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DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED-2019-OESE-0147]

Proposed priorities--Competitive Grants for State Assessments

[CFDA Number: 84.368A]

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

ACTION: Proposed priorities.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education proposes priorities under the Competitive Grants for State Assessments (CGSA) program. The Assistant Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2020 and later years. We take this action to focus Federal financial assistance related to student assessments on innovative assessments. We intend the priorities to increase the number of States using flexibility under the Innovative Assessment Demonstration Authority (IADA) and to support high-quality work among those States that do so.

DATES: We must receive your comments on or before [INSERT

DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID and the term "Competitive Grants for State Assessments-Comments" at the top of your comments.

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

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about these proposed priorities, address them to the Office of Elementary and Secondary Education, Attention: Donald Peasley, Competitive Grants for State Assessment-Comments, U.S. Department of

Education, 400 Maryland Avenue S.W., Room 3W106,
Washington, DC 20202-6132.

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

FOR FURTHER INFORMATION CONTACT: Donald Peasley, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3W106, Washington, DC 20202. Telephone: (202) 453-7982. Email: Donald.Peasley@ed.gov.

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

SUPPLEMENTARY INFORMATION:

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

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

During and after the comment period, you may inspect all public comments about the proposed priorities by accessing regulations.gov. You may also inspect the comments in person in room 3W106, 400 Maryland Avenue, S.W., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this document. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please

contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: The purpose of the CGSA program is to enhance the quality of assessment instruments and assessment systems used by States for measuring the academic achievement of elementary and secondary school students.

Program Authority: Section 1203(b)(1) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA) (20 U.S.C. 6363(b)(1)).

PROPOSED PRIORITIES:

This notice contains two proposed priorities.

Background:

The purpose of the CGSA program is to support States' efforts to improve the technical quality of their assessment systems--both the quality of individual State assessments and the overall field of State assessments. To do so, we encourage States to develop new forms of, or formats for administering, test items or assessment designs.

The Department is proposing these priorities to encourage State educational agencies (SEAs) to consider new

approaches to their State assessment systems. These priorities would build on the flexibility in section 1204 of the ESEA, which establishes the Innovative Assessment Demonstration Authority (IADA). IADA provides an opportunity for an SEA to pilot a new and innovative approach to assessments by first implementing it in a subset of schools or LEAs. Students in those schools would take the innovative assessment in place of the statewide assessment and their results would be included in the State's accountability system. Over a period of five years, the SEA would scale up the innovative assessment to eventually replace the statewide assessment. These priorities would allow States to use CGSA funds to improve alignment with and support related work through the IADA.

In 2018 and 2019, the Department published notices inviting applications (NIAs) for IADA and approved four SEAs through this authority. During the initial demonstration period (as defined in ESEA section 1204(b)(3) and 34 CFR 200.104(d)), up to seven SEAs may be approved for IADA. After the initial demonstration period, and upon meeting the requirements in ESEA section 1204(d), the Secretary may grant IADA flexibility to additional SEAs.

The Department is proposing these priorities for the CGSA program to support SEAs planning to apply for the authority to implement IADA or SEAs currently implementing an approved IADA plan. Approval for a CGSA grant for those SEAs planning to apply for IADA does not imply or infer that the Department will approve that SEA to implement its IADA proposal. However, the Department believes that the work to plan for IADA will strengthen the State's assessment system, even if the SEA is not ultimately granted IADA flexibility.

To the extent the Department uses the proposed priorities in this notice, the Department anticipates establishing project periods and budget ranges that may differ for applicants seeking CGSA funds to implement an IADA proposal as compared with those seeking CGSA funds to plan for an IADA proposal. The Department will establish specific project periods and budget ranges in a notice inviting applications. In particular, the Department anticipates that a planning grant might be available for a period of 12-18 months while an implementation grant might be available for 36-48 months. Since a planning grant is intended to provide support only during the preparation of

an IADA proposal, this would give an SEA or consortium sufficient time to prepare an application for submission. Similarly, the Department anticipates that the budget request for a planning grant would be substantially lower than for an implementation grant, both because the project period would be shorter and because the work would be more targeted, preliminary, and smaller in scope.

Each SEA seeking IADA approval must submit a separate IADA application consistent with 34 CFR 200.104 through 200.108 and the applicable IADA NIA announcing the availability of IADA to additional SEAs, and successfully complete the Department's separate review process for IADA applications. Currently, in addition to the four SEAs approved for IADA, SEAs have been invited to seek approval through a notice published in the *Federal Register* (84 FR 57709) on October 28, 2019.

Section 1203(b)(1)(A) of the ESEA identifies the six allowable uses of funds under CGSA. In brief, these uses include developing or improving assessments for English learners; developing or improving models to measure and assess student progress or student growth on assessments; developing or improving assessments for children with

disabilities; allowing for collaboration with institutions of higher education or other organizations to improve the quality, validity, and reliability of State academic assessments; measuring student academic achievement using multiple measures of student academic achievement from multiple sources; and evaluating student academic achievement using comprehensive academic assessment instruments (such as performance and technology-based academic assessments, computer adaptive assessments, projects, or extended performance task assessments) that emphasize the mastery of standards and aligned competencies in a competency-based education model. An SEA, or consortium of SEAs, applying for funds under CGSA must describe in its application how it is meeting one or more of these six allowable uses of funds. Since an SEA has flexibility to request IADA with regard to any of the assessments required under ESEA section 1111(b)(2)(B)(v), including alternate assessments aligned with alternate academic achievement standards, and must ensure the inclusion of all students who take that assessment, including English learners and children with disabilities, an SEA could potentially use CGSA funds under any or all of

the CGSA uses of funds in service of an IADA assessment. Further, the CGSA uses of funds related to using multiple measures of student academic achievement from multiple sources and evaluating student academic achievement through comprehensive academic assessments that emphasize a competency-based education model (section 1201(a)(2)(K) and (L) of the ESEA, as incorporated into CGSA by ESEA section 1203(b)(1)(A)) are particularly aligned with the flexibility envisioned in IADA.

Since all SEAs may apply for a CGSA grant, in any competition in which we use one or both of these priorities, we will also make funding opportunities available to an SEA that is not planning for or implementing IADA. For example, the Department may choose to use a priority from among the priorities established in the Department's Notice of Final Priorities--Enhanced Assessment Instruments published in the *Federal Register* on August 8, 2016 (81 FR 52341), which emphasized innovative assessment item types and design approaches, in keeping with CGSA uses of funds related to using multiple measures of student academic achievement from multiple sources and evaluating student academic achievement through

comprehensive academic assessments that emphasize a competency-based education, among others.

Proposed Priority 1--Implementing the Innovative Assessment Demonstration Authority (IADA).

(a) Under this priority an SEA, or consortium of SEAs, must--

(1) Be approved for IADA as of the date of its CGSA application. If applying as part of a consortium (or in partnership with other SEAs), each SEA must be approved for IADA as of the date of its CGSA application;

(2) Be implementing IADA, consistent with all requirements of section 1204 of the ESEA and applicable regulations as of the date of its CGSA application. If applying for CGSA as part of a consortium (or in partnership with other SEAs), each SEA must individually meet this requirement;

(3) Describe how the SEA will use CGSA funds to implement its approved IADA plan; and

(4) Describe how the proposed project aligns with one or more of the CGSA statutory uses of funds in section 1201(a)(2)(C), (H), (I), (J), (K), or (L) of the ESEA and as required under section 1203(b)(1)(A) of the ESEA.

(b) Any competition that uses this priority must also include another priority under which any SEA may apply.

Proposed Priority 2--Planning to Apply for the Innovative Assessment Demonstration Authority (IADA).

(a) Under this priority, an SEA, or consortium of SEAs, must--

(1) Provide an assurance by an authorized representative that the SEA(s) intends to apply for flexibility under the IADA, when made available by the Department. If applying for CGSA as part of a consortium (or in partnership with other SEAs), each SEA must provide an assurance that it intends to apply for flexibility under the IADA;

(2) If applying as a consortium of SEAs during the initial demonstration authority for IADA, not include more than four SEAs;

(3) Describe its approach to innovative assessments in terms of the subjects and grades it anticipates addressing, the proposed assessment design, proposed item types (e.g., item prototypes), and other relevant features; and

(4) Describe how the proposed projects align with one or more of the CGSA statutory uses of funds in section 1201(a)(2)(C), (H), (I), (J), (K), or (L) of the ESEA.

(b) Any competition that uses this priority must also include another priority under which any SEA may apply.

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 Priorities:

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

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

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is "significant" and, therefore, subject to the

requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

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

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

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

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

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

Under Executive Order 13771, for each new 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 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. However, Executive Order 13771 does not apply to "transfer rules" that cause only income transfers between taxpayers and program beneficiaries, such as those regarding discretionary grant programs. Because the proposed priorities would be used in connection with one or more discretionary grant programs, Executive Order 13771 does not apply.

We have also reviewed these proposed 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 on a reasoned

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

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

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

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

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

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated

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

We issue these proposed priorities only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that these proposed 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.

Potential Costs and Benefits

We have reviewed the proposed priorities in accordance with Executive Order 12866 and do not believe that these priorities would generate a considerable increase in

burden. We believe any additional costs imposed by the proposed priorities would be negligible, primarily because they would create new opportunities to prioritize applicants that may have submitted applications regardless of these changes, changes that do not impose additional burden. Moreover, we believe any costs will be significantly outweighed by the potential benefits of making funding opportunities available that leverage maximum flexibility under ESEA and allow for State and local innovation. In addition, generally, participation in a discretionary grant program is entirely voluntary; as a result, these proposed priorities would not impose any particular burden except when an entity voluntarily elects to apply for a grant.

Proposed Priority 1 would give the Department the opportunity to prioritize an applicant to the CGSA program that already has approval for IADA. We believe that this proposed priority could result in changes in the behavior of CGSA applicants. First, while SEAs with IADA approval could previously apply for CGSA (and one of the two SEAs then approved for IADA did apply for CGSA in 2019), we believe that SEAs that have IADA flexibility would be more

likely to apply for CGSA if the Department includes Proposed Priority 1 since use of the priority would demonstrate particular Department interest in such projects. Second, we believe that the proposed priority would shift at least some of the Department's grants and prioritize a portion of CGSA funds for those SEAs with IADA approval. However, because this proposed priority would be used in concert with another priority or priorities such that all SEAs could apply for and receive CGSA funds, it would neither expand nor restrict the universe of eligible entities for any Department grant program. Since application submission and participation in our discretionary grant programs is voluntary, we do not think that it would be appropriate to characterize any increased participation in our grant competitions or differences in which entities receive awards as costs associated with this priority.

Proposed Priority 2, which would give the Department the opportunity to prioritize an applicant to the CGSA program that plans to apply for IADA flexibility, would similarly not create costs or benefits, but may have the result of shifting at least some of the Department's grants

among eligible entities. We believe that this proposed priority could result in changes in the behavior of applicants. First, while SEAs that may seek future IADA approval could previously have applied for CGSA in 2019, we believe that SEAs that are interested in IADA flexibility would be more likely to apply for CGSA under Proposed Priority 2 since use of the priority would demonstrate particular Department interest in such projects. Second, we believe that the proposed priority could shift at least some of the Department's grants among eligible entities. However, as with Proposed Priority 1, because this proposed priority would be used in concert with another priority or priorities such that all SEAs could apply for and receive CGSA funds, it would neither expand nor restrict the universe of eligible entities for any Department grant program. Again, since application submission and participation in our discretionary grant programs is voluntary, we do not think that it would be appropriate to characterize any increased participation or differences in which entities receive awards as costs associated with this priority.

Both Proposed Priority 1 and Proposed Priority 2 may

result in benefits in the form of increased innovation in State assessment.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary and related mostly to an increase in the available support for meeting existing obligations to provide statewide student assessment. Therefore, we do not believe that the proposed priorities would significantly impact small entities beyond the potential for receiving additional support from their SEA

should the SEA receive a competitive grant from the Department.

Paperwork Reduction Act

The proposed priorities contain information collection requirements approved under OMB 1894-0006.

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.

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. At this site you can view this document, as well as all other documents of the Department published in the *Federal Register*, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 31, 2019.

Frank T. Brogan,
*Assistant Secretary for
Elementary and Secondary
Education.*

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