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DEPARTMENT OF EDUCATION

34 CFR Parts 200, 237, and 299

RINS 1810-AB36, 1810-AB37, 1810-AB38, 1810-AB39, 1810-AB40, 1810-AB41, 1810-AB42, 1810-AB43, 1810-AB44, and 1810-AB48

Outdated or Superseded Regulations: Title I, Parts A through C; Christa McAuliffe Fellowship Program; and Empowerment Zone or Enterprise Community-Priority

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

ACTION: Final regulations.

SUMMARY: The Secretary amends the Code of Federal Regulations (CFR) to remove outdated or superseded regulations. As a result of new legislation, absence of funding, and review in accordance with the President's regulatory reform initiative, the Secretary has determined that the regulations described below are no longer needed for the reasons discussed.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: Consistent with Executive Order  
13777, "Enforcing the Regulatory Reform Agenda," the  
Department is evaluating all existing regulations and  
making recommendations to the Secretary regarding their  
repeal, replacement, or modification, consistent with  
applicable law. As part of that effort, we have determined  
it is appropriate to take three deregulatory actions in  
this document to remove regulations that are outdated or  
unnecessary in parts 200, 237, and 299.

The regulations being removed have been superseded by  
new legislation or were issued to implement a program that  
is no longer funded. Therefore, these deregulatory actions  
will have no effect on the current operation of the  
Department's grant programs. To the extent that amendments  
to existing regulations or new regulations are needed to  
implement new legislation, they will be issued separately  
from this document. Any determination to issue new  
regulations will be carefully considered to ensure that it  
is consistent with the President's regulatory reform

efforts and the principles in Executive Orders 12866 and 13771.

The Department is continuing to review its other existing regulations thoroughly. To the extent the Secretary can identify further opportunities for regulatory reform, the Secretary will take appropriate action to revise or eliminate existing regulations, reduce burden, and increase flexibility.

In these final regulations, we take the following three deregulatory actions:

(1) Part 200 (RINs 1810-AB36, 1810-AB39, 1810-AB40, 1810-AB41, 1810-AB42, 1810-AB43, 1810-AB44, and 1810-AB48)

In 2015, the Every Student Succeeds Act (ESSA) reauthorized the Elementary and Secondary Education Act of 1965 (ESEA). Accordingly, some changes to the ESEA have rendered whole portions of the regulations in part 200 inconsistent with the statute. The superseded regulations in part 200 that the Department rescinds are: 34 CFR §§200.7 (Disaggregation of Data); 200.12 (State Accountability System); 200.13-200.22 (Adequate Yearly Progress); 200.27-200.28 (Schoolwide Programs); 200.30-200.53 (LEA and School Improvement); 200.55-200.57 and 200.59-200.60 (Highly Qualified Teachers and Duties of Paraprofessionals); 200.81(d), 200.81(f), 200.81(g), and

200.81(h) (Migrant Education Program (MEP)); and 200.89(a) (Allocation of funds under the MEP for FY 2006 and subsequent years). In addition, the ESSA removed the authority for the Migrant Education Even Start Program. Accordingly, the Department rescinds 34 CFR §200.80 because it is no longer needed.

(2) Part 237 (RIN 1810-AB37)

The Department rescinds the regulations governing the Christa McAuliffe Fellowship Program. We take this action because this program is no longer authorized under the Higher Education Act. The program was last funded in 1995.

(3) Part 299 (1810-AB38)

The Department rescinds the regulations establishing the priority for activities in an Empowerment Zone or Enterprise Community. We take this action because the last Congressional extension of tax benefits to Empowerment Zones ended in 2017 and, thus, the program is no longer viable.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency, for

good cause, finds that the requirement is impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B) and (d)(3)). There is good cause to waive rulemaking in this case because these final regulations merely remove existing regulations that are outdated, unnecessary, or superseded by recent statutory changes. This regulatory action adopts no new regulations and does not establish or affect substantive policy. Therefore, under 5 U.S.C. 553(b)(B), the Secretary has determined that proposed regulations are unnecessary and, thus, waives notice-and-comment rulemaking.

The APA also requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). Again, because the final regulations merely reflect statutory changes and remove outdated or unnecessary regulatory provisions, the Secretary also has good cause to waive the 30-day delay in the effective date of these regulatory changes under 5 U.S.C. 553(d)(3).

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine 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 regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or

otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2018, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because this final rule is not a significant regulatory action, the requirement to offset new regulations in Executive Order 13771 does not apply.

We have also reviewed these regulations 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 their 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 specifying the behavior or manner of compliance that regulated entities must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing 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 this regulatory action only upon a reasoned determination that it provides benefits and will not have any costs. In choosing among alternative

regulatory approaches, we selected the approach that maximizes net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

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

#### Need for the Regulatory Action

This regulatory action is necessary to remove superseded, outdated, or unnecessary regulations from the Code of Federal Regulations (CFR).

#### Analysis of Costs and Benefits

This regulatory action is a benefit to the public, grant recipients, and the Department as the action will remove any confusion that might be caused by maintaining superseded, outdated, or unnecessary regulations in the CFR.

The Department has also analyzed the costs of this regulatory action and has determined that it will impose no additional costs (\$0). As detailed earlier, this regulatory action reflects statutory changes and removes superseded, outdated, or unnecessary regulatory provisions.

#### Regulatory Flexibility Act Analysis

Pursuant to 5 U.S.C. 601(2), the Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking. The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice and comment under 5 U.S.C. 553.

#### Paperwork Reduction Act of 1995

This rule does not contain any information collection requirements. The previously OMB-approved information collections that were associated with part 237 are no longer active information collections (OMB Control Numbers 1810-0532 and 1810-0537). The OMB-approved information collection associated with the sections of part 200 (Consolidated State Plans OMB 1810-0576) that this rule removes has been modified as necessary to align with the requirements of the ESSA.

#### Intergovernmental Review

Some of these programs are 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.

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List of Subjects

34 CFR Part 200

Education of disadvantaged, Elementary and secondary education, Grant programs-education, Indians-education,

Infants and children, Juvenile delinquency, Migrant labor,  
Private schools, Reporting and recordkeeping requirements.

34 CFR Part 237

Elementary and secondary education, Grant programs-  
education, Scholarships and fellowships, Teachers.

34 CFR Part 299

Administrative practice and procedure, Elementary and  
secondary education, Grant programs-education, Private

schools, Reporting and recordkeeping requirements.

Dated: August 9, 2018.

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Frank Brogan,  
Assistant Secretary for  
Elementary and Secondary  
Education.

For reasons discussed in the preamble, and under the authority at 20 U.S.C. 3474, 20 U.S.C. 1221e-3, Pub. L. 109-270, and Pub. L. 114-95, the Secretary amends Chapter II of title 34 of the Code of Federal Regulations as follows:

**PART 200--TITLE I--IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED**

1. The authority citation for part 200 is revised to read as follows:

AUTHORITY: 20 U.S.C. 6301 through 6576, unless otherwise noted.

**§ 200.7 [Removed and Reserved]**

2. Remove and reserve § 200.7.

**§ 200.12 [Removed and Reserved]**

3. Remove the center heading "State Accountability System" and remove and reserve § 200.12.

**§§ 200.13 through 200.22 [Removed and Reserved]**

4. Remove the center heading "Adequate Yearly Progress (AYP)" and remove and reserve §§ 200.13 through 200.22.

**§§ 200.27 and 200.28 [Removed and Reserved]**

5. Remove and reserve §§ 200.27 and 200.28.

**§§ 200.30 through 200.53 [Removed and Reserved]**

6. Remove the center heading "LEA and School Improvement" and remove and reserve §§ 200.30 through 200.53.

7. Revise the center heading "Qualifications of Teachers and Paraprofessionals" to read "Qualifications of Paraprofessionals".

**§§ 200.55 through 200.57 [Removed and Reserved]**

8. Remove and reserve § 200.57.

**§§ 200.59 and 200.60 [Removed and Reserved]**

9. Remove and reserve §§ 200.59 and 200.60.

**§ 200.80 [Removed and Reserved]**

10. Remove and reserve § 200.80.

**§ 200.81 [Amended]**

11. In § 200.81, remove and reserve paragraphs (d), (f), (g), and (h).

**§ 200.89 [Amended]**

12. In § 200.89, amend the section heading by removing the words "MEP allocations;" and by removing and reserving paragraph (a).

**PART 237--[REMOVED AND RESERVED]**

13. Remove and reserve part 237.

**PART 299--GENERAL PROVISIONS**

14. The authority citation for part 299 continues to read as follows:

AUTHORITY: 20 U.S.C. 1221e-3(a) (1), 6511(a), and 7373(b), unless otherwise noted.

**Subpart B—[Removed and Reserved]**

15. Remove and reserve subpart B, consisting of § 299.3.

[FR Doc. 2018-17480 Filed: 8/21/2018 8:45 am; Publication Date: 8/22/2018]