

directions given to them by the COTP or the COTP's designated representative.

Dated: November 1, 2019.

**M.R. Franklin,**

*Commander, U.S. Coast Guard, Captain of the Port Prince William Sound, Alaska.*

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## DEPARTMENT OF EDUCATION

### 34 CFR Chapter III

[Docket ID ED-2019-OSERS-0025]

#### Proposed Priority and Requirements— Technical Assistance on State Data Collection—IDEA Data Management Center

[Catalog of Federal Domestic Assistance (CFDA) Number: 84.373M.]

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Proposed priority and requirements.

**SUMMARY:** The mission of the Office of Special Education and Rehabilitative Services (OSERS) is to improve early childhood, educational, and employment outcomes and raise expectations for all people with disabilities, their families, their communities, and the Nation. As such, the Department of Education (Department) proposes a funding priority and requirements under the Technical Assistance on State Data Collection program. The Department may use the proposed priority and requirements for competitions in fiscal year (FY) 2020 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to improve the capacity of States to meet the data collection requirements of the Individuals with Disabilities Education Act (IDEA). This Data Management Center would help States in collecting, reporting, and determining how to best analyze and use their data to establish and meet high expectations for each child with a disability by enhancing, streamlining, and integrating their IDEA Part B data into their State longitudinal data systems and would customize its TA to meet each State's specific needs.

**DATES:** We must receive your comments on or before January 27, 2020.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email

or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

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

- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed priority and requirements, address them to Meredith Miceli, U.S. Department of Education, 400 Maryland Avenue SW, Room 5141, Potomac Center Plaza, Washington, DC 20202-5076.

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

**FOR FURTHER INFORMATION CONTACT:** Meredith Miceli, U.S. Department of Education, 400 Maryland Avenue SW, Room 5141, Potomac Center Plaza, Washington, DC 20202-5076. Telephone: (202) 245-6028. Email: [Meredith.Miceli@ed.gov](mailto:Meredith.Miceli@ed.gov).

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

#### SUPPLEMENTARY INFORMATION:

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

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

*Directed Question:* The Department seeks input on whether the establishment of two centers (*i.e.*, one Center addressing the needs of

Developed Capacity States, and another Center addressing the needs of Developing Capacity States)<sup>1</sup> would be an efficient and effective approach to meeting the diverse needs of States in integrating, reporting, analyzing, and using high-quality IDEA Part B data. The Secretary specifically invites comments on the potential impact of having two centers on the ease and efficiency of accessing TA services proposed in this notice, the differing levels of expertise needed to effectively deliver TA services to the two different groups of States, and the types of products that the two groups of States would need to achieve the outcomes proposed in this notice.

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

During and after the comment period, you may inspect all public comments about the proposed priority and requirements by accessing *Regulations.gov*. You may also inspect the comments in person in Room 5010B, 550 12th Street SW, Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

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

<sup>1</sup> "Developed Capacity States" are defined as States that can demonstrate that their data systems include linkages between special education data and other early childhood and K-12 data. Projects funded under this focus area would focus on helping such States utilize those existing linkages to report, analyze, and use IDEA Part B data.

"Developing Capacity States" are defined as States that have a data system that does not include linkages between special education data and other early childhood and K-12 data. Projects funded under this focus area would focus on helping such States develop those linkages to allow for more accurate and efficient reporting, analysis, and use of IDEA Part B data.

*Purpose of Program:* The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve not more than 1/2 of 1 percent of the amounts appropriated under Part B for each fiscal year to provide TA activities authorized under section 616(i), where needed, to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is \$25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA (from funds reserved under section 611(c)), where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. Additionally, the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 gives the Secretary authority to use funds reserved under section 611(c) to “administer and carry out other services and activities to improve data collection, coordination, quality, and use under parts B and C of the IDEA.” Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019; Div. B, Title III of Public Law 115–245; 132 Stat. 3100 (2018).

To help ensure this program meets State needs, we invited the public to provide input on the Technical Assistance on State Data Collection program from April 24, 2018, through May 24, 2018, on the *ED.gov* OSERS Blog.<sup>2</sup> In response to this invitation, we received 63 relevant responses, all of which we considered in our development of this document. Sixty-two supported our continuing to fund TA centers; only one supported one of the other options we presented, specifically, to invite State educational

agencies (SEAs) and State lead agencies (LAs) to directly apply for funds reserved under section 611(c) to purchase TA to improve their capacity to meet their IDEA Part B and Part C data collection requirements. A few commenters noted some concerns regarding overlap between centers and a need for cross-State collaboration. We addressed these concerns in the proposed priority by including a requirement for the center to offer cross-State TA collaboration opportunities.

*Program Authority:* 20 U.S.C. 1411(c), 1416(i), 1418(c), 1442, and the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019; Div. B, Title III of Public Law 115–245, Consolidated Appropriations Act, 2019; 132 Stat. 3100 (2018).

*Applicable Program Regulations:* 34 CFR 300.702.

### Proposed Priority

The Assistant Secretary proposes the following priority for this program. We may apply this proposed priority in any year in which this program is in effect.

*IDEA Data Management Center.*

#### Background

The purpose of this proposed priority is to establish a TA center to provide TA to improve States’ capacity to collect, report, analyze, and use high-quality IDEA Part B data (including IDEA section 618 Part B data and section 616 Part B data) by enhancing, streamlining, and integrating their IDEA Part B data into the State’s longitudinal data systems.<sup>3</sup> The Data Management Center’s work will comply with the privacy and confidentiality protections in the Family Educational Rights and Privacy Act (FERPA) and IDEA and will not provide the Department with access to child-level data.

A majority of States have State longitudinal data systems, but, until recently, very few of those systems integrated IDEA Part B data, a complex issue. Specifically, in the IDEA State Supplemental Survey in school year (SY) 2015–16, only 18 of 60 Part B reporting entities responded that all their special education data was in their statewide longitudinal data system, rising to 23 Part B reporting entities in SY 2018–19. Therefore, many Part B reporting entities are still not integrating their IDEA Part B data with their States’

longitudinal data systems. This lack of integration reduces States’ ability both to make full use of their data and to meet changing reporting needs. States are seeing the value of integrating IDEA Part B data into their State longitudinal data systems. Doing so allows States to standardize data collected across programs, assists in meeting Federal reporting requirements, provides additional information on the participation in other programs by children with disabilities, and supports program improvement.

Currently, most students with disabilities are educated in the same settings as students without disabilities; however, the majority of States continue to separate disability and special education related data from other data collected on students (e.g., demographics, assessment data). Some States are using separate data collections to meet the reporting requirements under sections 616 and 618 of IDEA (e.g., discipline, assessment, educational environments) rather than including all data elements needed for Federal reporting in their State longitudinal data systems. At the same time, various programs, districts, and SEAs are using different collection processes to gather data for their required data submissions, resulting in different degrees of reliability in the data collected.

These situations hinder the States’ capacity both to collect and report valid and reliable data on children with disabilities to the Secretary and to the public, which is specifically required by IDEA sections 616(b)(2)(B)(i), 616(b)(2)(C)(ii), and 618(a), and to meet IDEA Part B data collection and reporting requirements under sections 616 and 618 of IDEA.

States with fragmented data systems are also more likely to have missing or duplicate data. For example, if a State collects and maintains data on disciplinary removals of students with disabilities in a special education data system but maintains data on the demographics of all students in another data system, the State may not be able to accurately match all data on disciplinary removals with the demographic data needed to meet IDEA Part B data collection and reporting requirements.

In addition, States with fragmented data systems often lack the capacity to cross-validate related data elements. For example, if the data on the type of statewide assessment in which students with disabilities participate is housed in one database and the grade in which students are enrolled is housed in another, the State may not be able to

<sup>2</sup> See <https://sites.ed.gov/osers/2018/04/use-of-part-b-program-funds-for-technical-assistance-to-states-on-idea-data-collection/>.

<sup>3</sup> A State’s longitudinal data system is a State-managed repository of longitudinal, linked, unit record data with connections across programs and sectors to support a comprehensive, integrated view of students, schools, and programs, and may also refer to other statewide data systems.

accurately match the assessment data to the grade-level data to meet the Federal reporting requirements, including IDEA Part B reporting requirements under sections 616 and 618 of IDEA.

Finally, the demand from States for support from the currently funded Data Management Center to assist them in integrating their IDEA Part B data within the States' longitudinal data system far exceeds the number of States that could be served by the current center. Ten States have received support from the current center while 28 additional States have indicated interest in integrating their IDEA Part B data with their States' longitudinal data systems. In addition to the interest in integrating data, about 10 percent of States reported to the National Center for Education Statistics through the State longitudinal data program that they do not yet have non-ED*Facts* special education reporting and are interested in, or are working towards, this functionality. About one-third of States reported that they do not yet have IDEA Part B data integrated into their systems and are interested in or are working on developing this functionality.

In addition, we propose for this priority to include an indirect cost cap that is the lesser of the grantee's actual indirect costs as determined by the grantee's negotiated indirect cost rate agreement with its cognizant Federal agency and 40 percent of the grantee's modified total direct cost (MTDC) base. We believe this cap is appropriate as it maximizes the availability of funds for the primary TA purposes of this priority, which is to improve the capacity of States to meet the data collection and reporting requirements under Part B of IDEA and to ultimately benefit programs serving children with disabilities. The Department has done an analysis of the indirect cost rates for all current technical assistance centers funded under the Technical Assistance and Dissemination and Technical Assistance on State Data Collection programs as well as other grantees that are large, midsize, and small businesses and small nonprofit organizations and has found that, in general, total indirect costs charged on these grants by these entities were at or below 35 percent of total direct costs (TDC). We recognize that, dependent on the structure of the investment and activities, the MTDC base could be much smaller than the TDC, which would imply a higher indirect cost rate than those calculated here. The Department arrived at a 40 percent rate to address some of that variation. This would account for a 12 percent variance between TDC and

MTDC. However, we note that, in the absence of a cap, certain entities would likely charge indirect cost rates in excess of 40 percent of MTDC. Based on our analysis, it appears that those entities would likely be for-profit and nonprofit organizations, but these organizations appear to be outliers when compared to the majority of other large businesses as well as the entirety of OSEP's grantees. Setting an indirect cost rate cap of 40 percent would be in line with the majority of applicants' existing negotiated rates with the cognizant Federal agency.

This proposed priority aligns with two priorities from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096): Priority 2: Promoting Innovation and Efficiency, Streamlining Education With an Increased Focus on Improving Student Outcomes, and Providing Increased Value to Students and Taxpayers; and Priority 5: Meeting the Unique Needs of Students and Children With Disabilities and/or Those With Unique Gifts and Talents.

Projects must be operated in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws.

#### **Proposed Priority**

The purpose of this proposed priority is to fund a cooperative agreement to establish and operate an IDEA Data Management Center (Data Management Center). The Data Management Center will respond to State needs as States integrate their IDEA Part B data required to meet the data collection requirements in section 616 and section 618 of IDEA, including information collected through the IDEA State Supplemental Survey, into their longitudinal data systems. This will improve the capacity of States to collect, report, analyze, and use high-quality IDEA Part B data to establish and meet high expectations for each child with a disability. The Data Management Center will help States address challenges with data management procedures and data systems architecture and better meet current and future IDEA Part B data collection and reporting requirements. The Data Management Center's work will comply with the privacy and confidentiality protections in FERPA and IDEA and will not provide the Department with access to child-level data.

The Data Management Center must be designed to achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of States to integrate IDEA Part B data required under sections 616 and 618 of IDEA within their longitudinal data systems;

(b) Increased use of IDEA Part B data within States by developing products to allow States to report their special education data to various stakeholders through their longitudinal data systems;

(c) Increased number of States that use data governance and data management procedures to increase their capacity to meet the IDEA Part B reporting requirements under sections 616 and 618 of IDEA;

(d) Increased capacity of States to utilize their State longitudinal data systems to collect, report, analyze, and use high-quality IDEA Part B data (including data required under sections 616 and 618 of IDEA); and

(e) Increased capacity of States to use their State longitudinal data systems to analyze high-quality data on the participation and outcomes of children with disabilities across various Federal programs (*e.g.*, IDEA, Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA)) in order to improve IDEA programs and the outcomes of children with disabilities.

In addition, the Data Management Center must provide a range of targeted and general TA products and services for improving States' capacity to report high-quality IDEA Part B data required under sections 616 and 618 of IDEA through their State longitudinal data systems. Such TA should include, at a minimum—

(a) In partnership with the Department, supporting, as needed, the implementation of an existing open source electronic tool to assist States in building ED*Facts* data files and reports that can be submitted to the Department and made available to the public. The tool will utilize Common Education Data Standards (CEDS) and meet all States' needs associated with reporting the IDEA Part B data required under sections 616 and 618 of IDEA;

(b) Developing and implementing a plan to maintain the appropriate functionality of the open source electronic tool described in paragraph (a) as changes are made to data collections, reporting requirements, file specifications, and CEDS (such as links within the system to allow TA products developed by other Office of Special Education Programs (OSEP)/ Department-funded centers or contractors);

(c) Conducting TA on data governance to facilitate the use of the open source electronic tool and providing training to

State staff to implement the open source electronic tool;

(d) Revising CEDS “Connections”<sup>4</sup> to calculate metrics needed to report the IDEA Part B data required under sections 616 and 618 of IDEA;

(e) Identifying other outputs (*e.g.*, reports, Application Programming Interface, new innovations) of an open source electronic tool that can support reporting by States of IDEA Part B data to different stakeholder groups (*e.g.*, local educational agencies (LEAs), legislative branch, parents);

(f) Supporting the inclusion of other OSEP/Department-funded TA centers’ products within the open source electronic tool or building connections that allow the SEAs to pull IDEA Part B data efficiently into the other TA products;

(g) Supporting a user group of States that are using an open source electronic tool for reporting IDEA Part B data required under sections 616 and 618 of IDEA; and

(h) Developing products and presentations that include tools and solutions to challenges in data management procedures and data system architecture for reporting the IDEA Part B data required under sections 616 and 618 of IDEA.

#### 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

<sup>4</sup> A Connection is a way of showing which CEDS data elements might be necessary for answering a data question. For users who have aligned their data systems to CEDS, States will be able to utilize these Connections via the Connect tool to see which data elements, in their own systems, would be needed to answer any data question.

preference over other applications (34 CFR 75.105(c)(1)).

#### Proposed Requirements

In addition to the programmatic requirements contained in the proposed priority, we propose that, to be considered for funding, applicants must meet the following requirements.

##### Proposed Requirements

The Assistant Secretary proposes the following requirements for this program. We may apply one or more of these proposed requirements in any year in which this program is in effect.

Applicants must—

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

(1) Address State challenges associated with State data management procedures, data systems architecture, and building ED*Facts* data files and reports for timely reporting of the IDEA Part B data to the Department and the public. To meet this requirement the applicant must—

(i) Present applicable national, State, or local data demonstrating the difficulties that States have encountered in the collection and submission of valid and reliable IDEA Part B data;

(ii) Demonstrate knowledge of current educational and technical issues and policy initiatives relating to IDEA Part B data collections and ED*Facts* file specifications for the IDEA Part B data collections; and

(iii) Present information about the current level of implementation of integrating IDEA Part B data within State longitudinal data systems and the reporting of high-quality IDEA Part B data to the Department and the public.

(b) Demonstrate, in the narrative section of the application under “Quality of project services,” how the proposed project will—

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

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that services and products meet the needs of the intended recipients of the grant;

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

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which

the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

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

**Note:** The following websites provide more information on logic models and conceptual frameworks: [www.osepideasthatwork.org/logicModel](http://www.osepideasthatwork.org/logicModel) and [www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework](http://www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework).

(4) Be based on current research and make use of evidence-based practices (EBPs).<sup>5</sup> To meet this requirement, the applicant must describe—

(i) The current research on data collection strategies, data management procedures, and data systems architecture; and

(ii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on States’ data management processes and data systems architecture;

(ii) Its proposed approach to universal, general TA,<sup>6</sup> which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

<sup>5</sup> For purposes of these requirements, “evidence-based practices” means practices that, at a minimum, demonstrate a rationale (as defined in 34 CFR 77.1), where a key project component included in the project’s logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

<sup>6</sup> “Universal, general TA” means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center’s website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

(iii) Its proposed approach to targeted, specialized TA,<sup>7</sup> which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

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

(C) Its proposed approach to prioritizing TA recipients with a primary focus on meeting the needs of Developing Capacity States; and

(D) The process by which the proposed project will collaborate with other OSEP-funded centers and other federally funded TA centers to develop and implement a coordinated TA plan when they are involved in a State; and

(iv) Its proposed approach to intensive, sustained TA,<sup>8</sup> which must identify—

(A) The intended recipients, which must be Developing Capacity States, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to address Developing Capacity States' challenges associated with integrating IDEA Part B data within State longitudinal data systems and to report high-quality IDEA Part B data to the Department and the public, which should, at a minimum, include providing on-site consultants to SEAs to—

(1) Model and document data management and data system integration policies, procedures, processes, and activities within the Developing Capacity State;

(2) Support the Developing Capacity State's use of an open source electronic tool and provide technical solutions to meet State-specific data needs;

<sup>7</sup> "Targeted, specialized TA" means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

<sup>8</sup> "Intensive, sustained TA" means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. "TA services" are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

(3) Develop a sustainability plan for the Developing Capacity State to maintain the data management and data system integration work in the future; and

(4) Support the Developing Capacity State's cybersecurity plan in collaboration, to the extent appropriate, with the Department's Privacy Technical Assistance Center;

(C) Its proposed approach to measure the readiness of the SEAs to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the State and local district levels;

(D) Its proposed plan to prioritize Developing Capacity States with the greatest need for intensive TA to receive products and services;

(E) Its proposed plan for assisting Developing Capacity State LAs and SEAs to build or enhance training systems that include professional development based on adult learning principles and coaching;

(F) Its proposed plan for working with appropriate levels of the education system (e.g., SEAs, regional TA providers, districts, local programs, families) to ensure that there is communication between each level and that there are systems in place to support the collection, reporting, analysis, and use of high-quality IDEA Part B data, as well as State data management procedures and data systems architecture for building EDFacts data files and reports for timely reporting of the IDEA Part B data to the Department and the public; and

(G) The process by which the proposed project will collaborate and coordinate with other OSEP-funded centers and other Department-funded TA investments, such as the Institute of Education Sciences/National Center for Education Statistics research and development investments, where appropriate, to develop and implement a coordinated TA plan; and

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

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

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

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

(c) In the narrative section of the application under "Quality of the project evaluation," include an

evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.<sup>9</sup> The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these requirements;

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

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

(4) Provide a timeline for conducting the evaluation, and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the State Performance Plan/Annual Performance Report (SPP/APR) and at the end of Year 2 for the review process; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under "Adequacy of resources," how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

<sup>9</sup> A "third-party" evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

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

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and how funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes; and

(5) The applicant will ensure that it will recover the lesser of: (A) Its actual indirect costs as determined by the grantee's negotiated indirect cost rate agreement with its cognizant Federal agency; and (B) 40 percent of its modified total direct cost (MTDC) base as defined in 2 CFR 200.68.

**Note:** The MTDC is different from the total amount of the grant. Additionally, the MTDC is not the same as calculating a percentage of each or a specific expenditure category. If the grantee is billing based on the MTDC base, the grantee must make its MTDC documentation available to the program office and the Department's Indirect Cost Unit. If a grantee's allocable indirect costs exceed 40 percent of its MTDC as defined in 2 CFR 200.68, the grantee may not recoup the excess by shifting the cost to other grants or contracts with the U.S. Government, unless specifically authorized by legislation. The grantee must use non-Federal revenue sources to pay for such unrecovered costs.

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

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

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

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

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

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

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

(f) Address the following application requirements:

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the

management plan described in the narrative;

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

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

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

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

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

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

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

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

(6) Budget to provide intensive, sustained TA to at least 25 States.

#### **Final Priority and Requirements**

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

**Note:** This document does *not* solicit applications. In any year in which we choose to use this proposed priority and one or more of these requirements, we invite applications through a notice in the **Federal Register**.

#### **Executive Orders 12866, 13563, and 13771**

##### *Regulatory Impact Analysis*

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

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

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

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

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

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

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new rule must be fully offset by the elimination of existing costs through deregulatory actions.

However, Executive Order 13771 does not apply to "transfer rules" that cause only income transfers between taxpayers and program beneficiaries, such as those regarding discretionary grant programs. Because the proposed priority and requirements would be utilized in connection with a discretionary grant program, Executive Order 13771 does not apply.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent

permitted by law, Executive Order 13563 requires that an agency—

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

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

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

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

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

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

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

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

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

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

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

The small entities that this proposed regulatory action would affect are SEAs; LEAs, including charter schools that operate as LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by the proposed priority and requirements would be limited to paperwork burden related to preparing an application and that the benefits of this proposed priority and these proposed requirements would outweigh any costs incurred by the applicant.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the proposed priority and requirements would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance on State Data Collection program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a Technical Assistance on State Data Collection program grant. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the proposed priority and requirements would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to

prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from small eligible entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

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

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**Mark Schultz,**

*Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.*

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