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## DEPARTMENT OF EDUCATION

### 34 CFR Chapter II

[Docket ID ED-2022-OESE-0080]

RIN 1810-AB68

#### Proposed Priorities, Requirements, and Definitions—School-Based Mental Health Services Grant Program

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

**ACTION:** Proposed priorities, requirements, and definitions.

**SUMMARY:** The Department of Education (Department) proposes priorities, requirements, and definitions under the School-Based Mental Health Services Grant (SBMH) Program, Assistance Listing Number (ALN) 84.184H. These proposed priorities, requirements, and definitions are designed to direct funds to increase the number of qualified school-based mental health services providers (as defined in section 4102 of the Elementary and Secondary Education Act of 1965, as amended (ESEA)) in local educational agencies (LEAs) with demonstrated need (as defined in this document), in order to meet student mental health needs. We may use one or more of these priorities, requirements, and definitions in fiscal year (FY) 2023 and later years.

**DATES:** We must receive your comments on or before September 1, 2022.

**ADDRESSES:** Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov*, please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments by fax or by email, or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

The Department strongly encourages you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Format (PDF), the Department

strongly encourages you to convert the PDF to “print-to-PDF” format, or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions to assist in the rulemaking process.

- *Federal eRulemaking Portal:* Please go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for finding a rule on the site and submitting comments, is available on the site under “FAQ.”

*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*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Amy Banks, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E257, Washington, DC 20202. Telephone: (202) 453-6704. Email: *amy.banks@ed.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

#### **SUPPLEMENTARY INFORMATION:**

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

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department’s programs and activities. Please also feel free to offer for our consideration any alternative approaches to the subjects addressed by the proposed regulations.

During and after the comment period, you may inspect all public comments about the proposed priorities, requirements, and definitions by

accessing *Regulations.gov*. You may also inspect the comments in person. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT** to make arrangements to inspect the comments in person.

*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 priorities, requirements, and definitions. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Purpose of Program:* The SBMH Program provides competitive grants to State educational agencies (SEAs) (as defined in section 8101 of the ESEA), LEAs (as defined in section 8101 of the ESEA), and consortia of LEAs to increase the number of qualified (*i.e.*, licensed, certified, or credentialed, each as defined in this document) mental health services providers providing school-based mental health services to students in LEAs with demonstrated need.

*Program Authority:* Section 4631(a)(1)(B) of the ESEA (20 U.S.C. 7281).

#### **Proposed Priorities**

This document contains four proposed priorities.

##### *Background:*

Like good physical health, positive mental health promotes success in life. As defined by the Centers for Disease Control and Prevention (CDC), “[m]ental health includes our emotional, psychological, and social well-being. It affects how we think, feel, and act. It also helps determine how we handle stress, relate to others, and make healthy choices. Mental health is important at every stage of life, from childhood and adolescence through adulthood.”<sup>1</sup>

The Novel Coronavirus Disease 2019 (COVID-19) pandemic brought on challenges for children and youth that impacted their overall emotional, psychological, and social well-being and their ability to fully engage in learning. The disruptions in routines, relationships, and the learning environment have led to increased stress and trauma, social isolation, and anxiety. More than half of parents express concern over their children’s

<sup>1</sup> <https://www.cdc.gov/mentalhealth/learn/index.htm>.

mental well-being.<sup>2</sup> Moreover, survey data suggests that this crisis began long before the arrival of COVID–19. In 2019, one in three high school students and half of female students reported persistent feelings of sadness or hopelessness, an overall increase of 40 percent from 2009.<sup>3</sup> Emergency department visits for attempted suicide have risen 51 percent among adolescent girls.<sup>4</sup> The need for mental health services is particularly acute for our lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) students. For example, “[the] share of [lesbian, gay, and bisexual (LGB)] high schoolers who said their mental health was not good most of the time or always during the pandemic was more than double that of heterosexual students (64% vs. 30%) . . . [and] about three-quarters of LGB high schoolers (76%) said they felt sad or hopeless almost daily for at least two weeks such that they stopped doing some of their usual activities, compared with 37% of heterosexual students.”<sup>5</sup>

This program is designed to address several barriers to increasing mental health support for children and youth in our schools. The first barrier is a significant shortage of qualified mental health services providers, including in schools.<sup>6</sup> Qualified professionals may need training and skill sets that include the capacity to conduct behavioral health assessments, identify youth who may need additional supports or pose a serious threat to themselves or others, and provide evidence-based interventions, particularly related to trauma- and grief-informed care. Qualified providers may also need to assist in the development of school environments and activities that promote behavioral wellness and foster resilience. Second, in mental health services provider preparation and professional development programs, there is a lack of pedagogical practices that prepare providers to create culturally and linguistically inclusive and identity-safe environments. An identity-safe environment is a place where every student feels physically

and emotionally safe. Perceptions of safety may differ across subgroups of students, and each intervention and support measure should be designed to ensure the safety and belonging of all students. Third, the public stigmatization associated with mental health care, which often inhibits children and adolescents from taking advantage of care even when it is available, is compounded for underserved groups.<sup>7</sup> Fourth, and related to the second barrier, is the need for more mental health services providers from diverse backgrounds, from the communities they serve, and who can provide services in languages other than English.<sup>8</sup>

In response to these barriers, the Department will make awards in FY 2023 under two competitive grants programs that are designed to increase the number of qualified school-based mental health services providers—the SBMH Program (described in this document) and the Mental Health Service Professional Demonstration Grant Program. The Mental Health Service Professional Demonstration Grant Program provides competitive grants to support and provide examples of effective innovative partnerships to train school-based mental health services providers for employment in schools and LEAs. For more information about the Mental Health Service Professional Demonstration Grant program competition, visit the Department’s website at: <https://oese.ed.gov/offices/office-of-formula-grants/safe-supportive-schools/mental-health-service-professional-demonstration-grant-program/>. Together these two programs are intended to provide timely and necessary support to LEAs by increasing the number of qualified school-based mental health services providers. We are proposing priorities, requirements, and definitions for the Mental Health Service Professional Demonstration Grant Program in a separate document published in the **Federal Register**.

The priorities we propose in this document for the SBMH Program are intended to address personnel shortages by (1) increasing recruitment and retention-related incentives and (2) promoting the respecialization and certification of existing mental health services providers to qualify them for work in LEAs with demonstrated need. Additionally, the Department proposes a priority that seeks to increase the

diversity, and cultural and linguistic competency, of school-based mental health services providers, including competency in providing identity-safe services, which the Department believes is essential to addressing the mental health needs of all students.

The Department also is interested in applicants’ demonstrated capacity to increase access to and sustain school-based mental health services beyond the period of Federal funding and support expanded access to care by promoting the integration of mental health services and supports into schools’ in-person and telehealth services options. The use of telehealth to address mental health and substance use needs rose dramatically during the height of the pandemic and has remained above pre-pandemic levels even where COVID–19 has waned. These telehealth services have proven both safe and effective, while reducing barriers to care.<sup>9</sup> Telehealth services options also help to address provider shortages in rural communities, in part by improving access to mental health services providers in such communities.

Additionally, the Department encourages applicants to plan for ways they will leverage available Federal, State, and local resources to achieve project goals and objectives.

### Proposed Priorities

The Department proposes the following four priorities for this program. Priorities 1 and 3 are only applicable to SEAs. Priority 2 is only applicable to LEAs or consortia of LEAs. Priority 4 is applicable to all eligible applicants. We may apply one or more of these priorities in any year in which this program is in effect.

*Proposed Priority 1—SEAs Proposing to Increase the Number of Qualified School-Based Mental Health Services Providers in LEAs with Demonstrated Need.*

To meet this priority, an SEA must propose to increase the number of qualified school-based mental health services providers by implementing plans that address recruitment (defined in this document) and retention (defined in this document) of services providers in LEAs with demonstrated need. Applicants must propose plans that include both of the following:

(a) *Recruitment.* An applicant must propose a plan to increase the number of qualified services providers serving

<sup>9</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/01/fact-sheet-president-biden-to-announce-strategy-to-address-our-national-mental-health-crisis-as-part-of-unity-agenda-in-his-first-state-of-the-union/>.

<sup>2</sup> <https://www.psychiatry.org/newsroom/news-releases/new-apa-poll-shows-sustained-anxiety-among-americans-more-than-half-of-parents-are-concerned-about-the-mental-well-being-of-their-children>.

<sup>3</sup> [https://www.cdc.gov/nchhstp/dear\\_colleague/2020/dcl-102320-YRBS-2009-2019-report.html](https://www.cdc.gov/nchhstp/dear_colleague/2020/dcl-102320-YRBS-2009-2019-report.html).

<sup>4</sup> <https://www.nytimes.com/2021/12/07/science/pandemic-adolescents-depression-anxiety.html>.

<sup>5</sup> <https://www.pewresearch.org/fact-tank/2022/04/25/in-cdc-survey-37-of-u-s-high-school-students-report-regular-mental-health-struggles-during-covid-19/>.

<sup>6</sup> <https://www.edweek.org/leadership/school-counselors-and-psychologists-remain-scarce-even-as-needs-rise/2022/03>.

<sup>7</sup> <https://www.hhs.gov/sites/default/files/surgeon-general-youth-mental-health-advisory.pdf>.

<sup>8</sup> <https://www.apa.org/workforce/data-tools/demographics>.

students in LEAs with demonstrated need.

(b) *Retention*. An applicant must also propose a plan to increase the likelihood that qualified services providers providing services in LEAs with demonstrated need remain in such LEAs over time.

*Proposed Priority 2—LEAs or Consortia of LEAs with Demonstrated Need Proposing to Increase the Number of Qualified School-Based Mental Health Services Providers.*

To meet this priority, an LEA or consortium of LEAs with demonstrated need must propose measures to increase the number of qualified school-based mental health services providers, including plans to address the recruitment and retention of qualified services providers in the LEA(s). Applicants must propose plans that include both of the following:

(a) *Recruitment*. An applicant must propose a plan to increase the number of qualified services providers serving students in the LEA(s) with demonstrated need.

(b) *Retention*. An applicant must also propose a plan to improve the likelihood that qualified services providers providing services in the LEA(s) with demonstrated need remain in such LEAs over time.

*Proposed Priority 3—SEAs Proposing Respecialization or Additional Certification of Existing Mental Health Services Providers to Qualify Them for Work in LEAs with Demonstrated Need.*

To meet this priority, an applicant must propose a respecialization (defined in this document) or other certification plan that promotes the readiness of services providers who already have training as social workers, counselors, or psychologists, or in other related fields, by supporting incremental training needed to work in an elementary school (as defined in section 8101 of the ESEA) or secondary school (as defined in section 8101 of the ESEA) and that is designed to increase the number of services providers qualified to serve in LEAs with demonstrated need.

*Proposed Priority 4—Increasing the Number of Qualified School-Based Mental Health Services Providers in LEAs with Demonstrated Need Who Are from Diverse Backgrounds or from Communities Served by the LEAs with Demonstrated Need.*

To meet this priority, applicants must propose a plan to increase the number of qualified school-based mental health services providers in LEAs with demonstrated need who are from diverse backgrounds or who are from

communities served by the LEAs with demonstrated need.<sup>10</sup>

Applicants must describe how their proposal to increase the number of school-based mental health services providers who are from diverse backgrounds or who are from the communities served by the LEA with demonstrated need will help increase access to mental health services for students within the LEA with demonstrated need and best meet the mental health needs of the diverse populations of students to be served.

*Types of Priorities:*

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

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

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

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

**Proposed Requirements**

The Department proposes the following requirements for this program. Proposed application requirement (a) would apply to SEAs only; and proposed application requirement (b) would apply to LEAs only. All of the remaining proposed requirements would apply to all eligible applicants. We may apply one or more of these requirements in any year in which the program is in effect.

*Eligible Applicants:* One or both of SEAs, as defined in 20 U.S.C. 7801(49), or LEAs, as defined in 20 U.S.C. 7801(30), including consortia of LEAs.

*Proposed Program Requirements:*

(a) Applicants that receive an award under this program must ensure that

any school-based mental health services provider hired under this grant, including any services provider that offers telehealth services, is qualified by the State to work in an elementary school or secondary school.

(b) Applicants that receive an award under this program must ensure that any school-based mental health services provider offering services (including telehealth services) does so in an equitable manner and consistent with the Family Educational Rights and Privacy Act (FERPA), the Protection of Pupil Rights Amendment (PPRA), the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act, as well as all other applicable Federal, State, and local laws and profession-specific ethical obligations.

*Proposed Application Requirements:*

(a) *Describe the LEAs with demonstrated need designated by the SEA to be served by the proposed project.*

SEA applicants must describe the LEAs with demonstrated need designated to benefit from the SBMH program.

(b) *Describe how the LEA, or each LEA in the proposed consortium (if applicable), meets the definition of an LEA with demonstrated need.*

To meet this requirement, an LEA applicant or the lead LEA submitting an application on behalf of a consortium must describe how the LEA or each LEA in the consortium meets the definition of an LEA with demonstrated need.

(c) *Describe the importance and magnitude of the problem.*

Applicants must describe the lack of school-based mental health services providers and its effect on students in the LEA(s) to be served by the grant. This must include a description of the nature of the problem for the LEA(s), based on information including, but not limited to, the most recent available ratios of school-based mental health services providers to students enrolled in the LEA(s), or for SEA applicants, the LEAs designated by the SEA to benefit from the SBMH Program. These data must be provided in the aggregate and disaggregated by profession (e.g., school social workers, school psychologists, school counselors) as compared to local, State, or national data. The description may also include LEA-level or school-level demographic data (including rates of poverty, rates of chronic absenteeism, percentage of students involved in the juvenile justice system, experiencing homelessness, or in foster care, and discipline data), school climate surveys, school violence/crime data, data related

<sup>10</sup> All strategies to increase the diversity of providers must comply with applicable Federal civil rights laws, including Title VI of the Civil Rights Act of 1964.

to suicide rates, and descriptions of barriers to hiring and retaining qualified school-based mental health services providers in the LEA.

(d) *Detailed project budget, including matching funds.*

To promote the sustainability of the school-based mental health services, all applicants must include non-Federal matching funds in one of the following amounts, as determined by the Secretary in the notice inviting applications:

(1) At least 10 percent of their budgets.

(2) At least 15 percent of their budgets.

(3) At least 20 percent of their budgets.

(4) At least 25 percent of their budgets.

Budgets must describe how the applicant will meet the matching requirement for each budget period awarded under this grant and must indicate the source of the funds, such as State, local, or private resources. The Secretary may consider decreasing or waiving the matching requirement post award, on a case-by-case basis, if an applicant demonstrates a significant financial hardship.

Budgets must also specify the portion of funds that will be used for respecialization, if applicable.

Administrative costs for SEA applicants may not exceed 10 percent of the annual grant award. This includes funding for State-level or LEA-level administrative costs that promote respecialization, if applicable.

Administrative costs for LEAs and consortia of LEAs may not exceed 5 percent of the annual grant award.

(e) *Number of providers.*

Applicants must include the most recent available data on the number of school-based mental health services providers in the identified LEA(s), disaggregated by profession (e.g., school social workers, school psychologists, school counselors), and the projected number of school-based mental health services providers that will be placed into employment in the identified LEA(s) for each year of the plan using funds from this grant or matching funds, including the unduplicated number of school-based mental health services providers offering telehealth services, as appropriate.

(f) *A plan for collaboration and coordination with related Federal, State, and local organizations and initiatives.*

Applicants must propose a plan describing how they will (1) collaborate with at least one State, regional, or local organization, such as school social worker associations, school psychologist associations, school counselor

associations, or colleges or universities, and (2) coordinate with regional or local mental health, public health, child welfare, and other community agencies, which may include school-based health centers, to achieve plan goals and objectives of increasing the number of school-based mental health services providers in LEAs with demonstrated need. Applicants may also describe proposed coordination with existing federally funded efforts related to elementary and secondary school counseling and mental health promotion, including Medicaid, if applicable. If such coordination will occur, applicants must identify which Federal program(s) they are coordinating with and how such coordination will promote program success across multiple programs.

(g) *Use of grant funds to supplement, and not supplant, existing school-based mental health services funds and to expand, not duplicate, efforts to increase the number of providers.*

Applicants must describe how project funds will supplement, and not supplant, non-Federal funds that would otherwise be available for activities funded under this program.

Applicants must describe how they will use the SBMH Program funds to expand, rather than duplicate, existing or new efforts to increase the number of qualified school-based mental health services providers in LEAs with demonstrated need and how they will integrate existing funding streams and efforts to support the plan.

(h) *Plan for immediate services to students.*

For SEA applicants, applicants must describe their plan to ensure services are provided to students immediately, including via subgrants to LEAs, as appropriate. For LEA applicants and consortia of LEAs, applicants must describe their plan to ensure students are provided services immediately.

### Proposed Definitions

The Department proposes to establish definitions of “certified,” “certification,” “credentialed,” “LEA with demonstrated need,” “licensed,” “recruitment,” “respecialization,” “retention,” and “telehealth” for use in this program. We may apply these in any year in which this program is in effect.

*Certified* means an individual has documented verification of education, expertise, or training in school psychology, school counseling, or school social work by a State or other recognized entity.

*Certification* means a level of achievement awarded by a State or other

recognized entity that attests to an individual’s education, expertise, or training to serve as a school-based mental health services provider.

*Credentialed* means an individual who possesses credentialing as a school psychologist, school counselor, or a school social worker from a State-level or other recognized entity.

*LEA with demonstrated need* means an LEA that has a significant need for additional school-based mental health services providers based on—

(1) High student to mental health services provider ratios as compared to other LEAs statewide or nationally;

(2) High rates of community violence (including hate crimes), poverty, substance use (including opioid use), suicide, or trafficking; or

(3) A significant number of students who are migratory, experiencing homelessness, have a family member deployed in the military or with a military-service connected disability (including veterans), have experienced a natural or manmade disaster or a traumatic event, or have other adverse childhood experiences.

*Licensed* means an individual has a license that represents a State’s legal authority for that individual to serve as a school-based mental health services provider.

*Recruitment* means strategies that help attract and hire professionals into positions that are otherwise hard to fill or where demand exceeds supply, including by doing at least one of the following:

(a) Providing an annual salary or stipend for school-based mental health services providers who maintain an active national certification.

(b) Providing payment toward the school loans accrued by the school-based mental health services provider.

(c) Creating pathways to grant cross-State credentialing reciprocity for school-based mental health services providers.

(d) Providing incentives and supports to help mitigate shortages. These may include, for example, increasing pay; offering monetary incentives for relocation to high-need areas; providing services via telehealth; creating hybrid roles that allow for leadership, academic, or research opportunities; developing induction programs; developing paid internship programs; and offering service scholarship programs such as those that provide grants in exchange for a commitment to serve in the LEA for a minimum number of years.

*Respecialization* means strategies that promote the readiness of mental health services providers who already have

training as social workers, counselors, or psychologists, or in other related fields, to serve in elementary or secondary schools, including by doing one or more of the following:

(a) Revising, updating, or streamlining requirements for such individuals so that additional training or other requirements focus only on incremental training needed for working in an elementary school or secondary school.

(b) Providing a stipend or making a payment to support the incremental training needed for working in an elementary school or secondary school.

(c) Offering flexible options for completing training that leads such professionals to meet State requirements.

(d) Establishing new State-level programs that provide alternate means of certification, licensure, or credentialing for such professionals, including through practical or on-the-job training.

(e) Offering other meaningful activities that result in existing mental health services providers obtaining the training they need to work in an elementary school or secondary school.

*Retention* means strategies to help ensure that qualified individuals stay in their position to avoid gaps in service and unfilled positions, including by—

(a) Providing opportunities for advancement or leadership, such as career pathways programs, recognition and award programs, and mentorship programs; and

(b) Offering incentives and supports to help mitigate shortages. These may include, for example, increasing pay, making payments toward student loans, offering monetary incentives for relocation to high-need areas, providing services via telehealth, offering service scholarship programs such as those that provide grants in exchange for a commitment to serve in the LEA for a minimum number of years, and developing paid internship programs.

*Telehealth* means the use of electronic information and telecommunication technologies to support and promote long-distance clinical health care, patient and professional health-related education, public health, and health administration. Technologies include videoconferencing, the internet, store-and-forward imaging, streaming media, and landline and wireless communications.

#### *Final Priorities, Requirements, and Definitions:*

We will announce the final priorities, requirements and definitions in a document published in the **Federal Register**. We will determine the final priorities, requirements, and definitions

after considering responses to the proposed priorities, requirements, and definitions and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

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

#### **Executive Orders 12866 and 13563**

##### *Regulatory Impact Analysis*

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

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

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

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

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

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866 because it has an annual effect on the economy of more than \$100 million. Approximately \$145 million are available under this program from fiscal year 2022 appropriations actions, and \$100 million are available each year from fiscal year 2023 to fiscal year 2026.

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 on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

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

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

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

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

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” 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 priorities, requirements, and definitions only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that the proposed priorities, requirements, and definitions are consistent with the principles in Executive Order 13563.

We also have 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 the 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.

## Potential Costs and Benefits

The proposed priorities, requirements, and definitions are necessary for the implementation of the SBMH program consistent with the requirements established by Congress in the Department of Education Appropriations Act, 2022, and the Explanatory Statement accompanying that Act. It is important to note that implementation of the SBMH program would almost exclusively confer benefits on the recipients of Federal funds subject to the proposed priorities, requirements, and definitions, whose voluntary participation in the SBMH program would entail minimal costs except for those paid with Federal funds and the Paperwork Reduction Act (PRA) section of this document discusses the burden estimates for preparing an application. This program was established under a statute with broad authority and only non-binding report language establishing program purpose, eligibility, or requirements; consequently, this rulemaking action is necessary to ensure program funds are used for their intended purpose. More specifically, the proposed priorities, requirements, and definitions would ensure that the Department may collect from applicants for SBMH funding the information necessary for competitive review of applications by peer reviewers, and to fund high-quality applications that will lead to the implementation of projects consistent with Congressional intent. Absent this rulemaking action, there is no alternative means of meeting these objectives.

The specific benefits of establishing a menu of proposed priorities include ensuring that funds are used consistent with Congressional intent and providing flexibility to the Department for supporting multiple strategies designed to address the shortage of school-based mental health services providers. The first strategy, embedded in proposed priorities 1 and 2, is to focus grant activities on hiring additional school-based mental health services providers in LEAs with demonstrated need to increase the number of school-based mental health services providers in schools and local educational agencies that have the most need for such services. The definition of LEA with demonstrated need, incorporated into these priorities, also was crafted to provide flexibility for an LEA to show need through data (ratios of school counselors to students), a description of events or conditions affecting school environment (such as community violence or disasters), or evidence that

an applicant will serve students who have or are likely to face adverse childhood experiences. Although the total number of LEAs is large (over 13,000 in school year 2018–19), the available funding will only support a limited number of multi-year projects. Absent the targeting of SBMH funds to LEAs with demonstrated need, the program may allocate scarce Federal resources to high-capacity LEAs that already meet the mental health needs of their students. Moreover, ensuring that funds are targeted to LEAs with demonstrated need was a requirement of the fiscal year 2020 SBMH competition, and Congress directed the Department, through the Explanatory Statement accompanying the Department of Education Appropriations Act, 2022, to incorporate the same requirement into the fiscal year 2022 SBMH competition.

The benefit of including Proposed priority 3 is that it supports another strategy for addressing the shortage of school-based mental health services providers. Requirements for school-based mental health services providers are established by States and generally include completion of bachelor's degree or higher, completion of practicum, and internship in a K–12 school, which typically take several years to fulfill. Proposed priority 3 would support States working to establish innovative strategies to expand the pipeline for qualified mental health providers by establishing pathways for individuals in related fields to attain the credentials to work as school-based mental health services providers. Under this priority, for example, a State might determine that individuals in related fields—such as counseling or social work—would only need to obtain incremental, additional training to qualify as a school-based mental health services provider, rather than a full degree or credentialing program. This strategy has the benefit of reducing the time necessary for credentialing and potentially increasing the number of qualified mental health providers available for hiring by LEAs, which is the core goal and purpose of the SBMH program. Absent the expanded use of such strategies, SBMH grantees may not be able to achieve this core goal due to the lack of qualified candidates.

The benefit of Proposed priority 4 is that it supports another strategy for expanding the workforce of school-based mental health services providers. Currently, the psychology<sup>11</sup> and school

<sup>11</sup> <https://www.apa.org/workforce/data-tools/demographics>.

counselor<sup>12</sup> workforce is significantly less diverse than the student population.<sup>13</sup> Increasing the number of qualified school-based mental health services providers from diverse backgrounds and from communities served by the LEAs with demonstrated need, and who can provide culturally and linguistically appropriate services, not only would expand the numbers of these providers but also increase access to and improve the quality of mental health services available to students. Further, this priority supports the Administration's equity agenda<sup>14</sup> and the Department's mission to support equity and excellence.

The Department believes that this proposed regulatory action would not impose significant costs on eligible entities, whose participation in our programs is voluntary, and costs can generally be covered with grant funds. As a result, the proposed priorities, requirements, and definitions would not impose a significant burden except when an entity voluntarily elects to apply for a grant. We believe these benefits would outweigh any associated costs.

The Paperwork Reduction Act (PRA) section of this document discusses the burden estimates for preparing an application. The potential benefits of receiving Federal funds under this program to expand the pool of and hire school-based mental health services providers will likely outweigh the application costs detailed in the PRA section. The costs of implementing the requirements established in this notice can be paid for with grant funds. Moreover, even an unsuccessful applicant may benefit from the effort of preparing an application, such as conducting deep data analysis about the needs in their LEA or developing creative plans to expand pathways to high-quality credentialing in this area.

## Regulatory Alternatives Considered

The Department believes that the final priorities, requirements, definitions, and selection criteria in this notice are needed to administer the program effectively. The authorizing statute does not provide sufficient detail to develop and administer a competitive grant program consistent with the intent of

<sup>12</sup> <https://www.schoolcounselor.org/getmedia/9c1d81ab-2484-4615-9dd7-d788a241beaf/member-demographics.pdf>.

<sup>13</sup> <https://nces.ed.gov/programs/coe/indicator/cge/racial-ethnic-enrollment>.

<sup>14</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

Congress as expressed in the Explanatory Statement accompanying the Department of Education Appropriations Act, 2022, which provided funding for the program in fiscal year 2022, or the Bipartisan Safer Communities Act, which provided additional funding for fiscal years 2022 through 2026. Consequently, absent the proposed priorities, requirements, and

definitions, the Department would not have a sufficient basis for evaluating the quality of applications or ensuring that the program achieves its intended objectives.

**Accounting Statement**

As required by OMB Circular A-4 (available at [www.whitehouse.gov/sites/default/files/omb/assets/omb/circulara004/a-4.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulara004/a-4.pdf)), in the following

table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the changes in annual monetized transfers as a result of this regulatory action.

Expenditures are classified as transfers from the Federal Government to SEAs and LEAs.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES  
[In millions]

Category	Transfers	
	3%	7%
Annualized monetized transfers .....	\$108.6	\$108.6
From whom to whom? .....	From the Federal government to SEAs and LEAs.	

**Clarity of the Regulations**

Executive Order 12866 and the Presidential memorandum “Plain Language in Government Writing” require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priorities, requirements, and definitions easier to understand, including answers to questions such as the following:

- Are the priorities, requirements, and definitions in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

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

*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.

**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 proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this proposed regulatory action would affect are school districts applying for and receiving funds under this program. The Secretary believes that the costs imposed on applicants by the proposed priorities, requirements, and definitions, would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by applicants.

Participation in this program is voluntary. For this reason, the proposed priorities, requirements, and definitions would impose no burden on small entities in general. Eligible applicants

would determine whether to apply for funds and have the opportunity to weigh the requirements for preparing applications, and any associated costs, against the likelihood of receiving funding and the requirements for implementing projects under the program. Eligible applicants most likely would apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of that application to seek funding from other sources to address a shortage in mental health providers.

**Paperwork Reduction Act**

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). This helps ensure that the public understands the Department’s collection instructions, respondents provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The proposed priorities, requirements, and definitions contain information collection requirements. Under the PRA the Department has submitted these requirements to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of the law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the notice of final priorities, requirements, and definitions we will display the control number assigned by OMB to any information collection proposed in this document and adopted in the notice of final priorities, requirements, and definitions.

For the years that the Department holds an SBMH Program competition, we estimate 300 applicants will apply and submit an application based on prior competitions for the program. We estimate that it will take each applicant 40 hours to complete and submit the application, including time for reviewing instructions, searching existing data sources, gathering and

maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this collection is 12,000 hours. At \$95.46 per hour (using mean wages for Education and Childcare Administrators<sup>15</sup> and assuming the total cost of labor, including benefits and overhead, is equal to 200 percent of the mean wage rate), the total estimated cost for 300 applicants to complete the SBMH Program application is approximately \$1,145,520.

The Department is requesting paperwork clearance on the OMB 1810–xxxx data collection associated with this proposed requirement. That request will account for all burden hours and costs discussed within this section.

Consistent with 5 CFR 1320.8(d), the Department is soliciting comments on the information collection through this document. Between 30 and 60 days after publication of this document in the **Federal Register**, OMB is required to make a decision concerning the collections of information contained in these proposed priorities, requirements, and definitions. Therefore, to ensure

that OMB gives your comments full consideration, it is important that OMB receives your comments on this Information Collection Request by September 1, 2022.

Comments related to the information collection activities must be submitted electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) by selecting the Docket ID number ED–2022–OESE–XXXX or via postal mail, commercial delivery, or hand delivery by referencing the Docket ID number and the title of the information collection request at the top of your comment. Comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

*Note:* The Office of Information and Regulatory Affairs and the Department review all comments related to the information collection activities posted at [www.regulations.gov](http://www.regulations.gov).

**Collection of Information**

Information collection activity	Estimated number of responses	Hours per response	Total estimated burden hours	Estimated cost at an hourly rate of \$95.46
School-Based Mental Health Services Grant Application .....	300	40	12,000	\$1,145,520

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

*Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or

text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

*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 the Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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

your search to documents published by the Department.

**Ruth E. Ryder,**  
Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education.

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**DEPARTMENT OF EDUCATION**

**RIN 1810–AB67**

**34 CFR Chapter II**

[Docket ID ED–2022–OESE–0094]

**Proposed Priorities, Requirements, and Definitions—Mental Health Service Professional Demonstration Grant Program**

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

**ACTION:** Proposed priorities, requirements, and definitions.

<sup>15</sup> See [www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm).