

**DEPARTMENT OF EDUCATION****Notice of Final Priorities, Requirements, Definitions, and Selection Criteria**

*Enhanced Assessment Instruments; Catalog of Federal Domestic Assistance (CFDA) Number: 84.368.*

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

**ACTION:** Notice of final priorities, requirements, definitions, and selection criteria.

**SUMMARY:** The Assistant Secretary for Elementary and Secondary Education announces priorities, requirements, definitions, and selection criteria under the Enhanced Assessment Instruments Grant program, also called the Enhanced Assessment Grants (EAG) program. The Assistant Secretary may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2011 and later years. We take these actions to focus Federal financial assistance on the pressing need to improve the assessment instruments and systems used by States to accurately measure student academic achievement and growth under the Elementary and Secondary Education Act of 1965, as amended (ESEA).

**DATES:** *Effective Date:* These priorities, requirements, definitions, and selection criteria are effective May 19, 2011.

**FOR FURTHER INFORMATION CONTACT:** Collette Roney, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W210, Washington, DC 20202. Telephone: (202) 401-5245. E-mail: [Collette.Roney@ed.gov](mailto:Collette.Roney@ed.gov).

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**SUPPLEMENTARY INFORMATION:**

*Purpose of Program:* The purpose of the EAG program is to enhance the quality of assessment instruments and systems used by States for measuring the academic achievement of elementary and secondary school students.

*Program Authority:* 20 U.S.C. 7301a.

*Public Comment:* We published a notice of proposed priorities, requirements, definitions, and selection criteria for this program in the **Federal Register** on January 7, 2011 (76 FR 1138). That notice contained background information and our reasons for proposing the particular priorities, requirements, definitions, and selection criteria. In response to comments we

received on the notice, we have made revisions to Priority 1—English Language Proficiency Assessment System (ELP Priority), Priority 2—Collaborative Efforts Among States (Collaborative Efforts Priority), and the requirements, definitions, and selection criteria.

*Public Comment:* In response to our invitation in the notice of proposed priorities, requirements, definitions, and selection criteria, 15 parties submitted comments. We group major issues according to subject. Generally, we do not address technical and other minor changes.

*Analysis of Comments and Changes:* An analysis of the comments and of any changes in the priorities, requirements, definitions, and selection criteria since publication of the notice of proposed priorities, requirements, definitions, and selection criteria follows.

**Priority 1—English Language Proficiency (ELP) Assessment System**

*Comment:* Many commenters expressed support for the ELP Priority and its broad objective of promoting the development of high-quality ELP assessment systems. Commenters stated that the priority addresses assessment needs unique to English learners and that improvements in assessments used to measure English learners' progress in and attainment of English proficiency will support improvements in curriculum and instruction for English learners, help raise their educational achievement, and help close achievement gaps between English learners and their English proficient-peers. Commenters also stated that the priority promotes innovative, high-quality assessments that are aligned with common college- and career-ready standards, which will help prepare English learners for higher education and careers and ensure that English learners have access to the same rigorous academic content as all students. Another commenter stated that the use of multiple measures of both academic and English proficiency will provide more ongoing feedback to educators as well as students and their families and offers the promise of greater validity and reliability in assessments for the diverse population of English learners.

*Discussion:* We agree with the commenters that the development of high-quality ELP assessments aligned with ELP standards that in turn correspond to a common set of college- and career-ready standards in English language arts and mathematics are likely to contribute to improved teaching and learning for English learners. We

appreciate the commenters' recognition that we designed the ELP Priority to support the development of high-quality diagnostic and summative assessments that measure students' abilities in each of the four language domains (reading, writing, speaking, and listening), in order to meet the significant need for ELP assessments that correspond to college- and career-ready standards held in common by multiple States.

*Changes:* None.

*Comment:* Some commenters recommended that the ELP assessment system outlined in the ELP Priority be defined more explicitly and suggested that the priority explicitly support the development of benchmark and formative assessments as well as diagnostic and summative assessments. The commenters expressed concern that formative assessments may be under-emphasized in the resulting ELP assessment systems if they are not explicitly included in the priority, and stated that many educators prefer an ELP assessment system that includes benchmark and formative assessments. One commenter stressed that the focus on assessments developed under this priority should be on measuring students' progress towards English proficiency. Another commenter recommended that the limited amount of funds for the EAG program be focused on the development of summative assessments only.

*Discussion:* We believe that two types of assessments are particularly important for English learners: (1) Diagnostic assessments (*e.g.*, screener or placement tests), which can be used to determine whether a student should be classified as an English learner, and (2) summative assessments, which can be used to determine whether an English learner has made progress toward and achieved grade-level English proficiency and should no longer be classified as an English learner. The ELP Priority does not preclude an applicant from including benchmark or formative assessments in the ELP assessment system it proposes to develop. However, because of the importance of diagnostic and summative assessments to the implementation of Federal education programs such as Title III of the ESEA, and given the limited resources available, we decline to expand the ELP Priority to require more than the development of diagnostic and summative ELP assessments.

We agree that clarification of the components for an ELP assessment system developed under the ELP Priority would be helpful and have added a definition of *English language*

proficiency (ELP) assessment system, for purposes of the ELP Priority.

*Changes:* We have added a definition of ELP assessment system to the final definitions. The definition specifies that, for purposes of the ELP Priority, ELP assessment system means a system of assessments that includes, at a minimum, diagnostic (e.g., screener or placement) and summative assessments at each grade level from kindergarten through grade 12 that cover the four language domains of reading, writing, speaking, and listening, as required by section 3113(b)(2) of the ESEA, and that meets all other requirements of the priority. Consistent with this change, we also have revised paragraphs (a)(2) and (a)(3) of the ELP priority to include both screener and placement assessments as examples of diagnostic assessments.

*Comment:* One commenter noted that schools implementing the ELP assessment systems developed under the ELP Priority will need time to transition to the new assessments and stated that the proposed priorities, requirements, definitions, and selection criteria did not address how an applicant would need to approach such a transition.

*Discussion:* Given the four-year project period we are planning for grants under this program, we anticipate that some of the actions needed to support the transition to new ELP assessment systems may take place after the end of the project period, while other actions (e.g., developing professional capacity and outreach as described in the selection criteria) will occur during the project period. Because operational administration of the assessments is not required during the project period, we are not requiring a complete transition plan. Transition issues will be addressed by applicants, as necessary, in response to selection criterion (e), the professional capacity and outreach selection criterion, and we decline to add any additional requirements relating to transition, as some of these activities may occur outside the grant period. We note, in addition, that the Department routinely provides guidance to the field on current implementation issues and will continue to do so in the future.

*Changes:* None.

*Comment:* Some commenters expressed concern that the ELP Priority does not adequately address coordination between the grants to be awarded under the EAG program and grants already awarded under the RTTA program. The commenters recommended that the ELP Priority require more specific coordination between EAG and RTTA grants. They

also suggested that we ensure that ELP assessments developed under the EAG program be embedded in work on assessments under the RTTA program, particularly because of the academic language that students likely will need in order to access the assessments to be developed under the RTTA grants.

*Discussion:* We understand the importance of ensuring that projects funded under the EAG program and other Department programs related to assessments coordinate efforts where appropriate. We plan to facilitate coordination and technical assistance, as needed, across newly awarded EAG projects and the RTTA grants. EAG and RTTA grantees will be required to participate in such technical assistance and other activities conducted or facilitated by the Department or its designees. We are clarifying this expectation for coordination by adding language to requirement (b) that will require EAG grantees to coordinate with the RTTA program.

*Changes:* We have revised requirement (b) by adding a phrase that requires EAG grantees to coordinate with the RTTA program in the development of assessments under the EAG program.

*Comment:* One commenter stated that States will need guidance and technical support from the Department on such implementation issues as accountability, timeframes, and benchmarks for English learners' linguistic and academic progress once States have developed their ELP assessments. The commenter also asserted that, if the reauthorization of the ESEA occurs prior to the development and implementation of ELP assessment systems funded under the EAG program, a reauthorized ESEA should not constrain such work.

*Discussion:* We recognize that the Department will need to work with grantees and provide technical assistance on implementing new ELP assessment systems. If a reauthorized ESEA requires changes to the projects awarded under the EAG program, we will work with grantees to make the necessary changes and provide guidance to the field, as appropriate.

*Changes:* None.

*Comment:* A few commenters expressed concern with the examples of linguistic components of language included in paragraph (a)(7) of the proposed ELP Priority. One commenter suggested adding "semantics and graphophonemic" to the list of examples. Another commenter suggested removing the list of examples. One commenter stated that the linguistic components should be

embedded within ELP standards and that determinations of students' English proficiency should not be limited to the sum of students' abilities on any group of specific linguistic components of language. This commenter expressed concern that the ELP Priority could be interpreted as requiring the ELP assessment systems to provide subscores on discrete linguistic components. Another commenter stated that the ELP Priority should specify that measurement of any linguistic component should be driven by the functions of comprehension and expression. This commenter suggested revising the priority to require the assessments to reflect the linguistic components of language or demonstrate students' control over linguistic components of language.

*Discussion:* Based on consideration of the comments and our further review of this issue prompted by the comments, we revised the list of the examples of linguistic components of language by removing "vocabulary" from the list. Use of the abbreviation "e.g." in the parenthetical indicates that the list is not exhaustive or definitive.

While a valid and reliable ELP assessment system should consider students' control over the linguistic components of language, we do not intend to require that the ELP assessment systems generate subscores for the linguistic components of language. However, we do intend to require that the ELP assessment systems generate a valid and reliable measure of students' abilities in each of the four language domains and are revising the priority accordingly.

*Changes:* We have revised paragraph (a)(7) of the ELP Priority to indicate that the ELP assessment systems must ensure that the measures of students' English proficiency consider students' control over the linguistic components of language (e.g., phonology, syntax, morphology). We also have revised paragraph (c)(2) of the ELP Priority to state that ELP assessment systems developed under the priority must provide a valid and reliable measure of students' abilities in each of the four language domains and a comprehensive ELP score based on all four domains, with each language domain score making a significant contribution to the comprehensive ELP score, at each proficiency level. To be consistent with revisions to paragraph (c)(2) of the ELP Priority, we have revised paragraph (a)(9) of the ELP Priority to list the four language domains.

*Comment:* Some commenters expressed concern about references to the uses of data from the ELP

assessment systems for evaluations of teacher and principal effectiveness. A few commenters outlined several concerns that may limit the usefulness of ELP assessments in evaluating teacher and principal effectiveness, for example: Limitations of current testing instruments; difficulty in isolating the effects of a teacher or principal on an individual student's scores, especially when multiple teachers are involved in a student's instruction; a limited knowledge base about growth in English learners' acquisition of English and how to use measures of growth; and the complexities of using longitudinal data, especially for English learners who tend to have high mobility rates. One commenter noted that States could misinterpret the ELP Priority as requiring student learning on an ELP assessment to be the only measure of teacher effectiveness.

A few commenters suggested revising the ELP Priority to require the use of multiple measures for evaluations of teacher and principal effectiveness, as opposed to using ELP assessments as the sole measure to evaluate teacher and principal effectiveness. One commenter suggested removing the provisions of the ELP Priority that refer to the use of ELP assessment data for informing evaluations of teacher and principal effectiveness. A few commenters stated that ELP assessments should be used for evaluations of teacher and principal effectiveness only after a research base has been established to support the use of the assessments for such purposes.

*Discussion:* The ELP Priority does not require that States or other entities use data from ELP assessment systems developed under the priority as the single measure of teacher and principal effectiveness. The ELP Priority, in combination with the assessment design selection criterion, is intended to signal that ELP assessment systems should be developed so that, as appropriate, the data that they provide can be used as one of multiple measures for teacher and principal evaluation. We have revised the language in the ELP Priority and the assessment design selection criterion to more clearly reflect that intent.

*Changes:* We have revised paragraph (c) of the ELP Priority to distinguish those circumstances in which ELP assessment data can be used as a single measure (paragraph (c)(3)) and those circumstances in which ELP assessment data can be one measure along with other appropriate measures (paragraph (c)(4)). We have included evaluations of principal and teacher effectiveness in paragraph (c)(4). We have also revised the assessment design selection

criterion in paragraph (b)(6)(i) to indicate that data from the assessments developed under the EAG program should be used only as appropriate as one of multiple measures for determinations of individual principal and teacher effectiveness.

*Comment:* Many commenters raised questions about the references in the ELP Priority to a "common definition of 'English learner'." One commenter expressed support for the general approach of requiring a common definition, noting that a common definition would ensure that the data States provide on the total number of English learners being served would be more accurate and consistent across the nation, thereby allowing parents, educators, and other stakeholders to make comparisons across States and the nation. Multiple commenters requested that the Department clarify the meaning of the term "common" and had diverging views on whether "common" should be defined as "identical" or "similar" (e.g., comparable and consistent). Commenters also asked for clarification as to whether the reference to a "common definition" applies to home language surveys, screening instruments, procedures for identifying and classifying English learners, definitions of language proficiency levels, and criteria for determining the English proficiency of students and student exit from English learner status.

Several commenters provided specific suggestions for how the term "common" should be interpreted when used in the phrase "common definition of English learner." One commenter recommended that the common definition of English learner, including classification and exit criteria, be based solely on the ELP assessment system and not on academic performance. The commenter noted that excluding academic performance measures would avoid problems of construct validity and avoid confusing the "English learner" classification with non-language-related criteria. Another commenter recommended that an assessment of students' proficiency in their first language be considered in the common definition of English learner. Another commenter asked how subgroups of English learners would fit within a common definition and how data on these subgroups would be collected, disaggregated, reported, and used.

One commenter stated that requiring multiple States to change their definition of English learner to a common definition would be an unreasonable Federal administrative requirement that goes beyond the intent of the ESEA. This commenter

recommended removing paragraph (a)(2) from the ELP Priority, which calls for States to adopt a common definition of English learner.

*Discussion:* The term "common," as used in a "common definition of English learner" in paragraph (a)(2) of the ELP Priority, means an identical definition of English learner with respect to certain criteria, specifically: The diagnostic assessments and associated achievement standards used to classify students as English learners, as well as the summative assessments and associated achievement standards used to exit students from English learner status. This definition is the same for all subgroups of English learners, with the exception of English learners with the most significant cognitive disabilities who are eligible to participate in alternate assessments based on alternate academic achievement standards in accordance with 34 CFR 200.6(a)(2). Assessment of students' proficiency in their first language is beyond the scope of the ELP Priority.

The use of a common definition of "English learner" and common criteria for exiting a student from English learner status will help ensure consistency in identifying English learners across the States in a consortium. However, the term "common" for purposes of the ELP Priority does not apply to other areas such as home language surveys, program placement and instruction for students, and the duration of program and support services for students. To clarify the scope of the ELP Priority, we have added language to paragraph (a)(2) to indicate that "common" means identical for purposes of the diagnostic assessments and associated achievement standards used to classify students as English learners as well as the summative assessments and associated achievement standards used to exit students from English learner status. To provide further clarity, we also substituted the word "common" for the word "uniform" in the definition of *English learner*.

We agree with the commenter that a common definition of English learner should be based on the ELP assessments to be developed under the priority, as reflected in paragraph (c)(3) of the ELP Priority. We also agree that the priority should specifically reference subgroups of English learners and, therefore, are adding language to paragraph (c)(1) of the ELP Priority to require that the ELP assessment system provide data that can be disaggregated by key English learner subgroups.

Because participation in a grant under the EAG program is voluntary and no

entity is required to participate and adopt a common definition of English learner, we do not believe the requirement in the ELP Priority regarding a common definition of English learner represents an unreasonable Federal administrative requirement and therefore decline to remove this provision from the priority.

*Changes:* We have revised paragraph (a)(2) of the ELP Priority to indicate that “common” means identical for purposes of the diagnostic and summative assessments and the associated achievement standards used to classify students as English learners and exit students from English learner status. We also substituted the word “common” for the word “uniform” in the definition of *English learner*. We have revised paragraph (c)(1) of the ELP Priority to require that the ELP assessment system provide data that can be disaggregated by key English learner subgroups and to provide examples of those subgroups.

*Comment:* Several commenters expressed concern that the proposed ELP Priority did not adequately address the development of ELP standards with which assessments developed under the priority must be aligned. The commenters recommended that the Department revise the priority to provide that the ELP standards be of high quality. One commenter also stated that the language of the proposed ELP Priority was unclear regarding whether EAG applicants would be required to develop the ELP standards to which assessments under the priority must be aligned as an activity under a grant. A few commenters specifically recommended that we require grantees to submit a detailed plan for developing and implementing the ELP standards on which they would base their ELP assessments. Another commenter recommended including in the ELP Priority a provision requiring the development of ELP standards or a requirement that all members of a consortium agree to the adoption and implementation of common ELP standards as a requirement for joining a consortium. These commenters stated that it would be impossible for a consortium to successfully develop common ELP assessments if each State in the consortium had its own ELP standards.

One commenter noted that linguistic components of language embedded within ELP standards may be necessary, but are not sufficient, to measure the extent to which English learners can process and use language for specified purposes or situations. This commenter stated that it is the discourse level of language that carries the “semantic load”

supportive of communication that is needed for college- and career-readiness.

Another commenter stated that the ELP assessments developed under the ELP Priority should be aligned with ELP standards that correspond to content standards not only in English language arts but also in other subject areas.

Another commenter noted the importance of effectively implementing ELP standards, stating that, in an aligned assessment system, standards are the reference point for designing proficiency measures, interpreting and communicating assessment results, and using assessment results to improve teaching and learning.

*Discussion:* We agree that high-quality ELP standards and their implementation are a crucial foundation for the ELP assessment systems to be developed under the ELP Priority. Section 6112 of the ESEA, which authorizes the EAG program, does not authorize EAG funds to be used for developing standards. Therefore, the Department can make awards under the EAG program only to develop assessments. We are adding a program requirement clarifying this limitation.

We expect that the assessments developed under the ELP Priority will be aligned with high-quality ELP standards, and are revising the ELP Priority to more specifically define the characteristics of high-quality ELP standards to which the ELP assessments should align.

Grants under the RTTA program, which the ELP Priority is designed to complement, are focused on assessments that are aligned with college- and career-ready standards in English language arts and mathematics that are held in common by a multiple States. Hence, we are providing that the assessments developed under the ELP Priority must be aligned with ELP standards that correspond to common, college- and career-ready standards in English language arts and mathematics. The ELP Priority does not preclude an applicant from proposing to align the ELP assessments with ELP standards that include the academic language necessary for college- and career-readiness in subjects in addition to English language arts and mathematics. We also expect that rigorous ELP standards that correspond to a set of college- and career-ready standards in English language arts and mathematics that are held in common by multiple States and that are developed with broad stakeholder involvement will attend not only to the linguistic components of language but also to the discourse level of language.

*Changes:* We have revised paragraph (a)(5) of the ELP Priority to more specifically define the characteristics of the ELP standards to which the ELP assessments developed under the program must align. Specifically, we have indicated that those standards must correspond to a common set of college- and career-ready standards in English language arts and mathematics, and be rigorous, developed with broad stakeholder involvement, and vetted with experts and practitioners. The standards also must be standards for which external evaluations have documented rigor and correspondence to a common set of college- and career-ready standards in English language arts and mathematics.

We removed the reference to States adopting or utilizing any standards developed under a proposed project from paragraph (d) of the Collaborative Efforts Priority in order to clarify that EAG program funds may not be used to develop standards. We also have added a new requirement (e), which requires grantees to ensure that EAG funds are not used to support the development of standards, such as under the ELP Priority or any other priority. The subsequent requirements have been re-numbered accordingly.

*Comment:* Two commenters expressed support for our approach to ELP assessments for students with the most significant cognitive disabilities. One commenter suggested removing paragraph (e) of the ELP Priority, which requires applicants to include in their applications the strategies the applicant State or, if the applicant is part of a consortium, all States in the consortium, would use to assess the English proficiency of English learners with the most significant cognitive disabilities. The commenter suggested replacing this provision with a requirement that grantees under the EAG program coordinate with existing grantees funded under the Individuals with Disabilities Education Act (IDEA), including the General Supervision Enhancement Grant (GSEG) program, to address the needs of English learners with the most significant cognitive disabilities. One commenter suggested that we require applicants to indicate how they would coordinate work under an EAG grant awarded under the ELP Priority with grants awarded under the GSEG program.

*Discussion:* Recent awards under the GSEG program are supporting the development of alternate assessments based on alternate achievement standards that measure student knowledge and skills against academic content standards in English language

arts and mathematics held in common by multiple States; these grants are not supporting the development of alternate ELP assessments for students with the most significant cognitive disabilities. We acknowledge the importance of developing alternate ELP assessments for English learners with the most significant cognitive disabilities but, due to limited resources, are not including them in the ELP Priority.

There will be limited overlap in the focus of the projects awarded under the ELP Priority and the projects awarded under the GSEG program because the EAG grants will not be supporting the development of alternate assessments and because the GSEG awards, which focus only on alternate assessments, are not supporting the development of ELP assessments. Accordingly, we decline to require that EAG grantees coordinate with GSEG grantees.

To clarify the reference to English learners with the most significant cognitive disabilities who are eligible to participate in alternate assessments based on alternate academic achievement standards, we added the relevant regulatory citation to paragraphs (a)(10) and (a)(11) of the ELP Priority.

*Changes:* We have added the relevant regulatory citation, 34 CFR 200.6(a)(2), to paragraphs (a)(10) and (a)(11) of the ELP Priority.

*Comment:* One commenter recommended that we consider adding a priority to support the development of assessments to measure proficiency in a second language other than English for States that support bilingual education and bi-literacy.

*Discussion:* We recognize that measuring student proficiency in a second language other than English can provide useful data to educators of such students. States already have the flexibility to develop such assessments, which under certain circumstances may be supported by ESEA funds in accordance with section 6111 of the ESEA.

We decline to make the suggested change because we believe that developing new ELP assessments is a more pressing need than developing assessments that measure student proficiency in a second language other than English. The Department has provided funding under the RTTA program to consortia that together include 44 States and the District of Columbia to develop new assessment systems that measure student knowledge and skills against a common set of college- and career-ready standards in English language arts and mathematics. ELP assessments

corresponding to such common standards will be needed when the RTTA assessments are implemented, and such assessments have not been developed.

*Changes:* None.

*Comment:* One commenter noted that addressing issues such as the assessment of students whose education has been interrupted might be more appropriately addressed by the GSEG program.

*Discussion:* The ELP Priority requires that ELP assessment systems developed under the priority accurately assess English learners with limited or no formal education, including students whose education has been interrupted. Data on the English proficiency of these students can support efforts to improve their instruction. The GSEG program focuses on assessment for students with disabilities, who may or may not be English learners. We decline to make a change in response to this comment, because it is beyond the scope of the program to make changes to other programs, such as the GSEG program, and because the GSEG program focuses on assessments for students with disabilities, only some of whom are English learners and not necessarily English learners with interrupted education.

*Changes:* None.

#### **Priority 2—Collaborative Efforts Among States**

*Comment:* We received a variety of comments on the paragraph in the Collaborative Efforts Priority that requires a consortium to include a minimum of 15 States. One commenter stated that providing grants to sizeable consortia of States would maximize the impact of program funds. Another commenter suggested that the Department establish an eligibility restriction under which only consortia would be eligible to apply and require that a consortium include a minimum of 15 States that represent at least 30% of the nation's English learners. Another commenter expressed concern that the approach to consortia may result in grants that do not include all States, including some States with sizable English learner populations. Two additional commenters recommended removing the proposed minimum number of States in a consortium, suggesting that a minimum of 15 States would impose an unfair obstacle to States and that improvement in assessment quality will be achieved through competition in the marketplace.

*Discussion:* States have indicated to the Department their interest in working together in consortia to develop

assessments aligned with common standards. Because of the complexity of developing and implementing assessments and assessment-related instruments, collaborative efforts between and among States can yield approaches that build on each State's expertise and experience, as well as approaches that generate substantial efficiencies in development, administration, costs, and uses of results. We believe that larger consortia will make more effective use of EAG funds by drawing on the expertise and experience of more States, increasing the potential impact across States, and increasing the degree to which common assessment tools are available to States nationwide. However, we do not want to limit States' flexibility in forming consortia by adding requirements in the Collaborative Efforts Priority, such as a requirement that a certain percentage of English learners be represented by the population of consortium member States. We do not have the authority to require all States to participate, and we decline to prohibit individual States from applying for an award under the EAG program; as a result, we decline to make the suggested changes in these areas.

*Changes:* None.

*Comment:* While expressing general support for the Collaborative Efforts Priority, one commenter expressed concern regarding the requirement to have States sign a binding memorandum of understanding to use assessments not yet developed. The commenter suggested that requiring a strong and exclusive letter of support for one consortium proposal would be a more reasonable requirement.

*Discussion:* Under Department regulations, all members of a consortium applying for a grant must enter into an agreement that (1) details the activities that each member of the consortium plans to perform; and (2) binds each member of the consortium to every statement and assurance made by the applicant in its application. (34 CFR 75.128). In response to the commenters' concerns that States may decide to leave a consortium after receiving the grant, we are revising paragraph (c)(3) of the Collaborative Efforts Priority to require applicants to include in their applications protocols for member States to leave a consortium and for new member States to join a consortium. A consortium of States applying for a grant would have flexibility in determining the roles that member States may play. In addition, a State could enter or leave a consortium according to the protocols the consortium has established for this purpose. In light of the Department's

regulations and the changes being made to provide flexibility to States, we decline to require a strong and exclusive letter of support rather than a binding memorandum of understanding.

*Changes:* We have revised paragraph (c)(3) of the Collaborative Efforts Priority to require that applications from consortia include protocols to allow States to leave the consortium and for new member States to join the consortium. We also revised paragraph (d) of the Collaborative Efforts Priority to indicate that, to remain in the consortium, a State must adopt or use any instrument, including to the extent applicable, assessments, developed under the proposed project no later than the end of the project period.

### Selection Criteria

*Comment:* One commenter, expressing support for the selection criteria, observed that the criteria include all the essential principles needed to govern the development and implementation of high-quality, rigorous, research-based assessment practices.

*Discussion:* We agree that the selection criteria should address the key aspects of developing high-quality assessments and that the selection criteria, as designed, address those key aspects.

*Changes:* None.

*Comment:* One commenter suggested revising paragraph (5) of the assessment design selection criterion, which specifies the types of data that must be provided by the assessments. The commenter suggested adding the following categories of data: types of English learner program services, length of time in the English learner program, and level of English proficiency.

*Discussion:* Students' levels of English proficiency are already included among the data the ELP assessments developed under the ELP Priority must provide. However, because the selection criteria in this notice may be used in future competitions, which may or may not include the ELP Priority, we decline to revise the selection criteria in a manner that relates specifically to the ELP Priority. For this same reason, we decline to include in the selection criteria the other types of data the commenter suggested (*i.e.*, English learner program services, length of time in the English learner program). In addition, data regarding services provided by English learner programs and the length of time students are in such programs are data that help assess program effectiveness; they are not data that ELP assessments provide.

*Changes:* None.

*Comment:* One commenter suggested that we revise paragraph (b)(10) of the assessment design selection criterion, which addresses methods of scoring, to allow for self-scoring of student performance on assessments in order to shorten the turnaround time for scoring.

*Discussion:* The selection criteria do not specify the scoring methods that grantees must use. Applicants may propose to use a self-scoring approach, as the commenter suggests, so long as the approach is consistent with the technical quality requirements for the assessments.

*Changes:* None.

*Comment:* One commenter recommended that paragraph (11) of the assessment design selection criterion, which addresses reports to be produced based on the assessments, be revised to include the provision of reports in a language and format that parents can understand.

*Discussion:* We agree with the commenter that reports of assessment data should be provided to parents in an understandable and uniform format and, to the extent practicable, in a language that parents can understand, and have revised this paragraph accordingly.

*Changes:* We have revised paragraph (11) of the assessment design selection criterion to provide for the consideration of the extent to which, reports produced based on the assessments will be presented in an understandable and uniform format, and to the extent practicable, in a language that parents can understand.

*Comment:* One commenter noted that paragraph (1)(ii) of the proposed assessment development plan selection criterion, which described the types of personnel to be involved in each assessment development phase and provided some examples of such personnel, did not include references to advocates for English learners or parents of English learners. The commenter suggested that the Department revise this paragraph to include such stakeholders in the examples provided.

*Discussion:* We agree that the list of examples should include a reference to other key stakeholders and have revised the selection criterion accordingly. However, because the selection criteria may be used in future competitions, which may or may not include the ELP Priority, we decline to revise the selection criteria in a manner that relates specifically to the ELP Priority, such as listing stakeholder groups specific to English learners.

*Changes:* We have revised paragraph (1)(ii) of the assessment development plan selection criterion to include "other

key stakeholders" in the list of examples provided.

*Comment:* One commenter expressed support for the Department's reference to the use of representative sampling for field testing in paragraph (5) of the assessment development plan selection criterion. This commenter suggested that we revise this paragraph to specify certain subgroups of English learners that may be considered in a representative sample.

*Discussion:* We agree with the suggestion that the student populations that should be considered for representative sampling include high- and low-performing students, different types of English learners, and students with disabilities, and that it would be helpful for applicants to have examples of subgroups of English learners that may be considered. We have revised this paragraph to provide examples of the subgroups of English learners that may be considered in a representative sample.

*Changes:* We have revised paragraph (5) of the assessment development plan selection criterion to include the following examples of subgroups of English learners that may be considered in a representative sample: recently arrived English learners, former English learners, migratory English learners, and English learners with disabilities.

*Comment:* One commenter expressed support for the emphasis on research and evaluation in the selection criteria.

*Discussion:* The Department agrees that the selection criteria should include a research and evaluation component and believes that the selection criteria, as designed, adequately consider whether an applicant's research and evaluation plan will ensure that the assessments developed are valid, reliable, and fair for their intended purposes.

*Changes:* None.

*Comment:* One commenter, while expressing support for the emphasis on professional capacity and outreach in the selection criteria, stated that mainstream and content-area teachers, as well as English-as-a-second language and bilingual program educators and administrators, should be included in professional capacity and outreach plans. The commenter also suggested that such plans should address additional factors relating to ELP assessments, including the definition of English learners, language proficiency levels, exit criteria for programs and services, and professional development on the use of the assessments and assessment results to inform and improve instruction.

*Discussion:* The activities suggested by the commenter are allowable under the requirements for this program. However, because the selection criteria may be used in future competitions that may or may not involve the ELP Priority, we decline to make the recommended changes to the selection criterion.

*Changes:* None.

### Requirements

*Comment:* One commenter recommended that the requirement related to evaluation be revised to mandate that evidence from evaluation activities be posted on a specific Web site used by professionals who specialize in issues related to English learners in order to improve dissemination of findings.

*Discussion:* The EAG requirements do not preclude grantees from posting information related to grant activities on Web sites (provided that the appropriate disclaimers are included). However, we believe that specifying the manner in which grantees make information available would be unnecessarily prescriptive. Therefore, we decline to make the suggested change in order to provide grantees with flexibility in how they meet the requirement to make information related to grant activities available to the public.

*Changes:* None.

*Comment:* A couple of commenters expressed concern regarding the requirement that grantees develop a strategy to make student-level data that result from any assessments or other assessment-related instruments developed under the ELP Priority available on an ongoing basis for research, including for prospective linking, validity, and program improvement studies. One commenter recommended that the requirements affirmatively address the applicable privacy safeguards under the ESEA and the Family Educational Rights and Privacy Act (FERPA) to ensure that disaggregated data used to report achievement results for subgroups cannot be traced back to an identifiable student. Another commenter suggested removing the requirement due to concerns about privacy issues and a concern that limited funds for the grants might be diverted to research or other entities that have separate access to governmental and non-governmental funding sources. The commenter also stated that the proposed requirements included all necessary considerations for validity, reliability, and fairness, thereby making the need for further research duplicative and superfluous.

*Discussion:* Eligible applicants awarded a grant under the EAG program must comply with FERPA and 34 CFR Part 99, as well as State and local requirements regarding privacy; we are adding a footnote to the notice reminding applicants that they must comply with these requirements. With regard to the concern that limited funds for the grants might be diverted to research, we note that the requirement states that grant recipients must make data available for further research, and that grant recipients may only use grant funds on research and evaluation activities that fall within the scope of the activities proposed in their approved applications. In order to allow for additional research that may prove useful, we decline to remove the requirement.

*Changes:* We have added a footnote to requirement (c) (making student-level data available for further research) reminding applicants that they must comply with FERPA and State and local privacy requirements should they receive an award under this program.

*Comment:* Two commenters expressed concern regarding the requirement that grantees, unless otherwise protected by law or agreement as proprietary information, make any assessment content and other assessment-related instruments developed with EAG funds freely available to States, technology platform providers, and others that request it for purposes of administering assessments, provided that those parties receiving assessment content comply with consortium or State requirements for test or item security. One commenter reiterated that all instruments developed with EAG funding must be open-source and available to any State requesting the use of the tools and instruments. The other commenter requested that we clarify that assessments would be freely available to States and others, including local educational agencies. This commenter recommended removing the phrase “unless otherwise protected by law or agreement as proprietary information” from the requirement, and adding a reference to making the information available to local educational agencies.

*Discussion:* We cannot make a change to protections of proprietary information guaranteed by existing laws. In addition, for work funded by the EAG program and other Department-funded discretionary grant programs, the Department reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes: The

copyright in any work developed under a grant from the EAG program; and any rights of copyright to which a grantee or a contractor purchases ownership with grant support. (34 CFR 80.34). At this time we do not intend to exercise this license with respect to any products produced with EAG funds. If a grantee develops a product but fails to make it reasonably available to interested entities, however, we may exercise our license if doing so would further the interests of the Federal Government. We believe the requirement as originally stated, coupled with our license with respect to any products produced with EAG funds, will serve to make adequately available products produced with EAG funds. Additionally, we note that this requirement is consistent with requirements of the RTTA program (see program requirement 6 “Making Work Available,” in the RTTA program notice inviting applications, 75 FR 18175 (April 9, 2010)). As a result, we decline to make the suggested changes.

*Changes:* None.

### Definitions

*Comment:* With regard to the definition of a *common set of college- and career-ready standards*, one commenter suggested revising the definition to specify what constitutes a “significant number of States.”

*Discussion:* In using the term significant, we intended to indicate multiple States rather than to refer to a specific number of States. We agree that the ELP Priority should be more specific and have replaced the phrase “significant number of” with the term “multiple.”

*Changes:* In the definition of *common set of college- and career-ready standards*, we have replaced the phrase “significant number of” with the term “multiple.”

### Funding

*Comment:* Some commenters expressed concern about the amount of funds anticipated to be available for awards under a competition for EAG funds involving the ELP Priority. Two commenters stated that the information they had from interviews and press reports suggested that funding for the development of ELP assessment systems under the ELP Priority would be limited, especially when compared to funds available for recent Department grants awarded under the RTTA and GSEG programs. Another commenter expressed concern that the amount of funding that would be available for an EAG competition involving the ELP Priority would be too small, especially in comparison with the RTTA and

GSEG programs that the new priorities for the EAG program are designed to complement. Some commenters recommended that the Department consider making additional funds available to support the development of ELP assessment systems under the EAG program. Another commenter noted that, based on its experience in developing assessments, the cost of accomplishing the scope and scale of work proposed in the notice of proposed priorities, requirements, definitions, and selection criteria would require more than the \$10.7 million appropriated for the EAG in FY 2010 to be awarded in 2011. The commenter encouraged the Department to provide funding for grants under the EAG program comparable to the amounts awarded under the RTTA and GSEG programs. Another commenter stated that \$10.7 million would be inadequate to address the needs of English learners through the EAG program. Another commenter recommended that the Department provide awards of \$30 million, and suggested decreasing the estimated number of awards if necessary to fund grantees at this amount. None of the commenters outlined specific anticipated costs for the various components of developing an ELP assessment system, and only one commenter suggested a specific amount for awards.

*Discussion:* We cannot alter the amount of funding that Congress appropriated for the EAG program in the FY 2010 budget. In developing our estimates for the average size and range of awards included in the FY 2011 notice inviting applications for new awards for FY 2010 funds, published elsewhere in this issue of the **Federal Register**, we considered the costs of efforts to develop ELP assessment systems that the Department has previously funded, the cost estimates for activities under programs with similar goals, and other information available for estimating the costs of developing assessment systems.

*Changes:* None.

*Final Priorities:*

*English Language Proficiency Assessment System.* The Department establishes a priority under the EAG program for an English language proficiency assessment system. To meet this priority, an applicant must propose a comprehensive plan to develop an English language proficiency assessment system that is valid, reliable, and fair for its intended purpose. Such a plan must include the following features:

(a) *Design.* The assessment system must—

(1) Be designed for implementation in multiple States;

(2) Be based on a common definition of *English learner* adopted by the applicant State and, if the applicant applies as part of a consortium, adopted and held in common by all States in the consortium, where common with respect to the definition of “English learner” means identical for purposes of the diagnostic (*e.g.*, screener or placement) assessments and associated achievement standards used to classify students as English learners as well as the summative assessments and associated achievement standards used to exit students from English learner status;

(3) At a minimum, include diagnostic (*e.g.*, screener or placement) and summative assessments;

(4) Measure students’ English proficiency against a set of English language proficiency standards held by the applicant State and, if the applicant applies as part of a consortium, held in common by all States in the consortium;

(5) Measure students’ English proficiency against a set of English language proficiency standards that correspond to a common set of college- and career-ready standards (as defined in this notice) in English language arts and mathematics, are rigorous, are developed with broad stakeholder involvement, are vetted with experts and practitioners, and for which external evaluations have documented rigor and correspondence with a common set of college- and career-ready standards in English language arts and mathematics;

(6) Cover the full range of the English language proficiency standards across the four language domains of reading, writing, speaking, and listening, as required by section 3113(b)(2) of the ESEA;

(7) Ensure that the measures of students’ English proficiency consider the students’ control over the linguistic components of language (*e.g.*, phonology, syntax, morphology);

(8) Produce results that indicate whether individual students have attained the English proficiency necessary to participate fully in academic instruction in English and meet or exceed college- and career-ready standards;

(9) Provide at least an annual measure of English proficiency and student progress in learning English for English learners in kindergarten through grade 12 in each of the four language domains of reading, writing, speaking, and listening;

(10) Assess all English learners, including English learners who are also

students with disabilities and students with limited or no formal education, except for English learners with the most significant cognitive disabilities who are eligible to participate in alternate assessments based on alternate academic achievement standards in accordance with 34 CFR 200.6(a)(2); and

(11) Be accessible to all English learners, including by providing appropriate accommodations for English learners with disabilities, except for English learners with the most significant cognitive disabilities who are eligible to participate in alternate assessments based on alternate academic achievement standards in accordance with 34 CFR 200.6(a)(2).

(b) *Technical quality.* The assessment system must measure students’ English proficiency in ways that—

(1) Are consistent with nationally recognized professional and technical standards; and

(2) As appropriate, elicit complex student demonstrations of comprehension and production of academic English (*e.g.*, performance tasks, selected responses, brief or extended constructed responses).

(c) *Data.* The assessment system must produce data that—

(1) Include student attainment of English proficiency and student progress in learning English (including data disaggregated by English learner subgroups such as English learners by years in a language instruction educational program; English learners whose formal education has been interrupted; students who were formerly English learners by years out of the language instruction educational program; English learners by level of English proficiency, such as those who initially scored proficient on the English language proficiency assessment; English learners by disability status; and English learners by native language);

(2) Provide a valid and reliable measure of students’ abilities in each of the four language domains (reading, writing, speaking, and listening) and a comprehensive English proficiency score based on all four domains, with each language domain score making a significant contribution to the comprehensive ELP score, at each proficiency level; and

(3) Can be used for the—

(i) Identification of students as English learners;

(ii) Decisions about whether a student should exit from English language instruction educational programs;

(iii) Determinations of school, local educational agency, and State effectiveness for the purposes of

accountability under Title I and Title III of the ESEA;

(4) Can be used, as appropriate, as one of multiple measures, to inform—

(i) Evaluations of individual principals and teachers in order to determine their effectiveness;

(ii) Determinations of principal and teacher professional development and support needs; and

(iii) Strategies to improve teaching, learning, and language instruction education programs.

(d) *Compatibility.* The assessment system must use compatible approaches to technology, assessment administration, scoring, reporting, and other factors that facilitate the coherent inclusion of the assessments within States' student assessment systems.

(e) *Students with the most significant cognitive disabilities.* The comprehensive plan to develop an English language proficiency assessment system must include the strategies the applicant State and, if the applicant is part of a consortium, all States in the consortium, plans to use to assess the English proficiency of English learners with the most significant cognitive disabilities who are eligible to participate in alternate assessments based on alternate academic achievement standards in accordance with 34 CFR 200.6(a)(2) in lieu of including those students in the operational administration of the assessments developed for other English learners under a grant from this competition.

*Collaborative Efforts Among States.* The Department establishes a priority under the EAG program for collaborative efforts among States. To meet this priority, an applicant must—

(a) Include a minimum of 15 States in the consortium;

(b) Identify in its application a proposed project management partner and provide an assurance that the proposed project management partner is not partnered with any other eligible applicant applying for an award under this competition;<sup>1</sup>

(c) Provide a description of the consortium's structure and operation. The description must include—

(1) The organizational structure of the consortium (e.g., differentiated roles that a member State may hold);

(2) The consortium's method and process (e.g., consensus, majority) for making different types of decisions (e.g., policy, operational);

(3) The protocols by which the consortium will operate, including

protocols for member States to change roles in the consortium, for member States to leave the consortium, and for new member States to join the consortium;

(4) The consortium's plan, including the process and timeline, for setting key policies and definitions for implementing the proposed project, including, for any assessments developed through a project funded by this grant, the common set of standards upon which to base the assessments, a common set of performance-level descriptors, a common set of achievement standards, common assessment administration procedures, common item-release and test-security policies, and a common set of policies and procedures for accommodations and student participation; and

(5) The consortium's plan for managing grant funds received under this competition; and

(d) Provide a memorandum of understanding or other binding agreement executed by each State in the consortium that includes an assurance that, to remain in the consortium, the State will adopt or use any instrument, including to the extent applicable, assessments, developed under the proposed project no later than the end of the project period.

*Types of Priorities:*

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

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

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

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

*Final Requirements:*

The Department establishes the following requirements for the Enhanced Assessment Grants program. We may apply one or more of these

requirements in any year in which a competition for program funds is held. An eligible applicant awarded a grant under this program must:

(a) Evaluate the validity, reliability, and fairness of any assessments or other assessment-related instruments developed under a grant from this competition, and make available documentation of evaluations of technical quality through formal mechanisms (e.g., peer-reviewed journals) and informal mechanisms (e.g., newsletters), both in print and electronically;

(b) Actively participate in any applicable technical assistance activities conducted or facilitated by the Department or its designees, coordinate with the RTTA program in the development of assessments under this program, and participate in other activities as determined by the Department;

(c) Develop a strategy to make student-level data that result from any assessments or other assessment-related instruments developed under a grant from this competition available on an ongoing basis for research, including for prospective linking, validity, and program improvement studies;<sup>2</sup>

(d) Ensure that any assessments or other assessment-related instruments developed under a grant from this competition will be operational (ready for large-scale administration) at the end of the project period;

(e) Ensure that funds awarded under the EAG program are not used to support the development of standards, such as under the English language proficiency assessment system priority or any other priority.

(f) Maximize the interoperability of any assessments and other assessment-related instruments developed with funds from this competition across technology platforms and the ability for States to move their assessments from one technology platform to another by doing the following, as applicable, for any assessments developed with funds from this competition by—

(1) Developing all assessment items in accordance with an industry-recognized open-licensed interoperability standard that is approved by the Department during the grant period, without non-standard extensions or additions; and

(2) Producing all student-level data in a manner consistent with an industry-recognized open-licensed interoperability standard that is

<sup>2</sup> Eligible applicants awarded a grant under this program must comply with the Family Educational Rights and Privacy Act (FERPA) and 34 CFR Part 99, as well as State and local requirements regarding privacy.

<sup>1</sup> In selecting a proposed project management partner, an eligible applicant must comply with the requirements for procurement in 34 CFR 80.36.

approved by the Department during the grant period;

(g) Unless otherwise protected by law or agreement as proprietary information, make any assessment content (i.e., assessments and assessment items) and other assessment-related instruments developed with funds from this competition freely available to States, technology platform providers, and others that request it for purposes of administering assessments, provided that those parties receiving assessment content comply with consortium or State requirements for test or item security; and

(h) For any assessments and other assessment-related instruments developed with funds from this competition, use technology to the maximum extent appropriate to develop, administer, and score the assessments and report results.

*Final Definitions:*

The Department establishes the following definitions for the Enhanced Assessment Grants program. We may apply one or more of these definitions in any year in which a competition for program funds is held.

*Common set of college- and career-ready standards* means a set of academic content standards for grades K–12 held in common by multiple States, that (a) define what a student must know and be able to do at each grade level; (b) if mastered, would ensure that the student is college- and career-ready by the time of high school graduation; and (c) for any consortium of States applying under the EAG program, are substantially identical across all States in the consortium.

A State in a consortium may supplement the common set of college- and career-ready standards with additional content standards, provided that the additional standards do not comprise more than 15 percent of the State's total standards for that content area.

*English language proficiency assessment system*, for purposes of the English language proficiency assessment system priority, means a system of assessments that includes, at a minimum, diagnostic (e.g., screener or placement) and summative assessments at each grade level from kindergarten through grade 12 that cover the four language domains of reading, writing, speaking, and listening, as required by section 3113(b)(2) of the ESEA, and that meets all other requirements of the priority.

*English learner* means a student who is an English learner as defined by the applicant consistent with the definition of a student who is "limited English

proficient" as that term is defined in section 9101(25) of the ESEA. If the applicant submits an application on behalf of a consortium, member States must develop and adopt a common definition of the term during the period of the grant.

*Student with a disability* means a student who has been identified as a child with a disability under the Individuals with Disabilities Education Act, as amended.

*Final Selection Criteria:*

The Department establishes the following selection criteria for the Enhanced Assessment Grant program. We may apply one or more of these selection criteria in any year in which a competition for program funds is held.

(a) *Theory of action.* The Secretary reviews each application to determine the extent to which the eligible applicant's theory of action is logical, coherent, and credible, and will result in improved student outcomes. In determining the extent to which the theory of action has these attributes, we will consider the description of, and rationale for—

(1) How the assessment results will be used (e.g., at the State, local educational agency, school, classroom, and student levels);

(2) How the assessments and assessment results will be incorporated into coherent educational systems (i.e., systems that include standards, assessments, curriculum, instruction, and professional development) of the State(s) participating in the grant; and

(3) How those educational systems as a whole will improve student achievement.

(b) *Assessment design.* The Secretary reviews each application to determine the extent to which the design of the eligible applicant's proposed assessments is innovative, feasible, and consistent with the theory of action. In determining the extent to which the design has these attributes, we will consider—

(1) The number and types of assessments, as appropriate (e.g., diagnostic assessments, summative assessments);

(2) How the assessments will measure student knowledge and skills against the full range of the relevant standards, including the standards against which student achievement has traditionally been difficult to measure, provide an accurate measure of student proficiency on those standards, including for students who are high- and low-performing in academic areas, and provide an accurate measure of student progress in the relevant area over a full academic year;

(3) How the assessments will produce the required student performance data, as described in the priority;

(4) How and when during the academic year different types of student data will be available to inform and guide instruction, interventions, and professional development;

(5) The types of data that will be produced by the assessments, which must include student achievement data and other data specified in the relevant priority;

(6) The uses of the data that will be produced by the assessments, including (but not limited to)—

(i) Determining individual student achievement and student progress; determining, as appropriate and as one of multiple measures, individual principal and teacher effectiveness, if applicable; and professional development and support needs;

(ii) Informing teaching, learning, and program improvement; and

(7) The frequency and timing of administration of the assessments, and the rationale for these;

(8) The number and types of items (e.g., performance tasks, selected responses, observational rating, brief or extended constructed responses) and the distribution of item types within the assessments, including the extent to which the items will be varied and elicit complex student demonstrations or applications of knowledge, skills, and approaches to learning, as appropriate (descriptions should include a concrete example of each item type proposed); and the rationale for using these item types and their distributions;

(9) The assessments' administration mode (e.g., paper-and-pencil, teacher rating, computer-based, or other electronic device), and the rationale for the mode;

(10) The methods for scoring student performance on the assessments, the estimated turnaround times for scoring, and the rationale for these; and

(11) The reports that will be produced based on the assessments, and for each report: The key data it will present; its intended use; target audience (e.g., students, parents, teachers, administrators, policymakers); and its presentation in an understandable and uniform format and, to the extent practicable, in a language that parents can understand.

(c) *Assessment development plan.* The Secretary reviews each application to determine the extent to which the eligible applicant's plan for developing the proposed assessments will ensure that the assessments are ready by the end of the grant period for wide-scale administration in a manner that is

timely, cost-effective, and consistent with the proposed design and incorporates a process for ongoing feedback and improvement. In determining the extent to which the assessment development plan has these attributes, we will consider—

(1)(i) The approaches for developing assessment items (*e.g.*, evidence-centered design, universal design) and the rationale for using those approaches; and the development phases and processes to be implemented consistent with the approaches; and

(ii) The types of personnel (*e.g.*, practitioners, content experts, assessment experts, experts in assessing English learners, linguists, experts in second language acquisition, experts in assessing students with disabilities, psychometricians, cognitive scientists, institution of higher education representatives, experts on career readiness standards, and other key stakeholders) involved in each development phase and process;

(2) The approach and strategy for designing and developing accommodations, accommodation policies, and methods for standardizing the use of those accommodations for students with disabilities;

(3) The approach and strategy for ensuring scalable, accurate, and consistent scoring of items, including the approach and moderation system for any human-scored items and the extent to which teachers are trained and involved in the administration and scoring of assessments;

(4) The approach and strategy for developing the reporting system; and

(5) The overall approach to quality control and the strategy for field-testing assessment items, accommodations, scoring systems, and reporting systems, including, with respect to assessment items and accommodations, the use of representative sampling of all types of student populations, taking into particular account high- and low-performing students, different types of English learners (*e.g.*, recently arrived English learners, former English learners, migratory English learners, and English learners with disabilities), and students with disabilities.

(d) *Research and evaluation.* The Secretary reviews each application to determine the extent to which the eligible applicant's research and evaluation plan will ensure that the assessments developed are valid, reliable, and fair for their intended purposes. In determining the extent to which the research and evaluation plan has these attributes, we will consider—

(1) The plan for identifying and employing psychometric techniques

suitable for verifying, as appropriate to each assessment, its construct, consequential, and predictive validity; external validity; reliability; fairness; precision across the full performance continuum; and comparability within and across grade levels; and

(2) The plan for determining whether the assessments are being implemented as designed and the theory of action is being realized, including whether the intended effects on individuals and institutions are being achieved.

(e) *Professional capacity and outreach.* The Secretary reviews each application to determine the extent to which the eligible applicant's plan for implementing the proposed assessments is feasible, cost-effective, and consistent with the theory of action. In determining the extent to which the implementation plan has these attributes, we will consider—

(1) The plan for supporting teachers and administrators in implementing the assessments and for developing, in an ongoing manner, their professional capacity to use the assessments and results to inform and improve instructional practice; and

(2) The strategy and plan for informing the public and key stakeholders (including teachers, administrators, families, legislators, and policymakers) in each State or in each member State within a consortium about the assessments and for building support from the public and those stakeholders.

(f) *Technology approach.* The Secretary reviews each application to determine the extent to which the eligible applicant would use technology effectively to improve the quality, accessibility, cost-effectiveness, and efficiency of the proposed assessments. In determining the extent to which the eligible applicant is using technology effectively, we will consider—

(1) The description of, and rationale for, the ways in which technology will be used in assessment design, development, administration, scoring, and reporting; the types of technology to be used (including whether the technology is existing and commercially available or is being newly developed); and how other States or organizations can re-use in a cost-effective manner any technology platforms and technology components developed under this grant; and

(2) How technology-related implementation or deployment barriers will be addressed (*e.g.*, issues relating to local access to internet-based assessments).

(g) *Project management.* The Secretary reviews each application to

determine the extent to which the eligible applicant's project management plan will result in implementation of the proposed assessments on time, within budget, and in a manner that is financially sustainable over time. In determining the extent to which the project management plan has these attributes, we will consider—

(1) The project workplan and timeline, including, for each key deliverable (*e.g.*, necessary procurements and any needed approvals for human subjects research, assessment, scoring and moderation system, professional development activities), the major milestones, deadlines, and entities responsible for execution;

(2) The approach to identifying, managing, and mitigating risks associated with the project;

(3) The extent to which the eligible applicant's budget is adequate to support the development of assessments that meet the requirements of the priority and includes costs that are reasonable in relation to the objectives, design, and significance of the proposed project and the number of students to be served;

(4) For each applicant State or for each member State within a consortium, the estimated costs for the ongoing administration, maintenance, and enhancement of the operational assessments after the end of the project period for the grant and a plan for how the State will fund the assessments over time (including by allocating to the assessments funds for existing State or local assessments that will be replaced by the new assessments); and

(5) The quality and commitment of the personnel who will carry out the proposed project, including the qualifications, relevant training, and experience of the project director and other key project personnel, and the extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

**Note:** This notice does not solicit applications. In any year in which we choose to use these priorities, requirements, definitions, and selection criteria, we invite applications through a notice in the **Federal Register**.

*Executive Order 12866:* This notice has been reviewed in accordance with Executive Order 12866. Under the terms

of the order, we have assessed the potential costs and benefits of this final regulatory action.

The potential costs associated with this final 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—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priorities, requirements, definitions, and selection criteria justify the costs.

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

We fully discussed the costs and benefits of this regulatory action in the notice of proposed priorities, requirements, definitions, and selection

criteria. Elsewhere in this notice we discuss the potential costs and benefits, both quantitative and qualitative, of the final priorities, requirements, definitions, and selection criteria.

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

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

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotope, or computer diskette) on request to the program contact

person listed under **FOR FURTHER INFORMATION CONTACT**.

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

Dated: April 14, 2011.

**Thelma Meléndez de Santa Ana**,  
*Assistant Secretary for Elementary and Secondary Education.*

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