

limited to paperwork burden related to preparing an application and that the benefits of this proposed priority and these proposed requirements will outweigh any costs incurred by the applicant.

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

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

This final regulatory action will not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program.

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

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

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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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.

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**Johnny W. Collett,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

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## DEPARTMENT OF EDUCATION

### 34 CFR Chapter III

[Docket ID ED-2019-OSERS-0001]

#### **Final Priority and Requirements— Technical Assistance on State Data Collection Program—National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Part B Data**

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

**ACTION:** Final priority and requirements.

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

**SUMMARY:** The Assistant Secretary for Special Education and Rehabilitative Services announces a priority and requirements under the Technical Assistance on State Data Collection Program. The Assistant Secretary may use this priority and these requirements for competitions in fiscal year (FY) 2019 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to improve the capacity of States to meet the data collection and reporting requirements under Part B of the Individuals with Disabilities Education Act (IDEA). This center, CFDA number 84.373Y, will support States in collecting, reporting, and determining how to best analyze and use their data to establish and meet high expectations for each child with a disability and would customize its TA to meet each State's specific needs.

**DATES:** This priority and these requirements are effective September 11, 2019.

#### **FOR FURTHER INFORMATION CONTACT:**

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#### **SUPPLEMENTARY INFORMATION:**

*Purpose of Program:* Section 616 of the IDEA requires States to submit to the Department, and make available to the public, a State performance plan (SPP) and an annual performance report (APR) with data on how each State implements both Parts B and C of the IDEA to improve outcomes for infants, toddlers, children, and youth with disabilities. Section 618 of the IDEA requires States to submit to the Department, and make available to the public, quantitative data on infants, toddlers, children, and youth with disabilities who are receiving early intervention and special education services under IDEA. The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements under Sections 616 and 618 of the IDEA to collect, analyze, and report the data used to prepare the SPP/APR. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve up to 1/2 of 1 percent of the amounts appropriated under Part B for each fiscal year to provide TA activities, where needed, to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is \$25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. Additionally, Division H of the

Consolidated Appropriations Act of 2018 gives the Secretary authority to use funds reserved under section 611(c) to “carry out services and activities to improve data collection, coordination, quality, and use under Parts B and C of the IDEA.” Consolidated Appropriations Act, 2018; Div. H, Title III of Public Law 115–141; 132 Stat. 745 (2018).

*Program Authority:* 20 U.S.C. 1411(c), 1416(i), 1418(c), 1442, and the Department of Education Appropriations Act, 2018; Div. H, Title III of Public Law 115–141, Consolidated Appropriations Act, 2018; 132 Stat. 745 (2018).

*Applicable Program Regulations:* 34 CFR 300.702.

We published a notice of proposed priority and requirements for this program in the **Federal Register** on March 6, 2019 (84 FR 8054) (the NPP). The NPP contained background information and our reasons for proposing the particular priority and requirements.

There are differences between the NPP and this notice of final priority and requirements (NFP) as discussed in the *Analysis of Comments and Changes* section of this notice. The most significant of these changes, as discussed below, is the addition of an indirect cost rate cap to the final requirements.

*Public Comment:* In response to our invitation in the NPP, 12 parties submitted comments on the proposed priority and requirements.

Generally, we do not address technical and other minor changes. In addition, we do not address comments that raised concerns not directly related to the proposed priority and requirements.

*Analysis of Comments and Changes:* An analysis of the comments and changes in the priority and requirements since publication of the NPP follows. OSERS received comments on a number of specific topics from the proposed cap on the maximum allowable indirect cost rate to the topics for technical assistance. Each topic is addressed below.

### General Comments

*Comments:* One commenter specifically expressed support for the proposed center, and a number of other commenters noted the positive impact of the valuable TA they received from centers previously funded under this program.

*Discussion:* The Department appreciates the comments and agrees with the commenters. Centers, like the proposed center, funded under this program provide necessary and valuable TA to the States.

*Changes:* None.

*Comments:* None.

*Discussion:* As discussed in the NPP, the Department is particularly concerned about maximizing the efficiency and effectiveness of this investment. Given the purpose of the program, we believe a critical lever to meeting this goal is to ensure that TA is appropriately targeted to recipients with a known and ongoing need for support in reporting, analyzing, and using high quality IDEA data. As such, the Department is adding a requirement that applicants describe their proposed approach to prioritizing TA recipients with a particular focus on meeting the needs of States with ongoing data quality issues.

*Changes:* The final priority includes a requirement for applicants to describe their proposed approach to prioritizing TA recipients.

### Indirect Cost Rate

*Comments:* A number of commenters agreed with the purpose of the indirect cost cap, which is to maximize funds that go directly to provide TA to States to improve their capacity to meet the IDEA data collection and reporting requirements. These same commenters, however, believed that setting a cap on indirect costs would not achieve this goal and that it may negatively impact the program. They noted that indirect costs support a wide variety of purchases and activities, including, but not limited to, facilities, information technology (IT) services, and support personnel. Further, a subset of these commenters stated that a cap on indirect cost rates would limit competition, reduce the number of qualified applicants, and likely degrade the quality of TA services provided to States. Specifically, some of these commenters stated that a cap could make it cost prohibitive for small businesses to compete for the grant, as they could not absorb any unrecovered indirect costs. Additionally, it would make it harder for applicants to attract and retain qualified personnel, thus depressing the quality of services provided to States.

*Discussion:* The Department appreciates the stakeholder input it received in response to the specific directed question on the indirect cost cap proposal but disagrees that it would have a negative impact on the program. Regarding potential impact, the Department has done an analysis of the indirect cost rates for all current technical assistance centers funded under the Technical Assistance and Dissemination and Technical Assistance on State Data Collection programs as

well as other grantees that are large, midsize and small businesses and small nonprofit organizations and has found that, in general, total indirect costs charged on these grants by these entities were at or below 35 percent of total direct costs. We recognize that, dependent on the structure of the investment and activities, the modified total direct cost (MTDC) base could be much smaller than the total direct cost, which would imply a higher indirect cost rate than those calculated here. The Department arrived at a 40 percent rate to address some of that variation. Such a change accounts for a 12 percent variance between TDC and MTDC. However, we note that, in the absence of a cap, certain entities would likely charge indirect cost rates in excess of 40 percent of MTDC. Based on our review, it appears that those entities would likely be larger for-profit and nonprofit organizations, but these organizations appear to be outliers when compared to the majority of other large businesses as well as the entirety of OSEP’s grantees. Setting an indirect cost rate cap of 40 percent is in line with the majority of applicants’ existing negotiated rates with the cognizant Federal agency. Therefore, we do not believe that the cap we are setting in these final requirements would negatively impact the majority of entities’ ability to recover indirect costs.

Regarding commenters’ concerns that a cap on indirect costs would limit competition and reduce the number of qualified applicants, it is not clear how a cap would do so. The cap included in the final requirements does not limit the pool of eligible applicants because most entities’ indirect cost rates are below the cap we are setting. Further, regarding the impact on the quality of TA services provided to States, we have no information indicating a direct correlation between an entity’s negotiated indirect cost rate and its ability to attract and retain qualified personnel and thus their ability to provide high-quality TA services to States. Based on our analysis, there are many OSEP grantees that are able to effectively carry out project activities required by their individual grants with negotiated indirect cost rates under the cap included in the final requirements. Further, the Department’s peer review process is intended to assess the ability of various applicants to provide high-quality TA to States. Finally, we do not believe the cap we are setting in these final requirements would result in an amount of unrecovered costs that would deter most prospective applicants. The prospective applicants could look at the

indirect cost cap prior to applying and either choose to absorb unrecovered costs or opt not to apply.

In light of these considerations, we have determined that placing an indirect cost cap that is the lesser of the percentage approved by the grantee's cognizant Federal agency and 40 percent for this priority is appropriate as it maximizes the availability of funds for the primary TA purposes of this priority, which is to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA and to ultimately benefit programs serving children with disabilities.

**Changes:** Paragraph (d)(5) of the final requirements now includes an indirect cost cap that is the lesser of the percentage approved by the grantee's cognizant Federal agency and a cap of 40 percent on the reimbursement of indirect costs.

**Comments:** A number of commenters expressed concerns that many of the most qualified organizations could not compete because once indirect cost rates are set by, and audited by, a cognizant agency, they cannot be lowered for a single project.

**Discussion:** Our analysis of indirect cost rates took into account 2 CFR 200.414(c)(1), which allows a Federal awarding agency to use an indirect cost rate different from the negotiated rate when required by Federal statute or regulation or when approved by a Federal awarding agency head based on documented justification when the Federal awarding agency implements, and makes publicly available, the policies, procedures, and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates. Federal discretionary grantees have historically been reimbursed for indirect costs at the rate that each grantee negotiates with its cognizant Federal agency, and we believe that use of the negotiated rate is appropriate for most grants in most circumstances. However, because funding for this program comes from funds reserved by the Department that would otherwise be allocated to States under Part B (which applies a restricted indirect cost rate to State grantees), we determined that using an indirect cost rate different from the negotiated rate was appropriate since it would maximize the funds available to provide TA to States to improve their capacity to meet the IDEA data collection and reporting requirements.

**Changes:** None.

**Comments:** Numerous commenters expressed concerns that the implementation of an indirect cost rate

limit would not impact each vendor equally or result in equal savings to the government, as categories of indirect costs vary across vendors.

**Discussion:** We appreciate the commenters' concerns and recognize that a cap on the indirect cost rate, although it would apply equally to all applicants, may be more difficult for particular entities to meet, particularly those with high negotiated indirect cost rates. However, as noted above, our analysis indicates that the rate established in the final requirements would not appear to create unreasonable burdens for many applicants. Further, it was not the Department's intention to institute a limit on the reimbursement of indirect costs by specific cost category, but rather to apply it as a percentage of MTDC. We have clarified in the final requirements that the limit applies to MTDC as defined in 2 CFR 200.68. As the MTDC is applied to the total direct costs of the grant, each grantee's MTDC will include direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward, thus ensuring equity across vendors.

**Changes:** The final requirement clarifies that the 40 percent maximum indirect cost rate is applied to MTDC as defined in 2 CFR 200.68.

**Comments:** Two commenters provided alternatives to setting a cap. One commenter proposed gauging competitiveness based on a vendor's total price in combination with the proposed quality and level of effort. A second commenter suggested that the program add a cost share requirement in lieu of an indirect cost cap. The commenter suggested that a modest cost share may not impact vendor economics to the same degree as a cap on indirect costs.

**Discussion:** The Department appreciates the commenters' suggestions. Regarding gauging competitiveness based on a vendor's total price in combination with the proposed quality and level of effort, this may represent a viable approach for contract procurement, but does not lend itself to making discretionary grant awards. Regarding the second commenter's recommendation to add a cost share requirement, the nature of the funding source for this program does not allow for a cost sharing requirement and, in addition, could have the unintended consequence of eliminating small businesses.

**Changes:** None.

**Comments:** One commenter advocated for the Department to provide clarification and guidance to States on what should be covered by indirect cost

rates and how to determine appropriate indirect cost rates. Additionally, a second commenter suggested the Department allow States the flexibility to determine and justify funds allocated to indirect costs.

**Discussion:** The Department appreciates the commenters' suggestions. We were not proposing a cap on the indirect cost rates for State formula grants. Clarification or guidance on what is or is not an indirect cost can be obtained from the indirect cost office of the applicant's cognizant Federal agency.

**Changes:** None.

#### **Data Collection Under IDEA**

**Comments:** A commenter recommended that the Department collect data on students who identify in a gender-neutral category, use a different language/communication system, or are born in the United States but do not speak English as their first language, and on their socioeconomic status, parental English fluency, and parents' highest educational level.

**Discussion:** The Department appreciates the comment; however, this priority does not address the data collection and reporting requirements for States under IDEA. The ED*Facts* information collection package (OMB control number 1850-0925), which would more squarely address these issues, was published in the **Federal Register** on April 8, 2019 (84 FR 13913). It addressed the IDEA Section 618 Part B data collection requirements and was open for public comment from April 8, 2019 to May 8, 2019.

**Changes:** None.

#### **Significant Disproportionality**

**Comments:** Some commenters noted that the proposed center did not include anything in its scope or focus related to TA on significant disproportionality. Commenters spoke to the continued need for data-related TA on significant disproportionality.

**Discussion:** The Department appreciates the commenters' concerns. At this time, however, the Department does not wish to emphasize specific IDEA sections 618 and 616 Part B data collection and reporting requirements that the proposed center would be required to address. Applicants will be required to demonstrate knowledge of current educational issues and policy initiatives (e.g., significant disproportionality) about IDEA Part B data collection and reporting requirements and knowledge of State and local data collection systems, as appropriate. The Center would be expected to provide TA designed to

meet the needs of States. Therefore, to the extent that particular TA recipients require support for any of the sections 618 and 616 Part B data collection or reporting requirements, the Center would provide the needed TA.

*Changes:* None.

### **Involvement of the State Educational Agency (SEA) in TA Efforts**

*Comments:* Some commenters requested that we require the proposed center to work with the SEA when providing TA to local educational agencies (LEAs) within the State in order to ensure TA aligns with the State's requirements.

*Discussion:* The Department agrees with commenters on the need to include SEAs when TA is provided to an LEA within a State. We added language to the priority to clarify that TA to LEAs must occur in collaboration with the SEA.

*Changes:* We added language to paragraph (d) of the list of expected outcomes in the priority to require the Center to collaborate with the SEA in providing TA to LEAs.

### **Cross-State Collaboration**

*Comments:* A number of commenters requested further clarification about expectations for cross-State collaboration, and three commenters suggested the Department require the proposed center to support a State data manager advisory board.

*Discussion:* The Department agrees with the commenters regarding the importance of cross-State collaboration. Expectations for such collaboration were already included in paragraph (c) in the list of expected outcomes in the proposed priority, which the Department believes fully addresses the commenters' concerns.

Consequently, we do not believe an advisory board is necessary, and anticipate that the funded center would engage established data groups to determine the data manager needs as appropriate.

*Changes:* None.

### **Targeted Technical Assistance**

*Comment:* One commenter recommended expanding the provision of targeted TA to States.

*Discussion:* The Department agrees with the commenter regarding the continued need to provide additional targeted TA to States. Targeted TA to groups of States on specific data processes and data collections is not only valuable to the State but also an efficient way to provide TA.

*Changes:* We revised what is now paragraph (f)(7) of the requirements to

clarify that 50 percent of the grant award must go to support both targeted and intensive TA to States.

### **Division of Activities Between 84.373Y and 84.373Z**

*Comment:* Several commenters voiced a concern with splitting the responsibilities of providing TA on the IDEA Part B preschool special education data between the proposed center and the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data, CFDA number 84.373Z. The commenters stated that splitting the responsibilities regarding the IDEA Part B preschool special education data across the two centers may require Part B data managers to work with both centers in order to improve the quality of their IDEA Part B preschool special education data.

*Discussion:* The Department appreciates the commenters' concerns. The Department believes that including IDEA Part B preschool special education data in the scope of this center makes sense for some of the IDEA data and including IDEA Part B preschool special education data in the scope of the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data, CFDA number 84.373Z, is appropriate for other IDEA data.

The Department believes that including the IDEA Part B preschool special education data required under IDEA section 618 (including the section 618, Part B Child Count and Educational Environments data) and those preschool data required under IDEA section 616 for indicators in the IDEA Part B State Performance Plan/Annual Performance Report (SPP/APR) that solely use the EDFacts data as the source for reporting, such as Indicator B-5 (Preschool Least Restrictive Environment), within the scope of this center will allow a State to obtain TA on IDEA data submitted via EDFacts from a single center. This structure that specifies more distinct portfolios of the centers (*i.e.*, less overlap) will make it easier for States to work with the two centers. Since a State Part B data manager plays a significant role in submitting the IDEA data on children with disabilities ages 3 through 5 and children with disabilities ages 6 through 21 via EDFacts, the data manager will be able to access TA on these data through a single center. Finally, this will allow States to receive TA on IDEA data-related topics and analyses that are supported by and use

IDEA section 618 data submitted via EDFacts.

The Department believes that including the IDEA Part B preschool special education data required under IDEA Section 616 for Indicators B-7 (Preschool Outcomes) and B-12 (Early Childhood Transition) within the scope for the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data, CFDA number 84.373Z, is appropriate because it will facilitate better linkages between the Part C data and the IDEA Part B preschool special education data on children with disabilities and the inclusion of the Part C and IDEA Part B preschool special education data in the Early Childhood Integrated Data Systems (ECIDS). This will allow for enhanced opportunities to improve the quality of data States are collecting, reporting, analyzing, and using related to children's transition from the Part C early intervention program to the Part B preschool special education program. In addition, due to the similarities in the type of data required under IDEA section 616 for Indicator C-3 (Infant and Toddler Outcomes) in the Part C SPP/APR and Indicator B-7 (Preschool Outcomes) in the Part B SPP/APR, it is more efficient to have the center funded under CFDA number 373Z provide TA on these data.

*Changes:* We have revised the purpose of the priority to include TA on the section 618, Part B Child Count and Educational Environments data for children with disabilities ages 3 through 5 and preschool data required under IDEA section 616 for indicators in the IDEA Part B SPP/APR that solely use the EDFacts data as the source for reporting, such as Indicator B-5 (Preschool Least Restrictive Environment), in the scope of this center.

### **Definition of Evidence-Based Practices**

*Comments:* One commenter stated that the definition of evidence-based practices (EBPs) used in the proposed requirements does not align with the highest level of available evidence, and that EBP is a dynamic process that requires ongoing evaluation.

*Discussion:* We understood the commenter to be recommending a higher level of evidence than required in the proposed requirements. We agree with the commenter regarding the importance of ensuring the provision of effective TA to States; however, we do not agree that the definition of EBPs used in the proposed requirements is insufficient. We are continually reviewing the effectiveness of services provided by our federally funded TA

centers. We believe that the definition of EBPs used in the proposed requirements—the definition in 34 CFR 77.1—is well established and provides the necessary standards against which high-quality services may be judged for the purposes of making an award and monitoring the implementation of TA to improve the capacity of States to meet the data collection and reporting requirements under Part B of IDEA.

*Changes:* None.

*Final Priority:*

*Technical Assistance on State Data Collection—National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data.*

*Priority:*

The purpose of this priority is to fund a cooperative agreement to establish and operate the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data (Data Center).

The Data Center will provide TA to help States better meet current and future IDEA Part B data collection and reporting requirements, improve data quality, and analyze and use section 616, section 618, and other IDEA data (e.g., State Supplemental Survey-IDEA) to identify and address programmatic strengths and areas for improvement. This Data Center will focus on providing TA on collecting, reporting, analyzing, and using Part B data on children with disabilities ages 3 through 21 required under sections 616 and 618 of IDEA, including Part B data on children with disabilities ages 3 through 5 required under section 618 of IDEA for the Part B Child Count and Educational Environments data collection and under section 616 for indicators in the IDEA Part B SPP/APR that solely use the EDFacts data as the source for reporting, such as Indicator B–5 (Preschool Least Restrictive Environment). However, the Data Center will not provide TA on Part B data required under section 616 of IDEA for Indicators B7 (Preschool Outcomes) and B12 (Early Childhood Transition); TA on collecting, reporting, analyzing, and using Part B data associated with children with disabilities ages 3 through 5 for these indicators will be provided by the National IDEA Technical Assistance Center on Early Childhood Data Systems, CFDA number 84.373Z.

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

(a) Improved State data infrastructure by coordinating and promoting communication and effective data governance strategies among relevant

State offices, including SEAs, LEAs, and schools to improve the quality of IDEA data required under sections 616 and 618 of IDEA;

(b) Increased capacity of States to submit accurate and timely data, to enhance current State validation procedures, and to prevent future errors in State-reported IDEA Part B data;

(c) Improved capacity of States to meet the data collection and reporting requirements under sections 616 and 618 of IDEA by addressing personnel training needs, developing effective tools (e.g., training modules) and resources (e.g., documentation of State data processes), and providing in-person and virtual opportunities for cross-State collaboration about data collection and reporting requirements that States can use to train personnel in schools, programs, agencies, and districts;

(d) Improved capacity of SEAs and LEAs, in collaboration with SEAs, to collect, analyze, and use both SEA and LEA IDEA data to identify programmatic strengths and areas for improvement, address root causes of poor performance towards outcomes, and evaluate progress towards outcomes;

(e) Improved IDEA data validation by using results from data reviews conducted by the Department to work with States to generate tools that can be used by States to lead to improvements in the validity and reliability of data required by IDEA and enable States to communicate accurate data to local consumers (e.g., parents, school boards, the general public); and

(f) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B data.

*Types of Priorities:*

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

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

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

*Invitational priority:* Under an invitational priority, we are particularly interested in applications that meet the

priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

## Final Requirements

The Assistant Secretary establishes the following requirements for this program. We may apply these requirements in any year in which this program is in effect.

*Requirements:*

Applicants must—

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

(1) Address the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and to increase their capacity to analyze and use section 616 and section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement. To meet this requirement the applicant must—

(i) Demonstrate knowledge of current educational issues and policy initiatives about IDEA Part B data collection and reporting requirements and knowledge of State and local data collection systems, as appropriate;

(ii) Present applicable national, State, and local data to demonstrate the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and use section 616 and section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement; and

(iii) Describe how SEAs and LEAs are currently meeting IDEA Part B data collection and reporting requirements and using section 616 and section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement.

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

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

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

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

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

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

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

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

(4) Be based on current research and make use of evidenced-based<sup>1</sup> practices (EBPs). To meet this requirement, the applicant must describe—

(i) The current research on the capacity of SEAs and LEAs to report and use data, specifically section 616 and section 618 data, as a means of both improving data quality and identifying strengths and areas for improvement; and

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

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

(i) How it proposes to identify or develop the knowledge base on the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and SEA and LEA analysis and use of sections 616 and 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement;

(ii) Its proposed approach to universal, general TA,<sup>2</sup> which must

identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,<sup>3</sup> which must identify—

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

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

(iv) Its proposed approach to intensive,<sup>4</sup> sustained TA, which must identify—

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

(B) Its proposed approach to measure the readiness of SEA and LEA personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA and LEA levels;

(C) Its proposed approach to prioritizing TA recipients with a primary focus on meeting the needs of States with known ongoing data quality issues, as measured by OSEP's review of the quality of the IDEA sections 616 and 618 data;

(D) Its proposed plan for assisting SEAs (and LEAs, in conjunction with

their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

<sup>3</sup> "Targeted, specialized TA" means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

<sup>4</sup> "Intensive, sustained TA" means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. "TA services" are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

SEAs) to build or enhance training systems related to the IDEA Part B data collection and reporting requirements that include professional development based on adult learning principles and coaching;

(E) Its proposed plan for working with appropriate levels of the education system (e.g., SEAs, regional TA providers, LEAs, schools, and families) to ensure that there is communication between each level and that there are systems in place to support the capacity needs of SEAs and LEAs to meet Part B data collection and reporting requirements under sections 616 and 618 of the IDEA; and

(F) Its proposed plan for collaborating and coordinating with Department-funded TA investments and Institute of Education Sciences/National Center for Education Statistics research and development investments, where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of this priority;

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

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

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

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

(c) In the narrative section of the application under "Quality of the project evaluation," include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.<sup>5</sup> The evaluation plan must—

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

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated

<sup>1</sup> For the purposes of this priority, "evidence-based" means the proposed project component is supported, at a minimum, by evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

<sup>2</sup> "Universal, general TA" means TA and information provided to independent users through

<sup>5</sup> A "third-party" evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

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

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

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

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

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

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

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

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

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

**Note:** The MTDC is different from the total amount of the grant. Additionally, the MTDC is not the same as calculating a percentage of each or a specific expenditure category. If the grantee is billing based on the MTDC base, the grantee must make its MTDC documentation available to the program

office and the Department's Indirect Cost Unit. If a grantee's allocable indirect costs exceed 40 percent of its MTDC as defined in 2 CFR 200.68, the grantee may not recoup the excess by shifting the cost to other grants or contracts with the U.S. Government, unless specifically authorized by legislation. The grantee must use non-Federal revenue sources to pay for such unrecovered costs.

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

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

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

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

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

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

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

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

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

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

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

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

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

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of

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

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

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

(6) Budget at least 50 percent of the grant award for providing targeted and intensive TA to States.

This document does not preclude us from proposing additional priorities or requirements, subject to meeting applicable rulemaking requirements.

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

## Executive Orders 12866, 13563, and 13771

### Regulatory Impact Analysis

Under Executive Order 12866, 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 final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a "major rule," as defined by 5 U.S.C. 804(2).

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For Fiscal Year 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because the proposed regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

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

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

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

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

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

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as

accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

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

We 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 these 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.

#### *Discussion of Potential Costs and Benefits*

The Department believes that this regulatory action does not impose significant costs on eligible entities, whose participation in this program is voluntary. While this action does impose some requirements on participating grantees that are cost-bearing, the Department expects that applicants for this program will include in their proposed budgets a request for funds to support compliance with such cost-bearing requirements. Therefore, costs associated with meeting these requirements are, in the Department's estimation, minimal.

The Department believes that these benefits to the Federal government outweigh the costs associated with this action.

#### *Regulatory Alternatives Considered*

The Department believes that the priority and requirements are needed to administer the program effectively.

#### *Paperwork Reduction Act of 1995*

The final priority and requirements contain information collection requirements that are approved by OMB under OMB control number 1894-0006; the final priority and requirements do

not affect the currently approved data collection.

#### *Regulatory Flexibility Act*

*Certification:* The Secretary certifies that this final regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) 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 final regulatory action will affect are SEAs; LEAs, including charter schools that operate as LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by the final priority and requirements will be limited to paperwork burden related to preparing an application and that the benefits of this final priority and these final requirements will outweigh any costs incurred by the applicant.

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

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



This final regulatory action will not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program.

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

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

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.*, Braille, large print, audiotope, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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.

**Johnny W. Collett,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2019-17215 Filed 8-7-19; 4:15 pm]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 100

[Docket No. FWS-R7-SM-2017-0096; FXFR13350700640-190-FF07J00000; FBMS #4500133004]

RIN 1018-BC06

#### Subsistence Management Regulations for Public Lands in Alaska—2019–20 and 2020–21 Subsistence Taking of Fish Regulations

**AGENCY:** Forest Service, Agriculture; Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises regulations for seasons, harvest limits, methods, and means related to taking of fish for subsistence uses in Alaska during the 2019–2020 and 2020–2021 regulatory years. The Federal Subsistence Board (Board) completes the biennial process of revising subsistence hunting and trapping regulations in even-numbered years and subsistence fishing and shellfish regulations in odd-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable biennial cycle. This rule also revises fish customary and traditional use determinations.

**DATES:** This rule is effective August 12, 2019.

**ADDRESSES:** The Board meeting transcripts are available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, AK 99503, or on the Office of Subsistence Management website (<https://www.doi.gov/subsistence>). The comments received in response to the proposed rule are available on [www.regulations.gov](http://www.regulations.gov) in Docket No. FWS-R7-SM-2017-0096.

**FOR FURTHER INFORMATION CONTACT:** Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas C.J. Doolittle, Office of Subsistence Management; (907) 786-3888 or [subsistence@fws.gov](mailto:subsistence@fws.gov). For questions specific to National Forest System lands, contact Thomas Whitford, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region;

(907) 743-9461 or [thomas.whitford@usda.gov](mailto:thomas.whitford@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to carry out this program in the **Federal Register** on June 29, 1990 (55 FR 27114), and published final regulations in the **Federal Register** on May 29, 1992 (57 FR 22940). The Program managers have subsequently amended these regulations a number of times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, “Parks, Forests, and Public Property,” and Title 50, “Wildlife and Fisheries,” at 36 CFR 242.1–242.28 and 50 CFR 100.1–100.28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board comprises:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, National Park Service;
- The Alaska State Director, Bureau of Land Management;
- The Alaska Regional Director, Bureau of Indian Affairs;
- The Alaska Regional Forester, USDA Forest Service; and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10