from programs assisted under title IV of the Act and from other programs.

(19) The design and operation of model programs for projects funded under the Federal TRIO programs.

(20) The use of appropriate educational technology in the operation of projects funded under the Federal TRIO programs.

(21) Strategies for recruiting and serving hard to reach populations, including students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

(b) The Secretary annually funds training on the subjects listed in paragraphs (a)(17), (18), (19), (20), and (21) of this section.

(Authority: 20 U.S.C. 1070a–11 and 1070a–17)

26. Section 642.25 is added to subpart C of part 642 to read as follows:

§ 642.25 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements

included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.*

(1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 642.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this

section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as discussed in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to a designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840-NEW1.)

(Authority: 20 U.S.C. 1070a-11)

27. A new § 642.26 is added to read as follows:

§ 642.26 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233, for a new grant, and

(2) 34 CFR 75.253, for the second year of a project period.

(b) The Secretary uses the available funds to set the amount of the grant at the lesser of—

(1) 170,000; or

(2) The amount requested by the applicant.

Subpart D of Part 642—[Amended]

§ 642.40 and 642.41 [Redesignated as § 642.30 and 642.31]

28. Newly redesignated subpart D of part 642 is amended by redesignating §§ 642.40 and 642.41 as §§ 642.30 and 642.31, respectively.

29. Newly redesignated § 642.30 is amended by:

A. Revising the section heading,

B. In paragraph (d), removing the words "if approved in writing by the Secretary".

The revision reads as follows:

§ 642.30 What are allowable costs?

* * * * *

30. Newly redesignated § 642.31 is amended by revising the section heading to read as follows:

§ 642.31 What are unallowable costs?

* * * * *

PART 643—TALENT SEARCH

31. The authority citation for part 643 continues to read as follows:

Authority: 20 U.S.C. 1070a-11 and 1070a-12, unless otherwise noted.

32. Section 643.1 is amended by:

A. In paragraph (b), adding the words "and facilitate the application for," after the word "of".

B. Revising paragraph (c).

The revision reads as follows:

§ 643.1 What is the Talent Search program?

* * * * *

(c) Encourage persons who have not completed education programs at the secondary or postsecondary level to enter or reenter and complete these programs.

* * * * *

33. Section 643.2 is amended by:

A. In the introductory text, adding the word "entities" after the word "following".

B. In paragraph (b), adding the words "including a community-based organization with experience in serving disadvantaged youth" after the word "organization".

C. Removing paragraph (d).

D. Redesignating paragraph (c) as paragraph (d).

E. Adding a new paragraph (c).

F. In newly redesignated paragraph (d), removing the words "paragraphs (a) and (b)" and adding, in their place, the words "paragraphs (a), (b), and (c)".

The addition reads as follows:

§ 643.2 Who is eligible for a grant?

* * * * *

(c) A secondary school.

* * * * *

34. Section 643.3 is amended by:

A. In paragraph (a)(3)(i), removing the words “, has potential for a program of postsecondary education, and needs one or more of the services provided by the project in order to undertake such a program”.

B. In paragraph (a)(3)(ii), removing the words “, has the ability to complete such a program, and needs one or more of the services provided by the project to reenter such a program”.

C. Redesignating paragraph (b) as paragraph (c).

D. Adding a new paragraph (b).

E. In newly redesignated paragraph (c), removing the citation “643.6(b)” and adding, in its place, the citation “643.7(b)”.

The addition reads as follows:

§ 643.3 Who is eligible to participate in a project?

* * * * *

(b) An individual is eligible to receive support to complete a rigorous secondary school program of study if the individual meets the requirements of paragraph (a)(1) of this section, is accepted into the Talent Search project by the end of the first term of the tenth grade, is enrolled or is preparing to enroll in a rigorous secondary school program of study, as defined by his or her State of residence, and is designated as enrolled in a rigorous secondary school program of study on reports submitted by the grantee to the Secretary.

* * * * *

35. Section 643.4 is revised to read as follows:

§ 643.4 What services does a project provide?

(a) A Talent Search project must provide the following services:

(1) Connections for participants to high quality academic tutoring services to enable the participants to complete secondary or postsecondary courses.

(2) Advice and assistance in secondary school course selection and, if applicable, initial postsecondary course selection.

(3) Assistance in preparing for college entrance examinations and completing college admission applications.

(4)(i) Information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and on resources for locating public and private scholarships; and

(ii) Assistance in completing financial aid applications, including the Free Application for Federal Student Aid (FAFSA).

(5) Guidance on and assistance in—

(i) Secondary school reentry;

(ii) Alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma;

(iii) Entry into general educational development (GED) programs; or

(iv) Entry into postsecondary education.

(6) Connections for participants to education or counseling services designed to improve the financial literacy and economic literacy of the participants or the participants' parents, including financial planning for postsecondary education.

(b) A Talent Search project may provide services such as the following:

(1) Academic tutoring, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects.

(2) Personal and career counseling or activities.

(3) Information and activities designed to acquaint youth with the range of career options available to the youth.

(4) Exposure to the campuses of institutions of higher education, as well as to cultural events, academic programs, and other sites or activities not usually available to disadvantaged youth.

(5) Workshops and counseling for families of participants served.

(6) Mentoring programs involving elementary or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons.

(7) Programs and activities as described in this section that are specially designed for participants who are limited English proficient, from groups that are traditionally underrepresented in postsecondary education, individuals with disabilities, homeless children and youths, foster care youth, or other disconnected participants.

(Authority: 20 U.S.C. 1070a–12)

36. Section 643.5 is revised to read as follows:

§ 643.5 How long is a project period?

A project period under the Talent Search program is five years.

(Authority: 20 U.S.C. 1070a–11)

37. Section 643.6 is amended by revising paragraph (a) to read as follows:

§ 643.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for

§§ 75.215–75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

38. Section 643.7(b) is amended by:
A. Revising the definition of “*Institution of higher education*”.

B. Revising the definition of “*Veteran*”.

C. Adding, in alphabetical order, new definitions for “*Different population*”, “*Financial and economic literacy*”, “*Foster care youth*”, “*Homeless children and youth*”, “*Individuals with disabilities*”, “*Regular secondary school diploma*”, and “*Rigorous secondary school diploma*”.

The revisions and additions read as follows:

§ 643.7 What definitions apply?

* * * * *

(b) * * *

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Talent Search program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, including but not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (e.g., loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary education (e.g., spending, saving, personal budgeting);

(4) College cost of attendance (e.g., public vs. private, tuition vs. fees, personal costs);

(5) Scholarship, grant, and loan education (e.g., searches, application processes, and differences between private and government loans); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

Foster care youth means youth who are in foster care or are aging out of the foster care system. * * *

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434(a)).

Individual with disabilities means a person who has a diagnosed physical or mental impairment that substantially

limits that person's ability to participate in educational experiences and opportunities.

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA. * * *

Regular secondary school diploma means a level attained by individuals who meet or exceed the coursework and performance standards for high school completion established by the individual's State.

Rigorous secondary school program of study means a program of study that is—

(1) Established by a State educational agency (SEA) or local educational agency (LEA) and recognized as a rigorous secondary school program of study by the Secretary through the process described in 34 CFR § 691.16(a) through § 691.16(c) for the ACG Program;

(2) An advanced or honors secondary school program established by States and in existence for the 2004–2005 school year or later school years;

(3) Any secondary school program in which a student successfully completes at a minimum the following courses:

- (i) Four years of English.
- (ii) Three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics.
- (iii) Three years of science, including one year each of at least two of the following courses: biology, chemistry, and physics.
- (iv) Three years of social studies.
- (v) One year of a language other than English;

(4) A secondary school program identified by a State-level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado;

(5) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of a "4" or higher on the examinations for at least two of those courses; or

(6) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of "3" or higher on the College Board's Advanced Placement Program Exams for at least two of those courses. * * *

Veteran means a person who—

(1) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(2) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(3) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(4) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

* * * * *

Subpart B—How Does One Apply for an Award?

39. Subpart B of part 643 is amended by revising the subpart heading to read as set forth above.

§ 643.10 [Redesignated as § 643.11]

39a. Redesignate § 643.10 as § 643.11.

40. A new § 643.10 is added to read as follows:

§ 643.10 How many applications may an eligible applicant submit?

(a) An applicant may submit more than one application for Talent Search grants as long as each application describes a project that serves a different target area or target schools, or another designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and the other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–12; 1221e–3)

41. Newly redesignated § 643.11 is amended by:

A. In the introductory text, removing the word "shall" and adding, in its place, the word "must".

B. In paragraph (a), adding the words "and at least two-thirds of the participants selected to receive support for a rigorous secondary school program of study," after the words "Talent Search project".

C. Revising paragraph (b). The revision reads as follows:

§ 643.11 What assurances must an applicant submit?

* * * * *

(b) Individuals who are receiving services from another Talent Search project; a Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) project under 34 CFR part

694; a Regular Upward Bound, Upward Bound Math and Science Centers, or Veterans Upward Bound project under 34 CFR part 645; an Educational Opportunity Centers project under 34 CFR part 644; or other programs serving similar populations will not receive the same services under the proposed project.

* * * * *

42. Section 643.20 is amended by:

A. In paragraph (a)(2)(i), removing the words "in delivering services" and adding, in their place, the words "of high quality service delivery (PE)".

B. In paragraph (a)(2)(ii), adding the word "total" after the word "maximum" the first time it appears.

C. Adding paragraphs (a)(2)(iii) through (a)(2)(v).

D. Removing paragraph (a)(3).

E. In paragraph (b), removing the words "through (3)" and adding, in their place, the words "and (a)(2)".

F. Revising paragraph (d).

The additions and revision read as follows:

§ 643.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed. * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

43. Section 643.21 is amended by:

A. Revising paragraphs (a), (b), and (c).

B. Revising paragraph (d)(2).

C. In the OMB control number parenthetical following paragraph (g), removing the numbers "1840–0549" and adding, in their place, the numbers "1840–0065".

The revisions read as follows:

§ 643.21 What selection criteria does the Secretary use?

* * * * *

(a) *Need for the project* (24 points). The Secretary evaluates the need for a Talent Search project in the proposed target area on the basis of the extent to

which the application contains clear evidence of the following:

(1) (6 points) A high number or high percentage of the following—

(i) Low-income families residing in the target area; or

(ii) Students attending the target schools who are eligible for free or reduced priced lunch as described in sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act.

(2) (2 points) Low rates of high school persistence among individuals in the target schools as evidenced by the annual student persistence rates in the proposed target schools for the most recent year for which data are available.

(3) (4 points) Low rates of students in the target school's graduating high school with a regular secondary school diploma in the standard number of years for the most recent year for which data are available.

(4) (6 points) Low postsecondary enrollment and completion rates among individuals in the target area and schools as evidenced by—

(i) Low rates of enrollment in programs of postsecondary education by graduates of the target schools in the most recent year for which data are available; and

(ii) A high number or high percentage of individuals residing in the target area with education completion levels below the baccalaureate degree level.

(5) (2 points) The extent to which the target secondary schools do not offer their students the courses or academic support to complete a rigorous secondary school program of study or have low participation by low-income or first generation students in such courses.

(6) (4 points) Other indicators of need for a Talent Search project, including a high ratio of students to school counselors in the target schools and the presence of unaddressed academic or socio-economic problems of eligible individuals, including foster care youth and homeless children and youth, in the target schools or the target area.

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the Need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) (2 points) Secondary school persistence.

(2) (2 points) Secondary school graduation (regular secondary school diploma).

(3) (1 point) Secondary school graduation (rigorous secondary school program of study).

(4) (2 points) Postsecondary education enrollment.

(5) (1 point) Postsecondary degree attainment.

(c) *Plan of operation* (30 points). The Secretary evaluates the quality of the applicant's plan of operation on the basis of the following:

(1) (3 points) The plan to inform the residents, schools, and community organizations in the target area of the purpose, objectives, and services of the project and the eligibility requirements for participation in the project.

(2) (3 points) The plan to identify and select eligible project participants, including the project's plan and criteria for selecting individuals who would receive support to complete a rigorous secondary school program of study.

(3) (10 points) The plan for providing the services delineated in § 643.4 as appropriate based on the project's assessment of each participant's need for services.

(4) (6 points) For those students in need of services to complete a rigorous secondary school program of study, the project's plan to provide services sufficient to enable the participants to succeed.

(5) (6 points) The plan, including timelines, personnel, and other resources, to ensure the proper and efficient administration of the project, including the project's organizational structure; the time commitment of key project staff; financial, personnel, and records management; and, where appropriate, coordination with other programs for disadvantaged youth.

(6) (2 points) The plan to follow former participants as they enter, continue in, and complete postsecondary education.

(d) * * *

(2) (8 points) Resources secured through written commitments from institutions of higher education, secondary schools, community organizations, and others.

* * * * *

44. Section 643.22 is revised to read as follows:

§ 643.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 643.20(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Talent Search project;

(2) Uses the approved project objectives for the applicant's expiring Talent Search grant and the information

the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) For the criterion specified in paragraph (d)(1) of this section (Number of participants), the Secretary does not award any PE points if the applicant did not serve the approved number of participants.

(d) For purposes of the evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) Number of participants. Whether the applicant provided services to the approved number of participants.

(2) (3 points) Secondary school persistence. Whether the applicant met or exceeded its objective regarding the continued secondary school enrollment of participants.

(3) (3 points) Secondary school graduation (regular secondary school diploma). Whether the applicant met or exceeded its objective regarding the graduation of current and prior participants from secondary school with a regular secondary school diploma in the standard number of years.

(4) (1.5 points) Secondary school graduation (rigorous secondary school program of study). Whether the applicant met or exceeded its objective regarding the percentage of current and prior participants with an expected high school graduation date in the school year who were enrolled in and completed a rigorous secondary school program of study.

(5) (3 points) Postsecondary enrollment. Whether the applicant met or exceeded its objective regarding the percentage of current and prior participants with an expected high school graduation date in the school year who enrolled in an institution of higher education by the fall term immediately following the school year.

(6) (1.5 points) Postsecondary completion. Whether the applicant met or exceeded its objective regarding the completion of a program of postsecondary education within the

number of years specified in the approved objective. The applicant may determine success in meeting the objective by using a randomly selected sample of participants in accordance with the parameters established by the Secretary in the **Federal Register** notice inviting applications or other published application materials for the competition.

(Approved by the Office of Management and Budget under control number 1840-NEW7.)

(Authority: 20 U.S.C. 1070a-12)

§ 643.23 [Amended]

45. Section 643.23 is amended by:

A. In the introductory text of paragraph (b), removing the words “beginning in fiscal year 1994”.

B. In paragraph (b)(1), removing the amount “\$180,000” and adding, in its place, the amount “\$200,000”.

46. A new § 643.24 is added to subpart C of part 643 to read as follows:

§ 643.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term “scoring error” does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information

needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.*

(1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 643.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as discussed in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE

points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840-NEW2.)

(Authority: 20 U.S.C. 1070a-11)

47. Section 643.30 is amended by:

A. In the introductory text, removing the words "34 CFR part 74, subpart Q" and adding, in their place, the words "34 CFR 74.27, 75.530, and 80.22, as applicable".

B. In the introductory text of paragraph (a), adding the word "project" before the word "staff".

C. In paragraph (a)(1), removing the words "to obtain information relating to the admission of participants to those institutions".

D. In paragraph (a)(2), removing the word "and".

E. In paragraph (a)(3) by adding the words "for participants" after the word "trips"; removing the words "in the target area"; and removing the punctuation "." at the end of the paragraph and adding, in its place, the words "; and".

F. Adding a new paragraph (a)(4).

G. In paragraph (b), adding the words "and test preparation programs for participants" after the word "materials".

H. Revising paragraph (f).

I. Adding new paragraphs (g) and (h).

The revision and additions read as follows:

§ 643.30 What are allowable costs?

* * * * *

(a) * * *

(4) Transportation to institutions of higher education, secondary schools not attended by the participants, or other locations at which the participant receives instruction that is part of a rigorous secondary school program of study.

* * * * *

(f) Purchase, lease, or rental of computer hardware, software, and other equipment and supplies that support the delivery of services to participants, including technology used by participants in a rigorous secondary school program of study.

(g) Purchase, lease, or rental of computer equipment and software needed for project administration and recordkeeping.

(h) Tuition costs for a course that is part of a rigorous secondary school program of study if—

(1) The course or a similar course is not offered at the secondary school that the participant attends or at another school within the school district;

(2) The grantee demonstrates to the Secretary's satisfaction that using grant funds is the most cost-effective way to deliver the course or courses necessary for the completion of a rigorous secondary school program of study for program participants;

(3) The course is taken at an institution of higher education;

(4) The course is comparable in content and rigor to courses that are part of a rigorous secondary school program of study as defined in § 643.7(b);

(5) The secondary school accepts the course as meeting one or more of the course requirements for obtaining a high school diploma;

(6) A waiver of the tuition costs is unavailable;

(7) The tuition is paid with Talent Search grant funds to an institution of higher education on behalf of a participant; and

(8) The Talent Search project pays for no more than the equivalent of two courses for a participant each school year.

* * * * *

48. Section 643.31 is amended in paragraph (a) by removing the phrase "Tuition, stipends," and by adding "Stipends" in its place.

49. Section 643.32 is amended by:

A. Removing paragraph (b).

B. Redesignating paragraph (c) as paragraph (b).

C. In newly redesignated paragraph (b) introductory text, removing the word "shall" and adding, in its place, the word "must".

D. In newly redesignated paragraph (b)(3), removing the word "and".

E. In newly redesignated paragraph (b)(4), removing the punctuation "." and adding, in its place, the words "; and".

F. Adding a new paragraph (b)(5).

G. Adding a new paragraph (c).

H. Removing paragraph (d).

I. In the OMB control number parenthetical following newly added paragraph (c), removing the numbers "1840-0549" and adding, in their place, the numbers "1840-NEW2".

The additions read as follows:

§ 643.32 What other requirements must a grantee meet?

* * * * *

(b) * * *

(5) A list of courses taken by participants receiving support to complete a rigorous secondary school

program of study as defined in § 643.7(b).

(c) *Project director.* (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (c)(1) of this section if the applicant demonstrates that the requirement to administer no more than three programs will hinder effective coordination between the Talent Search program and—

(i) One or more Federal TRIO programs (sections 402A through 402F of the HEA); or

(ii) One or more similar programs funded through other sources.

* * * * *

PART 644—EDUCATIONAL OPPORTUNITY CENTERS

50. The authority citation for part 644 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–16, unless otherwise noted.

51. Section 644.1 is amended by:

A. In the introductory text, removing the words “to provide”.

B. In paragraph (a), removing the word “Information” and adding, in its place, the words “To provide information”; removing the word “for” and adding, in its place, the word “to”; and removing the word “and” that appears after the punctuation “,”.

C. In paragraph (b), removing the word “Assistance” and adding, in its place, the words “To provide assistance”; and removing the punctuation “.” at the end of the sentence and adding, in its place, the word “; and”.

D. Adding a new paragraph (c).

The addition reads as follows:

§ 644.1 What is the Educational Opportunity Centers program?

* * * * *

(c) To improve the financial literacy and economic literacy of participants on topics such as—

(1) Basic personal income, household money management, and financial planning skills; and

(2) Basic economic decision-making skills.

* * * * *

52. Section 644.2 is amended by:

A. In the introductory text of the section, adding the word “entities” after the word “following”.

B. In paragraph (b), adding the words “, including a community-based organization with experience in serving disadvantaged youth” after the word “organization”.

C. Removing paragraph (d).

D. Redesignating paragraph (c) as paragraph (d).

E. Adding a new paragraph (c).

F. In newly redesignated paragraph (d), removing the word “and” before the citation “(b)” and adding, in its place, the punctuation “;”; and adding the words “, and (c)” after the citation “(b)”.

The addition reads as follows:

* * * * *

§ 644.2 Who is eligible for a grant?

* * * * *

(c) A secondary school.

* * * * *

53. Section 644.4 is amended by:

A. Redesignating paragraphs (e), (f), (g), (h), (i), (j), and (k) as paragraphs (f), (g), (h), (i), (j), (k), and (l), respectively.

B. Adding a new paragraph (e).

C. In newly redesignated paragraph (g), removing the word “Personal” and adding, in its place, the words “Individualized personal, career, and academic”.

D. Revising newly redesignated paragraph (k).

The addition and revision read as follows:

§ 644.4 What services may a project provide?

* * * * *

(e) Education or counseling services designed to improve the financial literacy and economic literacy of participants.

* * * * *

(k) Programs and activities described in this section that are specially designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary education, participants who are individuals with disabilities, participants who are homeless children and youth, participants who are foster care youth, or other disconnected participants.

* * * * *

54. Section 644.5 is revised to read as follows:

§ 644.5 How long is a project period?

A project period under the Educational Opportunity Centers program is five years.

(Authority: 20 U.S.C. 1070a–11)

55. Section 644.6 is amended by revising paragraph (a) to read as follows:

§ 644.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

56. Section 644.7(b) is amended by:

A. Adding, in alphabetical order, new definitions for *Different population*, *Financial and economic literacy*, *Foster care youth*, *Homeless children and youth*, and *Individual with disabilities*.

B. Revising the definition of *Institution of higher education*.

C. Revising the definition of *Veteran*.

The additions and revisions read as follows:

§ 644.7 What definitions apply?

* * * * *

(b) * * *

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Educational Opportunity Centers program and that—

(i) Is separate and distinct from any other population that the entity has applied for a grant under this chapter to serve; or

(ii) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, including but not limited to knowledge about—

(i) Personal and family budget planning;

(ii) Understanding credit building principles to meet long-term and short-term goals (e.g., loan to debt ratio, credit scoring, negative impacts on credit scores);

(iii) Cost planning for postsecondary education (e.g., spending, saving, personal budgeting);

(iv) College cost of attendance (e.g., public vs. private, tuition vs. fees, personal costs);

(v) Scholarship, grant, and loan education (e.g., searches, application processes, and differences between private and government loans); and

(vi) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

Foster care youth means youth who are in foster care or are aging out of the foster care system.

* * * * *

Homeless children and youth means those persons defined in section 725 of

the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434(a)).

Individual with disabilities means a person who has a diagnosed physical or mental impairment that substantially limits that person's ability to participate in educational experiences and opportunities.

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

* * * * *

Veteran means a person who—

(i) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(ii) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(iii) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(iv) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

* * * * *

Subpart B—How Does One Apply for an Award?

57. The heading for subpart B of part 644 is revised to read as set forth above.

§ 644.10 [Redesignated as § 644.11]

58. In subpart B of part 644, § 644.10 is redesignated as § 644.11.

59. A new § 644.10 is added to subpart B of part 644 to read as follows:

§ 644.10 How many applications may an eligible applicant submit?

(a) An applicant may submit more than one application for Educational Opportunity Centers grants as long as each application describes a project that serves a different target area or another designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–11, 1221e–3)

60. Newly redesignated § 644.11 is amended by:

A. In the introductory text, removing the word “shall” and adding, in its place, the word “must”.

B. Revising paragraph (b).

The revision reads as follows:

§ 644.11 What assurances must an applicant submit?

* * * * *

(b) Individuals who are receiving services from another Educational Opportunity Center project under this part, a Veterans Upward Bound project under 34 CFR part 645, a Talent Search project under 34 CFR part 643, or other programs serving similar populations will not receive the same services under the proposed project.

* * * * *

61. Section 644.20 is amended by:

A. In paragraph (a)(2)(i), removing the words “in delivering services” and adding, in their place, the words “of high quality service delivery (PE)”.

B. In paragraph (a)(2)(ii), adding the word “total” after the word “maximum” the first time it appears.

C. Adding new paragraphs (a)(2)(iii) through (a)(2)(v).

D. Removing paragraph (a)(3).

E. In paragraph (b), removing the words “paragraphs (a)(1) through (3)” and adding, in their place, the words “paragraph (a)”.

F. Revising paragraph (d).

The revision and additions read as follows:

§ 644.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

62. Section 644.21 is amended by:

A. Revising paragraph (b).

B. In paragraph (d)(2), adding the words “of support” after the word “commitments”; and adding the words “institutions of higher education, secondary” before the word “schools”.

C. In the OMB control number parenthetical following paragraph (g), removing the numbers “1840–0065” and adding, in their place, the numbers “1840–NEW3”.

The revision reads as follows:

§ 644.21 What selection criteria does the Secretary use?

* * * * *

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) (2 points) Enrollment of participants who do not have a secondary school diploma or its recognized equivalent in programs leading to a secondary school diploma or its equivalent.

(2) (4 points) Postsecondary enrollment.

(3) (1 point) Student financial aid assistance.

(4) (1 point) Student college admission assistance.

* * * * *

63. Section 644.22 is revised to read as follows:

§ 644.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 644.20(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Educational Opportunity Centers project;

(2) Uses the approved project objectives for the applicant's expiring Educational Opportunity Centers grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE points are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) For the criterion specified in paragraph (d)(1) of this section (Number

of participants), the Secretary does not award PE points if the applicant did not serve the approved number of participants.

(d) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) *Number of participants*. Whether the applicant provided services to the approved number of participants.

(2) (3 points) *Secondary school diploma*. Whether the applicant met or exceeded its approved objective with regard to participants who do not have a secondary school diploma or its equivalent who enroll in programs leading to a secondary school diploma or its equivalent.

(3) (6 points) *Postsecondary enrollment*. Whether the applicant met or exceeded its approved objective with regard to the secondary school graduates who enroll in programs of postsecondary education during the project year by the fall term immediately following the school year.

(4) (1.5 points) *Financial aid assistance*. Whether the applicant met or exceeded its objective regarding assistance to individuals in completing financial aid applications.

(5) (1.5 points) *College admission assistance*. Whether the applicant met or exceeded its objective regarding assistance to individuals in completing applications for college admission.

(Approved by the Office of Management and Budget under control number 1840-NEW8.)

(Authority: 20 U.S.C. 1070a-16)

64. Section 644.23 is amended by:

A. In the introductory text of paragraph (b), removing the words "beginning in fiscal year 1994".

B. Revising paragraph (b)(1).

The revision reads as follows:

§ 644.23 How does the Secretary set the amount of a grant?

* * * * *

(b) * * *

(1) \$200,000; or

* * * * *

65. Section 644.24 is added to subpart C of part 644 to read as follows:

§ 644.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed*. (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice

inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed*. (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores

assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review*.

(1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 644.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as

described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as discussed in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking

of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840-NEW3)

(Authority: 20 U.S.C. 1070a-11)

66. Section 644.30 is amended by:

A. In the introductory text, removing the words "34 CFR part 74, subpart Q" and adding, in their place, the words "34 CFR 74.27, 75.530, and 80.22, as applicable".

B. In the introductory text of paragraph (a), adding the word "project" before the word "staff".

C. In paragraph (a)(1), removing the words "to obtain information relating to the admission of participants to those institutions".

D. Revising paragraph (a)(3).

E. In paragraph (b), adding the words "and test preparation programs for participants" after the word "materials".

F. Revising paragraph (f).

The revisions read as follows:

§ 644.30 What are allowable costs?

* * * * *

(a) * * *

(3) Field trips for participants to observe and meet with persons who are employed in various career fields and can act as role models for participants.

* * * * *

(f) Purchase, lease, or rental of computer hardware, computer software, or other equipment for participant development, project administration, or project recordkeeping.

* * * * *

67. Section 644.32 is amended by:

A. Removing paragraphs (b) and (d).

B. Redesignating paragraph (c) as paragraph (b).

C. Adding a new paragraph (c).

D. In the OMB control number parenthetical following paragraph (b), removing the numbers "1840-0065" and adding, in their place, the numbers "1840-NEW8".

The addition reads as follows:

§ 644.32 What other requirements must a grantee meet?

* * * * *

(c) *Project director.* (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (c)(1) of this section if the applicant demonstrates that the requirement to administer no more than three programs will hinder effective coordination between the Educational Opportunity Centers program and—

(i) One or more Federal TRIO programs (sections 402A through 402F of the HEA); or

(ii) One or more similar programs funded through other sources.

* * * * *

PART 645—UPWARD BOUND PROGRAM

68. The authority citation for part 645 is revised to read as follows:

Authority: 20 U.S.C. 1070a-11 and 1070a-13, unless otherwise noted.

69. Section 645.2 is amended by:

A. In paragraph (a), removing the word "Institutions" and adding, in its place, the words "An institution".

B. Revising paragraphs (b), (c), and (d).

The revisions read as follows:

§ 645.2 Who is eligible for a grant?

* * * * *

(b) A public or private agency or organization, including a community-based organization with experience in serving disadvantaged youth.

(c) A secondary school.

(d) A combination of the types of institutions, agencies, and organizations described in paragraphs (a), (b), and (c) of this section.

* * * * *

70. Section 645.4 is amended by:

A. Revising the section heading.

B. Removing paragraph (a).

C. Redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c), respectively.

The revision reads as follows:

§ 645.4 What are the grantee requirements for documenting the low-income and first-generation status of participants?

* * * * *

71. Section 645.5 is amended by revising paragraph (a) to read as follows:

§ 645.5 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

72. Section 645.6(b) is amended by:

A. Revising the definition of

Institution of higher education.

B. Revising the definition of *Veteran*.

C. Adding, in alphabetical order, new definitions for *Different population*, *Financial and economic literacy*, *Foster care youth*, *Homeless children and youth*, *Individual who has a high risk for academic failure*, *Individual with disabilities*, *Regular secondary school diploma*, *Rigorous secondary school program of study*, and *Veteran who has a high risk for academic failure*.

The revisions and additions read as follows:

§ 645.6 What definitions apply to the Upward Bound Program?

* * * * *

(b) * * *

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Upward Bound program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

* * * * *

Financial and economic literacy means knowledge about personal financial decision-making, including but not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (e.g., loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary education (e.g., spending, saving, personal budgeting);

(4) College cost of attendance (e.g., public vs. private, tuition vs. fees, personal costs);

(5) Scholarship, grant, and loan education (e.g., searches, application processes, and differences between private and government loans); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

Foster care youth means youth who are in foster care or are aging out of the foster care system.

* * * * *

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434(a)).

Individual who has a high risk for academic failure (regular Upward Bound participant) means an individual who—

(1) Has not achieved at the proficient level on State assessments in reading or language arts;

(2) Has not achieved at the proficient level on State assessments in math;

(3) Has not completed pre-algebra, algebra, or geometry; or

(4) Has a grade point average of 2.5 or less (on a 4.0 scale) for the most recent school year for which grade point averages are available.

Individual with disabilities means a person who has a diagnosed physical or mental impairment that substantially limits that person's ability to participate in educational experiences and opportunities.

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

* * * * *

Regular secondary school diploma means a diploma attained by individuals who meet or exceed the coursework and performance standards for high school completion established by the individual's State.

Rigorous secondary school program of study means a program of study that is—

(1) Established by a State educational agency (SEA) or local educational

agency (LEA) and recognized as a rigorous secondary school program of study by the Secretary through the process described in 34 CFR 691.16(a) through (c) for the ACG Program;

(2) An advanced or honors secondary school program established by States and in existence for the 2004–2005 school year or later school years;

(3) Any secondary school program in which a student successfully completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English;

(4) A secondary school program identified by a State-level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado;

(5) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of a "4" or higher on the examinations for at least two of those courses; or

(6) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of "3" or higher on the College Board's Advanced Placement Program Exams for at least two of those courses.

* * * * *

Veteran means a person who—

(1) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(2) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(3) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(4) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

Veteran who has a high risk for academic failure means a veteran who—

(1) Has been out of high school or dropped out of a program of postsecondary education for five or more years;

(2) Has scored on standardized tests below the level that demonstrates a likelihood of success in a program of postsecondary education; or

(3) Meets the definition of an individual with disabilities as defined in § 645.6(b).

* * * * *

73. Section 645.11 is revised to read as follows:

§ 645.11 What services do all Upward Bound projects provide?

(a) Any project assisted under this part must provide—

(1) Academic tutoring to enable students to complete secondary or postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects;

(2) Advice and assistance in secondary and postsecondary course selection;

(3) Assistance in preparing for college entrance examinations and completing college admission applications;

(4)(i) Information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and

(ii) Assistance in completing financial aid applications, including the Free Application for Federal Student Aid;

(5) Guidance on and assistance in—

(i) Secondary school reentry;

(ii) Alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma;

(iii) Entry into general educational development (GED) programs; or

(iv) Entry into postsecondary education; and

(6) Education or counseling services designed to improve the financial literacy and economic literacy of students or the students' parents, including financial planning for postsecondary education.

(b) Any project that has received funds under this part for at least two years must include as part of its core curriculum in the next and succeeding years, instruction in—

(1) Mathematics through pre-calculus;

(2) Laboratory science;

(3) Foreign language;

(4) Composition; and

(5) Literature.

(Authority: 20 U.S.C. 1070a–13)

§ 645.12, 645.13, and 645.14 [Redesignated as § 645.13, 645.14, and 645.15]

74. Sections 645.12, 645.13, and 645.14 of subpart B of part 645 are redesignated as §§ 645.13, 645.14, and 645.15 of subpart B of part 645, respectively.

75. A new § 645.12 is added to subpart B of part 645 to read as follows:

§ 645.12 What services may regular Upward Bound and Upward Bound Math-Science projects provide?

Any project assisted under this part may provide such services as—

(a) Exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth;

(b) Information, activities, and instruction designed to acquaint youth participating in the project with the range of career options available to the youth;

(c) On-campus residential programs;

(d) Mentoring programs involving elementary school or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons;

(e) Work-study positions where youth participating in the project are exposed to careers requiring a postsecondary degree; and

(f) Programs and activities as described in § 645.11 or paragraphs (a)(1) through (a)(6) of this section that are specially designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary education, participants who are individuals with disabilities, participants who are homeless children and youths, participants in or who are aging out of foster care, or other disconnected participants.

(Authority: 20 U.S.C. 1070a–13)

76. Newly redesignated § 645.15 is amended by—

A. In the introductory text, removing the words “§ 645.11(a) and may be provided under § 645.11(b)” and adding, in their place, the citation “§ 645.11”;

B. In paragraph (b), removing the word “and”;

C. In paragraph (c), removing the punctuation “.” and adding, in its place, the word “; and”;

D. Adding a new paragraph (d).

The addition reads as follows:

§ 645.15 What additional services do Veterans Upward Bound projects provide?

* * * * *

(d) Provide special services, including mathematics and science preparation, to

enable veterans to make the transition to postsecondary education.

* * * * *

77. Section 645.20 is revised to read as follows:

§ 645.20 How many applications for an Upward Bound award may an eligible applicant submit?

(a) An applicant may submit more than one application as long as each application describes a project that serves a different target area or target school, or another designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–13, 1221e–3)

78. Section 645.21 is revised to read as follows:

§ 645.21 What assurances must an applicant include in an application?

(a) An applicant for a Regular Upward Bound award must assure the Secretary that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be low-income individuals, potential first-generation college students, or individuals who have a high risk for academic failure;

(3) No student will be denied participation in a project because the student would enter the project after the 9th grade; and

(4) Individuals who are receiving services from Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) project under 34 CFR part 694, another regular Upward Bound or Upward Bound Math and Science Centers project under this part, a Talent Search project under 34 CFR part 643, an Educational Opportunity Centers project under 34 CFR part 644, or other programs serving similar populations will not receive the same services under the proposed project.

(b) An applicant for an Upward Bound Math and Science Centers award must assure the Secretary that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be either low-income individuals or potential first-generation college students;

(3) No student will be denied participation in a project because the student would enter the project after the 9th grade; and

(4) Individuals who are receiving services from GEAR UP under 34 CFR part 694, a regular Upward Bound or another Upward Bound Math-Science Centers project under this part, a Talent Search project under 34 CFR part 643, an Educational Opportunity Centers project under 34 CFR part 644, or other programs serving similar populations will not receive the same services under the proposed project.

(c) An applicant for a Veterans Upward Bound award must assure the Secretary that—

- (1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;
- (2) The remaining participants will be low-income individuals, potential first-generation college students, or veterans who have a high risk for academic failure; and

(3) Individuals who are receiving services from another Veterans Upward Bound project under this part, a Talent Search project under 34 CFR part 643, an Educational Opportunity Centers project under 34 CFR part 644, or other programs serving similar populations will not receive the same services under the proposed project.

(Authority: 20 U.S.C. 1070a–13)

79. Section 645.30 is amended by:

A. In paragraph (a)(2)(i), removing the words “in delivering services” and adding, in their place, the words “of high quality service delivery (PE)”.

B. In paragraph (a)(2)(ii), adding the word “total” after the word “maximum” the first time it appears.

C. Adding new paragraphs (a)(2)(iii) through (a)(2)(v).

D. Revising paragraph (d).

The additions and revision read as follows:

§ 645.30 How does the Secretary decide which grants to make?

- (a) * * *
- (2) * * *

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

80. Section 645.31 is amended by:

A. Revising paragraph (b).

B. In paragraph (d)(2), adding the word “secondary” after the word “from”; and adding the words “institutions of higher education,” after the word “schools.”

The revision reads as follows:

§ 645.31 What selection criteria does the Secretary use?

* * * * *

(b) *Objectives* (9 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) For Regular Upward Bound and Upward Bound Math and Science Centers—

(i) (1 point) Academic performance (GPA);

(ii) (1 point) Academic performance (standardized test scores);

(iii) (2 points) Secondary school graduation (with regular secondary school diploma);

(iv) (1 point) Completion of rigorous secondary school program of study;

(v) (3 points) Postsecondary enrollment; and

(vi) (1 point) Postsecondary completion.

(2) For Veterans Upward Bound—

(i) (2 points) Academic performance (standardized test scores);

(ii) (3 points) Education program retention and completion;

(iii) (3 points) Postsecondary enrollment; and

(iv) (1 point) Postsecondary completion.

* * * * *

81. Section 645.32 is revised to read as follows:

§ 645.32 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 645.30(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Upward Bound project;

(2) Uses the approved project objectives for the applicant's expiring

Upward Bound grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award any PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE points are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) For the criteria specified in paragraphs (e)(1)(i) and (e)(2)(i) of this section (Number of participants), the Secretary does not award PE points if the applicant did not serve the approved number of participants.

(d) The Secretary uses the approved number of participants, or the actual number of participants served in a given year if greater than the approved number of participants, as the denominator for calculating whether the applicant has met its approved objectives related to the following PE criteria:

(1) Regular Upward Bound and Upward Bound Math and Science Centers PE criteria in paragraph (e)(1)(ii) of this section (Academic performance) and paragraph (e)(1)(iii) of this section (Secondary school retention and graduation).

(2) Veterans Upward Bound PE criteria in paragraph (e)(2)(ii) of this section (Academic improvement on standardized test) and paragraph (e)(2)(iii) of this section (Education program retention and completion).

(e) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) *Regular Upward Bound and Upward Bound Math and Science Centers.*

(i) (3 points) *Number of participants.* Whether the applicant provided services to the approved number of participants.

(ii) *Academic Performance.* (A) (1.5 points) Whether the applicant met or exceeded its approved objective with regard to the percentage of project participants that received a 2.5 grade point average or better on a 4.0 scale or its equivalent at the end of each school year.

(B) (1.5 points) Whether the applicant met or exceeded its approved objective

with regard to the percentage of project participants that performed at the proficient level on State assessments in reading/language arts and math.

(iii) (3 points) *Secondary school retention and graduation*. Whether the applicant met or exceeded its approved objective with regard to the percentage of participants who returned the next school year or graduated from secondary school with a regular secondary school diploma.

(iv) (1.5 points) *Rigorous secondary school program of study*. Whether the applicant met or exceeded its approved objective with regard to the percentage of current and prior participants with an expected high school graduation date in the school year who were enrolled in and completed a rigorous secondary school program of study.

(v) (3 points) *Postsecondary enrollment*. Whether the applicant met or exceeded its approved objective with regard to the percentage of current and prior participants with an expected high school graduation date in the school year who enrolled in a program of postsecondary education by the fall term immediately following the school year.

(vi) (1.5 points) *Postsecondary completion*. Whether the applicant met or exceeded its approved objective with regard to the percentage of postsecondary enrollees who attained a postsecondary degree within the number of years specified in the approved objective.

(2) *Veterans Upward Bound*.

(i) (3 points) *Number of participants*. Whether the applicant provided services to the approved number of participants.

(ii) (3 points) *Academic improvement on standardized test*. Whether the applicant met or exceeded its approved objective with regard to the percentage of participants who improved their academic performance during the project year as measured by a standardized test taken by participants before and after receiving services from the project.

(iii) (3 points) *Education program retention and completion*. Whether the applicant met or exceeded its approved objective with regard to the percentage of participants who remain enrolled in or completed their Veterans Upward Bound educational program during the project year.

(iv) (3 points) *Postsecondary enrollment*. Whether the applicant met or exceeded its approved objective with regard to the percentage of participants who enrolled in an institution of higher education during the project year or by the fall term immediately following the project year.

(v) (3 points) *Postsecondary completion*. Whether the applicant met or exceeded its approved objective with regard to the percentage of postsecondary enrollees who attained a postsecondary degree within the number of years specified in the approved objective.

(Approved by the Office of Management and Budget under control number 1840-NEW9) (Authority: 20 U.S.C. 1070a-11 and 1070a-13)

§ 645.33 [Amended]

82. Section 645.33 is amended by, in paragraph (b)(1), removing the amount “\$190,000” and adding, in its place, the amount “\$200,000”.

83. Section 645.34 is revised to read as follows:

§ 645.34 How long is a project period?

A project period under the Upward Bound program is five years.

(Authority: 20 U.S.C. 1070a-11)

84. A new § 645.35 is added to subpart D of part 645 to read as follows:

§ 645.35 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed*. (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed*. (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term “scoring error” does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;
(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or
(C) Any error by the applicant.

(c) *Procedures for the second review.*
(1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 645.30 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as discussed in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent

made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840-NEW4.)

(Authority: 20 U.S.C. 1070a-11)

85. Section 645.40 is amended by:
A. In the introductory text, removing the words "34 CFR part 74, subpart Q" and adding, in their place, the words "34 CFR 74.27, 75.530, and 80.22, as applicable".

B. Revising paragraph (n).

C. Redesignating paragraph (o) as paragraph (p).

D. Adding new paragraph (o).

The revision and addition read as follows:

§ 645.40 What are allowable costs?

* * * * *

(n) Purchase, lease, or rental of computer hardware, software, and other equipment and supplies that support the delivery of services to participants, including technology used by participants in a rigorous secondary school program of study.

(o) Purchase, lease, or rental of computer equipment and software needed for project administration and recordkeeping.

* * * * *

86. Section 645.42 is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 645.42 What are Upward Bound stipends?

* * * * *

(d) * * *

(1) * * *

(ii) The stipend may not exceed \$60 per month for the summer school recess for a period not to exceed three months, except that youth participating in a work-study position may be paid \$300 per month during the summer school recess.

* * * * *

87. Section 645.43 is amended by:

A. Removing paragraphs (a) and (b).

B. Adding a new paragraph (a).

C. Redesignating paragraph (c) as paragraph (b).

D. Adding an OMB control number parenthetical following paragraph (b).

The additions read as follows:

§ 645.43 What other requirements must a grantee meet?

(a) *Project director.* (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (a)(1) of this section if the applicant demonstrates that the requirement to administer no more than three programs will hinder effective coordination between the Regular Upward Bound, Upward Bound Math and Science or Veterans Upward Bound program and—

(i) One or more Federal TRIO programs (sections 402A through 402F of the HEA); or

(ii) One or more similar programs funded through other sources.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–NEW9.)

* * * * *

PART 646—STUDENT SUPPORT SERVICES

88. The authority citation for part 646 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–14, unless otherwise noted.

89. Section 646.1 is amended by:

A. In paragraph (a), adding the word “college” before the word “retention”.

B. Revising paragraph (c).

C. Adding new paragraph (d).

The revision and addition read as follows:

§ 646.1 What is the Student Support Services program?

* * * * *

(c) Foster an institutional climate supportive of the success of students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, individuals with disabilities, homeless children and youth, foster care youth, or other disconnected students; and

(d) Improve the financial literacy and economic literacy of students in areas such as—

(1) Basic personal income, household money management, and financial planning skills; and

(2) Basic economic decision-making skills.

* * * * *

90. Section 646.4 is revised to read as follows:

§ 646.4 What activities and services does a project provide?

(a) A Student Support Services project must provide the following services:

(1) Academic tutoring, directly or through other services provided by the institution, to enable students to complete postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects.

(2) Advice and assistance in postsecondary course selection.

(3)(i) Information on both the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and

(ii) Assistance in completing financial aid applications, including the Free Application for Federal Student Aid.

(4) Education or counseling services designed to improve the financial literacy and economic literacy of students, including financial planning for postsecondary education.

(5) Activities designed to assist students participating in the project in applying for admission to, and obtaining financial assistance for enrollment in, graduate and professional programs.

(6) Activities designed to assist students enrolled in two-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, a four-year program of postsecondary education.

(b) A Student Support Services project may provide the following services:

(1) Individualized counseling for personal, career, and academic matters provided by assigned counselors.

(2) Information, activities, and instruction designed to acquaint students participating in the project with the range of career options available to the students.

(3) Exposure to cultural events and academic programs not usually available to disadvantaged students.

(4) Mentoring programs involving faculty or upper class students, or a combination thereof.

(5) Securing temporary housing during breaks in the academic year for—

(i) Students who are homeless children and youths or were formerly homeless children and youths; and

(ii) Foster care youths.

(6) Programs and activities as described in paragraph (a) of this

section or paragraphs (b)(1) through (b)(4) of this section that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

(Authority: 20 U.S.C. 1070a–14)

91. Section 646.5 is revised to read as follows:

§ 646.5 How long is a project period?

A project period under the Student Support Services program is five years.

(Authority: 20 U.S.C. 1070a–11)

92. Section 646.6 is amended by revising paragraph (a) to read as follows:

§ 646.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215–75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

93. Section 646.7 is amended by:

A. Removing paragraph (a).

B. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

C. In newly redesignated paragraph (b), revising the definition of *Different campus*; removing the definition of *Different population of participants*; revising the definition of *Individual with disabilities*; and adding, in alphabetical order, new definitions for *Different population*, *Financial and economic literacy*, *First generation college student*, *Foster care youth*, *Homeless children and youth*, *Institution of higher education*, and *Low-income individual*.

The revisions and additions read as follows:

§ 646.7 What definitions apply?

* * * * *

(b) * * *

Different campus means a site of an institution of higher education that—

(1) Is geographically apart from the main campus of the institution;

(2) Is permanent in nature; and

(3) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential.

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Student Support Services program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, including but not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (e.g., loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for secondary education (e.g., spending, saving, personal budgeting);

(4) College cost of attendance (e.g., public vs. private, tuition vs. fees, personal costs);

(5) Scholarship, grant and loan education (e.g., searches, application processes, differences between private and government loans); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

First generation college student means—

(1) A student neither of whose natural or adoptive parents received a baccalaureate degree; or

(2) A student who, prior to the age of 18, regularly resided with and received support from only one parent and whose supporting parent did not receive a baccalaureate degree.

(3) An individual who, prior to the age of 18, did not regularly reside with or receive support from a natural or an adoptive parent.

Foster care youth means youth who are in foster care or are aging out of the foster care system.

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 1143a).

Individual with disabilities means a person who has a diagnosed physical or mental impairment that substantially limits that person's ability to participate in educational experiences and opportunities.

Institution of higher education means an educational institution as defined in sections 101 and 102 of the Act.

Low-income individual means an individual whose family's taxable income did not exceed 150 percent of the poverty level amount in the calendar year preceding the year in which the

individual initially participated in the project. The poverty level amount is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

* * * * *

94. Subpart B of part 646 is revised to read as follows:

Subpart B—How Does One Apply for an Award?

§ 646.10 How many applications may an eligible applicant submit and for what different populations may an eligible application be submitted?

(a) An eligible applicant may submit more than one application as long as each application describes a project that serves a different campus or a designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14; 20 U.S.C. 1221e–3)

§ 646.11 What assurances and other information must an applicant include in an application?

(a) An applicant must assure the Secretary in the application that—

(1) Not less than two-thirds of the project participants will be—

(i) Low-income individuals who are first generation college students; or

(ii) Individuals with disabilities;

(2) The remaining project participants will be low-income individuals, first generation college students, or individuals with disabilities; and

(3) Not less than one-third of the individuals with disabilities served also will be low-income individuals.

(b) The applicant must describe in the application its efforts, and where applicable, past history, in—

(1) Providing sufficient financial assistance to meet the full financial need of each student in the project; and

(2) Maintaining the loan burden of each student in the project at a manageable level.

(Approved by the Office of Management and Budget under control number 1840–1840–NEW5)

(Authority: 20 U.S.C. 1070a–14)

95. Section 646.20 is amended by:
A. In paragraph (a)(2)(i), removing the words “in delivering services” and adding, in their place, the words “of high quality service delivery (PE)”;
B. Revising paragraph (a)(2)(ii).

C. Adding new paragraphs (a)(2)(iii) through (a)(2)(v).

D. Revising paragraph (d).

The revisions and additions read as follows:

§ 646.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(ii) The maximum total score for all the criteria in § 646.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

96. Section 646.21 is amended by:

A. Revising paragraph (b).

B. Revising the OMB control number at the end of the section.

The revision reads as follows:

§ 646.21 What selection criteria does the Secretary use to evaluate an application?

* * * * *

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's proposed objectives in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources.

(1) (3 points) Retention in postsecondary education.

(2) (2 points) In good academic standing at grantee institution.

(3) Two-year institutions only. (i) (1 point) Certificate or degree completion; and

(ii) (2 points) Certificate or degree completion and transfer to a four-year institution.

(4) Four-year institutions only. (3 points) Completion of a baccalaureate degree.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–NEW5.)

* * * * *

97. Section 646.22 is revised to read as follows:

§ 646.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 646.20(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Student Support Services project;

(2) Uses the approved project objectives for the applicant's expiring Student Support Services grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of prior PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE points are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) For the criterion specified in paragraph (e)(1) of this section (Number of participants), the Secretary does not award PE points if the applicant did not serve the approved number of participants.

(d) The Secretary uses the approved number of participants, or the actual number of participants served in a given year if greater than the approved number of participants, as the denominator for calculating whether the applicant has met its approved objectives related to paragraph (e)(2) of this section (Postsecondary retention) and paragraph (e)(3) of this section (Good academic standing).

(e) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) Number of participants. Whether the applicant provided services to the approved number of participants.

(2) (4 points) Postsecondary retention. Whether the applicant met or exceeded its objective regarding the percentage of all participants served who continue to be enrolled in a program of postsecondary education from one academic year to the beginning of the next academic year or who complete a program of postsecondary education at the grantee institution during the academic year or transfer from a two-

year institution to a four-year institution during the academic year.

(3) (4 points) Good academic standing. Whether the applicant met or exceeded its objective regarding the percentage of all participants served who are in good academic standing at the grantee institution.

(4) (4 points) Degree completion (for an applicant institution of higher education offering primarily a baccalaureate or higher degree). Whether the applicant met or exceeded its objective regarding the percentage of participants receiving a baccalaureate degree at the grantee institution within the specified number of years.

(5) Degree completion and transfer (for an applicant institution of higher education offering primarily an associate degree). Whether the applicant met or exceeded its objectives regarding the percentage of participants who—

(i) (2 points) Complete a degree or certificate within the number of years specified in the approved objective; and

(ii) (2 points) Transfer within the number of years specified in the approved objective to institutions of higher education that offer baccalaureate degrees.

(Approved by the Office of Management and Budget under control number 1840-NEW10)

(Authority: 20 U.S.C. 1070a-11; 1070a-14)

§ 646.23 [Amended]

98. Section 646.23(b)(1) is amended by removing the amount "\$170,000" and adding, in its place, the amount "\$200,000".

99. A new § 646.24 is added to subpart C of part 646 to read as follows:

§ 646.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the

Federal Register notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes

errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term “scoring error” does not include—

(A) A peer reviewer’s appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.*

(1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 646.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers’ evaluations of the applicant’s application and the applicant’s PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department’s agent, or a peer reviewer made an administrative or scoring error as discussed in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has 15 calendar days after

receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary’s written notification.

(6) An applicant’s written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department’s agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant’s PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department’s agent or the peer reviewer made an administrative error that relates to the peer reviewers’ score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant’s peer reviewers’ score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers’ scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary’s determination of whether the applicant has met the requirements for a second review and the Secretary’s decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW5.)

(Authority: 20 U.S.C. 1070a–11)

100. Section 646.30 is amended by:

A. In the introductory text, removing the words “34 CFR part 74, subpart Q” and adding, in their place, the words “34 CFR 74.27, 75.530, and 80.22, as applicable”.

B. Revising paragraph (f).

C. Adding new paragraphs (i) and (j). The revision and additions read as follows:

§ 646.30 What are allowable costs?

* * * * *

(f) Purchase, lease, or rental of computer hardware, computer software, or other equipment for participant development, project administration, or project recordkeeping.

* * * * *

(i) Grant Aid to eligible students who—

(1) Are in their first two years of postsecondary education and who are receiving Federal Pell Grants under subpart 1 of part A of title IV of the Act; or

(2) Have completed their first two years of postsecondary education and who are receiving Federal Pell Grants under subpart 1 of part A of title IV of the Act if the institution demonstrates to the satisfaction of the Secretary that—

(i) These students are at high risk of dropping out; and

(ii) It will first meet the needs of all its eligible first- and second-year

students for services under this paragraph.

(j) Temporary housing during breaks in the academic year for—

- (1) Students who are homeless children and youths or were formerly homeless children and youths; and
- (2) Students who are foster care youth.

* * * * *

§ 646.31 [Amended]

101. Section 646.31(b) is amended by adding the words “, except for Grant aid under § 646.30(i)” after the word “support”.

§ 646.32 [Amended]

102. Section 646.32 is amended by:

- A. In paragraph (a)(2), removing the words “Higher Education”.
- B. Revising paragraph (c).
- C. In the OMB control number parenthetical following paragraph (d), removing the numbers “1840–0017” and adding, in its place, the numbers “1840–NEW5”.

The revisions read as follows:

§ 646.32 What other requirements must a grantee meet?

* * * * *

(c) *Project director*. (1) A grantee must employ a full-time project director unless—

- (i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or
- (ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (c)(1) of this section if the applicant demonstrates that the requirement to administer no more than three programs will hinder effective coordination between the Student Support Services program and—

- (i) One or more Federal TRIO programs (sections 402A through 402F of the HEA); or
- (ii) One or more similar programs funded through other sources.

* * * * *

103. Section 646.33 is added to subpart D of part 646 to read as follows:

§ 646.33 What are the matching requirements for a grantee that uses Student Support Services program funds for student Grant aid?

(a) Except for grantees described in paragraph (b) of this section, a grantee that uses Student Support Services program funds for Grant aid to eligible students described in § 646.30(i) must—

(1) Match the Federal funds used for Grant aid, in cash, from non-Federal funds, in an amount that is not less than 33 percent of the total amount of Federal grant funds used for Grant aid; and

(2) Use no more than 20 percent of the Federal program funds awarded the grantee each year for Grant aid.

(b) A grant recipient that is an institution of higher education eligible to receive funds under part A or B of title III or title V of the HEA, as amended, is not required to match the Federal funds used for Grant aid.

(Approved by the Office of Management and Budget under control number 1840–NEW10.)

(Authority: 20 U.S.C. 1070a–11)

PART 647—RONALD E. MCNAIR POSTBACCALAUREATE ACHIEVEMENT PROGRAM

104. The authority citation for part 647 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–15, unless otherwise noted.

105. Section 647.4 is revised to read as follows:

§ 647.4 What activities and services does a project provide?

(a) A McNair project must provide the following services and activities:

- (1) Opportunities for research or other scholarly activities at the grantee institution or at graduate centers that are designed to provide students with effective preparation for doctoral study.
- (2) Summer internships.
- (3) Seminars and other educational activities designed to prepare students for doctoral study.
- (4) Tutoring.
- (5) Academic counseling.
- (6) Assistance to students in securing admission to, and financial assistance for, enrollment in graduate programs.

(b) A McNair project may provide the following services and activities:

- (1) Education or counseling services designed to improve the financial literacy and economic literacy of students, including financial planning for postsecondary education.
- (2) Mentoring programs involving faculty members at institutions of higher education, students, or a combination of faculty members and students.
- (3) Exposure to cultural events and academic programs not usually available to disadvantaged students.

(Authority: 20 U.S.C. 1070a–15)

106. Section 647.5 is revised to read as follows:

§ 647.5 How long is a project period?

A project period under the McNair program is five years.

(Authority: 20 U.S.C. 1070a–11)

107. Section 647.6 is amended by revising paragraph (a) to read as follows:

§ 647.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215–75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

108. Section 647.7(b) is amended by:

- A. Removing the definition of *Summer internship*.

B. In the definition of *Graduate center*, revising the introductory text.

C. Revising the definition of *Groups underrepresented in graduate education*.

D. Revising the definition of *Institution of higher education*.

E. Adding, in alphabetical order, new definitions for *Different campus*, *Different population*, *Financial and economic literacy*, and *Research or scholarly activity*.

The revisions and additions read as follows:

§ 647.7 What definitions apply?

* * * * *

(b) * * *

Different campus means a site of an institution of higher education that—

- (1) Is geographically apart from the main campus of the institution;
- (2) Is permanent in nature; and
- (3) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential.

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the McNair TRIO program and that—

- (1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or
- (2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, including but not limited to knowledge about—

- (1) Personal and family budget planning;
- (2) Understanding credit building principles to meet long-term and short-term goals (e.g., loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary education (e.g., spending, saving, personal budgeting);

(4) College cost of attendance (e.g., public vs. private, tuition vs. fees, personal costs);

(5) Scholarship, grant and loan education (e.g., searches, application processes, and differences between private and government loans); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

* * * * *

Graduate center means an institution of higher education as defined in sections 101 and 102 of the HEA; and that—

* * * * *

Groups underrepresented in graduate education. The following ethnic and racial groups are considered underrepresented in graduate education: Black (non-Hispanic), Hispanic, American Indian, Alaskan Native (as defined in section 7306 of the Elementary and Secondary Education Act of 1965, as amended (ESEA)), Native Hawaiians (as defined in section 7207 of the ESEA), and Native American Pacific Islanders (as defined in section 320 of the HEA).

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

* * * * *

Research or scholarly activity means an educational activity that is more rigorous than is typically available to undergraduates in a classroom setting, that is definitive in its start and end dates, contains appropriate benchmarks for completion of various components, and is conducted under the guidance of an appropriate faculty member with experience in the relevant discipline.

* * * * *

Subpart B—How Does One Apply for an Award?

109. Subpart B of part 647 is amended by revising the subpart heading to read as set forth above.

§ 647.10 [Redesignated as § 647.11]

109a. Redesignate § 647.10 as § 647.11.

110. Section 647.10 is added to subpart B of part 647 to read as follows:

§ 647.10 How many applications may an eligible applicant submit?

(a) An applicant may submit more than one application for McNair grants as long as each application describes a project that serves a different campus or a designated different population.

(b) For each grant competition, the Secretary designates, in the Federal Register notice inviting applications and the other published application

materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–15; 20 U.S.C. 1221e–3)

111. Section 647.20 is amended by:

A. In paragraph (a)(2)(i), adding the words “of high quality service delivery (PE)” after the words “prior experience”.

B. Revising paragraph (a)(2)(ii).

C. Adding new paragraphs (a)(2)(iv), (a)(2)(v), and (a)(2)(vi).

D. Revising paragraph (d).

The revisions and addition read as follows:

§ 647.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(ii) The maximum total score for all the criteria in § 647.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

* * * * *

(iv) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the Federal Register notice inviting applications and the other published application materials for the competition.

(v) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(vi) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant’s prior project involved the fraudulent use of program funds.

* * * * *

112. Section 647.21 is amended by:

A. Revising paragraph (b).

B. Adding an OMB control number parenthetical following paragraph (d).

The revision and addition read as follows:

§ 647.21 What selection criteria does the Secretary use?

* * * * *

(b) Objectives (9 points). The Secretary evaluates the quality of the applicant’s objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project’s plan of operation, budget, and other resources:

(1) (2 points) Research.

(2) (3 points) Enrollment in a graduate program.

(3) (2 points) Continued enrollment in graduate study.

(4) (2 points) Doctoral degree attainment.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–NEW6)

* * * * *

113. Section 647.22 is revised to read as follows:

§ 647.22 How does the Secretary evaluate prior experience?

(a) In the case of an applicant described in § 647.20(a)(2)(i), the Secretary—

(1) Evaluates an applicant’s performance under its expiring McNair project;

(2) Uses the approved project objectives for the applicant’s expiring McNair grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) For the criteria specified in paragraph (e)(1) of this section (Number of participants), the Secretary does not award any PE points if the applicant did not serve the approved number of participants.

(d) The Secretary uses the approved number of participants, or the actual number of participants served in a given year if greater than the approved number of participants, as the denominator for calculating whether the applicant has met its approved objective related to paragraph (e)(2) of this section (Research and scholarly activities).

(e) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant’s PE on the basis of the following outcome criteria:

(1) (3 points) Number of participants. Whether the applicant provided services to the approved number of participants.

(2) (3 points) Research and scholarly activities. Whether the applicant met or exceeded its objective for providing

participants with appropriate research and scholarly activities each academic year.

(3) (3 points) Graduate school enrollment. Whether the applicant met or exceeded its objective with regard to the acceptance and enrollment in graduate programs of participants who complete the baccalaureate program during the academic year.

(4) (4 points) Continued enrollment in graduate school. Whether the applicant met or exceeded its objective with regard to the continued enrollment in graduate school of prior participants.

(5) (2 points) Doctoral degree attainment. Whether the applicant met or exceeded its objective with regard to the attainment of doctoral level degrees of prior participants in the specified number of years.

(Approved by the Office of Management and Budget under control number 1840-NEW11.)

(Authority: 20 U.S.C. 1070a-11 and 1070a-15)

§ 647.23 [Amended]

114. Section 647.23 is amended by:

A. In paragraph (b), introductory text, removing the words “beginning in fiscal year 1995”.

B. In paragraph (b)(1), removing the amount “\$190,000” and adding, in its place, the amount “\$200,000”.

115. Section 647.24 is added to subpart C of part 647 to read as follows:

§ 647.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the

competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term “scoring error” does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.*

(1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 647.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as discussed in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to a designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the

Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840-NEW6.)

(Authority: 20 U.S.C. 1070a-11)

116. Section 647.30 amended by:

A. In paragraph (b), removing the amount "\$2,400" and, adding, in its place, the amount "\$2,800".

B. Revising paragraph (d).

The revision reads as follows:

§ 647.30 What are allowable costs?

* * * * *

(d) Purchase, lease, or rental of computer hardware, computer software, or other equipment for participant development, project administration, or project recordkeeping.

117. Section 647.32 is amended by adding an OMB control number parenthetical following paragraph (d) to read as follows:

§ 647.32 What other requirements must a grantee meet?

* * * * *

(Approved by the Office of Management and Budget under control number 1840-NEW11.)

* * * * *

PART 694—GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)

118. The authority citation for part 694 continues to read as follows:

Authority: 20 U.S.C. 1070a-21 to 1070a-28.

119. Section 694.1 is amended by revising paragraph (a), introductory text to read as follows:

§ 694.1 What is the maximum amount that the Secretary may award each fiscal year to a Partnership or a State under this program?

(a) *Partnership grants.* The Secretary may establish the maximum amount that may be awarded each fiscal year for a GEAR UP Partnership grant in a notice published in the **Federal Register**. The maximum amount for which a Partnership may apply may not exceed the lesser of the maximum amount established by the Secretary, if applicable, or the amount calculated by multiplying—

* * * * *

120. Section 694.4 is amended by revising paragraph (b)(2) to read as follows:

§ 694.4 Which students must a State or Partnership serve when there are changes in the cohort?

* * * * *

(b) * * *

(2) Must continue to provide GEAR UP services to at least those students in the cohort who attend one or more participating schools that together enroll a substantial majority of the students in the cohort.

* * * * *

121. Section 694.7 is revised to read as follows:

§ 694.7 What are the matching requirements for a GEAR UP grant?

(a) In order to be eligible for GEAR UP funding—

(1) An applicant must state in its application the percentage of the cost of the GEAR UP project the applicant will provide for each year from non-Federal funds, subject to the requirements in paragraph (b) of this section; and

(2) A grantee must make substantial progress towards meeting the matching percentage stated in its approved application for each year of the project period.

(b) Except as provided in §§ 694.8 and 694.9, the non-Federal share of the cost of the GEAR UP project must be not less than 50 percent of the total cost of the project (*i.e.*, one dollar of non-Federal contributions for every one dollar of Federal funds obligated for the project) over the project period.

(c) The non-Federal share of the cost of a GEAR UP project may be provided in cash or in-kind.

(Authority: 20 U.S.C. 1070a-23)

122. Part 694 is amended by redesignating §§ 694.8, 694.9, 694.10, 694.11, 694.12, 694.13, and 694.15 as follows:

Old section	New section
§ 694.8	§ 694.10
§ 694.9	§ 694.11
§ 694.10	§ 694.13
§ 694.11	§ 694.15
§ 694.12	§ 694.17
§ 694.13	§ 694.18
§ 694.15	§ 694.19

123. New § 694.8 is added to read as follows:

§ 694.8 Under what conditions may the Secretary approve a request from a Partnership applying for a GEAR UP grant to waive a portion of the matching requirement?

(a) The Secretary may approve a Partnership applicant's request for a waiver of up to 75 percent of the matching requirement for up to two years if the applicant demonstrates in its application a significant economic hardship that stems from a specific, exceptional, or uncontrollable event, such as a natural disaster, that has a devastating effect on the members of the Partnership and the community in which the project would operate.

(b)(1) The Secretary may approve a Partnership applicant's request to waive up to 50 percent of the matching requirement for up to two years if the applicant demonstrates in its application a pre-existing and an on-going significant economic hardship that precludes the applicant from meeting its matching requirement.

(2) In determining whether an applicant is experiencing an on-going economic hardship that is significant enough to justify a waiver under this paragraph, the Secretary considers documentation of such factors as:

(i) Severe distress in the local economy of the community to be served by the grant (*e.g.*, there are few employers in the local area, large employers have left the local area, or significant reductions in employment in the local area).

(ii) Local unemployment rates that are higher than the national average.

(iii) Low or decreasing revenues for State and County governments in the area to be served by the grant.

(iv) Significant reductions in the budgets of institutions of higher education that are participating in the grant.

(v) Other data that reflect a significant economic hardship for the geographical area served by the applicant.

(3) At the time of application, the Secretary may provide tentative approval of an applicant's request for a waiver under paragraph (b)(1) of this section for all remaining years of the project period. Grantees that receive

tentative approval of a waiver for more than two years under this paragraph must submit to the Secretary every two years by such time as the Secretary may direct documentation that demonstrates that—

(i) The significant economic hardship upon which the waiver was granted still exists; and

(ii) The grantee tried diligently, but unsuccessfully, to obtain contributions needed to meet the matching requirement.

(c) The Secretary may approve a Partnership applicant's request in its application to match its contributions to its scholarship fund, established under section 404E of the HEA, on the basis of two non-Federal dollars for every one Federal dollar of GEAR UP funds.

(d) The Secretary may approve a request by a Partnership applicant that has three or fewer institutions of higher education as members to waive up to 70 percent of the matching requirement if the Partnership applicant includes—

(1) A fiscal agent that is eligible to receive funds under title V, or Part B of title III, or section 316 or 317 of the HEA, or a local educational agency;

(2) Only participating schools with a 7th grade cohort in which at least 75 percent of the students are eligible for free or reduced-price lunch under the Richard B. Russell National School Lunch Act; and

(3) Only local educational agencies in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the Richard B. Russell National School Lunch Act.

(Authority: 20 U.S.C. 1070a–23)

124. New § 694.9 is added to read as follows:

§ 694.9 Under what conditions may the Secretary approve a request from a Partnership that has received a GEAR UP grant to waive a portion of the matching requirement?

(a) After a grant is awarded, the Secretary may approve a Partnership grantee's written request for a waiver of up to—

(1) 50 percent of the matching requirement for up to two years if the grantee demonstrates that—

(i) The matching contributions described for those two years in the grantee's approved application are no longer available; and

(ii) The grantee has exhausted all funds and sources of potential contributions for replacing the matching funds.

(2) 75 percent of the matching requirement for up to two years if the grantee demonstrates that matching contributions from the original

application are no longer available due to an uncontrollable event, such as a natural disaster, that has a devastating economic effect on members of the Partnership and the community in which the project would operate.

(b) In determining whether the grantee has exhausted all funds and sources of potential contributions for replacing matching funds, the Secretary considers the grantee's documentation of key factors such as the following and their direct impact on the grantee:

(1) A reduction of revenues from State government, County government, or the local educational agency (LEA).

(2) An increase in local unemployment rates.

(3) Significant reductions in the operating budgets of institutions of higher education that are participating in the grant.

(4) A reduction of business activity in the local area (*e.g.*, large employers have left the local area).

(5) Other data that reflect a significant decrease in resources available to the grantee in the local geographical area served by the grantee.

(c) If a grantee has received one or more waivers under this section or under § 694.8, the grantee may request an additional waiver of the matching requirement under this section no earlier than 60 days before the expiration of the grantee's existing waiver.

(d) The Secretary may grant an additional waiver request for up to 50 percent of the matching requirement for a period of up to two years beyond the expiration of any previous waiver.

(Authority: 20 U.S.C. 1070a–23)

125. New § 694.12 is added to read as follows:

§ 694.12 Under what conditions do State and Partnership GEAR UP grantees make section 404E scholarship awards?

(a)(1) *State Grantees.* All State grantees must establish or maintain a financial assistance program that awards section 404E scholarships to students in accordance with the requirements of § 694.13 or § 694.14, as applicable.

(2) *Partnership Grantees.* Partnerships may, but are not required, to award scholarships to eligible students. If a Partnership awards scholarships to eligible students pursuant to section 404E of the HEA, it must comply with the requirements of § 694.13 or § 694.14, as applicable.

(b)(1) *Section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008.* A State or Partnership grantee making section 404E

scholarship awards using funds from GEAR UP grant awards that were made prior to August 14, 2008, must provide such scholarship awards in accordance with the requirements of § 694.13 unless it elects to provide the scholarships in accordance with the requirements of § 694.14 pursuant to paragraph (b)(2) of this section.

(2) *Election to use § 694.14 requirements.* A State or Partnership grantee making section 404E scholarship awards using funds from GEAR UP grant awards that were made prior to August 14, 2008, may provide such scholarship awards in accordance with the requirements of § 694.14 (rather than the requirements of § 694.13) provided that the grantee—

(i) Informs the Secretary, in writing, of its election to make the section 404E scholarship awards in accordance with the requirements of § 694.14; and

(ii) Such election does not decrease the amount of the scholarship promised to any individual student under the grant.

(c) *Section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made on or after August 14, 2008.* A State or Partnership grantee making section 404E scholarship awards using funds from GEAR UP grant awards that were made on or after August 14, 2008, must provide such scholarship awards in accordance with the requirements of § 694.14.

(Authority: 20 U.S.C. 1070a–25)

126. Newly redesignated § 694.13 is revised to read as follows:

§ 694.13 What are the requirements concerning section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008?

The following requirements apply to section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008 unless the grantee elects to provide such scholarship awards in accordance with the requirements of § 694.14 pursuant to § 694.12(b)(2).

(a)(1) The maximum scholarship amount that an eligible student may receive under this section must be established by the grantee.

(2) The minimum scholarship amount that an eligible student receives in a fiscal year pursuant to this section must not be less than the lesser of—

(i) 75 percent of the average cost of attendance for an in-State student, in a four-year program of instruction, at public institutions of higher education in the student's State; or

(ii) The maximum Federal Pell Grant award funded under section 401 of the HEA for the award year in which the scholarship is awarded.

(3) If an eligible student who is awarded a GEAR UP scholarship attends an institution of higher education on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount, but in no case may the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

(b) Scholarships provided under this section may not be considered for the purpose of awarding Federal grant assistance under title IV of the HEA, except that in no case may the total amount of student financial assistance awarded to a student under title IV of the HEA exceed the student's total cost of attendance.

(c) Grantees providing section 404E scholarship awards in accordance with this section—

(1) Must award GEAR UP scholarships first to students who will receive, or are eligible to receive, a Federal Pell Grant during the award year in which the GEAR UP scholarship is being awarded; and

(2) May, if GEAR UP scholarship funds remain after awarding scholarships to students under paragraph (c)(1) of this section, award GEAR UP scholarships to other eligible students (*i.e.*, students who are not eligible to receive a Federal Pell Grant) after considering the need of those students for GEAR UP scholarships.

(d) For purposes of this section, an eligible student is a student who—

(1) Is less than 22 years old at the time of award of the student's first GEAR UP scholarship;

(2) Has received a secondary school diploma or its recognized equivalent on or after January 1, 1993;

(3) Is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education that is located within the State's boundaries, except that, at the grantee's option, a State or Partnership may offer scholarships to students who attend institutions of higher education outside the State; and

(4) Has participated in activities under § 694.21 or § 694.22.

(e) A State using a priority approach may award scholarships under paragraph (a) of this section to eligible students identified by priority at any time during the grant award period rather than reserving scholarship funds

for use only in the seventh year of a project or after the grant award period.

(f) A State or a Partnership that makes scholarship awards from GEAR UP funds in accordance with this section must award continuation scholarships in successive award years to each student who received an initial scholarship and who is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

127. New § 694.14 is added to read as follows:

§ 694.14 What are the requirements concerning section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made on or after August 14, 2008?

The following requirements apply to section 404E scholarship awards provided by grantees whose initial GEAR UP grant awards were made on or after August 14, 2008 and any section 404E scholarship awards for grantees whose initial GEAR UP grant awards were issued prior to August 14, 2008, but who, pursuant to § 694.12(b)(2), elected to use the § 694.14 requirements (rather than the § 694.13 requirements).

(a)(1) The maximum scholarship amount that an eligible student may receive under section 404E of the HEA must be established by the grantee.

(2) The minimum scholarship amount that an eligible student receives in a fiscal year must not be less than the minimum Federal Pell Grant award under section 401 of the HEA at the time of award.

(3) If an eligible student who is awarded a GEAR UP scholarship attends an institution of higher education on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount, but in no case may the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

(b) For purposes of this section, an eligible student is a student who—

(1) Is less than 22 years old at the time of award of the first GEAR UP scholarship;

(2) Has received a secondary school diploma or its recognized equivalent on or after January 1, 1993;

(3) Is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education that is located within the State's boundaries, except that, at the grantee's option, a State or Partnership may offer scholarships to students who attend

institutions of higher education outside the State; and

(4) Has participated in the activities required under § 694.21.

(c)(1) By the time students who have received services from a State grant have completed the twelfth grade, a State that has not received a waiver under section 404E(b)(2) of the HEA of the requirement to spend at least 50 percent of its GEAR UP funds on scholarships must have in reserve an amount that is not less than the minimum Federal Pell Grant multiplied by the number of students the State estimates will enroll in an institution of higher education.

(2) Consistent with paragraph (a) of this section and § 694.16(a), States must use funds held in reserve to make scholarships to eligible students.

(3) Scholarships must be made to all students who are eligible under the definition in paragraph (b) of this section. A grantee may not impose additional eligibility criteria that would have the effect of limiting or denying a scholarship to an eligible student.

(d) A State using a priority approach may award scholarships under paragraph (a) of this section to eligible students identified by priority at any time during the grant award period rather than reserving scholarship funds for use only in the seventh year of a project or after the grant award period.

(e) States providing scholarships must provide information on the eligibility requirements for the scholarships to all participating students upon the students' entry into the GEAR UP program.

(f) A State must provide scholarship funds as described in this section to all eligible students who attend an institution of higher education in the State, and may provide these scholarship funds to eligible students who attend institutions of higher education outside the State.

(g) A State or a Partnership that chooses to participate in the scholarship component in accordance with section 404E of the HEA may award continuation scholarships in successive award years to each student who received an initial scholarship and who is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education.

(h) A GEAR UP scholarship, provided under section 404E of the HEA, may not be considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA, except that in no case may the total amount of student financial assistance awarded to a student under title IV of the HEA exceed the student's total cost of attendance.

(Authority: 20 U.S.C. 1070a–25)

128. Newly redesignated § 694.15 is revised to read as follows:

§ 694.15 May a Partnership that does not award scholarships under section 404E of the HEA provide, as part of a GEAR UP project, financial assistance for postsecondary education using non-Federal funds?

A GEAR UP Partnership that does not participate in the GEAR UP scholarship component may provide financial assistance for postsecondary education with non-Federal funds, and those funds may be used to satisfy the matching requirement.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

129. Section 694.16 is added to read as follows:

§ 694.16 What are the requirements for redistribution or return of scholarship funds not awarded to a project's eligible students?

The following requirements apply only to section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made on or after August 14, 2008, and to any section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008, but who, pursuant to § 694.12(b)(2), elect to use the § 694.14 requirements (rather than the § 694.13 requirements):

(a) Scholarship funds held in reserve by States under § 694.14(c) or by Partnerships under section 404D(b)(7) of the HEA that are not used by eligible students as defined in § 694.14(b) within six years of the students' scheduled completion of secondary school may be redistributed by the grantee to other eligible students.

(b) Any Federal scholarship funds that are not used by eligible students within six years of the students' scheduled completion of secondary school, and are not redistributed by the grantee to other eligible students, must be returned to the Secretary within 45 days after the six-year period for expending the scholarship funds expires.

(c) Grantees that reserve funds for scholarships must annually furnish information, as the Secretary may require, on the amount of Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds to eligible students until these funds are fully expended or returned to the Secretary.

(d) A scholarship fund is subject to audit or monitoring by authorized representatives of the Secretary throughout the life of the fund.

(Authority: 20 U.S.C. 1070a–25(e))

130. Newly redesignated § 694.18 is revised to read as follows:

§ 694.18 What requirements must be met by a Partnership or State participating in GEAR UP with respect to 21st Century Scholarship Certificates?

(a) A State or Partnership must provide, in accordance with procedures the Secretary may specify, a 21st Century Scholar Certificate to each student participating in its GEAR UP project.

(b) 21st Century Scholarship Certificates must be personalized and indicate the amount of Federal financial aid for college and the estimated amount of any scholarship provided under section 404E of the HEA, if applicable, that a student may be eligible to receive.

(Authority: 20 U.S.C. 1070a–26)

131. Newly redesignated § 694.19 is revised to read as follows:

§ 694.19 What priorities does the Secretary establish for a GEAR UP grant?

The Secretary awards competitive preference priority points to an eligible applicant for a State grant that has both—

(a) Carried out a successful State GEAR UP grant prior to August 14, 2008, determined on the basis of data (including outcome data) submitted by the applicant as part of its annual and final performance reports, and the applicant's history of compliance with applicable statutory and regulatory requirements; and

(b) A prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

(Authority: 20 U.S.C. 1070a–21(b))

132. New § 694.20 is added to read as follows:

§ 694.20 When may a GEAR UP grantee provide services to students attending an institution of higher education?

(a) The Secretary authorizes an eligible State or Partnership to provide GEAR UP services to students attending an institution of higher education if the State or Partnership—

(1) Applies for and receives a new GEAR UP award after August 14, 2008, and

(2) In its application, requested a seventh year so that it may continue to provide services to students through their first year of attendance at an institution of higher education.

(b) A State grantee that uses a priority (rather than or in addition to a cohort)

approach to identify participating students may, consistent with its approved application and at any time during the project period, provide services to students during their first year of attendance at an institution of higher education, provided that the grantee continues to provide all required services throughout the Federal budget period to GEAR UP students still enrolled in a local educational agency.

(c) If a grantee is awarded a seven year grant, consistent with the grantee's approved application, during the seventh year of the grant the grantee—

(1) Must provide services to students in their first year of attendance at an institution of higher education; and

(2) May choose to provide services to high school students who have yet to graduate.

(d) Grantees that continue to provide services under this part to students through their first year of attendance at an institution of higher education must, to the extent practicable, coordinate with other campus programs, including academic support services to enhance, not duplicate service.

(Authority: 20 U.S.C. 1070a–21(b)(2))

133. New § 694.21 is added to read as follows:

§ 694.21 What are required activities for GEAR UP projects?

A grantee must provide comprehensive mentoring, outreach, and supportive services to students participating in the GEAR UP program. These services must include the following activities:

(a) Providing information regarding financial aid for postsecondary education to eligible participating students.

(b) Encouraging student enrollment in rigorous and challenging curricula and coursework, in order to reduce the need for remedial coursework at the postsecondary level.

(c) Implementing activities to improve the number of participating students who—

(1) Obtain a secondary school diploma, and

(2) Complete applications for, and enroll in, a program of postsecondary education.

(d) In the case of a State grantee that has not received a 100-percent waiver under section 404E(b)(2) of the HEA, providing scholarships in accordance with section 404E of the HEA.

(Authority: 20 U.S.C. 1070a–24(a))

134. New § 694.22 is added to read as follows:

§ 694.22 What other activities may all GEAR UP projects provide?

A grantee may use grant funds to carry out one or more of the following services and activities:

(a) Providing tutors and mentors, who may include adults or former participants in a GEAR UP program, for eligible students.

(b) Conducting outreach activities to recruit priority students (identified in section 404D(d) of the HEA) to participate in program activities.

(c) Providing supportive services to eligible students.

(d) Supporting the development or implementation of rigorous academic curricula, which may include college preparatory, Advanced Placement, or International Baccalaureate programs, and providing participating students access to rigorous core academic courses that reflect challenging State academic standards.

(e) Supporting dual or concurrent enrollment programs between the secondary school and institution of higher education partners of a GEAR UP Partnership, and other activities that support participating students in—

(1) Meeting challenging State academic standards;

(2) Successfully applying for postsecondary education;

(3) Successfully applying for student financial aid; and

(4) Developing graduation and career plans, including career awareness and planning assistance as they relate to a rigorous academic curriculum.

(f) Providing special programs or tutoring in science, technology, engineering, or mathematics.

(g) For Partnerships, providing scholarships described in section 404E of the HEA, and for all grantees providing appropriate administrative support for GEAR UP scholarships.

(h) Introducing eligible students to institutions of higher education, through trips and school-based sessions.

(i) Providing an intensive extended school day, school year, or summer program that offers—

(1) Additional academic classes; or

(2) Assistance with college admission applications.

(j) Providing other activities designed to ensure secondary school completion and postsecondary education

enrollment of at-risk children, such as:

(1) Identification of at-risk children.

(2) After-school and summer tutoring.

(3) Assistance to at-risk children in obtaining summer jobs.

(4) Academic counseling.

(5) Financial and economic literacy education or counseling.

(6) Volunteer and parent involvement.

(7) Encouraging former or current participants of a GEAR UP program to serve as peer counselors.

(8) Skills assessments.

(9) Personal and family counseling, and home visits.

(10) Staff development.

(11) Programs and activities that are specially designed for students who are limited English proficient.

(k) Enabling eligible students to enroll in Advanced Placement or International Baccalaureate courses, or college entrance examination preparation courses.

(l) Providing services to eligible students in the participating cohort described in § 694.3 through the first year of attendance at an institution of higher education.

(m) Fostering and improving parent and family involvement in elementary and secondary education by promoting the advantages of a college education, and emphasizing academic admission requirements and the need to take college preparation courses, through parent engagement and leadership activities.

(n) Disseminating information that promotes the importance of higher education, explains college preparation and admission requirements, and raises awareness of the resources and services provided by the eligible entities to eligible students, their families, and communities.

(o) For a GEAR UP Partnership grant, in the event that matching funds described in the approved application are no longer available, engaging other potential partners in a collaborative manner to provide matching resources and to participate in other activities authorized in §§ 694.21, 694.22, and 694.23.

(Authority: 20 U.S.C. 1070a–24(b))

135. New § 694.23 is added to read as follows:

§ 694.23 What additional activities are allowable for State GEAR UP projects?

In addition to the required and permissible activities identified in §§ 694.21 and 694.22, a State may use grant funds to carry out one or more of the following services and activities:

(a) Providing technical assistance to—

(1) Secondary schools that are located within the State; or

(2) Partnerships that are eligible to apply for a GEAR UP grant and that are located within the State.

(b) Providing professional development opportunities to individuals working with eligible cohorts of students.

(c) Providing administrative support to help build the capacity of Partnerships to compete for and manage grants awarded under the GEAR UP program.

(d) Providing strategies and activities that align efforts in the State to prepare eligible students to attend and succeed in postsecondary education, which may include the development of graduation and career plans.

(e) Disseminating information on the use of scientifically valid research and best practices to improve services for eligible students.

(f)(1) Disseminating information on effective coursework and support services that assist students in achieving the goals described in paragraph (f)(2)(ii) of this section, and

(2) Identifying and disseminating information on best practices with respect to—

(i) Increasing parental involvement; and

(ii) Preparing students, including students with disabilities and students who are limited English proficient, to succeed academically in, and prepare financially for, postsecondary education.

(g) Working to align State academic standards and curricula with the expectations of postsecondary institutions and employers.

(h) Developing alternatives to traditional secondary school that give students a head start on attaining a recognized postsecondary credential (including an industry-recognized certificate, an apprenticeship, or an associate's or a bachelor's degree), including school designs that give students early exposure to college-level

courses and experiences and allow students to earn transferable college credits or an associate's degree at the same time as a secondary school diploma.

(i) Creating community college programs for individuals who have dropped out of high school that are personalized drop-out recovery programs, and that allow drop-outs to complete a secondary school diploma and begin college-level work.

(Authority: 20 U.S.C. 1070a–24)

136. New § 694.24 is added to read as follows:

§ 694.24 What services may a GEAR UP project provide to students in their first year at an institution of higher education?

Consistent with their approved applications and § 694.20, a grantee may provide any services to students in their first year of attendance at an institution of higher education that will help those students succeed in school, and that do not duplicate services otherwise available to them. Examples of services that may be provided include—

(a) Orientation services including introduction to on-campus services and resources;

(b) On-going counseling to students either in person or through electronic or other means of correspondence;

(c) Assistance with course selection for the second year of postsecondary education;

(d) Assistance with choosing and declaring an academic major;

(e) Assistance regarding academic, social, and personal areas of need;

(f) Referrals to providers of appropriate services;

(g) Tutoring, mentoring, and supplemental academic support;

(h) Assistance with financial planning;

(i) Career counseling and advising services; or

(j) Advising students about transferring to other schools.

(Authority: 20 U.S.C. 1070a–24)

137. New § 694.25 is added to read as follows:

§ 694.25 Are GEAR UP grantees required to provide services to students who were served under a previous GEAR UP grant?

If a Partnership or State is awarded a GEAR UP grant on or after August 14, 2008 (*i.e.*, initial grant), the grant ends before all students who received GEAR UP services under the grant have completed the twelfth grade, and the grantee receives a new award in a subsequent GEAR UP competition (*i.e.*, new grant), the grantee must—

(a) Continue to provide services required by or authorized under §§ 694.21, 694.22, and 694.23 to all students who received GEAR UP services under the initial grant and remain enrolled in secondary schools until they complete the twelfth grade; and

(b) Provide the services specified in paragraph (a) of this section by using Federal GEAR UP funds awarded for the new grant or funds from the non-Federal matching contribution required under the new grant.

(Authority: 20 U.S.C. 1070a–21(b)(3)(B) and 1070a–22(d)(1)(C))

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