

**DEPARTMENT OF EDUCATION****34 CFR Parts 75, 76, and 108****RIN 1870-AA12****Equal Access to Public School Facilities for the Boy Scouts of America and Other Designated Youth Groups****AGENCY:** Office for Civil Rights, Department of Education.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to add a new part to title 34 of the Code of Federal Regulations and to amend 34 CFR parts 75 and 76 to implement the provisions of the Boy Scouts of America Equal Access Act. This Act directs the Secretary of Education, through the Office for Civil Rights, to ensure compliance with this new law. The proposed regulations would address equal access to public school facilities by the Boy Scouts of America and other designated youth groups.

**DATES:** Your comments must be postmarked or sent through the Internet on or before December 3, 2004.

**ADDRESSES:** Address all comments about these proposed regulations to Kenneth L. Marcus, Delegated the Authority of Assistant Secretary for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., room 6095 Potomac Center Plaza, Washington, DC 20202-1100. If you prefer to send your comments through the Internet, you may address them to us at the U.S. Government Web site: <http://www.regulations.gov>.

Or you may send your Internet comments to us at the following address: [boyscoutscomments@ed.gov](mailto:boyscoutscomments@ed.gov).

For all comments submitted, you should specify the subject as "Boy Scouts Proposed Regulations Comments."

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget (OMB) at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

**FOR FURTHER INFORMATION CONTACT:** Sandra G. Battle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6125 Potomac Center Plaza, Washington, DC 20202-1100. Telephone: (202) 245-6767.

If you use a telecommunications device for the deaf (TDD), you may call 1-877-521-2172. For additional copies of this document, you may call the

Customer Service Team for the Office for Civil Rights (OCR) at 1-800-421-3481. This notice of proposed rulemaking will also be available at the Department's Web site on the Internet at: <http://www.ed.gov/news/fedregister/proprule/index.html>.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:****Invitation To Comment**

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 6128 Potomac Center Plaza, 550 12th Street, SW., Washington, DC, between the hours of 9:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays. If you are interested in reviewing the comments, we encourage you to contact the person listed under **FOR FURTHER INFORMATION CONTACT** in advance to schedule an appointment for inspecting the comments.

**Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. If you use a TDD, you may call 1-877-521-2172.

**Background**

These proposed regulations would implement the Boy Scouts of America Equal Access Act. On January 8, 2002, the President signed into law the No

Child Left Behind Act of 2001 (NCLB), Public Law 107-110, amending the Elementary and Secondary Education Act of 1965 (ESEA). Included in the amendments to the ESEA is the Boy Scouts of America Equal Access Act (Boy Scouts Act). The Boy Scouts Act applies to any public elementary school, public secondary school, local educational agency (LEA), or State educational agency (SEA) that has a designated open forum or limited public forum and that receives funds made available through the Department of Education (Department). Under this law, those entities may not deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) that wishes to conduct a meeting within the covered entity's designated open forum or limited public forum.

The Boy Scouts Act authorizes the Secretary to implement this law by issuing and securing compliance with rules or orders with respect to any covered public elementary school, public secondary school, LEA, or SEA that denies equal access or a fair opportunity to meet to, or discriminates against, any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) that wishes to conduct a meeting within the covered entity's designated open forum or limited public forum. The Boy Scouts Act also directs the Secretary, through OCR, to enforce this law in a manner consistent with the procedure used under section 602 of the Civil Rights Act of 1964 with respect to these covered entities. If the covered public school or agency does not comply with the Boy Scouts Act, it would be subject to the Department's enforcement actions.

On November 15, 2002, we published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (67 FR 69456) requesting comments from interested parties to assist us in developing proposed regulations. The comment period for the ANPRM closed on December 16, 2002. In response to the Secretary's invitation in the ANPRM, approximately two dozen parties submitted comments on issues to be considered in developing proposed regulations. The comments expressed a variety of opinions on the Boy Scouts Act and what should be included in regulations implementing this law. We considered these comments in developing this notice of proposed rulemaking.

## Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

### Section 108.3 Definitions

#### a. Covered Entity

*Statute:* Section (b)(1) of the Boy Scouts Act (section 9525(b)(1) of the ESEA, as amended by NCLB) provides that this law applies to any public elementary school, public secondary school, LEA, or SEA that has a designated open forum or limited public forum and that receives funds made available through the Department.

*Proposed Regulations:* Proposed § 108.3 would create the term “covered entity” and define it to mean any public elementary school, public secondary school, LEA, or SEA that has a designated open forum or limited public forum and that receives funds made available through the Department.

*Reason:* Proposed § 108.3, for simplification, provides one term to be used when referring to the entities to which the Boy Scouts Act applies.

#### b. Designated Open Forum

*Statute:* Section (b)(1) of the Boy Scouts Act (section 9525(b)(1) of the ESEA, as amended by NCLB) uses the terms “designated open forum” and “limited public forum.” Section (d)(2) of the Boy Scouts Act defines “limited public forum” but does not define “designated open forum.”

*Proposed Regulations:* Proposed § 108.3 would define “designated open forum.”

*Reason:* The statute applies to public schools, LEAs, and SEAs that have a designated open forum or limited public forum. The statute defines when an elementary or secondary school has a limited public forum, but does not define when an elementary or secondary school has a designated open forum. For purposes of clarification, the proposed regulations contain a definition of “designated open forum.”

Under this definition, a school retains control over its educational benefits and services, and does not create a designated open forum simply by inviting an outside group in to present information to the students. For instance, if a school, as part of its character education program, invites an outside group to put on a school assembly on saying no to drugs, that does not mean that the school has created a designated open forum and must allow any group officially

affiliated with the Boy Scouts of America, or any other youth group listed in title 36 of the United States Code (as a patriotic society), to come into the school to do a presentation related to character education.

#### c. Limited Public Forum

*Statute:* Section (b)(1) of the Boy Scouts Act (section 9525(b)(1) of the ESEA, as amended by NCLB) uses the term “limited public forum.” Section (d)(2) of the Boy Scouts Act defines “limited public forum.”

*Proposed Regulations:* Proposed § 108.3 would incorporate the statutory definition of “limited public forum.”

*Reason:* By incorporating the statutory definition of this term, the regulations accurately reflect the requirements of the statute.

#### d. Outside Youth or Community Group

*Statute:* Section (d)(2) of the Boy Scouts Act (section 9525(d)(2) of the ESEA, as amended by NCLB) uses the term “outside youth or community groups” in the definition of “limited public forum.”

*Proposed Regulations:* Proposed § 108.3 would define the term “outside youth or community group,” as the term appears in the definitions of “designated open forum” and “limited public forum,” to mean a group that is not affiliated with the school.

*Reason:* For purposes of clarification, the proposed regulations would define “outside youth or community group” to mean a youth or community group that is not affiliated with the school.

#### e. To Sponsor Any Group Officially Affiliated With the Boy Scouts of America; To Sponsor Any Group Officially Affiliated With Any Other Youth Group Listed in Title 36 of the United States Code (as a Patriotic Society)

*Statute:* Under section (b)(2) of the Boy Scouts Act (section 9525(b)(2) of the ESEA, as amended by NCLB), no school, agency, or a school served by an agency is required to sponsor any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society).

*Proposed Regulations:* Proposed § 108.3 would define the term “To sponsor any group officially affiliated with the Boy Scouts of America” as meaning to possess a community organization charter issued by the Boy Scouts of America. Proposed § 108.3 would define the term “To sponsor any group officially affiliated with any other youth group listed in title 36 of the

United States Code (as a patriotic society)” to mean choosing to take whatever actions are required by that title 36 group to become a sponsor of that group.

*Reason:* The statute does not define either of these terms. Accordingly, proposed § 108.3 clarifies what it means to sponsor any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society). The first definition is supported by the legislative history of the Boy Scouts Act. During the legislative debate of the Boy Scouts Act, Senator Smith of Oregon stated: “The Boy Scouts is a national institution with a national charter with this Government, and it is put out for any group that wants to sponsor it. They are called chartering institutions. Most of the chartering institutions are churches and synagogues. Some are police stations. Some may even be a school district.” 147 Cong. Rec. 6259 (2001). We specifically request comment on these proposed definitions.

#### f. Youth Group

*Statute:* Section (d)(1) of the Boy Scouts Act (section 9525(d)(1) of the ESEA, as amended by NCLB) defines the term “youth group.”

*Proposed Regulations:* Proposed § 108.3 incorporates the statutory definition of “youth group.”

*Reason:* By incorporating the statutory definition of this term, the regulations would accurately reflect the requirements of the statute.

### Section 108.4 Effect of State or Local Law

*Statute:* Under section (b)(1) of the Boy Scouts Act (section 9525(b)(1) of the ESEA, as amended by NCLB), no covered entity, notwithstanding any other provision of law, shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society).

*Proposed Regulations:* Proposed § 108.4 would explain that neither State nor local law would obviate or alleviate a covered entity’s obligation to comply with the Boy Scouts Act and its implementing regulations.

*Reason:* Proposed § 108.4 reflects the statutory provision that covered entities must comply with the equal access and non-discrimination requirements without regard to any State or local law. A public school, LEA, or SEA that receives funds made available through the Department must comply with the

Boy Scouts Act, even if State or local law conflicts with the Boy Scouts Act.

#### *Section 108.5 Compliance Obligations*

*Statute:* Section (b)(2) of the Boy Scouts Act (section 9525(b)(2) of the ESEA, as amended by NCLB) provides that this law applies to any public elementary school, public secondary school, LEA, or SEA that has a designated open forum or limited public forum and that receives funds made available through the Department.

*Proposed Regulations:* Proposed § 108.5 would provide that the obligation of public elementary schools, public secondary schools, LEAs, and SEAs to comply with the Boy Scouts Act is not limited by the nature or extent of their authority to make decisions about the use of school facilities.

*Reason:* The Secretary recognizes that public schools, LEAs, or SEAs may not always have the independent authority to make decisions concerning the use of school facilities, and that other entities may be responsible for making those decisions. The statute, however, holds public schools, LEAs, and SEAs responsible for compliance with the Boy Scouts Act and does not condition their compliance obligation on whether they have the authority to make decisions about use of their school facilities. Proposed § 108.5 clarifies that the statute applies to covered public elementary schools, public secondary schools, LEAs, and SEAs regardless of their authority to make decisions about the use of school facilities.

#### *Section 108.6 Equal Access*

*Statute:* Under section (b)(1) of the Boy Scouts Act (section 9525(b)(1) of the ESEA, as amended by NCLB), no covered entity shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) that wishes to conduct a meeting within that covered entity's designated open forum or limited public forum for reasons including the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts of America or of the youth group listed in title 36 of the United States Code (as a patriotic society).

*Proposed Regulations:* Proposed § 108.6 would restate the statutory requirement. Proposed § 108.6(a) through (c) would clarify that the statutory requirement means that any group officially affiliated with the Boy Scouts of America or any youth group

listed in title 36 of the United States Code (as a patriotic society) that wishes to conduct a meeting within that covered entity's designated open forum or limited public forum must be provided with—(a) Access to school premises and school facilities to conduct meetings; (b) the ability to communicate through the use of school-related means such as, but not limited to, bulletin board notices and literature distribution; and (c) access to students, and student information, for recruitment purposes. That access and ability to communicate must be provided on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups. Proposed § 108.6(d) would clarify that any group officially affiliated with the Boy Scouts of America or any youth group listed in title 36 of the United States Code (as a patriotic society) may be charged fees in connection with their use of school facilities provided the fees are based on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

*Reasons:* We have sought to clarify the nature of the access required by the statute. That access includes not only access to school facilities for meetings before, during, or after school, but also access to other school activities related to an intention by any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) to conduct a meeting within a covered entity's designated open forum or limited public forum. The types of access include, but are not necessarily limited to, means of communication and recruitment. However, in order to provide equal access under the Boy Scouts Act, any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) that wishes to conduct a meeting at the school must be provided such access and use of school-related means of communication on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups. We specifically request comment on this proposed standard.

We recognize the need to regulate in such a way as to ensure that public schools, LEAs, and SEAs continue to have flexibility to establish fees based on certain distinctions; for example, distinctions made between non-profit community groups and for-profit groups. However, in order to provide

equal access under the Boy Scouts Act, any fees charged to any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) must be charged on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

The Boy Scouts Act does not require access, but rather equal access. Thus, if one or more outside youth or community groups are given access to a school activity, then any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) must be given access to that school activity. However, if a school or agency decides to deny access to a particular school activity to all outside youth or community groups, that decision would not violate the Boy Scouts Act. For instance, if a school decides that no outside youth or community groups that wish to hold meetings at the school may hold recruitment assemblies during school hours so that school hours can be devoted to instruction, then the Boy Scouts Act does not force that school to make an exception for any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society).

Access for recruitment under the Boy Scouts Act is not the same as NCLB's access for armed forces recruitment, provided under section 9528 of the ESEA, as amended by NCLB. We do not think the Boy Scouts Act authorizes the Department to incorporate these armed forces recruitment requirements into the Boy Scouts Act regulations. The armed forces recruitment requirements and the Boy Scouts Act are in two separate sections of NCLB, and nothing in NCLB indicates that one section applies to the other. Moreover, the armed forces recruitment requirements concern unique access by military recruiters or institutions of higher education to certain information about secondary school students. In contrast, the Boy Scouts Act concerns equal access by groups officially affiliated with the Boy Scouts of America and certain other patriotic youth organizations to public school facilities.

Of course, outside youth or community groups, including any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society), would not have access to education records (or personally identifiable information

contained therein), as defined by the Family Educational Rights and Privacy Act (FERPA), other than in accordance with the provisions of the FERPA. That law generally prohibits schools from disclosing personally identifiable information in a student's education record, unless the school obtains the consent of the student's parent or the eligible student (a student who is 18 years old or older or who attends a postsecondary institution).

#### *Section 108.7 Voluntary Sponsorship*

**Statute:** Under section (b)(2) of the Boy Scouts Act (section 9525(b)(2) of the ESEA, as amended by NCLB), no school, agency, or a school served by an agency to which the Boy Scouts Act applies is required to sponsor any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society).

**Proposed Regulations:** Proposed § 108.7 would repeat the statutory requirement.

**Reasons:** Proposed § 108.7 incorporates the statutory requirement. The proposed regulations, in § 108.3, would define the terms "to sponsor any group officially affiliated with the Boy Scouts of America" and "to sponsor any group officially affiliated with any other youth group listed in title 36 of the United States Code (as a patriotic society)." Reasons for these definitions are discussed previously under § 108.3 Definitions.

#### *Section 108.8 Compliance Procedures*

**Statute:** Section (c)(1) of the Boy Scouts Act (section 9525(c)(1) of the ESEA, as amended by NCLB) directs the Secretary, through OCR, to enforce this law in a manner consistent with the procedure used under section 602 of the Civil Rights Act of 1964.

**Proposed Regulations:** Proposed § 108.8 would adopt the procedural provisions applicable to title VI of the Civil Rights Act of 1964 (Title VI).

**Reason:** OCR uses the regulations found in 34 CFR parts 100 and 101 in enforcing Title VI. Rather than repeating the relevant sections of these Title VI regulations in the proposed regulations for the Boy Scouts Act, proposed § 108.8 simply adopts those relevant sections.

#### *Sections 75.500 and 76.500 Federal Statutes and Regulations on Nondiscrimination*

**Statute:** Under section (b)(1) of the Boy Scouts Act (section 9525(b)(1) of the ESEA, as amended by NCLB), no covered entity shall deny equal access or a fair opportunity to meet to, or discriminate against, any group

officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) that wishes to conduct a meeting within that covered entity's designated open forum or limited public forum for reasons including the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts of America or of the youth group listed in title 36 of the United States Code (as a patriotic society).

**Proposed Regulations:** Sections 75.500 and 76.500 list the Federal statutes and regulations on nondiscrimination with which grantees, under § 75.500, and States and subgrantees, under § 76.500, must comply. These regulations do not include the Boy Scouts Act among the listed Federal statutes and regulations on nondiscrimination. Proposed §§ 75.500(b) and 76.500(b) would provide that a covered entity as defined in § 108.3 also must comply with the nondiscrimination requirements of the Boy Scouts Act.

**Reason:** The proposed amendments to §§ 75.500 and 76.500 would add the Boy Scouts Act and the regulations in part 108 to the list of Federal statutes and regulations on nondiscrimination with which grantees and States and subgrantees that are covered entities under § 108.3 must comply.

#### **Executive Order 12250**

Pursuant to Executive Order 12250, which provides for the Attorney General to review proposed regulations implementing any provision of Federal statutory law that provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance, the Assistant Attorney General for Civil Rights has reviewed this notice of proposed rulemaking and approved it for publication.

#### **Executive Order 12866**

##### *1. Potential Costs and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY**

**INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

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

#### **Summary of Potential Costs and Benefits**

The proposed regulations would not impose any specified costs. If recipients have to change their practices in order to meet the equal access and nondiscrimination requirements of the statute, they may incur some costs. Any costs, including costs to comply with information collection requirements, likely would be minimal. The potential benefits of this proposed regulatory action are that stakeholders would have easily accessible, codified, published regulations that clarify both the substantive obligations of the law and how the Department would enforce the law. The Boy Scouts Act provides for new obligations and requirements regarding access to school facilities. By engaging in rulemaking, we would be able to obtain input from stakeholders (including public schools, LEAs, SEAs, the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society), and parents) and other interested parties that will help us to develop clear and accessible regulations that advance the purpose of the statute and sufficiently inform stakeholders of their rights and responsibilities under the law. By developing regulations for use in enforcing the Boy Scouts Act, we also would be complying with the directive in the Boy Scouts Act to enforce the law in a manner consistent with the procedures used to enforce Title VI. The proposed regulations would incorporate the existing procedural sections of the Title VI regulations and, like the Title VI regulations, would clarify the substantive obligations of covered entities.

##### *2. Clarity of the Regulations*

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

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A “section” is preceded by the symbol “§” and a numbered heading; for example, § 108.6 Equal Access.)
- 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?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The proposed regulations address equal access to school facilities and activities for the Boy Scouts of America and other specified youth organizations and would not have a significant economic impact on any entities.

### Paperwork Reduction Act of 1995

Section 108.8 contains an information collection requirement. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of this section to OMB for its review.

### *Collection of Information: Assurances of Compliance*

The collection of information consists of assurances that applicants for Federal financial assistance will comply with the requirements of the Boy Scouts Act. These proposed regulations would affect the following types of entities applying to the Department for Federal financial assistance: SEAs, LEAs, public elementary schools, and public secondary schools.

The Boy Scouts Act directs the Secretary, through OCR, to enforce this law in a manner consistent with the

procedure used under Title VI. This procedure includes obtaining assurances of compliance with Title VI, under 34 CFR 100.4. Section 108.8 would adopt this Title VI regulatory provision.

This assurance would be collected on applications for Federal financial assistance, including formula and discretionary grants, from the Department. Because this assurance would simply be added to existing assurances already contained on applications for Federal financial assistance from the Department, we estimate that the annual reporting and recordkeeping burden for this collection of information will be negligible.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

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 or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

### Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

### Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications.

“Federalism implications” means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations in § 108.4 may have federalism implications, as defined in Executive Order 13132. We encourage State and local elected officials to review and provide comments on these proposed regulations.

### Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number does not apply.)

### List of Subjects

#### 34 CFR Part 75

Accounting, Administrative practice and procedure, Education, Grant programs—Education, Private schools, Reporting and recordkeeping requirements.

#### 34 CFR Part 76

Administrative practice and procedure, Compliance, Eligibility, Grant administration, Reporting and recordkeeping requirements.

#### 34 CFR Part 108

Boy Scouts of America, Education, Equal access, Reporting and recordkeeping requirements.

Dated: October 7, 2004.

**Rod Paige,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary proposes to amend parts 75 and 76 of, and to add a new part 108 to, title 34 of the Code of Federal Regulations to read as follows:

## **PART 75—DIRECT GRANT PROGRAMS**

1. The authority citation for part 75 continues to read as follows:

**Authority:** 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

2. Section 75.500 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows.

### **§ 75.500 Federal statutes and regulations on nondiscrimination.**

\* \* \* \* \*

(b) A grantee that is a covered entity as defined in § 108.3 of this title shall comply with the nondiscrimination requirements of the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 CFR part 108.

\* \* \* \* \*

## **PART 76—STATE-ADMINISTERED PROGRAMS**

3. The authority citation for part 76 continues to read as follows:

**Authority:** 20 U.S.C. 1221e–3, 3474, 6511(a), and 8065a, unless otherwise noted.

4. Section 76.500 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

### **§ 76.500 Federal statutes and regulations on nondiscrimination.**

\* \* \* \* \*

(b) A State or subgrantee that is a covered entity as defined in § 108.3 of this title shall comply with the nondiscrimination requirements of the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 CFR part 108.

\* \* \* \* \*

5. Add part 108 to read as follows:

## **PART 108—EQUAL ACCESS TO PUBLIC SCHOOL FACILITIES FOR THE BOY SCOUTS OF AMERICA AND OTHER DESIGNATED YOUTH GROUPS**

Sec.

108.1 Purpose.

108.2 Applicability.

108.3 Definitions.

108.4 Effect of State or local law.

108.5 Compliance obligations.

108.6 Equal access.

108.7 Voluntary sponsorship.

108.8 Compliance procedures.

**Authority:** 20 U.S.C. 7905, unless otherwise noted.

### **§ 108.1 Purpose.**

The purpose of this part is to implement the Boy Scouts of America Equal Access Act (Boy Scouts Act).

(Authority: 20 U.S.C. 7905)

### **§ 108.2 Applicability.**

This part applies to any public elementary school, public secondary school, local educational agency, or State educational agency that has a designated open forum or limited public forum and that receives funds made available through the Department.

(Authority: 20 U.S.C. 7905)

### **§ 108.3 Definitions.**

(a) The following definitions apply to this part:

*Boy Scouts Act* means the Boy Scouts of America Equal Access Act, section 9525 of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Public Law 107–110, 115 Stat. 1425, 1981–82 (20 U.S.C. 7905).

*Boy Scouts of America* means the organization named “Boy Scouts of America,” which has a Federal charter and which is listed as an organization in title 36 of the United States Code (Patriotic and National Observances, Ceremonies, and Organizations) in Subtitle II (Patriotic and National Organizations), Part B (Organizations), Chapter 309 (Boy Scouts of America).

*Covered entity* means any public elementary school, public secondary school, local educational agency, or State educational agency that has a designated open forum or limited public forum and that receives funds made available through the Department.

*Designated open forum* means the following for the purposes of these regulations: An elementary school or secondary school has a designated open forum whenever the school involved designates a time and place for one or more outside youth or community groups to meet on school premises or in school facilities, including during the hours in which attendance at the school is compulsory, for reasons other than to provide the school’s educational benefits or services.

*Elementary school* means an elementary school as defined by section 9101(18) of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Public Law

107–110, 115 Stat. 1425, 1958 (20 U.S.C. 7801).

*Limited public forum* means the following for purposes of these regulations: An elementary school or secondary school has a limited public forum whenever the school involved grants an offering to, or opportunity for, one or more outside youth or community groups to meet on school premises or in school facilities before or after the hours during which attendance at the school is compulsory.

*Local educational agency* means a local educational agency as defined by section 9101(26) of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Public Law 107–110, 115 Stat. 1425, 1961 (20 U.S.C. 7801).

*Outside youth or community group*, as that term appears in the regulatory definitions of designated open forum and limited public forum, means a youth or community group that is not affiliated with the school.

*Secondary school* means a secondary school as defined by section 9101(38) of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Public Law 107–110, 115 Stat. 1425, 1965 (20 U.S.C. 7801).

*State educational agency* means a State educational agency as defined by section 9101(41) of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Public Law 107–110, 115 Stat. 1425, 1965 (20 U.S.C. 7801).

*Title 36 of the United States Code (as a patriotic society)* means title 36 (Patriotic and National Observances, Ceremonies, and Organizations), Subtitle II (Patriotic and National Organizations).

*To sponsor any group officially affiliated with the Boy Scouts of America* means to possess a community organization charter issued by the Boy Scouts of America.

*To sponsor any group officially affiliated with any other youth group listed in title 36 of the United States Code (as a patriotic society)* means choosing to take whatever actions are required by that title 36 group to become a sponsor of that group.

*Youth group* means any group or organization intended to serve young people under the age of 21.

(b) The following terms defined in 34 CFR 100.13 apply to this part.

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(Authority: 20 U.S.C. 7905)

**§ 108.4 Effect of State or local law.**

The obligation to comply with the Boy Scouts Act and this part is not obviated or alleviated by any State or local law or other requirement.

(Authority: 20 U.S.C. 7905)

**§ 108.5 Compliance obligations.**

The obligation of public elementary schools, public secondary schools, local educational agencies, and State educational agencies to comply with the Boy Scouts Act is not limited by the nature or extent of their authority to make decisions about the use of school facilities.

(Authority: 20 U.S.C. 7905)

**§ 108.6 Equal access.**

No covered entity shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) that wishes to conduct a meeting within that covered entity's designated open forum or limited public forum. No covered entity shall deny that access or opportunity or discriminate for reasons including the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts of America or of the youth group listed in title 36 of the United States Code (as a patriotic society). Activities covered include, but

are not necessarily limited to, the following:

(a) *Meetings.* Any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) must be given access to school premises and school facilities to conduct meetings on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

(b) *Means of communication.* Any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) must be allowed to use school-related means of communication on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups. These means of communication include, but are not limited to, bulletin board notices and literature distribution.

(c) *Recruitment.* Any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) must be allowed access to students, and student information, for recruitment purposes on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

(d) *Fees.* Any group officially affiliated with the Boy Scouts of

America or any other youth group listed in title 36 of the United States Code (as a patriotic society) may be charged fees in connection with conducting meetings on school premises or in school facilities, using school-related means of communication, or conducting recruitment activities, but only if the fees are charged on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

(Authority: 20 U.S.C. 7905)

**§ 108.7 Voluntary sponsorship.**

Nothing in this part shall be construed to require any school, agency, or a school served by an agency to sponsor any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society).

(Authority: 20 U.S.C. 7905)

**§ 108.8 Compliance procedures.**

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. Those procedures are found in 34 CFR 100.4, 100.6 through 100.11, 100.13(a) through (f), and (h) through (k), and 34 CFR part 101.

(Authority: 20 U.S.C. 7905)

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