4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED-2020-OPE-0031]

Final priorities, requirements, and definitions--Fund for

the Improvement of Postsecondary Education--Open Textbooks

Pilot Program

AGENCY:  Office of Postsecondary Education, Department of

Education.

ACTION:  Final priorities, requirements, and definitions.

SUMMARY:  The Assistant Secretary for Postsecondary

Education announces priorities, requirements, and

definitions for the Open Textbooks Pilot (OTP) program

conducted under the Fund for the Improvement of

Postsecondary Education (FIPSE), CFDA number 84.116T.  The

Assistant Secretary may use one or more of these

priorities, requirements, and definitions for competitions

in fiscal year (FY) 2020 and later years.  We take this

action to focus Federal financial assistance on the

creation of new open textbooks (as defined in this notice)

and to expand the use of open textbooks in courses that are

part of a degree-granting program, particularly those with

high enrollments.  We intend this action to further develop

and identify programs and practices that improve

instruction and student learning outcomes, as well as

increase access, affordability, and completion rates, for

students seeking postsecondary education degrees through

the development, enhancement, and use of open textbooks.

DATES:  These priorities, requirements, and definitions are

effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN

THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:  Stacey Slijepcevic, U.S.

Department of Education, 400 Maryland Avenue, SW, room 268-

34, Washington, DC 20202.  Telephone: (202) 453-6150.

Email:  stacey.slijepcevic@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:

Purpose of Program:  The OTP program supports projects at

institutions of higher education (IHEs) that create new

open textbooks and expand the use of open textbooks in

courses that are part of a degree-granting program,

particularly those with high enrollments.  Applicants are

encouraged to develop projects that demonstrate the

greatest potential to achieve the highest level of savings

for students through sustainable, expanded use of open

textbooks in high-enrollment courses (as defined in this

notice) or in programs that prepare individuals for in-demand fields.

Program Authority:  20 U.S.C. 1138-1138d.

We published a notice of proposed priorities, requirement, and definitions (NPP) for this program in the *Federal Register* on March 31, 2020 (85 FR 17805).  That document contained background information and our reasons for proposing the particular proposed priorities, requirement, and definitions.

There are differences between the proposed priorities, requirement, and definitions and the final priorities, requirements, and definitions as discussed in the Analysis of Comments and Changes section elsewhere in this document.

Public Comment:  In response to our invitation in the NPP, 78 parties submitted comments on the proposed priorities, requirement, and definitions.

We group major issues according to subject.  We discuss other substantive issues under the title of the item to which they pertain.  Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority.  In addition, we do not address general comments that raised concerns not directly related to the proposed priorities, requirement, or definitions.

<u>Analysis of Comments and Changes</u>:  An analysis of the

comments and of any changes in the priorities,

requirements, and definitions since publication of the NPP

follows.

<u>Award Size</u>

<u>Comment</u>:  In the NPP, the Department specifically requested

feedback from the public on a variety of items that are

established in the notice inviting applications (NIA) for

this program, namely the maximum award, range in award

size, estimated number of awards, and estimated average

award.  Most commenters suggested that the Department

establish a maximum award, range of awards, and average

award in the NIA that would support a greater number of

smaller awards than the Department supported through the FY

2018 competition, which established a maximum award of

$4,950,000.  The maximum award amounts suggested by

commenters ranged from $500,000 to $2 million, with the

latter amount the most common maximum award suggested by

the commenters.  Many commenters suggested that the

Department adopt a tiered framework in which a different

maximum award would apply to consortia than would apply to

single institution applicants.  Most commenters encouraged

the Department to support a greater number of awards,

though most commenters were not specific.  Of those

comments that were specific, there was substantial variation. For example, one commenter suggested 3-6 awards while another suggested that 15-20 awards would be ideal. A few commenters urged the Department to ensure that adequate funding is provided to be impactful and to support the software technology that is necessary under this program. Finally, many commenters suggested that the Department shorten the project period to either 24 or 36 months to serve a number of goals such as increasing the amount available to the grantees on an annual basis, and enabling the program to produce results more quickly.

Discussion: We appreciate these comments and have relied on this feedback to establish a funding framework in the FY 2020 OTP NIA published elsewhere in this issue of the *Federal Register*. Although we appreciate the suggestion that we establish a tiered funding structure to support larger awards for consortia and smaller awards for single institutions, we believe that it is essential to maintain the consortia arrangement, which ensures collaboration by requiring applicants to develop partnerships among multiple IHEs, educational technology or electronic curriculum design experts, and workforce advisors, to maximize the impact of this program. Finally, although we note that the project period established in the FY 2018 OTP NIA allowed

applicants to propose a project period shorter than 48

months, we appreciate that many applicants consider the

maximum project period as a default project period.

Furthermore, we appreciate the feedback that this work can

be accomplished in a shorter timeframe and agree with those

commenters that noted that establishing a shorter project

period would enable this program to yield results more

quickly.

Changes:  These comments were in response to a directed

question on issues that do not require rulemaking, but we

have incorporated the feedback into the FY 2020 OTP NIA.

Specifically, in contrast to the FY 2018 OTP NIA, which

established a maximum award of $4,950,000, in the FY 2020

NIA, we are setting $2,000,000 as the maximum award,

$1,000,000 as the average award, $500,000-$2,000,000 as the

range in award size, and 3-12 as the estimated number of

awards.  In addition, we have shortened the project period

from 48 months to 36 months.

Matching Contribution

Comment:  The Department received several comments in

response to the directed question seeking feedback on the

use of a priority to require or encourage applicants to

propose matching contributions.  Although several

commenters responded that the Department should either

require or encourage matching contributions to support the sustainability of the project and to achieve other objectives, the majority of commenters advised against a matching priority for a variety of reasons. Some commenters raised concerns that a matching priority could disadvantage lower-resourced institutions. Many commenters were supportive of the idea in general but advised that the COVID-19 pandemic and its impact on the budgets of institutions, States, and nonprofit partners make a matching priority ill-suited to the FY 2020 competition.

Discussion: The Department appreciates these responses. In general, given the small appropriation for this program, we are interested in encouraging matching as a way to maximize the impact of the program and support the sustainability of the funded projects. We also share the concerns many commenters have raised and do not want to disadvantage under-resourced institutions, including community colleges and minority serving institutions. We also recognize the impact COVID-19 has had, and is likely to continue to have, on IHEs.

Accordingly, the Department is not establishing a matching priority for this program. We note that, through the priority 2(f) established in the Secretary's Supplemental Priorities, we have the authority to use a

matching priority in OTP competitions without establishing
such a priority for this program.  However, given the
concerns raised regarding the impact of COVID-19 on
applicants' ability to secure matching contributions, the
Department is not including a matching priority in the FY
2020 OTP NIA.

Changes:  None.

Degree-Granting Programs

Comment:  In general, commenters expressed support for the
broader definition of high-enrollment courses and high-
enrollment programs.

Discussion:  Upon further review of the Explanatory
Statement that accompanied the FY 2020 Appropriations Act,
we recognized that Congress intended to limit the FY 2020
OTP program to degree-granting programs.  Accordingly, we
are revising Priority 2 and the definitions of "high-
enrollment courses" and "high-enrollment programs" to
remove references to credentials and solely reference
degree-granting programs.

Changes:  We have revised Priority 2 and the definitions of
"high-enrollment courses" and "high-enrollment programs" to
remove references to credentials and solely reference
degree-granting programs.

Proposed Priority 1--Improving Collaboration and Dissemination

Comment:  In response to this proposed priority designed to encourage collaboration and dissemination, several commenters noted that collaborations can be challenging, especially with large-scale projects, and costly.  One commenter noted that consortia arrangements can be inefficient and ineffective at managing grant funds, particularly if they are ad hoc or spread over a wide area.  For this reason, the commenter encouraged the Department to prioritize consortia with a demonstrated connection between partners.

Discussion:  We appreciate the support and critical feedback on collaborations and consortia arrangements.  The Department believes the consortia arrangement can be impactful on a larger scale than individual projects, but we agree that such consortia need to focus on identifying members of the consortia who bring a synergistic combination of participants, experience, and program management.  It is the applicant's responsibility to demonstrate the effectiveness of the consortia arrangement and how the consortium will meet this priority.

Changes:  None.

Comment: One commenter recommended expanding the priority to include collaborations that promote the development of communication infrastructures that support the sharing of resources among open education practitioners.

Discussion: The Department appreciates this comment. We understand the importance of sustainable support systems within and across institutions, as well as the broader open education community. Applicants have the flexibility to develop projects that are tailored to the consortium or the broader community to support this identified need.

Changes: None.

Comment: Several commenters recommended prioritizing certain combinations of collaborative arrangements--for example, collaborations with private institutions or non-profit and private sector businesses. One commenter recommended prioritizing collaboration with campus bookstores to assist with companion platforms and services, and to provide information on the use of open textbooks and the associated savings.

Discussion: The Department appreciates the recommendations. However, to encourage a broad range of consortia arrangements, we support providing applicants the flexibility to develop collaborative arrangements with entities that can best address their identified needs.

Changes:  None.

Comment:  One commenter recommended a requirement that applicants propose how they might collaborate with existing OTP program grantees to leverage the current investments made in those programs.

Discussion:  The Department appreciates this comment.  We recognize the importance of building upon existing efforts, including current OTP program projects, and leveraging other Federal investments to maximize program impact.  Since the previous awards made under this grant program are currently active, information regarding the effectiveness of the projects and deliverables may not be readily available to all applicants.  Because of this, we do not believe it is appropriate to impose this requirement.  We will continue to support activities that build collaboration between our grantees and dissemination to the broader education community to increase the impact of our investment.

Changes:  None.

Comment:  Several commenters recommended that we include in the priority a requirement to increase awareness of open educational resources (OER).

Discussion:  The Department appreciates these comments.  We recognize the importance of improving awareness of OER to

encourage its usage and adoption.  We believe there is an opportunity to improve awareness of OER and engage various communities more broadly about it through the collaboration and dissemination efforts developed under this priority, as well as through professional development for faculty, instructors, and staff, which is supported by this priority and priority 2.

Changes:  None.

Proposed Priority 2--Addressing Gaps in the Open Textbook Marketplace and Bringing Solutions to Scale

Comment:  Several commenters provided specific recommendations to make more explicit the requirement in subpart (c) regarding accessibility.  These commenters recommended that the Department require adherence to Section 508 of the Rehabilitation Act of 1973 and the Web Content Accessibility Guidelines (WCAG 2.0) Level AA.  In addition, commenters recommended that under this priority, the OTP program include support for both implementation and maintenance of these standards.

Discussion:  The Department appreciates the commenters' concerns and agrees that the openly licensed materials created through this grant program, especially digital resources, should be widely available and accessible to ensure all students are able to benefit.  To ensure that

the materials created through this grant program are accessible, the Department is adding an additional program requirement that all digital content developed under this grant program must incorporate principles of universal design to ensure that they are accessible to students with disabilities, and that the content and courses must be in full compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, as amended, and the W3C Web Content Accessibility Guidelines 2.0, Level AA (http://www.w3.org/TR/WCAG/).

Changes:  The Department has added an additional accessibility program requirement.

Comment:  Commenters noted that the OER content created through this grant program should abide by the same Federal and State laws and commonly accepted standards governing student data privacy and intellectual property rights that may be used by the private sector.

Discussion:  Department grantees under all grant programs, including this grant program, must comply with student data privacy and State and Federal privacy laws, including the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232) and its implementing regulations in 34 CFR part 99.  Additional privacy protections in these priorities are not necessary.

With regards to intellectual property rights, grants awarded under the OTP program are subject to the Department's open licensing requirements in 2 CFR 3474.20, which speaks to copyrightable intellectual property created with Department grant funds. We believe that the open licensing regulations properly balance the intellectual property interests of grantees and the public's interest in ensuring that copyrightable material produced with Department grant funds is widely disseminated. In addition, we believe the suggested change would not be consistent with the intent of this grant program to expand the use of openly licensed textbooks.

Changes: None.

Comment: Commenters recommended broadening the scope of this priority to include English Language Learners (ELLs) and students eligible as a Dislocated Worker under the Workforce Innovation and Opportunity Act.

Discussion: The Department appreciates this comment. We recognize the importance of improving access for ELs and those students eligible for services under the Workforce Innovation and Opportunity Act. We believe there is opportunity to serve these students under the priority and applicants have the flexibility to develop projects that

are tailored to the consortium or broader community to support these identified needs, as appropriate.

Changes:  None.

Comment:  Several commenters noted that digital materials created under this grant program would benefit the broader community of stakeholders using a variety of applications, platforms, and systems if these materials conformed with standards for interoperability.  These commenters recommended including more explicit language that conveys the necessity for content that is interoperable across various platforms and systems.

Discussion:  The Department agrees with the commenters that digital materials developed in conformance with open standards is consistent with the goals of this grant program and the intent of the Department to broaden the impact of its investments.

Changes:  We have added an additional program requirement that digital assets created through this grant program should conform with technical standards for interoperability.

Comment:  Several commenters noted that this priority, as well as priorities 1 and 3, contain multiple required components that may be difficult to complete for some applicants.  The commenters recommended removing select

components, such as subparts (d) and (e), from the

priority; clarifying the language to state that applicants

should strive to meet as many of the requirements as

possible; and encouraging teams of applicants to focus on

some components more than others, rather than expecting all

applicants to address all the components.  One commenter

noted that requiring all subparts of the priority to be met

disregards differences in, among other things,

demographics, financial capabilities, and institution type

and may put certain institutions at a disadvantage.

Discussion:  The Department appreciates this critical

feedback.  We understand the concerns raised and do not

want to disadvantage applicants with impractical

requirements.  We aim to administer a program that will

meet the needs of a broad community without imposing

unnecessary burden.  To this end, we believe the proposed

elements of the program will provide the basic framework to

support the program's purpose and address the program's

goal.  The Department also expects applicants to expand

upon this framework and propose projects that are tailored

to their needs.  We believe the consortia arrangement will

be beneficial to all as it is an opportunity to collaborate

and leverage the complementary strengths of the consortia

members.

However, in the NIA published elsewhere in this issue of the *Federal Register*, the Department has established a new tiebreaker mechanism, and incorporated selection criteria and a priority, to address the concerns and facilitate the support of a diverse range of applications.

Changes:  None.

Comment:  One commenter recommended requiring applicants to explain how the development and distribution of the grant deliverables will be sustained after grant funding ends.

Discussion:  The Department appreciates this comment.  The applicant will have an opportunity to describe plans for sustainability as part of the program's selection criteria.

Changes:  None.

Proposed Priority 3--Promoting Student Success

Comment:  Many commenters expressed support for this priority.  There were several commenters that suggested the priority would benefit from expanded metrics to track and evaluate educational outcomes and cost savings because the current metrics for this priority are limited and are focused on whole-textbook adoption and associated student cost savings.

Discussion:  We appreciate the commenters' support and recommendations for this priority.  With the broadened definition of an open textbook, the Department believes the

priority does not imply that cost savings can only be measured by the displacement of a textbook.  We understand that in some instances the open textbook will supplement and not displace a textbook.  The Department expects applicants to use the broadened definition of an open textbook to identify the best method for monitoring and evaluating the impact of open textbooks on instruction, learning outcomes, course outcomes, and educational costs. Furthermore, we expect applicants to develop clear, specific, and actionable metrics that will address the performance of the proposed grant project.

Changes:  None.

Comment:  One commenter recommended including professional development in this priority.

Discussion:  Although we did not specifically incorporate professional development into this priority, the applicant is not precluded from incorporating professional development to address this priority.

Changes:  None.

Comment:  One commenter recommended revising the priority to incorporate Universal Design for Learning as an exemplar for evidence-based practices, and one commenter recommended that we require any materials used, promoted, or disseminated through the project to comply with Federal

accessibility standards under Section 508 of the Rehabilitation Act of 1973.

Discussion:  The Department agrees with the former recommendation, and has added a program requirement that all digital content developed under this program must incorporate principles of universal design to ensure that the content is accessible to students with disabilities, and that the content and courses must be in full compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, as amended, and the W3C Web Content Accessibility Guidelines 2.0, Level AA (http://www.w3.org/TR/WCAG/).  With respect to the latter recommendation, Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d) requires Federal agencies to make electronic and information technologies that they develop, procure, maintain, or use accessible to individuals with disabilities.  This law is not applicable to recipients of Federal financial assistance that are not Federal agencies.

Changes:  The Department has added an additional accessibility program requirement.

Comment:  One commenter stated that this priority introduces an inequitable barrier for institutions like community colleges, technical colleges, and institutions that support local industry demand for career and technical

programs.  It was noted that many of these institutions have courses that are in high demand for creation of open textbooks but they will not meet the definition for "high-enrollment" because the courses cannot accommodate large class sizes due to industry and safety specifications.  The commenter recommended the inclusion of the proposed definitions for "in-demand industry sector" and "in-demand occupation" in this priority.

Discussion:  We acknowledge the concern that establishing a stricter definition for "high-enrollment courses" could preclude some applicants from proposing open textbooks for certain courses.  However, the Department needs to balance this concern with the key program objective of maximizing savings for students.  The Department must also take into consideration how the program priorities may achieve broad-scale impact.  We do not believe that limiting this priority to courses in in-demand industry sectors and in-demand occupations would sufficiently support promoting student success on a broader scale.

Changes:  None.

Proposed Priority 4--Using Technology-Based Strategies for Personalized Learning and Continuous Improvement

Comment:  One commenter recommended including professional development in this priority.

Discussion:  Although we did not specifically incorporate professional development into this priority, the applicant is not precluded from incorporating professional development to address this priority.

Changes:  None.

Comment:  Multiple commenters recommended broadening the priority so that it is not limited to projects that integrate personalized learning strategies.  There was concern that applicants with projects involving technologies that are less complex to develop would be deterred by this requirement.  It was recommended to broaden the priority to include all technology developments.

Discussion:  The Department appreciates the critical feedback and recommendations.  We recognize that in addition to personalized learning there are a multitude of strategies and pathways towards improving instruction and student learning outcomes.  While artificial intelligence and adaptive learning are examples of technologies that may provide personalized learning experiences for students, applicants are not prohibited from undertaking other types of technology developments under this priority.  The Department encourages applicants to choose the technology that fits the context of their proposed project.

Therefore, we agree that it will be beneficial to broaden the language of this priority.

Changes:  We have revised priority 4 to include all technology-based strategies.

Comment:  Multiple commenters expressed concern over consumer data privacy and stated that the priority lacks explicit language requiring grantees to protect the privacy of students.

Discussion:  As State and Federal privacy laws apply to this grant program, including FERPA and its implementing regulations in 34 CFR part 99, additional privacy protections in these regulations are not necessary.

Changes:  None.

Comment:  Multiple commenters expressed concern over accessibility requirements and recommended the addition of language requiring adherence to Section 508 of the Rehabilitation Act of 1973.

Discussion:  Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) requires Federal agencies to make electronic and information technologies that they develop, procure, maintain, or use accessible to individuals with disabilities.  This law is not applicable to recipients of Federal financial assistance that are not Federal agencies. To ensure that the materials created through this grant

program are accessible, the Department is adding an additional program requirement that all digital content developed under this grant program must incorporate principles of universal design to ensure that they are accessible to students with disabilities, and that the content and courses must be in full compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, as amended, and the W3C Web Content Accessibility Guidelines 2.0, Level AA (http://www.w3.org/TR/WCAG/).

Changes:  The Department has added an additional accessibility program requirement.

Comment:  Multiple commenters expressed concern over intellectual property and recommended the Department follow all applicable laws with regard to the protection of intellectual property rights including those of copyright, patent, and trademark holders.

Discussion:  Grants awarded under the OTP program are subject to the Department's open licensing requirements under 2 CFR 3474.20, which speaks to copyrightable intellectual property created with Department grant funds. We believe that the Department's regulations properly balance the intellectual property interests of grantees and the public's interest in ensuring that copyrightable

material produced with Department grant funds is widely disseminated.  In addition, we believe the suggested change would not be consistent with the intent of this grant program to expand the use of openly licensed textbooks.

Changes:  None.

Comment:  A number of commenters did not support this priority primarily because of the technology focus and, for some commenters, a lack of alignment with the goal to achieve cost savings for students.  Commenters noted the technology focus of this priority may present a barrier to applicants with smaller projects that may not be capable of delivering some of the OER technology, or it may exclude applicants with projects that are not focused on technology-enabled content and instruction.  There were also concerns about the burden to implement technology-based strategies and the high costs associated with the development and maintenance of technology-based solutions.

Discussion:  The Department appreciates the critical feedback for this priority.  Although cost savings are a primary goal for this program, the Department recognizes the possibility of other tangible benefits.  Through the use of technology-based strategies, the open textbook materials can be further tailored and enhanced to meet the needs of the students.  We believe this priority is in

alignment with priorities 1, 2, and 3, which are more
directly focused on the development of open textbooks
content and materials, because this priority leverages the
use of technology to support the open textbook content.
The Department encourages applicants to identify consortium
members that can help fill gaps, such as academic or
technology gaps, that may exist at their institution.  We
recognize that grantees may need to invest in a variety of
resources and that the burden to access and implement these
resources may vary across institutions.  To get optimal
value from these investments, the Department expects
applicants to leverage the resources of their consortium
and thereby benefit from the access and offerings provided
by the consortium members.

Changes:  None.

Comment:  One commenter stated that complex technologies
may make it more difficult for other users to revise,
remix, and customize the materials for their own learning
objectives and student population despite the open license.

Discussion:  The Department appreciates the commenter's
concern that some digital assets or technology-enabled
materials may be difficult to revise, remix, and customize.
Digital assets developed through this grant program will be
openly licensed.  In addition, the Department has included

an additional program requirement that all technology-enabled assets will conform with open standards to ensure interoperability across multiple applications, platforms, and systems.

Changes:  None.

Comment:  One commenter recommended that, for any technology-based or personalized learning focused projects, there should also be a focus on the integration and reuse of the technologies with learning management systems.  In addition, since the development and maintenance of these technologies can be costly, it was recommended that a plan be proposed to sustain and update the systems and content beyond the grant period.

Discussion:  The Department appreciates this comment.  The Department has included an additional program requirement that all technology-enabled assets will conform with open standards to ensure interoperability across multiple applications, platforms, and systems.  The applicant will have an opportunity to describe plans for sustainability as part of the program's selection criteria.

Changes:  None.

Proposed Requirement

Applicant Eligibility

Comment:  Several commenters recommended that the Department expand the entities eligible to apply to lead the activities of the consortium, to include private non-profit institutions, for-profit organizations, State Higher Education Executive Officers Association (SHEEO), State higher education systems, and state-wide OER initiatives.

Discussion:  We appreciate these comments and support the participation of a diverse array of institutions and organizations in this grant program.  However, the Department adhered to the explanatory statement accompanying the FY 2020 appropriations bill, which recommended that IHEs, as defined in section 101 of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1001), or State higher education agencies serve as fiscal agent for a consortium.  Applicants are reminded that as part of the consortium they may include private non-profit institutions, for-profit organizations, SHEEO, State higher education systems, and state-wide OER initiatives.  Additionally, a system is eligible to apply as the lead applicant as long as the eligibility parameters are met, and the lead applicant is an eligible IHE from the system that serves as the fiscal agent.

Changes:  None.

Comment:  Many commenters were supportive of applicants collaborating between multiple institutions, as well as with employers.  There were also many comments with recommendations for less restrictive eligibility requirements, and flexibility to construct their own consortia based on their needs and scope of expertise.  The recommended eligibility requirements included: decreasing the number of IHEs; reducing the size of the advisory group; eliminating the requirement for an educational technology or electronic curriculum design expert; eliminating the requirement for an advisory group; eliminating the requirement for a consortium altogether; and supporting single institution projects.  Some commenters also noted the potential burden of constructing a consortium due to the COVID-19 pandemic and its impact on IHEs, as well as employers.

Discussion:  The Department appreciates these responses and we share some of the concerns many commenters have raised regarding the impact of the COVID-19 pandemic.  We do not want to unnecessarily create additional burden on the applicants and are revising the eligibility requirement to make it less restrictive.  However, we believe that consortia are necessary to facilitate the sharing of resources and help ensure adequate scale of the projects.

Additionally, the composition of the consortium is intended to represent at a minimum the constituents and stakeholders that can provide support and expertise that aligns with the project scope.

Changes:  We have revised the requirement for an advisory group to provide that it must include at least three, rather than five, employers, workforce organizations, or sector partners (as defined in this notice).

Comment:  One commenter requested clarification on the involvement of employers and workforce partners in the advisory group and what role they may serve.

Discussion:  An advisory group was included in the consortium to provide expertise and support for facilitating the alignment of postsecondary education to workforce opportunities and employer needs.  Specifically, in the case of a career and technical postsecondary program, the consortium should work together to develop and implement open textbooks that meet industry standards in in-demand industry sectors or in-demand occupations.

Changes:  None.

Comment:  Commenters sought clarification on what qualifies as an educational technology or electronic curriculum design expert.

Discussion:  Individuals in this role should be able to provide expertise in the design, development, and delivery of open textbooks and instructional resources.  Ideally, the experts will possess the skills needed to create content for learning and have qualifications that facilitate designing, developing, implementing, and assessing instruction and learning.

Changes:  None.

Proposed Definitions

High enrollment

Comment:  A number of commenters raised concerns that increasing the threshold for high enrollment from programs and courses with "above-average" enrollment to those with "top-third" enrollment could discourage applicants form proposing open textbooks for certain programs and courses, such as those in the humanities.

Discussion:  We appreciate the concerns raised by some commenters that establishing a stricter definition for "high-enrollment" could preclude applicants from proposing open textbooks for certain programs and courses.  However, the Department needs to balance this concern with the key program objective of maximizing savings for students.  We believe that our proposed revision strikes the right balance.  However, the Department has established a new

tiebreaker mechanism to ensure that the funded projects support a diverse range of programs and courses.

Changes:  None.

Open Textbook

Comment:  One commenter disagreed with the expansion of the definition and suggested that the word "textbook" already had a specific definition, and that redefining the term may result in confusion.

Discussion:  The Department believes that while a textbook is an item with a prior known definition, the proposed definition mirrors the actual use of learning materials for teaching and learning.  As other commenters also note, the textbook is no longer the single source of learning enrichment in a classroom and by itself is insufficient to create a rich and engaging learning experience for students.  Furthermore, the use of a textbook in the context of this program goes beyond digitizing a book, as such; without these ancillary materials, the Department would not be able to accomplish the goals of this grant program.

Changes:  None.

Comment:  One commenter stated that the definition of "open textbooks" may be too broad and imply that the grantees

must use openly licensed software to support the entire delivery of their course.

Discussion: The Department does not believe that the definition suggests that all aspects of course delivery should be openly licensed. It is beyond the authority and scope of this grant program to require any grantee to re-license any previously copyrighted materials or to direct the usage of any applications, platforms, or systems.

Changes: None.

Comment: One commenter suggested that the Department should provide a definition for "ancillary materials" to avoid the use of openly licensed assessments.

Discussion: The Department appreciates this comment. However, we believe there is value in open assessments as they provide the opportunity to demonstrate mastery of the competencies. Therefore, we do not want to limit applicants from developing or using these materials. We also believe there is opportunity to develop a wide variety of materials to serve students and that applicants have the flexibility to develop projects that are tailored to the consortium or broader community to support their identified needs, as appropriate.

Changes: None.

Comment:  One commenter suggested revising the definition so that it specifies how the original source code is guaranteed to be made freely available to the public.

Discussion:  Unless an exception applies, all new intellectual property created in whole or in part with Department grant funds, including those awarded under this grant program, are subject to the Department's open licensing requirements under 2 CFR 3474.20.  This includes source code for any new, copyrightable digital assets.

Changes:  None.

Sector Partner

Comment:  One commenter recommended that we expand the definition of "sector partner" to include entities such as non-profit and private sector businesses, and for the Department to establish a competitive preference priority for partnerships with these entities.

Discussion:  We appreciate the commenter's recommendation, but we do not believe that it is necessary to revise the definition of "sector partner" to include non-profit and private sector businesses.  Applicants have the flexibility to include entities such as non-profit and private sector businesses in their consortia arrangement and may choose to include these types of entities to meet priority 1.

Changes:  None.

This notice contains four final priorities.  The Assistant Secretary may use one or more of these priorities for the FY 2020 OTP program competition or for any subsequent competitions.  We may use one or more of these priorities in any year in which this program is in effect.

Priority 1--Improving Collaboration and Dissemination.

To meet this priority, an eligible applicant must propose to lead and carry out projects that involve a consortia of institutions, instructors, and subject matter experts, including no less than three IHEs, along with relevant employers, workforce stakeholders (as defined in this notice), and/or trade or professional associations (as defined in this notice).  Applicants must explain how the members of the consortium will work together to develop and implement open textbooks that:  (a) reduce the cost of college for large numbers of students through a variety of cost saving measures; and (b) contain instructional content and ancillary instructional materials that align student learning objectives with the skills or knowledge required by large numbers of students (at a given institution or nationally), or in the case of a career and technical postsecondary program, meet industry standards in in-demand

industry sectors or in-demand occupations (as defined in this notice).

Priority 2--Addressing Gaps in the Open Textbook Marketplace and Bringing Solutions to Scale.

To meet this priority, an applicant must identify the gaps in the open textbook marketplace in courses that are part of a degree-granting program that it seeks to address and propose how to close such gaps.  An applicant must propose a comprehensive plan to:  (a) identify and assess existing open educational resources in the proposed subject area before creating new ones, such as by identifying any existing open textbooks that could potentially be used as models for the design of the project or ancillary learning resources that would support the development of courses that use open textbooks; (b) focus on the creation and expansion of education and training materials that can be scaled, within and beyond the participating consortium members, to reach a broad range of students participating in high-enrollment courses or preparing for in-demand industry sectors or in-demand occupations; (c) create and disseminate protocols to review any open textbooks created or adapted through the project for accuracy, rigor, and accessibility for students with disabilities; (d) disseminate information about the results of the project to

other IHEs, including promoting the adoption of any open textbooks created or adapted through the project, or adopting open standard protocols and processes that support the interoperability for any digital assets created; (e) include professional development to build capacity of faculty, instructors, and other staff to adapt and use open textbooks; and (f) describe the courses for which open textbooks and ancillary materials are being developed.

Priority 3--Promoting Student Success.

To meet this priority, an applicant must propose to build upon existing open textbook materials and/or develop new open textbooks for high-enrollment courses or high-enrollment programs in order to achieve the highest level of savings for students.

Additionally, this priority requires the applicant to include plans for:  (a) promoting and tracking the use of open textbooks in postsecondary courses across participating members of the consortium, including an estimate of the projected direct cost savings for students which will be reported during the annual performance review; (b) monitoring the impact of open textbooks on instruction, learning outcomes, course outcomes, and educational costs; (c) investigating and disseminating evidence-based practices associated with using open

textbooks that improve student outcomes; and (d) updating the open textbooks beyond the funded period.

Priority 4--Using Technology-Based Strategies for Personalized Learning and Continuous Improvement.

To meet this priority, an applicant must propose a project that focuses on improving instruction and student learning outcomes by integrating technology-based strategies, such as personalized learning, and providing support to faculty, instructors, and other staff who are delivering courses using these techniques.  The project must enable students to tailor and monitor their own learning and/or allow instructors to monitor the individual performance of each student in the classes or courses for which the applicant proposes to develop open textbooks.  In addition, online and technology-enabled content and courses developed under this project must incorporate the principles of universal design in order to ensure that they are accessible by all students, including students with disabilities.  The openly licensed resources that are developed should support traditional, text-based materials, including through such tools as adaptive learning modules, digital simulations, and tools to assist student engagement.

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 for Postsecondary Education establishes the following requirements for this program. We may apply one or more of these requirements in any year

in which this program is in effect.

Eligible Applicants:  Eligible applicants are IHEs as defined in section 101 of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1001), or State higher education agencies that--

(a)  Lead the activities of a consortium that is comprised of at least--

(1)  Three IHEs, as defined in section 101 of the HEA;

(2)  An educational technology or electronic curriculum design expert (which may include such experts that are employed by one or more of the consortium institutions); and

(3)  An advisory group of at least three employers, workforce organizations, or sector partners (as defined in this notice); and

(b)  Have demonstrated experience in the development and implementation of open educational resources.

Accessibility:  All digital content developed under this grant program must incorporate the principles of universal design (www.cast.org/udl/) to ensure that they are accessible to individuals with disabilities.  The content and courses must be in full compliance with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, as amended, and the Web Content

Accessibility Guidelines 2.0, Level AA

(www.w3.org/TR/WCAG/).

Technical Standards for Interoperability:  All

digital assets developed under this grant program must be

produced to maximize interoperability, exchange, and reuse

and must conform to industry-recognized open standards and

specifications.  Applicants must identify the industry

standard they will use.  All digital assets created in

whole or in part under this grant program must be licensed

for free, attributed public use and distribution as

required under 2 CFR 3474.20.

FINAL DEFINITIONS:

The Assistant Secretary for Postsecondary Education

establishes the following definitions for this program.  We

may apply one or more of these definitions in any year in

which this program is in effect.

High-enrollment courses means courses that are

required for a degree granting program offered by an

eligible IHE that either have total student enrollments

within the top third of courses:  (a) at the lead

institution, if applicable, or at one or more of the

consortia partner institutions; (b) in the State; or (c)

nationally as compared to other academic or career and

technical education courses.

High-enrollment program means a program that yields a postsecondary degree that either has total student enrollments within the top third of programs:  (a) at the lead institution, if applicable, or at one or more of the consortia partner institutions; (b) in the State; or (c) nationally as compared to other academic or career and technical education courses.

In-demand industry sector means an industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the State, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors.

In-demand occupation means an occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the State, regional, or local economy, as appropriate.

Open textbook means a textbook that is licensed under a worldwide, nonexclusive, royalty-free, perpetual, and irrevocable license to the public to exercise any of the rights under copyright conditioned only on the requirement

that attribution be given as directed by the copyright owner.  An open textbook may also include a variety of open educational resources or materials used by instructors in the development of a course and those learning activities necessary for successful completion of a course by students.  These include any learning exercises, technology-enabled experiences (e.g., simulations), and adaptive support and assessment tools.

Sector partner means a member of a workforce collaborative, convened by or acting in partnership with a State board or local board, that organizes key stakeholders interconnected by labor markets, technologies, and worker skill needs into a working group that focuses on shared goals and resource needs.

Trade or professional association means a membership organization that inspects employers or practitioners, or leads credentialing programs, in a specific industry or sector.

Workforce stakeholder means an individual or organization with an interest in the employability of others either for self-interest or the interest of other employers.

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 any of the proposed

priorities, requirements, or definitions, 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)must determine 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 final 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 significant regulatory action must be fully offset by the elimination of existing costs through deregulatory actions. Because this 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 these final priorities, requirements, and definitions 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 both 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.

Paperwork Reduction Act of 1995

The final priorities, requirements, and definitions
contain information collection requirements that are
approved by OMB under OMB control number 1894-0006; the
final priorities, requirements, and definitions do not
affect the currently approved data collection.

Regulatory Flexibility Act Certification:  The Secretary
certifies that this regulatory action will not have a
significant economic impact on a substantial number of
small entities.  The U.S. Small Business Administration
(SBA) Size Standards define "small entities" as for-profit
or nonprofit institutions with total annual revenue below
$7,000,000 or, if they are institutions controlled by small
governmental jurisdictions (that are comprised of cities,
counties, towns, townships, villages, school districts, or
special districts), with a population of less than 50,000.

The small entities that this regulatory action will
affect are public or private nonprofit agencies and
organizations, including IHEs that may apply.  We believe
that the costs imposed on an applicant by the final
priorities, requirements, and definitions would be limited
to paperwork burden related to preparing an application and

that the benefits of the final priorities, requirements,

and definitions would outweigh any costs incurred by the

applicant.

Participation in the OTP program is voluntary.  For

this reason, the final priorities, requirements, and

definitions will impose no burden on small entities unless

they applied for funding under the program.  We expect that

in determining whether to apply for OTP program funds, an

eligible entity will evaluate the requirement of preparing

an application and any associated costs, and weigh them

against the benefits likely to be achieved by receiving a

program grant.  An eligible entity will probably apply only

if it determines that the likely benefits exceed the costs

of preparing an application.

We believe that the final priorities, requirements,

and definitions 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 regulatory action and the time needed to

prepare an application would likely be the same.

This regulatory action will not have a significant

economic impact on a small entity once it receives a grant

because it will 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.

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 this Department published in the *Federal Register*, in text or Adobe 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.


_____
Robert L. King,
*Assistant Secretary for*
*Postsecondary Education*.
[FR Doc. 2020-20378 Filed: 9/14/2020 8:45 am; Publication Date:  9/15/2020]