DEPARTMENT OF EDUCATION

34 CFR Subtitle B, Chapter II

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Teacher Incentive Fund

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.385 and 84.374.

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

ACTION: Notice of final priorities, requirements, definitions, and selection criteria.

SUMMARY: The Secretary of Education (Secretary) establishes priorities, requirements, definitions, and selection criteria under the Teacher Incentive Fund (TIF) program. These priorities, requirements, definitions, and selection criteria will be used in two separate and distinct TIF grant competitions: The Main TIF competition, which will provide TIF funding to eligible entities to support their implementation of a performance-based compensation system (PBCS) in accordance with the priorities, the Main TIF competition requirements, the definitions, and the selection criteria established in this document; and the TIF Evaluation competition, which will provide, in accordance with the priorities, the Main TIF competition requirements, the definitions, and the selection criteria, as well as the Evaluation requirements established in this document, TIF funding to help pay the costs of implementing the eligible entity's PBCS in exchange for an agreement to participate in the national evaluation. The Secretary may use these TIF priorities, requirements, definitions, and selection criteria in fiscal year (FY) 2010 and subsequent years. We intend the priorities, requirements, definitions, and selection criteria announced in this document to help improve student achievement (as defined in this document) in high-need schools (as defined in this document) and provide incentives for effective teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) in these schools to take on additional responsibilities and leadership roles.

DATES: These priorities, requirements, definitions, and selection criteria are effective July 6, 2010.

FOR FURTHER INFORMATION CONTACT: April Lee, *Telephone:* (202) 205–5224; or by *e-mail: TIF@ed.gov;* or *by mail:* (*Attention:* Teacher Incentive Fund), U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E120, Washington, DC 20202.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the TIF program is to support projects that develop and implement PBCSs for teachers, principals, and other personnel in order to increase educator effectiveness and student achievement (as defined in this notice), measured in significant part by student growth (as defined in this notice), in high-need schools (as defined in this notice).

Program Authority: The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008, Division G, Title III, Public Law 110–161; Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2010, Division D, Title III, Public Law 111–117; and the American Recovery and Reinvestment Act of 2009, Division A, Title VIII, Public Law 111–5.

Background: Signed into law by President Obama on February 17, 2009, the American Recovery and Reinvestment Act of 2009 (ARRA) constitutes an unprecedented effort to revive the Nation's economy, create and save millions of jobs, and address long-neglected challenges so the Nation can thrive in the 21st century.

In addition to measures that modernize the Nation's infrastructure, enhance energy independence, preserve and improve affordable health care, provide tax relief, and protect those in greatest need, the ARRA provides an unprecedented sum—approximately $100 billion dollars—to fundamentally transform our public education system.

Section 14005(d) of the ARRA requires that this funding be used to promote effective school reform in four assurance areas: (1) Adopting internationally benchmarked standards and assessments that prepare students for success in college and the workplace; (2) Building data systems that measure student success and inform teachers and principals in how they can improve their practices; (3) Increasing teacher effectiveness and achieving equity in teacher distribution; and (4) Turning around our lowest-achieving schools.

The ARRA's second and third assurances are based on evidence that teachers are the single most critical in-school factor in improving student achievement. In addition, the ARRA recognizes the contribution a principal makes toward running an effective school. However, too many students, particularly those attending high-need schools, are provided instruction by unqualified or ineffective teachers. Accordingly, the ARRA requires the Department to promote efforts that ensure an equitable distribution of effective teachers between high- and low-poverty schools so that economically disadvantaged students have the same access to effective teachers as other students.

TIF is one such effort that advances the ARRA's third assurance of recruiting, developing, and retaining effective teachers. To meet this assurance, Congress appropriated an additional $200 million dollars of funding for the TIF program.

The Department plans, to the extent feasible and appropriate, to align TIF with the requirements of other ARRA programs, including the State Fiscal Stabilization Fund, Race to the Top, and Title I School Improvement Grants. The Department's intention in doing so is to maximize the efficient use of resources and encourage applicants to develop plans for evaluating educator effectiveness and for providing educators the useful feedback and professional development needed to improve classroom practice and student achievement that complement, and are consistent with, plans developed across other ARRA programs.

Along with appropriating TIF funds to be used to support projects that implement PBCSs, the ARRA also requires the Department to use some of the appropriated funds to conduct a "rigorous national evaluation * * * utilizing randomized controlled methodology to the extent feasible, that assesses the impact of performance-based teacher and principal compensation systems supported by the funds provided in this Act on teacher and principal recruitment and retention in high-need schools and subjects." The ARRA thus requires the Department to award funds in a way that will ensure adequate participation of both a treatment group and control group in the national evaluation. The TIF Evaluation competition is designed to permit the Department to meet this responsibility and, at the same time, to seek answers to research questions about the effect of PBCSs on student achievement in high-need schools that are of great importance to those who would implement such systems.

The Department published a notice of proposed priorities, requirements, definitions, and selection criteria (NPP) for this program in the **Federal Register** on February 26, 2010 (75 FR 8854). That notice contained background information and our reasons for proposing the particular priorities,

requirements, definitions, and selection criteria.

Public Comment: We received comments on the NPP from 40 commenters, including State educational agencies (SEAs), local educational agencies (LEAs), nonprofit organizations, teachers' unions, universities, professional associations, parents, and other public citizens. We used these comments to revise, improve, and clarify the priorities, requirements, definitions, and selection criteria.

Major Changes in the Final Priorities, Requirements, Definitions, and Selection Criteria

In addition to minor technical and editorial changes, there are several substantive differences between the priorities, requirements, definitions, and selection criteria proposed in the NPP and the final priorities, requirements, definitions, and selection criteria that we establish in this notice. Those substantive changes are summarized in this section and discussed in greater detail in the *Analysis of Comments and Changes* that follows. We do not discuss minor technical or editorial changes, nor do we address comments that suggested changes that we are not authorized to make under the law.

Priorities

We are making the following changes to the priorities for this program:

• In clause (b) of absolute priority 1 (Differentiated Levels of Compensation for Effective Teachers and Principals), we have clarified the need for observation-based assessments of both teachers and principals as part of the evaluation system used to support a TIF-funded PBCS. This change is in response to a recommendation from a commenter to amend proposed priority 1 to be consistent with core element (c), which requires classroom observations of teachers and principals at least twice during the school year.

• In competitive preference priority 4 (Use of Value-Added Measures of Student Achievement), we have changed the language to read: "Clearly explain the chosen value-added model to teachers to enable them to use the data generated through the model to improve classroom practices." This change was made in response to a commenter's request to provide clarification as to whether applicants could meet this priority by using value-added models only, or whether they also must provide feedback to teachers aimed at improving instruction.

• We have added a new competitive preference priority 6 to address the issue regarding whether current TIF grantees would be restricted from applying for TIF funds. Under this new competitive preference priority, the following applicants can receive additional points: Nonprofit organizations that are current TIF grantees that propose to work with a new eligible scope of SEAs and LEAs, and those applicants that do not already have a TIF grant in place. This competitive preference priority is titled *Competitive Preference Priority 6—New Applicants to the Teacher Incentive Fund.* Please see the Final Priorities section of this notice for the full language of this new competitive preference priority.

Requirements

We are making the following changes to the requirements for this program:

• The NPP stated that "[a]lthough [the applicable statutes] provide that Federal TIF funds may support PBCSs only for teachers and principals, grantees may extend their PBCSs to additional school personnel by using non-TIF funds to pay for additional compensation for non-instructional personnel." 75 FR 8856. Under the Department's FY 2010 Appropriations Act, Congress authorized FY 2010 TIF funds to be used for PBCSs for teachers, principals, and other school personnel. Therefore, while requiring TIF-supported PBCSs to extend to both teachers and principals, we have revised the requirements to permit applicants to propose the use of TIF funds to support PBCSs that also benefit such other school personnel as the applicants may identify. (This change does not otherwise affect the program's priorities, requirements, or selection criteria as proposed in the NPP.)

• For both the Main TIF competition and the TIF Evaluation competition, the proposed *Additional Eligibility Requirement* that would have precluded applications that proposed to implement their PBCSs in schools currently served by a TIF grant award has been revised to permit applicants who are already TIF grantees to propose expansion of their existing PBCSs to cover new categories of staff in schools currently served by TIF funding. Thus, for example, current TIF grantees whose projects focus only on principals could seek TIF funding to expand their PBCSs to teachers and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) as well.

• In paragraph (d) of the Core Elements, we have added a footnote to remind applicants that data systems that link teacher and principal incentives based on student growth (as defined in this notice) must comply with any applicable requirements under both the Family Educational Rights and Privacy Act (FERPA) and State and local privacy laws. This change was made in response to two commenters who urged the Department to ensure that the data management systems required by paragraph (d) of the Core Elements protect privacy of students and educators.

• Under the *TIF Evaluation Competition Requirements,* a new design that incorporates a 1 percent across-the-board bonus has been selected for the control schools. The requirement to provide a match that would have been required if *Comparison Design 2* was selected has been eliminated.

• We have added a *Local Evaluation* requirement. The new requirement clarifies (1) that, in order to be eligible to receive points under the *Quality of Local Evaluation* selection criterion, applicants must include a description of their local evaluation in their application although it will not be considered when ranking applicants under the TIF Evaluation competition, and (2) that applicants selected under the TIF Evaluation competition will not be required to conduct the local evaluation they propose in response to the selection criterion. This was in response to three commenters who expressed concern that some applicants might mistakenly believe that applying for the TIF Evaluation competition obviates the need to address the *Quality of Local Evaluation* criterion.

• We have clarified that the Department will waive the *Advance Notice* requirement under the TIF Evaluation competition for any applicant that is eligible to implement its PBCS in school year 2010–11 (*i.e.,* for applicants that meet the five core requirements) so long as the program is implemented according to the evaluator's assigned group status. (**Note:** The evaluator will be ready to assign group status immediately upon grant award.) We made this change in response to a commenter who expressed concern that, depending on when FY 2010 TIF grants are awarded, applicants might not be able to provide the two months notice to teachers and principals involved in the evaluation, as required under the proposed *Advance Notice* requirement.

• Under the *Evaluation Competition* requirements, the eligibility requirement was broadened to include consortia and intermediary units that have centralized coordination of data and that could meet the minimum requirement of 8 schools in grades 3 through 8.

Definitions

We have made no changes to the proposed definitions.

Selection Criteria

We have made the following change to the selection criteria for this program:

• We have added new sub-criterion to the Project Design selection criterion that concerns the extent to which an applicant provides a clear definition of how teachers, principals and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) are determined to be "effective" for the purposes of the proposed PBCS. We have added this sub-criterion because our proposed criterion would have had applicants address how effectiveness would be determined but had neglected to have reviewers examine the actual definition of teacher and principal effectiveness applicants would use.

Analysis of Comments and Changes

An analysis of the comments received on, and any changes to, the priorities, requirements, definitions, and selection criteria since publication of the NPP for this program follows.

Note about general comments: We received many comments expressing general support or making general recommendations for this program. In most cases, these comments were effectively duplicated by other comments expressing support or making specific recommendations for the program's proposed priorities, requirements, definitions, or selection criteria, which we discuss in the sections that follow. We accordingly do not discuss those general comments here. In other cases, we interpreted a general comment as applying to a specific priority, requirement, definition, or selection criterion. We address the comment in the discussion that relates to the relevant priority, requirement, definition, or selection criterion.

Note about comments on program issues not covered in the NPP: We received a number of comments relating to program issues that were not proposed for public comment in the NPP for this program. These issues include: specific funding ranges or award amounts for the grant categories, the number of grant awards, uses of funds, length of grant periods, and technical assistance for applicants. We do not address comments on these issues here. We note, however, that information on these issues will be made available through other Department documents, including the notice inviting applications for this program.

General Comments

Comment: Several commenters expressed strong support for the TIF program, as outlined in the NPP, both for the overall effort to improve recruitment, development, and retention of effective teachers and for specific components of the NPP, such as encouraging the use of value-added models as part of teacher evaluation systems and allowing planning periods for grantees.

Discussion: The Department appreciates the support of these commenters for the priorities, requirements, definitions, and selection criteria proposed in the NPP.

Changes: None.

Comment: Several commenters expressed concern that the NPP relied excessively on indicators of student achievement and student growth as meaningful predictive measures of teacher and principal effectiveness. These commenters cited research that cautions against the use of student test scores to predict future teacher performance and that discourages the use of assessment results for purposes for which they have not been validated. One commenter also objected to the Department's statement in the NPP that studies using value-added assessments indicate that individual teachers make a significant difference in student achievement, claiming that this statement was "an inaccurate summation of the research" on the use of value-added models to estimate individual teacher impact on student performance. Other commenters asserted that assessment data do not reflect other essential aspects of teacher performance, such as planning and preparation, the classroom environment, instructional methods, and other professional duties. In addition, two commenters claimed that the NPP ignored research and survey data showing that "nearly all teachers" would prefer supportive leadership and collaborative working environments to monetary rewards. These commenters noted that requiring payments "substantial enough" to change teacher behavior may be ineffective if leadership, climate, and other supports are lacking.

Discussion: As noted in the NPP, the Department believes that student achievement (as defined in this notice) and student growth (as defined in this notice) data are meaningful measures of teacher and principal effectiveness, and, therefore, should be a significant factor in the PBCSs funded by the TIF program as part of rigorous, transparent, and fair evaluation systems that include multiple measures. The Department's citation of research showing that value-added assessments can be used to demonstrate that individual teachers make a significant difference in student achievement was not intended to summarize all available research on the use of value-added models to measure teacher performance. Rather the citation was included in the NPP to emphasize research supporting the central premises of the TIF program: That since we know good teachers matter, it makes sense for compensation to take into account effectiveness, as measured by growth (as defined in this notice) in student achievement (as defined in this notice), and to offer financial incentives to encourage the most effective teachers to work in high-need schools. In addition, Congress has authorized and appropriated funding for the TIF program specifically to support the development and use of PBCSs that consider growth (as defined in this notice) in student achievement (as defined in this notice), among other factors. Thus, requiring growth (as defined in this notice) in student achievement (as defined in this notice) to be a significant factor in any PBCS supported with TIF funds is wholly consistent with the statutory authority for the TIF program.

Moreover, this final notice, like the NPP, heeds the conclusion of much of the research cited by commenters that student achievement, no matter how it is measured, should not be the sole basis for making consequential decisions about teachers. In particular, this final notice retains the proposed requirement for at least two observation-based assessments of teacher performance in TIF projects, while permitting an applicant to include other measures of its own choosing. This flexibility allows applicants to take into account other measures of teacher effectiveness and performance when developing teacher evaluation systems for use as part of their PBCSs. In addition, the final notice retains the emphasis on the need for each applicant to demonstrate that its PBCS is part of a coherent and integrated approach to strengthening the educator workforce, which may include efforts to improve school climate, create collaborative environments, and other support for teachers, as recommended by the commenters.

Changes: None.

Comment: Two commenters stated that the standard of reliability and validity for any teacher evaluation system must be higher when the results are used for high-stakes compensation, tenure, and termination decisions than when the results are used simply to identify and meet professional development needs. Another commenter recommended that the Department require multiple measures of teacher performance.

Discussion: The Department agrees that the teacher and principal evaluation systems used by TIF grantees as part of their PBCSs must be rigorous, transparent, and fair, in part through the use of multiple measures of performance. The Department believes that this goal was fully reflected in the NPP and has been retained in this final notice. For example, priority 1 requires LEAs to use a combination of student achievement (as defined in this notice), classroom observation, and other measures of the LEA's choosing to evaluate teacher and principal effectiveness. Priority 2 requires evidence that the proposed PBCS is aligned with a coherent and integrated strategy for strengthening the educator workforce, including the use of data and evaluations for professional development, retention, and tenure decisions. The core elements that all applicants must put into place before beginning to make incentive payments are specifically intended to ensure that teachers and principals are involved in developing a PBCS and understand how it works, that evaluation systems include objectively collected data on classroom performance, and that applicant data systems are sufficiently robust to accurately link student achievement (as defined in this notice) data to individual teachers and human resources systems. The Department believes that these priorities and requirements, collectively, will ensure that TIF grantees implement a PBCS that meets the higher standard of reliability and validity for teacher evaluation systems called for by the commenters.

Changes: None.

Comment: One commenter expressed the view that increasing funding for education, including for programs to support teachers, is not likely to improve the overall quality of our education system. According to this commenter, spending has increased dramatically since the 1960s, but test scores have not improved. The commenter also stated that teachers need respect and support from parents and administrators.

Discussion: The Department believes that increased resources for education, effectively used, will improve the quality of our education system. However, the TIF program is focused on improving the efficacy of existing State and local education resources by encouraging LEAs and other applicants to use a greater proportion of those resources to reward effective teaching and school leadership and provide new incentives for our best teachers and principals to work in our most challenging schools. The Department believes that one of the best ways to demonstrate respect and increase support for teachers and principals is to increase the compensation of those who demonstrate effectiveness, in particular, by raising student achievement (as defined in this notice).

Changes: None.

Comment: One commenter cautioned that while teacher evaluation is an essential component of a PBCS, effective teachers cannot be measured by test scores alone. Two other commenters emphasized the importance of collaborative partnerships of union leaders and administrators in the development of a successful PBCS, while another added that such collaboration is more important than the use of test scores. Other commenters asserted that changing the Nation's education system to improve teaching and learning requires more than just changes in compensation; they argued that it also requires professional teaching standards, standards for teaching and learning conditions, and standards for professional development.

Discussion: The Department agrees that effective teachers cannot be measured by test scores alone. The final requirements for this program, like those in the NPP, do not provide otherwise. Rather, as required by the program's authorizing legislation, a PBCS must include the use of student achievement (as defined in this notice) data, classroom observations, and other measures selected by the grantee. Moreover, paragraph (c) of the Core Elements requires "the involvement and support of unions in participating LEAs where they are the designated exclusive representatives for the purpose of collective bargaining that is needed to carry out the grant." Finally, the *Professional Development* requirement provides that applicants must demonstrate that their PBCSs include high-quality professional development targeted to needs identified through an evaluation system. We, therefore, believe that the final notice adequately addresses the commenters' concerns.

Changes: None.

Comment: One commenter urged the Department to make publicly available all successful grant applications so that these applications can serve as templates for future applicants and promote the sharing of promising practices.

Discussion: The Department agrees with this commenter, and will post all successful TIF applications, for both the Main TIF competition and TIF Evaluation competitions, on its Web site at *www.ed.gov.*

Changes: None.

Comment: Two commenters asked for clarification as to whether the PBCSs required by the NPP must include both teachers and principals.

Discussion: The Department interprets the program's authorizing legislation as requiring each PBCS supported with TIF funds to cover both teachers and principals in high-need schools. However, this does not mean that TIF funds must be used to pay performance-based compensation to both teachers and principals. If an LEA's PBCS already provides compensation to either teachers or principals, the LEA may implement a TIF project that would benefit the other group, provided that the PBCS, as a whole, covers both groups of educators for the duration of the TIF project period.

Thus, in response to this commenter's question, the Department has revised the *Additional Eligibility Requirement* to extend eligibility to those applicants that have current PBCSs in their States or LEAs (including charter school LEAs), but currently provide performance-based compensation either only to principals or only to teachers. The requirement now allows an applicant to propose to expand an existing PBCS to cover teachers or principals who are not currently being served through the PBCS provided that TIF funds are used to expand the coverage of existing projects only in high-need schools (as defined in this notice). An applicant creating an entirely new PBCS must apply to use TIF funds to develop and implement a PBCS for both teachers and principals, as required by *absolute priority 1.*

Changes: The *Additional Eligibility Requirement* has been revised to allow applicants that are current TIF grantees with principal- or teacher-only projects to expand their current PBCSs to those teachers or principals who work in high-need schools (as defined in this notice) and who are not currently being served through the PBCS currently in place. If funded under the new competition, the PBCS for both teachers and principals must remain in place for the duration of the TIF project.

Comment: One commenter recommended adding a definition of the term "teacher" to the final notice, while two other commenters suggested clarifying that, under the TIF program, "teachers and principals" include other staff such as instructional specialists, counselors, librarians and media specialists, and assistant principals.

Discussion: As in prior TIF competitions, the Department interprets the term "teacher" to include resource teachers and other staff who provide direct instruction, such as

paraprofessionals and classroom aides. However, in general, because the term "teacher" is not defined in Federal statute or regulation, the Department believes the definition of "teacher" should reflect applicable State and local laws and policy regarding the inclusion of other school staff, such as counselors, librarians, and media specialists.

Moreover, during our review of public comments, we realized that the language authorizing the TIF program in the Department's FY 2010 Appropriations Act expressly provides that TIF funds may support PBCSs that benefit teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools).

Therefore, an applicant has flexibility to extend its PBCS to cover school personnel who are not teachers or principals and to define the range of other personnel who are eligible to participate in the PBCS.

Changes: We have revised the requirements for the program to clarify that an applicant's PBCS must cover teachers and principals and, at the discretion of the applicant, may cover other school personnel.

Comment: One commenter strongly recommended that the Department require teacher evaluators in the PBCS to have subject- or specialty-area expertise specific to the position or positions that they are evaluating.

Discussion: The Department believes that the language in paragraph (c) of the Core Elements, which specifies (1) that the evaluation process use objective evidence-based rubrics for observation, aligned with professional teaching standards, and (2) that evaluators have specialized training, is sufficient to ensure fair classroom observations of participating teachers. Moreover, requiring each evaluator to have the same subject or specialty area expertise as the individuals they are evaluating would be impracticable in many LEAs and would potentially limit the inclusion of classroom observations in teacher evaluation systems. For this reason, we do not believe it is appropriate to make the change requested by the commenter.

Changes: None.

Comment: One commenter recommended increasing to three the minimum number of observation-based assessments required each year under proposed priorities 1 and 4, believing that two observations are insufficient to obtain a fair review.

Discussion: While the requirement for multiple observations necessitates at least two observations per year, as was proposed in the NPP, the Department believes that the precise number of observation-based assessments should be left to the considered judgment of the applicant and its process of securing input from stakeholders. In particular, the quality of the observation-based assessment is likely to matter more than the number; two comprehensive observations by a well-prepared evaluator may provide a more accurate picture of teacher performance than five cursory classroom visits. For this reason, the Department declines to make the change recommended by the commenter. However, we note that grantees would have the flexibility to conduct additional assessments if desired.

Changes: None.

Comment: One commenter urged the Department to add statewide support, such as technical assistance, electronic networks, and regional meetings, to the list of activities described in the *Background* section of the NPP that may be supported with TIF funds.

Discussion: Our final notice does not include the background statements provided in the NPP, so we are not making the change requested by the commenter. That said, to the extent that SEAs apply for TIF funds in conjunction with eligible LEAs, the activities described by the commenter generally would be permitted under the statutory authority for the TIF program, which allows the use of TIF funds to develop or improve systems and tools that would enhance the quality and success of the PBCS. The Department does not believe it is necessary to create a separate "statewide support" category.

Changes: None.

Priority 1

Comment: Several commenters recommended modifications to proposed priority 1 regarding differentiated levels of compensation for effective teachers and principals. One commenter stated that the requirement to give "significant weight" to student growth exceeded statutory authority, while others interpreted the requirement that LEAs give "significant weight" to student growth as the equivalent of basing the evaluation of teacher performance "on a single test score." A few commenters also stated that because growth data are available for only 30 percent of the teaching force, a PBCS must use other measures to determine the effectiveness of most teachers and principals. One commenter suggested allowing applicants in States that do not have growth models to use status models to measure student learning. Other commenters recommended changing priority 1 to emphasize the use of multiple measures in a TIF-funded PBCS, such as classroom observations, portfolio reviews, student grades, and appraisals of lesson plans.

One commenter also urged inclusion of school climate, resources, and professional development in teacher evaluations. Another commenter recommended including certification by the National Board for Professional Teaching Standards (NBPTS) as a specific option for measuring teacher effectiveness. On the other hand, one commenter called for maintaining the requirement in a previous TIF competition that bonuses be based "primarily" on student achievement and urged that the final notice require applicants to "fully utilize" student achievement data by mandating a 50-percent weighting for such data. Another commenter recommended strengthening the program's emphasis on student achievement by changing "significant" to "predominant" so that student achievement will not "be obfuscated by multiple other objective and subjective criteria."

Discussion: The statute requires the Department to use TIF funds to support the development and implementation of PBCSs that use student achievement (as defined in this notice) and multiple classroom observations, as well as other factors, to determine incentive payments for teachers and principals. The Department believes that given the wide range of possible factors that might be included in their teacher evaluation systems, as well as the fact that improving student achievement is the underlying purpose of the TIF program, it is both appropriate and consistent with the statute to ensure that TIF grantees give student achievement "significant" weight among the factors included in such systems.

While the Department appreciates the concerns of commenters who argued for giving greater, "predominant" weight to student growth (as defined in this notice) in TIF-funded PBCSs, we continue to require that this factor be given "significant" weight in this final notice. We do so both (1) to emphasize, consistent with the Department's Race to the Top program, that teacher effectiveness for TIF should not be determined solely on the basis of standardized test scores, and (2) in the belief that, given the statutory requirement that grantees also base their evaluations on multiple annual observations, among other factors, the LEA, in consultation with school staff and with the support of any teacher's union that represents teachers in collective bargaining, is in the best

position to determine the relative weight to give these other factors. Hence, this final notice requires a TIF-supported PBCS to use (1) student growth (as defined in this notice), (2) multiple classroom observations, and (3) other measures selected by the grantee to inform the payment decisions of the PBCS. These other measures might include, for example, outputs such as student portfolios or grades and inputs such as NBPTS certification.

Congress established TIF as a competitive grant program to promote the use of PBCSs to improve student achievement (as defined in this notice) in high-need schools (as defined in this notice). Therefore, it is necessary only that LEAs that wish to apply for TIF funds be able to use the required student achievement (as defined in this notice) and growth (as defined in this notice) data for their teachers. Moreover, States or LEAs may, as a part of the TIF program, determine how to use assessments such as annual district assessments, interim assessments, or pre-tests/post-tests, to generate growth (as defined in this notice) data for a larger percentage of teachers and principals. However, the use of status model assessment data alone is not consistent with the emphasis of the TIF program on using student growth (as defined in this notice) to inform the decisions made under a PBCS.

Changes: None.

Comment: One commenter stated that priority 1 and paragraph (c) of the Core Elements are inconsistent with regard to the need to include principal observations in determinations of principal effectiveness. This commenter recommended revising priority 1 to reflect the requirement for at least two yearly observations of principals in paragraph (c) of the Core Elements. Another commenter recommended emphasizing "growth" in graduation and postsecondary enrollment rates in the examples of supplemental measures for determining the effectiveness of principals, while a third commenter proposed including in those examples nine separate "measures of highly effective school leaders."

Discussion: The Department agrees that proposed absolute priority 1 was unclear on the need for observation-based assessments of both teachers and principals as part of the evaluation system used to support a TIF-funded PBCS. In the final notice, we have changed the priority to include principal observations in determinations of principal effectiveness. We believe this change is fully consistent with the statutory requirement that a PBCS for teachers and principals include multiple classroom observations. We decline, however, to modify or add any other examples of specific measures of principal performance, as the absolute priority is not meant to provide an exhaustive list of all possible supplemental measures an LEA might use. We will, however, consider including such examples in any non-regulatory guidance that we may issue for the TIF program.

Changes: In paragraph (b) of priority 1, we have changed "include observation-based assessments of teacher performance at multiple points in the year" to read "include observation-based assessments of teacher and principal performance at multiple points in the year."

Comment: One commenter recommended adding to proposed priority 1 a requirement that each applicant describe how its PBCS will include educators of both students with disabilities and gifted and talented students.

Discussion: We do not believe that the Department should require an LEA to ensure that its PBCS apply to any specific group of teachers. Rather we believe that the LEA, in consultation with school staff and any teachers' union that represents teachers for the purpose of collective bargaining, where applicable, should extend to all teachers in a high-need school or to a subset of those teachers based on hard-to-staff subjects or needs in particular specialty areas.

We note that in the NPP, and now in this notice, we describe several ways in which a PBCS may include educators of both students with disabilities and gifted and talented students. First, under paragraph (a)(1)(i) of the selection criteria, the Department considers the extent to which the applicant demonstrates that the high-need schools that would participate in its PBCS have difficulty in recruiting highly qualified or effective teachers, particularly in hard-to-staff subject and specialty areas such as special education (these specialty areas also could include gifted and talented education).

Second, under priority 5, the Department will give a competitive preference to an applicant showing that its proposed PBCS is designed to assist high-need schools to (1) serve high-need students (which, as defined in this notice, includes students with disabilities); (2) retain effective teachers in teaching positions in hard-to-staff subjects and specialty areas, such as mathematics, science, special education, and English language acquisition, and (3) fill vacancies with teachers of those subjects or specialty areas who are effective or likely to be effective. By implication, an LEA with a particular need for special education teachers could use its PBCS specifically to hire and retain such teachers. The Department has retained both of these provisions in this final notice, and believes that no additional language is needed to respond to the commenter's concern.

Changes: None.

Priority 2

Comment: Commenters had mixed reactions to absolute priority 2's requirements regarding the fiscal sustainability of a PBCS. For example, while one commenter stated that the current fiscal climate will make it difficult to meet this priority, other commenters supported the priority for the same reason, suggesting that current budget constraints make it even more important for each applicant to demonstrate a strong commitment to sustaining its PBCS. One commenter also expressed concern that requiring grantees to demonstrate sustainability could "aggravate serious problems of school finance" in States with school funding equity problems. Another commenter urged the Department to acknowledge the dependence of sustainability plans on economic and budget factors and to include "contingency options" for LEAs that may face extreme financial hardship both during and after the grant period.

Other commenters objected to the priority's reference to the "redeployment" of other existing resources, stating that most LEAs already have reallocated available resources to meet the current budget crisis, that such redeployment may undermine other LEA program priorities, that resources used to support continuing education for teachers and principals are essential to improving the skills of these staff, and that redeploying resources used for salary increments potentially would lower the standard of living for teachers and make it more difficult to obtain mortgages and own their own homes.

Discussion: The Department acknowledges all of the concerns raised by commenters regarding the difficulty of ensuring the fiscal sustainability of TIF-funded PBCSs. However, in Public Law 111–117, the FY 2010 Appropriations Act that included funding for TIF, Congress provided that all applications for TIF grants "shall include a plan to sustain financially the activities conducted and systems developed under the grant once the grant period has expired." We do not

believe any credible plan for financial sustainability is likely to succeed without a demonstration by an applicant of its readiness to make the hard choices needed to ensure that the funding will be available to sustain the PBCS after the TIF grant ends. For this reason, the Department also is extending this requirement to TIF awards made with ARRA funds.

In addition, this final notice, like the NPP, does take into account the economic conditions facing the Nation's school systems. Unlike previous TIF awards, which required an increasing non-TIF share in years in which performance-based compensation is provided and established a percentage ceiling on the amount of TIF funds that could be used for incentive payments during the last year of the grant period, this notice requires only an increasing non-TIF share in years when performance-based compensation is provided. For all of these reasons, the Department declines to make the recommended changes to priority 2.

Changes: None.

Comment: One commenter requested clarification regarding the duration of an applicant's fiscal sustainability plan, *i.e.,* how many years following the end of TIF funding must a PBCS be sustained?

Discussion: Applicants have flexibility regarding the length of their sustainability plans. As a practical matter, we understand that the difficulty of making long-term predictions of economic conditions, State and local funding, and political factors may limit the required fiscal sustainability plans to no more than three to five years.

Changes: None.

Priority 3

Comment: Several commenters expressed support for priority 3 regarding programmatic sustainability of the PBCS. One commenter also urged that the priority include a focus on strategies for supporting educators, such as professional development, mentoring, and induction programs. Similarly, another commenter cautioned against too much emphasis on the PBCS when other approaches related to recruiting, inducting, mentoring, evaluating, and retaining teachers may be more effective in improving student achievement. Another commenter encouraged the Department to require, as part of priority 3, professional development strategies designed to improve the identification and instruction of students with disabilities and gifted and talented students. In addition, this commenter recommended that the Department promote mentoring and induction programs supporting collaboration between general and special education.

Discussion: Priority 3 is based on the idea that a PBCS works best in conjunction with a coherent and integrated approach to strengthening the educator workforce that specifically includes many of the strategies suggested by the commenters, such as teacher and principal recruitment, induction, professional development, evaluation, retention, and advancement into instructional leadership roles (as defined in this notice). Contrary to the second commenter's warning about "too much emphasis" on the PBCS, we believe the opportunity to receive incentive payments and other rewards from the PBCS will encourage educators to take full advantage of the various strategies and supports made available through the applicant's coherent and integrated approach to strengthening the educator workforce.

Moreover, the Department also expects that, particularly as part of an overall strategy to improve instruction for high-need students, TIF grantees will provide professional development related to meeting the needs of students with disabilities and gifted and talented students, including induction and mentoring programs aimed at supporting collaboration between general and special education. However, the Department declines to add specific requirements in this area as we believe that TIF grantees should implement site-specific professional development opportunities for teachers and principals designed based on their specific needs, which may include professional development related to serving students with disabilities and gifted and talented students.

Changes: None.

Priority 4

Comment: Three commenters expressed strong support for priority 4, a competitive priority on the use of value-added measures of student achievement for purposes of determining differentiated levels of compensation in a PBCS. Two of these commenters recommended making this priority an absolute priority, "since improving student achievement is the underlying purpose for all these incentives." Another commenter stated that the use of value-added models will address the problem of non-random assignment of students to individual teachers by helping to ensure that teachers with the highest-achieving students do not benefit disproportionately from a PBCS.

However, several other commenters raised strong objections to the use of value-added models as part of a PBCS, citing research that shows significant variability in the results of such models, particularly for individual teachers, the limited availability of data to support such models for most teachers, the limited number of vendors experienced in developing and implementing value-added models, and the lack of evidence that such models are fair, reliable, and valid when used to evaluate teacher effectiveness or determine compensation levels. One commenter, for example, stated that value-added systems are not appropriate for "high-stakes decisions regarding employee evaluation and compensation." Another commenter stated that the use of value-added models in PBCSs generally would exclude both educators of students with disabilities and the impact of regular instructors on students with disabilities, leading to "two separate systems for judging teacher performance." As a result of these various concerns, three commenters recommended eliminating priority 4 altogether. Other commenters suggested replacing the priority with a competitive preference for programs that enhance teaching and leadership skills through professional development or the pursuit of advanced certification or degrees, as well as the addition of multiple measures to value-added models. Finally, one commenter asked whether TIF funds could be used to refine a value-added model.

Discussion: We appreciate the expressions of support for encouraging applicants to incorporate value-added measures into their PBCSs, in particular due to the potential for such measures to isolate the improved achievement that may be attributed to individual teachers regardless of the starting point of their students. The Department understands and, to some extent, shares the concerns of some commenters regarding the need to be judicious about the use of value-added models due to the public's limited experience with them. We also recognize that many researchers have expressed concern about the use of value-added models to evaluate teacher performance. However, one purpose of a competitive grant program like the TIF program is to encourage innovation and the Department believes that a competitive preference on the use of value-added models as part of a PBCS is consistent with this purpose.

We also note that many of the research-based concerns expressed by commenters focus on the potential use of value-added models as the sole or predominant indicator of teacher performance, an approach that is not required under either the statutory

authority for the TIF program or this final notice, which states that, in determining teacher effectiveness, the LEA must give significant weight to student growth (as defined in this notice) and must include observation-based assessments of performance. Moreover, we believe that priority 4 is fully consistent with the observation of one study cited by a commenter that value-added approaches "may be appropriate for wider use as student assessment systems and value-added models evolve." One purpose of priority 4 is to promote such evolution by encouraging grantees to adapt value-added models to their PBCSs consistent with the safeguards for all PBCSs required by this final notice (*i.e.,* the use of multiple measures in teacher evaluation systems, teacher involvement in developing such systems, and robust data systems).

In addition, value-added models have the potential to improve the measurement of academic growth (as defined in this notice) for many students with learning disabilities, and thus should not be dismissed simply because they may not be appropriate for all students with disabilities. TIF funds also may be used to improve tools to measure growth (as defined in this notice) in student achievement (as defined in this notice), such as value-added models, and thus could be used to refine a value-added model, addressing some of the concerns raised by commenters. For this reason the Department does not agree with the commenters who suggested that we eliminate priority 4. Similarly, the Department does not agree that a competitive preference for programs that enhance teaching and leadership skills through professional development or attainment of professional credentials holds the same promise of improving our ability to measure teacher effectiveness as value-added measures of student achievement (as defined in this notice). We say this largely because such programs are not designed or intended to measure teacher effectiveness, as is statutorily required for the TIF program.

Changes: None.

Comment: One commenter requested clarification as to whether applicants could meet priority 4 by using value-added models only to evaluate teacher performance or whether they also must provide to teachers feedback aimed at improving instruction.

Discussion: In the NPP, the background section for proposed priority 4 clearly stated that one goal of this competitive preference priority is to ensure that applicants have a plan to enable teachers "to use the data generated through the models to improve classroom practices." However, the language of the proposed priority inadvertently omitted any reference to improving classroom practice. The Department has revised priority 4 to require TIF applicants seeking to meet this priority to ensure that they will use value-added data to improve classroom instruction as well as to evaluate teacher performance. As these activities are directly related to providing feedback educators need to improve their performance, and thus are part of a coherent and integrated approach to strengthening the educator workforce (*see* priority 2), TIF funds may be used to pay for activities needed to help educators use the value-added data to improve classroom practices, including the development or enhancement of systems and tools used to generate feedback to teachers for the purpose of improving instruction.

Changes: The Department has revised clause (2) of priority 4 to clarify that an applicant must demonstrate in its application that, as part of its PBCS, it has the capacity to clearly explain the chosen value-added model to teachers to enable them to use the data generated through the model to improve classroom practices.

Comment: One commenter recommended that priority 4 be revised to require LEAs to have a plan for including career and technical education (CTE) teachers in value-added systems, although the commenter acknowledged that value-added measures are problematic in CTE due to the lack of comparative data for the end-of-course assessments typically used in CTE courses.

Discussion: The Department declines, for the reason cited by the commenter, to require applicants to have a plan for including CTE courses in their value-added systems. However, applicants that have the capability to use such measures for CTE programs certainly may include them to meet the requirements of priority 4.

Changes: None.

Priority 5

Comment: One commenter recommended changing priority 5, the competitive preference priority on increased recruitment and retention of teachers in hard-to-staff subjects and specialty areas in high-need schools, to an absolute priority. Another commenter called for giving priority to applications that propose to increase recruitment or retention of teachers in hard-to-staff subjects in high-need schools. A third commenter sought clarification that an applicant could receive points for priority 5 by including an emphasis on recruiting and retaining teachers in hard-to-staff subjects and specialty areas as part of an overall PBCS for all teachers, rather than a PBCS focused solely on the goals of priority 5.

Discussion: We agree with the first commenter that increased recruitment and retention of teachers in hard-to-staff subjects and specialty areas in high-need schools is an important goal; however, we also believe that designing and implementing a good PBCS is difficult, and that some LEAs may be reluctant to add to the challenge by making recruitment and retention bonuses a required component of the system. Consistent with our overall policy of establishing mandatory requirements only when necessary, we believe that retaining priority 5 as a competitive preference priority is the appropriate way to encourage applicants to consider ways to use the PBCS to promote increased recruitment and retention of teachers in hard-to-staff subjects and specialty areas in high-need schools. The Department declines to give a competitive preference to an applicant that proposes to increase recruitment *or* retention, because we believe that it is the combination of the two strategies that is likely to be both most needed and most effective in serving high-need students in high-need schools. Finally, we agree that the components and activities required to meet priority 5 may be part of a broader TIF proposal for developing and implementing a PBCS that fulfills the full range of an applicant's recruitment and retention needs, not just those related to teachers in hard-to-staff subjects and specialty areas.

Changes: None.

Comment: Two commenters objected to what they described as the premise of priority 5—that an effective teacher will be effective in any school without regard to the school's conditions and climate. These commenters recommended that we address factors such as poor leadership and support, inadequate professional development, discipline and safety concerns, and planning time. The commenters argued that addressing these factors could help remove the "hard-to-staff" label from the school. A third commenter stated that any effort to attract and retain teachers should invest in teacher support and development.

Discussion: Priority 5 is not premised on the assumption that an effective teacher will be effective in any school; rather, it is based on the premise that a teacher who has demonstrated the

ability to raise student achievement (as defined in this notice) in one school is more likely to be effective in another school than a teacher who has not demonstrated such effectiveness in any school setting. In addition, an applicant seeking to meet priority 5 will be expected to incorporate the strategies for doing so into its coherent and integrated strategy for strengthening the educator workforce, which may, and whenever necessary should, include efforts to address the other conditions described by the commenters.

Changes: None.

Comment: One commenter objected to the use of the terms "effective" or "likely to be effective" in the context of priority 5 because of concerns about the use of growth measures to determine "effectiveness." Another commenter recommended that the priority be revised to include NBPTS certification as one measure that could demonstrate whether a teacher who is filling a hard-to-staff vacancy is effective or likely to be effective.

Discussion: We have addressed concerns about the use of student growth (as defined in this notice) measures to determine teacher and principal effectiveness under the General Comments section of this preamble. In addition, priority 5 requires applicants to provide an explanation for how they will determine that a teacher filling a vacancy is effective or likely to be effective. We believe that this language provides flexibility for an applicant to propose appropriate measures of effectiveness or likely effectiveness, including NBPTS certification, under priority 5.

Changes: None.

Comment: Three commenters provided suggestions about how to define "hard-to-staff" subjects under priority 5. One commenter recommended that we add CTE to the list of hard-to-staff subjects and specialty areas. Another commenter requested that the priority provide flexibility to allow LEAs to change their lists of hard-to-staff subjects and specialty areas over the 5-year grant period. The last commenter asked the Department to clarify that LEAs have the authority to determine which subjects are hard-to-staff and which areas constitute "specialty areas," and that specialty areas could include extended day, pre-K, or other areas in high-need schools that are difficult to staff.

Discussion: Priority 5 requires applicants to demonstrate, in their applications, the extent to which the subjects or specialty areas they propose to target are hard-to-staff. The language of the priority leaves the determination of hard-to-staff subjects and specialty areas up to applicants and the LEAs that administer the affected high-need schools. The Department, therefore, believes that, under priority 5, applicants have the flexibility to define "hard-to-staff" subjects consistent with the suggestions made by the commenters, including flexibility to change their definitions over the 5-year grant period. Also, because of this flexibility, we do not believe that any of the specific suggestions for additions to the list of hard-to-staff subjects and specialty areas are necessary, and therefore decline to make any changes to the priority.

Changes: None.

Comment: One commenter stated that paying the teachers of some subjects more than teachers of other subjects undermines the basic equity of existing compensation systems. Instead, this commenter recommended that we address gaps in subject and specialty areas through scholarships, tuition assistance, and loan forgiveness programs.

Discussion: The TIF program is premised on the belief that existing compensation systems do not serve the goal of increasing the number and proportion of effective teachers serving low-income, minority, and low-achieving students, and the belief that providing financial rewards for both effectiveness and willingness to work in challenging schools is a promising education reform. Many high-need schools have particular need for teachers of certain subjects and specialty areas (*e.g.,* mathematics, science, and special education), and we believe that higher pay for effective teachers in these areas who agree to work in high-need schools could help to alleviate this problem. We are confident that performance-based compensation available through TIF can be one means of addressing this problem. The Department agrees that other kinds of rewards and incentives described by the commenter also may be effective, but they fall outside the scope of the TIF program.

Changes: None.

Comment: One commenter asserted that the school intervention models required by the School Improvement Grants (SIG) program, some of which require the replacement of a school's teachers, could be a disincentive for teachers to take jobs in hard-to-staff schools.

Discussion: Except for school closure, none of the school intervention models required by the SIG program mandates the replacement of all effective teachers. Moreover, the Department believes that the significant resources potentially made available through the SIG program (up to $6 million per school over 3 years) will, in many cases, create a strong incentive for effective teacher and leaders seeking the challenge of turning around a persistently lowest-achieving school.

Changes: None.

Comment: One commenter asked whether priority 5 includes principals as well as teachers.

Discussion: Priority 5 is a competitive preference priority focused on recruiting and retaining teachers in hard-to-staff subjects and specialty areas and does not apply to principals. That said, applicants may include strategies and incentives to recruit and retain effective principals in high-need schools as part of the overall design of their PBCSs, but would not receive priority consideration for doing so under either the Main TIF or TIF Evaluation competitions.

Changes: None.

Suggested Priorities

Comment: Three commenters recommended that the Department establish additional absolute priorities for the TIF program. Two commenters called for an absolute priority on incentives to take on additional responsibilities and leadership roles, a recommendation that these commenters described as consistent with the treatment of other statutory mandates for this program. The third commenter suggested a new absolute priority on establishing and sustaining a competitive compensation schedule for school personnel that is comparable to compensation schedules of similar professions in the region. The commenter stated that such a priority is needed to avoid a situation in which a PBCS is perceived as preventing any teachers eligible for the PBCS from receiving a competitive, professional, or living wage, and that the schedule would need to be based on educational and professional attainment and provide annual increases that double the base salary within 10 years.

Discussion: Under the *Application Requirements,* each applicant is required to describe in its application how its proposed PBCS will provide educators with incentives to take on additional responsibilities and leadership roles (as defined in this notice). The Department believes that this requirement adequately addresses the commenters' concern, and that it is unnecessary to add a new absolute priority on additional responsibilities and leadership roles (as defined in this notice). The recommendation to use the

TIF program to establish uniform higher compensation schedules that are not linked to student achievement (as defined in this notice) is inconsistent with the TIF program's authorizing legislation, which requires eligible entities to use TIF funds to develop and implement PBCSs that consider growth (as defined in this notice) in student achievement (as defined in this notice), as well as classroom evaluations conducted multiple times during each school year. The law does not give the Department authority to require changes in an LEA's regular staff compensation system.

Changes: None.

Comment: Three commenters recommended that the final notice include two new invitational priorities. Two of these commenters called for an invitational priority for applications from SEAs in order to ensure the sustainability and broader impact of TIF awards. One commenter requested an invitational priority for PBCSs in which effective teachers are required to share their instructional practices prior to receiving incentive payments or bonuses.

Discussion: SEAs, like other eligible entities, must use TIF funds awarded to them to develop and implement a PBCS in high-need schools, a requirement that could involve efforts to ensure the sustainability and broader impact of TIF awards. However, the TIF program statute does not authorize TIF funds to be used to promote statewide support and broader impact of local TIF projects, and hence an invitational priority in this area does not seem appropriate. Furthermore, the Department agrees that having teachers share effective instructional practices could be a useful element of a TIF project, but declines to add an invitational priority to make incentive payments contingent on such practices because the primary purpose of the incentive payments required by the TIF program is to reward teachers for improving student achievement (as defined in this notice), not for sharing effective practices.

Changes: None.

Application Requirements

Comment: One commenter stated that the application process described in the NPP was unnecessarily complex due to "repetitive and inconsistent" priorities, application requirements, and selection criteria. The commenter recommended that because paragraphs (c) and (d) of the Core Elements already are covered by priorities 1 and 3, incorporating the remaining core elements into a new priority 6 regarding input from and communication with teachers would permit the elimination of the "core elements" section in the final notice.

Discussion: The Department acknowledges that proposed priorities 1 and 3 and paragraphs (c) and (d) of the Core Elements share some elements and language, but believes that there are differences in emphasis and detail that favor retention of the proposed structure of priorities, application requirements, core elements, selection criteria, and definitions. In addition, this structure facilitates the implementation of a planning period when necessary. For these reasons, the Department declines to change that structure in this final notice.

Changes: None.

Comment: One commenter was concerned that many of the terms used in paragraph (c) of the Core Elements related to professional development and evaluation systems are not defined (*e.g.,* "multiple," "professional teaching standards," and "inter-rater reliability"). One commenter proposed the use of a specific model of teacher evaluation for the TIF program, while another commenter called for replacing the requirement in paragraph (c) of the Core Elements that principal and teacher effectiveness be measured in significant part by student achievement with a system that (1) uses multiple measures of educator performance based on clear and comprehensive professional expectations and (2) is linked to continuous professional development and opportunities to demonstrate newly acquired knowledge and skills.

Another commenter asserted that few current performance evaluation systems are fair, valid, and reliable and recommended that the Department reconsider requiring the use of performance evaluation systems as part of a PBCS unless funding and other support (especially at the SEA level) is available to develop and implement new performance evaluation systems. Similarly, one commenter also suggested that, for a small LEA, the data management system called for in paragraph (d) of the Core Elements should be required to link student achievement data only to the teacher evaluation system and not to payroll and human resources systems.

Discussion: The Department believes that applicants should have some flexibility to define the terms cited by the first commenter, and that, if necessary, the Department may clarify such terms through non-regulatory guidance. We also believe that TIF applicants should be able to develop their own teacher evaluation systems in response to their own needs and circumstances, and thus we decline to require the use of any particular model for teacher evaluation. The recommendation that teacher evaluations should be based not on student achievement (as defined in this notice), but only on professional expectations and participation in professional development activities is not consistent with the statutory requirement that PBCSs take into account student achievement (as defined in this notice), and the Department, therefore, declines to make this change.

The Department generally agrees that few States or LEAs have implemented high-quality teacher evaluation systems; this is why building such systems is both a priority and a prerequisite under priorities 1 and 4, all five core elements, and selection criterion (b). Moreover, as the NPP made clear, grantees may use TIF funds to develop or improve systems and tools (which may be developed and used either for the entire LEA or only for schools served under the grant) that would enhance the quality and success of the PBCS, such as linkages that may not otherwise exist in the data systems used in small LEAs. For this reason, the Department does not believe it is necessary to permit exceptions to the requirements of paragraph (d) of the Core Elements for small LEAs.

Changes: None.

Comment: One commenter recommended adding a paragraph to the Core Elements that would require the PBCS to be aligned with an LEA's coherent and integrated strategy for strengthening its educator workforce, because without such a strategy, an applicant cannot meet priorities 1 and 3, and is therefore not eligible to receive a grant under the TIF program. Making the strategy one of the core elements would allow an LEA that does not already have such a strategy to use the planning period to develop one, thereby allowing them to meet priorities 1 and 3.

Discussion: To the extent that an eligible LEA does not already have a coherent and integrated strategy for strengthening its educator workforce, it must develop and document such a strategy as part of its application process. Moreover, an applicant would also be able to propose further work needed to design and implement its strategy for strengthening the educator workforce as part of its work during the Planning Period on Core Element (c). Therefore, we decline to follow the commenter's recommendation.

Changes: None.

Comment: One commenter requested clarification of the requirement that the

proposed PBCS provide participating teachers and principals with professional development that is shown to be effective.

Discussion: The specific language cited by the commenter that the professional development must be "shown to be effective" was included as background material in the *Requirements* section of the NPP and does not appear in this final notice. However, under paragraphs (3), (4), and (5) of the *Professional Development* requirement in the *Requirements* section of this notice, an applicant must demonstrate, in its application, that it provides effective professional development to teachers and principals covered by the PBCS and include a process for regularly assessing the effectiveness of this professional development in improving teacher practice and student achievement (as defined in this notice) and making the modifications necessary to improve its effectiveness. Therefore, we believe that the language in the *Requirements* section of this notice provides clarification and no additional language has been added.

Changes: None.

Comment: Several commenters expressed concern about ensuring involvement by and input from teachers, principals, and other school staff, as well as the involvement of unions representing these individuals, during the development of each LEA's PBCS. One commenter requested that the Department clarify that developing, communicating, and implementing a PBCS is a joint process involving teachers, administrators, and other school personnel. In other words, the commenter asserted, involvement in developing the PBCS must precede communicating its elements. Another commenter stated that the timing of the application process could make it difficult to obtain required input from teachers and principals. Two commenters recommended replacing the reference to unions in paragraph (b) of the core elements with "local teacher associations," to ensure that there is a mechanism for local teacher input in right-to-work States.

Discussion: The Department believes that the language included in paragraph (b) of the Core Elements, which states that PBCSs must be developed with the involvement and support of teachers, principals, and other personnel, including unions in participating LEAs where they are designated exclusive representatives for the purpose of collective bargaining that is needed to carry out the grant, is sufficiently clear to meet the concerns of the commenters. The Department also believes that while an applicant will certainly want to discuss its proposal with affected educators and their union representatives as it develops its application, concerns about the availability of sufficient time to provide such input are addressed by the Planning Period provision, which allows a successful applicant to take up to one year during which it will use its TIF funds to develop the core element or elements it lacks. The Department certainly agrees that including local teacher input is important; however, the Department believes that the existing language in the notice is sufficient to address the need to involve both educators and union representatives in developing a PBCS and a TIF application.

Changes: None.

Comment: One commenter recommended that the final notice require that both the LEA and the collective bargaining representative involved in a TIF proposal certify that they understand the proposals reflected in the TIF program application and will negotiate terms and conditions needed to implement a TIF award without reopening for negotiation other contract provisions that are not implicated by the program. In addition, three commenters recommended that the Department require 75 percent of teachers in non-bargaining LEAs to approve a TIF project in order to demonstrate the significant buy-in from those affected by the plan that is needed to ensure successful implementation. Another commenter objected to the requirement for support from teacher unions to receive a TIF grant because it would give unions effective veto power over an LEA decision to apply for and carry out a Federal grant. Instead, this commenter called for the Department to require evidence of support from teachers and principals for the proposed PBCS, as well as a description of any legal barriers to carrying out a proposed PBCS and plans to overcome those barriers.

Discussion: The Department believes that, in general, the issues raised by the commenters about the TIF application and negotiating its terms and conditions for successful implementation should be the subject for local negotiation rather than Federal requirement. In addition because the creation of a PBCS directly affects employee compensation, which is a key issue in local collective bargaining agreements, the Department believes that cooperation from and agreement with local union representatives, where a union is a representative in collective bargaining, is essential to successful implementation of a PBCS. For these reasons, the Department has determined that it is not appropriate to revise the requirements as requested by the commenters.

Changes: None.

Comment: One commenter expressed concern about the complexity of many growth and value-added models and recommended that the Department add language to paragraph (e) of the Core Elements to ensure that the pay formulas used in a PBCS are transparent and understandable by teachers and principals.

Discussion: The Department believes that paragraphs (a), (b), and (e) of the Core Elements, which contain specific requirements related to communicating the components of the PBCS to teachers and principals, involving teachers and principals and ensuring their support for the PBCS, and ensuring that teachers and principals understand the measures of effectiveness included in the PBCS, are sufficient to ensure that PBCSs and related teacher evaluation systems are transparent and understandable by teachers and principals.

Changes: None.

Comment: Two commenters urged the Department to ensure that the data management systems required by paragraph (d) of the Core Elements protect the privacy of students and educators.

Discussion: The Department is committed to protecting the privacy of students and educators and, therefore, has added a clarifying footnote to paragraph (d) of the Core Elements to remind applicants that data systems used to pay incentives based on student growth (as defined in this notice) to teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) must comply with any applicable requirements under FERPA. Privacy of data in these systems also is subject to any applicable State or local law.

Changes: We have added a footnote to paragraph (d) of the Core Elements stating that each successful applicant will need to ensure that its PBCS, including related data systems, complies with FERPA and applicable State or local privacy laws.

Comment: Two commenters expressed concern that limiting participation to high-need schools could make it difficult for many LEAs to implement a PBCS, and is inconsistent with the requirement that a PBCS be part of a district-wide coherent and integrated approach to strengthening the educator workforce. In addition, these commenters stated that limiting the

program to high-need schools would prevent a comparison of the impact of PBCSs in high-need and non-high-need schools.

Discussion: Public Law 111–117, which contains the Department's FY 2010 appropriation, authorizes the Department to use TIF funds to make competitive grants to eligible entities to develop and implement a PBCS in high-need schools. While this statute authorizes grantees to use TIF funds to develop or improve systems and tools, such as high-quality teacher evaluations and measurements of growth (as defined in this notice) in student achievement (as defined in this notice), that would enhance the quality and success of the PBCS either district-wide or only for participating high-need schools, it does not authorize the use of TIF funds to implement the PBCS in schools that are not high-need. Limiting the use of TIF funds to implement PBCSs in high-need schools does not necessarily prevent a grantee from evaluating the impact of having a PBCS in high-need schools versus non-high-need schools. If a grantee wishes to evaluate the impact of its PBCS on staff in high-need schools relative to staff in schools that are not high-need, however, it would need to ensure that (1) its use of TIF funds to conduct the study is reasonable and necessary to its implementation of its PBCS for staff in high-need schools, and (2) it does not use TIF funds for any of the costs associated with implementing the PBCS in non-high-need schools.

Changes: None.

Planning Year

Comment: In general, commenters praised the Department for proposing a planning year provision in the NPP, during which TIF applicants that need additional time to put in place the five core elements of a PBCS can do so. However, there were many suggestions for modifying or providing flexibility in the requirements of the planning period. A few commenters recommended that all grantees use a planning year to prepare to implement their PBCSs. Two commenters sought flexibility to begin implementing some core elements before plans for all five elements are in place. One commenter recommended that members of a consortium be permitted to have different starting points reflecting different levels of preparedness. Another commenter requested clarification regarding the portion of TIF funds that may be used for activities carried out during an approved planning year, whether TIF funds are available only for planning, and any other technical assistance and support that may be available during a planning period.

Discussion: The Department appreciates expressions of support from commenters for the proposed planning period of up to one year for grantees to put in place the five core elements prior to beginning incentive payments. We disagree with the recommendation to mandate a planning year, as such a requirement would needlessly delay implementation of a PBCS in a site that has all the key requirements in place and is ready to move forward. We agree that grantees should be able to begin implementing some core elements before all five elements are in place, as long as the grantee does not begin making incentive payments before all five core elements are completed. For example, an LEA might begin conducting observation-based assessments before it is able to link student achievement data to individual teachers. While the LEA may begin conducting observation-based assessments using TIF funds, it may not begin making incentive payments solely on the basis of these observation-based assessments. We believe that the Planning Period provision allows for this flexibility and that no changes are necessary in the final notice.

In addition, the Department agrees that members of a consortium could have different starting dates depending on their respective readiness relative to the five core elements and believes that, as proposed, the Planning Period provision and Core Elements would allow this and that no changes to the final notice are necessary. With respect to the portion of TIF funds that may be used for a planning year, whether TIF funds are available only for planning, and any other technical assistance and support that may be available during a planning period, an applicant may propose to use a specific amount of its TIF awards for a planning period, subject to negotiation and approval by the Department; however, TIF awards are not available solely for planning purposes. The Department may be able to provide limited technical assistance during a planning period.

Changes: None.

Comment: One commenter asserted that the Planning Period provision is unnecessary and "potentially unlawful" because a grantee that does not meet requirements, including the core elements, after the planning period may have spent grant funds unlawfully. For this reason, the commenter recommended that the Department eliminate the Planning Period in the final notice.

Discussion: The Department disagrees with this interpretation of the authorizing statutes; provided that it expends its TIF funds properly during the Planning Period to implement its planning responsibilities, a grantee that fails to complete the required core elements during its planning period simply would become ineligible to receive or otherwise obligate the remainder of its five-year grant amount.

Changes: None.

Eligibility

Comment: A large number of commenters objected to excluding current TIF grantees from the Main TIF and TIF Evaluation competitions, as proposed in the NPP. In particular, commenters stated that the prohibition on awarding new TIF funds to existing grantees would prevent the expansion of many promising PBCSs. One commenter added that excluding current grantees from the new competitions appeared to be contrary to the Department's emphasis on rewarding and replicating successful practices. Commenters recommended several alternatives to the exclusion of existing TIF grantees from these competitions, including extending eligibility to current grantees but giving priority to new applicants, limiting eligibility for the TIF Evaluation competition to new applicants but allowing existing grantees to apply for the Main TIF competition, and permitting awards to existing grantees that want to expand their programs to cover teachers or other educators who currently are not served (*e.g.,* a PBCS currently in place in high-need schools for principals only could be expanded to serve teachers).

Discussion: The Department did not propose to exclude existing TIF grantees from applying for new TIF awards; instead, the NPP proposed to limit eligibility for the Main TIF competition and the TIF Evaluation competition to applicants proposing to serve schools not already served (or to be served) under current TIF grants. A grantee, for example, that is serving only some of its high-need schools would have been eligible for a new award to expand coverage of its PBCS to additional high-need schools. The intention, as stated in the NPP, was to use new TIF funding to extend PBCSs to new high-need schools, rather than to provide more funding for PBCSs in schools already supported by the TIF program. Nonetheless, the Department is persuaded by the commenters that this proposal might have a negative impact upon the continued success of existing PBCSs. Because we do not want to impede the expansion of current TIF-funded PBCSs

to cover additional groups of educators in high-need schools, we have revised the eligibility requirement to permit existing TIF grantees that want to expand their PBCSs to cover unserved staff (as in the example cited by the last commenter) to expand a PBCS currently serving only principals to cover teachers as well. However, because we believe existing TIF grantees generally will have a competitive advantage in applying for new TIF funds, we also are adding a new competitive preference priority for new TIF applicants to promote a more level playing field for both existing grantees and new applicants. We have extended this competitive preference priority to the nonprofit organizations that (1) had previously received a TIF grant as part of a partnership, and (2) apply in partnership with one or more new LEAs or States. We do so because we believe that, given the focus of the TIF application requirements on conditions within the implementing LEA(s), these nonprofit organizations will not likely have a competitive advantage over other applicants.

Changes: We have revised the *Additional Eligibility Requirement* to allow existing TIF grantees to propose expanding their PBCSs to high-need schools not currently funded by TIF, as well as to include new categories of staff in schools currently funded by TIF. We have also added a new competitive preference priority that would give additional points to those applicants not currently funded by TIF. For this reason, we extend the availability of these competitive preference points to these nonprofit organizations as well. This new competitive preference priority is called *Competitive Preference Priority 6—New Applicants to the Teacher Incentive Fund*

Comment: One commenter recommended expanding the TIF program to include high schools.

Discussion: There is no restriction on serving high schools under the TIF program as long as applicants are able to meet all applicable requirements, including the use of data on student growth (as defined in this notice) as a significant factor in the evaluation of teachers, principals, and other school personnel that applicants may choose to include in the PBCS. Issues affecting high school participation in the evaluation are discussed in the following section under the sub-heading *TIF Evaluation Competition.*

Changes: None.

TIF Evaluation Competition

Comment: A few commenters noted that the NPP appears to limit participation in the TIF Evaluation competition to schools that have grades covered by assessment requirements under the Elementary and Secondary Education Act of 1965, as amended (ESEA) (*i.e.,* tested grades 3 through 8), and recommended that the Department should consider expanding the range of allowable tests to include advanced placement tests or the ACT to encourage greater participation by high schools, as well as the inclusion of a broader variety of subjects. Other commenters added that excluding high schools from the TIF Evaluation competition unfairly penalizes States and LEAs with assessment systems capable of providing value-added data for all teachers at all grade levels.

Discussion: The Department agrees that some high school tests would be suitable for the national evaluation. However, we also believe that the circumstances under which these tests would meet the requirements of the national evaluation are too complicated and varied to describe fully in this notice. The suitability of high school tests would depend upon the psychometric properties of the tests and the alignment between the subject matter taught by individual teachers and their students. In addition, the Department's Institute of Education Sciences (IES) evaluator would need to investigate whether the circumstances in which each high school test is used is consistent with the evaluation design. For example, tracking of courses at the high school level makes such comparisons more complicated and less reliable within the current study design. Also, because the expected effects of PBCSs on the issues to be studied are lower at higher grade levels, efforts to evaluate the effects of PBCSs on recruitment and retention of staff and student achievement at high school grade levels would require the evaluator to add significant numbers of new schools to the evaluation in order to assess the areas that are the pivotal to the study design.

Therefore, the Department believes it is neither cost-efficient nor practical to include high schools in the national evaluation plan, and therefore has limited the evaluation to the effects of the PBCSs on recruitment and retention of staff and student achievement in schools with grades 3 through 8. An applicant to the TIF Evaluation competition may propose a PBCS that also covers staff who work in high-need high schools and, if selected for the evaluation competition, may use TIF funds for PBCSs in those schools. However, for reasons we summarize in the preceding paragraph, we have determined that an LEA's high-need high schools will not count toward the minimum of eight schools required under the TIF Evaluation competition.

Changes: None.

Comment: Three commenters cited the potential for confusion regarding the evaluation requirements for both the Main TIF competition and the TIF Evaluation competition; in particular, these commenters expressed concern that some applicants may believe that applying for the TIF Evaluation competition obviates the need for a local project evaluation required under the Main TIF competition.

Discussion: The Department agrees that the local project evaluation described in the selection criteria of the Main TIF competition would add little or no utility for participants in the national evaluation selected under the TIF Evaluation competition and so does not believe that applicants selected under the TIF Evaluation competition should be required to conduct the local evaluations they propose in response to the *Quality of Local Evaluation* selection criteria. However, in the event that an applicant is not selected under the TIF Evaluation competition, the applicant's response to the local evaluation selection criteria will be reviewed as part of the Main TIF competition. For this reason, we are adding a *Local Evaluation* requirement to the TIF Evaluation requirements.

Changes: We have added a new requirement, called the *Local Evaluation* requirement in the TIF Evaluation competition requirements. This new requirement clarifies that, in order to be eligible to receive points under the selection criteria of the Main TIF competition, applications must include a description of its local evaluation, demonstrated in its response to the selection criterion *Quality of Local Evaluation.* If an applicant is selected under the TIF Evaluation competition, the local evaluation plan will not be reviewed and will not be applicable for program implementation.

Comment: Several commenters expressed concern about various aspects of the TIF Evaluation competition, including: The timeline and high matching requirements that could prevent many LEAs from applying, possible unfairness resulting from the selection of TIF Evaluation grantees before making awards under the Main TIF competition, lack of support in the statute for additional funding for Evaluation grantees, and unintended consequences on teacher employment decisions at control schools (*e.g.,* teachers may leave control schools if they know that they cannot receive performance pay regardless of their

effectiveness). Finally, one commenter recommended an independent validation and peer-review of the IES evaluation.

Discussion: The Department recognizes that the challenge of conducting an evaluation of the TIF program that uses randomized controlled methodology to the extent feasible, as required by the statute, has created a variety of concerns among commenters, including the fair treatment of applicants for both the Main TIF and TIF Evaluation competitions, tight timelines and high non-TIF program costs, and the difficulty of ensuring adequate participation by control schools that, by definition, will not be able to offer incentive payments to their teachers for the duration of the grant period. In response to many of these concerns, and to ensure high-quality evaluation results consistent with the statute, the Department has decided to implement, as outlined in this final notice, a hybrid of proposed comparison designs 1 and 2 that would provide a comparison between PBCSs implementing differentiated effectiveness incentive payments and PBCSs providing a small (*i.e.,* 1 percent) across-the-board bonus to all teachers and principals. Through the TIF program, the Department will pay the full cost of this modest across-the-board bonus in order to make participation in the TIF Evaluation competition more appealing to potential applicants. This approach will permit a study design that examines the effectiveness of substantial differentiated payments on teacher and principal performance while keeping program costs reasonable and providing a sufficient incentive for participation by control schools.

The Department does not believe, however, that additional financial support for TIF Evaluation grantees is inconsistent with the statutory authority for the TIF program, because this additional funding is essential to ensure the feasibility of the randomized controlled methodology specifically required by the statute. Finally, IES, which will manage the evaluation contract, will be guided by the expertise of an external technical working group to ensure the integrity and rigor of its study design, and all IES evaluations are subject to a rigorous external review process before the release of any findings.

Changes: We have revised the study design in this final notice to include a comparison of the implementation of differentiated effectiveness incentive payments in Group 1 schools with the payment of annual, 1 percent across-the-board bonuses in Group 2 schools. Under the new hybrid comparison design, the IES evaluator will select, by lottery, one-half of the evaluation schools within an LEA to implement the applicant's proposed differentiated effectiveness incentive payment component of the PBCS. The other half of the schools within the LEA participating in the evaluation will implement a 1 percent across-the-board annual bonus for teachers and principals, without implementing the differentiated effectiveness payment component. Both sets of schools would implement all of the non-payment components of the PBCS. Under this design, both treatment and control schools will receive additional TIF funds they may use for bonuses to attract educators as well as to pay for PBCS components. The evaluation will use a random assignment design consistent with the statute. Furthermore, we have removed the non-TIF match requirement that would have been applicable to proposed comparison design 2; there is no match requirement for the new hybrid design.

Comment: Two commenters requested clarification regarding IES's data collection plans, as well as when collected information would be available to grantees.

Discussion: IES's current data collection plan is designed to provide rich information about participating schools and staff, grant implementation, and rigorous impact data on educator recruitment, mobility, and student achievement. Data instruments will include grantee surveys and interviews, teacher and principal surveys, and student administrative records. IES expects to provide Evaluation competition grantees with regular and continuous evaluation results as they become available during and beyond the life of the 5-year grant period.

Changes: None.

Evaluation Models

Comment: A few commenters expressed a preference for comparison design 1 in the proposed TIF Evaluation competition, largely due to the higher cost of proposed comparison design 2, which would have required across-the-board salary increases that could be difficult to sustain beyond the grant period. In addition, one commenter expressed concern about predicting the required level of the across-the-board increases in the control schools before data are available on the actual size of incentive payments in the treatment schools.

Discussion: As discussed earlier in this notice, upon consideration of the public comments, the Department has determined that neither proposed comparison design 1 nor proposed comparison design 2 is likely to produce the high-quality evaluation results that the law anticipates for the required randomized study. Consequently, the final TIF Evaluation competition requirements reflect a hybrid of these two designs, described elsewhere in this notice, which will compare the outcomes obtained by PBCSs implementing differentiated effectiveness incentive payments and PBCSs providing a small (*i.e.,* 1 percent) across-the-board bonus to all teachers and principals. In particular, this new hybrid approach addresses the cost concerns raised by the commenters about the need for LEAs to be able to accurately predict their capacity to provide across-the-board salary increases.

Changes: None.

Comment: A number of commenters cited concerns about the proposed TIF Evaluation competition requirements, including the potential for high payouts (*e.g.,* 15 percent of salary) limiting the number of applicants that can afford to participate in the TIF Evaluation program, uncertainty about defining "significantly" better performance, and doubts that two months provides sufficient advance notice to change behavior.

Discussion: The Department believes that the potential for highly effective teachers and principals to receive substantially larger incentive rewards is essential both (1) to producing the measurable treatment effects required for meaningful and reliable evaluation results and (2) to implementing absolute priority 1. Hence, we envision that TIF Evaluation grantees and Main TIF grantees will have comparable differentiated incentive payment amounts.

Moreover, certainly not all teachers who are eligible to participate in the PBCS will likely earn the additional compensation. The issue really is the amount that, on average, an LEA must set aside for performance-based compensation per teacher (*i.e.,* higher incentive payments for the highest-performing teachers and principals will be offset by lower or no incentive payments for modestly performing teachers and principals), a context that we believe many if not most LEAs will find manageable.

With regard to the meaning of "significantly better" performance, the Department believes that this definition will vary from one teacher evaluation system to another, and that it is appropriate to allow applicants to

propose their own locally based criteria for determining what constitutes "significantly better."

Finally, while we agree that applicants should work with the IES evaluator to provide as much advance notice as possible of each school's status under the TIF Evaluation grant implementation plan, we believe that a minimum of two months notice is sufficient for affected teachers and principals to learn about the potential impact of the proposed PBCS and change their teaching practice in response. The Department also notes that a significant potential benefit of the planning period will be to give teachers and principals considerably more time to learn about a proposed PBCS prior to its implementation.

Changes: None.

Comment: Several commenters expressed concern about (1) the possible unintended consequences of the TIF Evaluation model designs, including the motivational effects on teachers of seeing performance-based compensation withheld from them while it is granted to teachers in other high-need schools; (2) the possibility of incentives luring both effective and ineffective teachers to treatment schools, where they have a chance to earn more money through bonus and incentive payments; and (3) the reluctance of teachers to participate in a lottery-based selection process that would make only some of them eligible for increased compensation.

Discussion: The Department agrees that these are legitimate concerns about the likely feasibility of the proposed comparison designs in the proposed TIF Evaluation competition; indeed, similar concerns led the Department to invite comment on two different proposed study designs. Ultimately, in considering public comment, the Department decided to implement a hybrid evaluation study design, described elsewhere in this final notice, which we believe is the best approach to minimizing the concerns raised by the commenters within the context of the TIF statute's requirement of a randomized design.

Changes: None.

Comment: Three commenters expressed concern that requiring eight schools with students in grades 3 through 8 would eliminate many small and medium-sized LEAs from consideration for TIF Evaluation awards. These commenters recommended that the selected evaluation design should ensure that a representative sample of schools (small, large, urban, rural, suburban) can meet the final design requirements. One commenter suggested that smaller LEAs could join consortia for purpose of reaching the eight-school requirement.

Discussion: The Department agrees that larger LEAs are more likely to meet the proposed minimum number of schools requirement, but believes that this limitation is necessary due to the need to conduct a rigorous evaluation with limited resources. Extending the evaluation design to better accommodate LEAs with a smaller number of high-need schools in grades 3 through 8 will make the evaluation prohibitively complicated and expensive. For this reason, the study design emphasizes rigor over representativeness. We acknowledge that although the national evaluation will not provide representative estimates of the effect of the TIF program on all LEAs in the Nation, it will provide descriptive information on all grantees funded under the FY 2010 competition. Also, we do agree that including consortia or intermediary units in the Evaluation design would be consistent with the needs of the evaluation design. Specifically, we believe it is appropriate to permit consortia or intermediary units that are considered LEAs under State law and that serve a coordinating function (*i.e.,* where data are available from a centralized or coordinating entity) to participate in the TIF Evaluation competition.

Changes: Consortia or intermediary units that are considered LEAs under State law and serve a coordinating function (*i.e.,* data are available from a centralized or coordinating entity) are now eligible for the TIF Evaluation competition. The minimum number of schools required for the overall consortia or intermediary unit is still eight and proposed consortia or intermediary unit schools must meet other requirements (*i.e.,* within the eight, each school is at least paired with another school at the same grade level and within the same State).

Comment: Several commenters recommended changes to the IES evaluation plan. These changes included: (1) Gathering data about the preparation of teachers who receive incentive payments to help determine the effectiveness of such preparation; (2) requiring a letter from each participating LEA's superintendent, board, principals, and research office indicating agreement to comply with evaluation requirements; (3) measuring the impact of PBCSs on teachers of students with disabilities and gifted and talented students; (4) protecting the rights of students and other participants in the TIF Evaluation; and (5) ensuring that key decisions regarding the conduct of the evaluation are made in the best interests of students and staff in participating schools.

Discussion: The Department believes that the data that will be collected as part of the rigorous, fair, and valid teacher evaluation systems required of TIF grantees will provide an excellent source for investigating the relative effectiveness of various forms of teacher preparation. However, investigations of factors affecting the preparation of teachers who receive incentive payments, while potentially important, are outside the scope of the TIF Evaluation competition, which is statutorily focused on the impact that PBCSs have on teacher and principal performance in high-need schools. We also note that the *Commitment to Evaluation* requirement of the proposed TIF Evaluation, which is retained unchanged in this final notice, requires letters from LEA superintendents, principals, and research offices indicating agreement to comply with all applicable TIF Evaluation requirements. In addition, to the extent that applicant PBCSs cover teachers of students with disabilities and teachers of gifted and talented students, the Department expects that these teachers will be included in the national TIF evaluation. As for protecting the rights and interests of students and other participants in the TIF Evaluation program, IES follows accepted ethical study procedures and its study designs and data collections are approved by both the Office of Management and Budget (OMB) and an independent Institutional Review Board. In addition, the statute authorizing IES requires protections related to data security and confidentiality, which IES follows. Also, IES is guided by the expertise of an external technical working group to ensure the integrity and rigor of its study design. Therefore, the Department believes that the IES evaluation plan already adequately addresses the commenters' concerns.

Changes: None.

Matching Funds

Comment: One commenter recommended that the Department allow prior investments in the planning and design of a PBCS to count as matching funds under new TIF awards.

Discussion: The primary purpose of requiring a matching contribution under the TIF program is to encourage grantees to commit, over time, the resources they need to continue making incentive payments once the period of Federal funding has ended. Funding or other resources expended on planning prior to receipt of a TIF grant would not

promote this purpose. Moreover, the Department's regulations regarding matching contributions (34 CFR 74.23(a)(4) and 80.24) and cost principles issued by the OMB in its Circulars A–21 and A–87 (codified in 2 CFR parts 20 and 225) require that, to be allowable, a matching contribution must be something that would be an allowable cost if paid with Federal grant funds. A grantee's prior investment in other services or activities is not such a cost. For these reasons, the Department declines to permit such prior investments to count toward the required non-TIF match.

Changes: None.

Comment: One commenter requested flexibility, in recognition of the current State and local budget climate, to allow a greater contribution from TIF grant funds toward incentive payments in the initial award years. Another commenter noted that the percentage of an applicant's budget used for incentives may not increase in a linear fashion due to such factors as uneven assessment results and local budget issues such as declining enrollments and school closures. This commenter recommended that the final notice include instead the expectation for "an upward trend" in both student achievement growth and the percentage of the applicant's budget used for incentive payments.

Discussion: The NPP specifically proposed allowing grantees to begin with a small contribution in the early years of a TIF project, stating in the *Background* section that while there is no required minimum percentage local contribution, the Department "would expect that as an LEA's PBCS becomes institutionalized, the percentage of its budget that is used for incentive payments would increase throughout the five-year grant period." In addition, priority 2 requires an applicant to provide, in its application, evidence that the applicant will provide, from non-TIF funds over the course of the five-year project period, an increasing share of performance-based compensation paid to teachers and principals in those project years in which the LEA provides such payments as part of its PBCS.

With regard to the concern that the need for an increasing annual match may not materialize if actual need for compensation payments decreases from one year to another, we note that the costs of implementing a PBCS involve more than the performance-based compensation payments themselves. Beyond this, should the level of a grantee's contribution to supplemental staff compensation costs decrease from year to year because an LEA's overall level of compensation payments under its PBCS also decreases, the Department will be able to work with the grantee to adjust the level of match so that it corresponds to the amount of TIF funds needed for compensation payments compared to the amount that had been budgeted and anticipated.

Changes: None.

Compensation Plans

Comment: Three commenters stated that there is no research to support paying bonuses to individual teachers who increase student test scores and urged the Department to revise the final notice to encourage school-wide incentive systems. On the other hand, one commenter objected to mixed-group compensation, largely for the reason cited in the NPP—that the incentive for individuals to perform better potentially is weakened if their compensation depends on the performance of others.

Discussion: The NPP proposed to allow, and not require, a grantee to use individual, group, or mixed-group incentives in its PBCS, and the Department sees no reason to prohibit any of these approaches, as each may have benefits and advantages depending on local circumstances. Moreover, permitting a variety of incentive models will encourage greater innovation and provide data to help determine which models work best and under what circumstances.

Changes: None.

Comment: One commenter recommended that the final notice permit an applicant to focus its PBCS on certain subjects or grade levels (or both) because, the commenter claimed, focusing on high-need subject areas could have greater impact than systems targeting other subjects. Another commenter asked whether an LEA could focus a PBCS on particular staff or schools (*e.g.,* new teachers or elementary schools).

Discussion: Applicants have flexibility under the final priorities, requirements, definitions, and selection criteria to design their PBCSs to reflect and meet local needs, including the selection of subjects and grade levels that will be included in the PBCSs. For example, an applicant with growth (as defined in this notice) or value-added data for certain subjects and grades would be permitted to develop a PBCS covering only teachers and principals responsible for those subjects and grades. An applicant also could choose to include only certain high-need schools, such as elementary schools, in its PBCS.

Changes: None.

Comment: One commenter urged that the final notice allow the use of TIF funds to pay at least a portion of master, mentor, or lead teacher salaries, while another recommended allowing payment of salaries for principal coaches.

Discussion: As discussed in the NPP, the notice inviting applications (NIA) will demonstrate the Department's commitment to limiting the use of TIF funding awarded in the Main TIF competition to paying the salary of only one master, mentor, lead teacher, or academic coach per school. Paying for more than one such salary per school could significantly reduce the resources available for the performance-based incentives and rewards that are by law the primary focus of the TIF program. That said, grantees may use TIF funds for bonuses paid to such staff if the staff assume additional responsibilities under the PBCS. TIF Evaluation grantees, on the other hand, will receive at least $1 million in additional funding over their five-year grant period that they can use to pay other TIF-related costs, and these funds may be used to pay the salaries of multiple master teachers, mentors, lead teachers or academic coaches in participating schools.

Changes: None.

Comment: One commenter requested that the Department clarify that incentives for taking on additional responsibilities and leadership roles could include financial incentives, such as salary increases and bonus payments.

Discussion: The Application Requirements require each applicant to describe in its application how its proposed PBCS will provide educators with incentives to take on additional responsibilities and leadership roles (as defined in this notice). This language encompasses both financial and non-financial incentives.

Changes: None.

Comment: One commenter asserted that LEA-wide PBCSs are essential to obtain the "complete buy-in" from both local unions and school boards necessary for successful outcomes; this commenter recommended that the final notice allow use of TIF funds to support a PBCS for an entire LEA, not just specific schools within an LEA. In such cases, the commenter added, the PBCS could support teacher quality and improved student achievement broadly across an LEA while providing specific incentives for hard-to-staff schools and high-need students.

Discussion: While the Department does not dispute the potential advantages of LEA-wide PBCSs, the statutory authority for the TIF program does not allow TIF funds to be used for incentive payments in such broad-based

systems. Instead, TIF funds may be used only for incentives and rewards provided to teachers, principals, and other school personnel who work in high-need schools (as defined in this notice) within an LEA. TIF funds also may be used more generally to help develop and implement the tools and systems required for a LEA-wide PBCS; however, incentive payments to teachers, principals, and other school personnel who work in non-high-need schools (as defined in this notice) must be paid for with non-TIF funds.

Changes: None.

Comment: One commenter suggested that meeting TIF program requirements could be difficult for resource-poor high-need schools and might have a negative impact on other reform efforts.

Discussion: The Department recognizes that meeting all the requirements of the TIF program, as proposed in the NPP and described in this final notice, may be challenging for many high-need schools (as defined in this notice). However, while TIF funds are specifically intended to help high-need schools overcome such challenges, the Department believes that the development and implementation of an appropriate PBCS necessitates the requirements proposed in the NPP and retained in this final notice.

Changes: None.

Incentives

Comment: Two commenters asked for clarification regarding the size of incentive payments required by the TIF program; in particular, the commenters wanted to know if there is any research suggesting an appropriate incentive amount, or if the overall average of 5 percent of teacher salaries suggested in the TIF Evaluation requirements was the minimum required amount.

Discussion: The Department is not aware of any definitive research regarding the optimal size of incentive payments for an effective PBCS and believes that a wide range of such payment amounts may be effective, depending on local circumstances and market conditions. The figure of 5 percent of the average teacher salary was provided only as an example; perhaps more important was the suggestion that creating meaningful differences in performance could require that the top-performing teachers and principals receive 3 times this average amount, or 15 percent of a salary. In any case, this final notice, like the NPP, makes clear in priority 1 that the Department is not requiring a minimum incentive amount, but expects applicants to clearly explain why the amounts they choose for their PBCSs are "high enough to create change in the behavior of current and prospective teachers and principals."

Changes: None.

Comment: Several commenters recommended providing additional flexibility with respect to the types and amounts of incentives used in an LEA's PBCS. In particular, the commenters highlighted the importance of non-financial incentives such as professional development, time for collaboration and leadership opportunities, uncertainty about the precise level of financial incentive needed to change educator behavior and performance, and local market needs and requirements.

Discussion: An applicant has flexibility to design its PBCS so that financial incentives and rewards are provided in combination with other incentives and support. In particular, as proposed in the NPP and finalized in this notice, the TIF program not only encourages, but also requires, high-quality professional development that is linked to the specific measures of teacher and principal effectiveness included in the PBCS, as well as opportunities to take on additional responsibilities and leadership roles (as defined in this notice).

Changes: None.

Comment: One commenter urged the Department to consider allowing TIF grantees to pay incentives only after positive student outcomes are obtained.

Discussion: The priorities and requirements proposed in the NPP and announced in this final notice require grantees to develop and implement PBCSs that pay incentives based on improved student learning. Under paragraph (a) of priority 1, the PBCS must give significant weight to student growth (as defined in this notice) in determining and rewarding teacher and principal effectiveness. However, other important goals of the TIF program, such as encouraging effective teachers and principals to work in the most challenging schools and recruiting and retaining teachers for hard-to-staff subjects and specialty areas, may require incentive payments independent of improved student outcomes, because the positive outcome desired is improved recruitment and retention of effective teachers and principals.

Changes: None.

Comment: Two commenters recommended allowing incentive pay and other additional compensation for teachers who obtain further education, professional development, national certification, or who work in challenging schools, or serve as mentors or on school improvement committees.

Discussion: The recommended factors described by the commenters are permitted as supplemental multiple measures that may be used when evaluating teacher and principal effectiveness under paragraph (c) of Priority 1. However, because such evaluations must give significant weight to student growth (as defined in this notice), these factors alone could not be the only measures used for compensating a teacher or principal under the proposed PBCS.

Changes: None.

Definition of High-Need School

Comment: Two commenters agreed with the definition of high-need school proposed in the NPP, which defines such a school as a school with 50 percent or more of its enrollment from low-income families, based on eligibility for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use. However, several other commenters recommended that the definition be changed to reflect the 40-percent poverty threshold used for schoolwide program eligibility under title I, part A of the ESEA. Other commenters also recommended that the definition be structured to consider academic need, and not just poverty status, to determine the eligibility of schools to participate in TIF-funded projects. For example, one commenter suggested that schools and LEAs in ESEA improvement status should be eligible for participation under the TIF program, regardless of poverty status. One commenter recommended using the persistently lowest-achieving schools definition from the SIG program. Two commenters urged the Department to change the definition so that high-need status is based only on academic factors. Finally, other commenters recommended defining need for the purposes of the TIF program at the LEA level rather than at the school level, as well as giving LEAs flexibility to determine need, particularly in cases where a school may miss the poverty threshold by one or two percentage points.

Discussion: The Department gave careful consideration to the alternative definitions of high-need school recommended by commenters, but ultimately decided to retain the definition of high-need school that was proposed in the NPP. In Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended, Congress authorized the lower 40-percent schoolwide program threshold in order to expand flexibility for schools to participate in Title I schoolwide

programs. However, the purpose of our definition of a high-need school in the NPP is to focus the limited funding that Congress has appropriated for TIF on assisting schools that serve the neediest communities. We are very concerned that lowering the poverty threshold for this program from 50 to 40 percent eligibility for free-and reduced-price lunch subsidies, as some commenters desire, will dilute the program's emphasis on helping such schools use PBCSs as one means to help increase student academic achievement. Moreover, the available data shows that even at the 50-percent poverty threshold, a regrettably large number of LEAs and States, in all parts of the Nation and in both urban and rural areas, will be able to identify enough high-need schools to support participation in the TIF program. Incorporating academic measures would dilute this focus on high-poverty schools, as many schools identified for improvement under the ESEA are low-poverty schools. Also, schools may be identified for ESEA improvement due to the performance of one or two relatively small subgroups of students, rather than the broader weaknesses in student achievement more commonly associated with our neediest schools. Finally, defining need at the LEA level would be inconsistent with the statutory authority for the TIF program, which clearly requires that the need for TIF program funds be measured at the school and not the LEA level.

Changes: None.

Definition of Student Achievement

Comment: One commenter suggested adding industry-recognized certificates and college credit to the alternative measures of student learning in the definition of student achievement.

Discussion: Paragraph (b) of the definition of student achievement permits the use of alternative measures of student learning, which could include those suggested by the commenter, provided that they are rigorous and comparable across schools. Therefore, we do not believe that a change to the definition is necessary.

Changes: None.

Comment: One commenter urged the Department to delete from the definition of student achievement the requirement that alternative measures of student learning must be "rigorous and comparable across schools," because the requirement effectively limits other measures to assessment results.

Discussion: The Department declines to make the requested change because ensuring that alternative measures of student learning are rigorous and comparable across schools is essential if student achievement data based on such measures are to be part of a fair, valid, and reliable teacher evaluation system. Using non-comparable achievement data could result in unfair teacher ratings.

Changes: None.

Definition of Student Growth

Comment: One commenter argued that applicants for the TIF program should be able to use "status" measures of student achievement to evaluate teacher effectiveness if the LEAs in which the PBCS is to be implemented are in States that do not currently have assessment systems capable of measuring student growth (as defined in this notice).

Discussion: Student achievement alone, as measured, for example, on the annual assessments required by the ESEA, is not sufficient for measuring the change in individual student achievement over time, which is an essential element of the teacher evaluation systems required by the TIF program. For this reason, all TIF applicants must be able to measure individual student growth (as defined in this notice), and may not use the "snapshot" of student achievement provided by ESEA assessments as a substitute for measuring growth (as defined in this notice).

Changes: None.

Definition of Additional Responsibilities and Leadership Roles

Comment: One commenter stated that the proposed definition of additional responsibilities and leadership roles in the NPP is too prescriptive. Another commenter recommended that the Department change this definition so that it is targeted specifically at improving teacher capacity and is linked to increasing student achievement, rather than student-focused activities, such as tutoring or mentoring individual students.

Discussion: The Department believes that the definition of additional responsibilities and leadership roles is sufficiently broad to provide applicants with flexibility to define which duties and roles satisfy the definition. Moreover, as we acknowledged in the NPP, the list of additional responsibilities and leadership opportunities in the definition is not intended to be exhaustive, and we encourage applicants to develop opportunities for additional responsibilities and leadership roles (as defined in this notice) for their teachers, principals, and, at the applicant's discretion, other school personnel.

Changes: None.

Selection Criteria

Comment: One commenter recommended adding a new selection criterion related to sustainability, to encourage and reward the creation of LEA consortia that support PBCS sustainability. Another commenter suggested that an applicant's previous progress and achievements in developing or implementing a PBCS should be taken into account in scoring applications.

Discussion: The Department believes that the sustainability goal recommended by the commenter is amply supported by priorities 2 and 3, related to financial sustainability and comprehensive approaches needed for PBCSs, and that adding an additional sustainability requirement to the selection criteria is unnecessary. We also believe that, in general, applicants that have started or completed various elements of a PBCS will likely be in a position to submit stronger applications than applicants that have not, and that therefore there is no need to give additional weight or priority to these "early adopters."

Changes: None.

Comment: None.

Discussion: In reviewing the proposed selection criteria, the Department determined that in order to address criterion (b)(i), applicants would have to explain how the effectiveness of teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) would be determined. However, the notice of proposed priorities did not specifically provide for applicants to submit this information. In order to ensure that peer reviewers may review this key information, the Department has decided to request it as part of the selection criteria.

Changes: The Department has added sub-criterion (b)(1)(iii) to the selection criterion that asks applicants to provide a clear explanation of how teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) are determined to be "effective" for the purposes of the proposed PBCS.

Comment: None.

Discussion: In reviewing the proposed selection criteria, the Department has determined that it is necessary to change (b)(1)(ii) to request an applicant's proposed methodology for determining the effectiveness of teachers, principals, and other personnel (in those sites in which the

grantee wishes to expand the PBCS to additional staff in its schools) using measures of student growth (as defined in this notice) instead of student achievement (as defined in this notice). The Department would like to be consistent in promoting student growth (as defined in this notice) as a significant component of an applicant's measure of effectiveness, as noted throughout the notice as well as in selection criterion (b)(1). Given this change, under selection criterion (b)(1)(ii), the Department has also removed the reference to norm- and criterion-referenced statewide assessment scores as valid and reliable measures of student growth. This reference is redundant with the definition of student growth (as defined in this notice), which references student achievement as a student's score on the State's assessments under the ESEA.

Changes: Under selection criterion (b)(1)(ii), the term student achievement (as defined in this notice) has been replaced with student growth (as defined in this notice) and the statement regarding norm- and criterion-referenced statewide assessment scores has been removed.

Final Priorities

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

The Secretary establishes the following priorities for the TIF program. We may apply these priorities in any year in which this program is in effect. All of the priorities are applicable under both the Main TIF competition and the TIF Evaluation competition.

Absolute Priorities

Priority 1 (Absolute)—Differentiated Levels of Compensation for Effective Teachers and Principals

To meet this absolute priority, an applicant must demonstrate, in its application, that it will develop and implement a PBCS that rewards, at differentiated levels, teachers and principals who demonstrate their effectiveness by improving student achievement (as defined in this notice) as part of the coherent and integrated approach of the local educational agency (LEA) to strengthening the educator workforce. In determining teacher and principal effectiveness as part of the PBCS, the LEA—

(a) Must give significant weight to student growth (as defined in this notice), based on objective data on student performance;

(b) Must include observation-based assessments of teacher and principal performance at multiple points in the year, carried out by evaluators trained in using objective evidence-based rubrics for observation, aligned with professional teaching standards; and, if applicable, as part of the LEA's coherent and integrated approach to strengthening the educator workforce; and

(c) May include other measures, such as evidence of leadership roles (as defined in this notice), that increase the effectiveness of other teachers in the school or LEA.

In determining principal effectiveness as part of a PBCS, the LEA must give significant weight to student growth (as defined in this notice) and may include supplemental measures such as high school graduation and college enrollment rates.

In addition, the applicant must demonstrate that the differentiated effectiveness incentive payments will provide incentive amounts that are substantial and provide justification for the level of incentive amounts chosen. While the Department does not propose a minimum incentive amount, the Department encourages applicants to be thorough in their explanation of why the selected incentive amounts are likely high enough to create change in the behavior of current and prospective teachers and principals in order to ultimately improve student outcomes.

Priority 2 (Absolute)—Fiscal Sustainability of the Performance-Based Compensation System (PBCS)

To meet this absolute priority, the applicant must provide, in its application, evidence that:

(a) The applicant has projected costs associated with the development and implementation of the PBCS, during the project period and beyond, and has accepted the responsibility to provide such performance-based compensation to teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) who earn it under the system; and

(b) The applicant will provide from non-TIF funds over the course of the five-year project period an increasing share of performance-based compensation paid to teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) in those project years in which the LEA provides such payments as part of its PBCS.

Priority 3 (Absolute)—Comprehensive Approaches to the Performance-Based Compensation System (PBCS)

To meet this absolute priority, the applicant must provide, in its application, evidence that the proposed PBCS is aligned with a coherent and integrated strategy for strengthening the educator workforce, including in the use of data and evaluations for professional development and retention and tenure decisions in the LEA or LEAs participating in the project during and after the end of the TIF project period.

Competitive Preference Priorities (Priorities 4 through 6) Priority 4 (Competitive Preference)—Use of Value-Added Measures of Student Achievement

To meet this competitive preference priority, the applicant must demonstrate, in its application, that the proposed PBCS for teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) will use a value-added measure of the impact on student growth (as defined in this notice) as a significant factor in calculating differentiated levels of compensation provided to teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools).

Under this priority, the applicant must also demonstrate that it has a plan to ensure that, as part of the PBCS, it has

the capacity to (1) implement the proposed value-added model (*e.g.,* through robust data systems that collect the necessary data and ensure data quality), and (2) clearly explain the chosen value-added model to teachers to enable them to use the data generated through the model to improve classroom practices.

Priority 5 (Competitive Preference)—Increased Recruitment and Retention of Effective Teachers to Serve High-Need Students and in Hard-to-Staff Subjects and Specialty Areas in High-Need Schools

To meet this competitive preference priority, the applicant must demonstrate in its application that its proposed PBCS is designed to assist high-need schools (as defined in this notice) to (1) serve high-need students (as defined in this notice), (2) retain effective teachers in teaching positions in hard-to-staff subjects and specialty areas, such as mathematics, science, special education, and English language acquisition, and (3) fill vacancies with teachers of those subjects or specialty areas who are effective or likely to be effective. The applicant must provide an explanation for how it will determine that a teacher filling a vacancy is effective or likely to be effective. In addition, applicants must demonstrate, in their applications, the extent to which the subjects or specialty areas they propose to target are hard-to-staff. Lastly, applicants must demonstrate, in their applications, that they will implement a process for effectively communicating to teachers which of the LEA's schools are high-need and which subjects and specialty areas are considered hard-to-staff.

Priority 6 (Competitive Preference)—New Applicants to the Teacher Incentive Fund

To meet this competitive preference priority, an applicant must be a new applicant to the TIF program. For the purposes of this priority, a new applicant is (1) an eligible entity that has not previously been awarded a grant under the TIF program, or (2) a nonprofit organization that previously received funding through TIF, as part of a partnership with one or more LEAs or SEAs, but that is applying to work with a different group of eligible LEAs or SEAs than it worked with under any previous TIF grant. Under this competitive preference priority, a current nonprofit grantee may not propose to use new TIF funds to compensate for any activities related to the development and implementation of its PBCS in LEAs and high-need schools (as defined in this notice) already served under the current grant. Rather, a nonprofit organization that is a current TIF grantee may only use new TIF funds for the costs of implementing the PBCS in high-need schools (as defined in this notice) that have not previously received TIF funds.

Final Main TIF Competition Requirements

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

Selection of Competition. An applicant may submit an application for either the Main TIF competition or the TIF Evaluation competition. Each applicant must identify in its application the competition for which it is applying. Decisions regarding awards for the TIF Evaluation program will be made prior to doing so for the Main TIF competition, so that applicants not funded in the TIF Evaluation competition will still be eligible for funding under the Main TIF competition.

Application Requirement. Each applicant must describe in its application how its proposed PBCS will provide educators with incentives to take on additional responsibilities and leadership roles (as defined in this notice).

Core Elements of a PBCS and a Potential Planning Period. Each applicant must either—

(a) Demonstrate in its application that it has in place the five core elements that follow; or

(b) If the applicant cannot demonstrate in its application that it has in place each of the five core elements—

(1) Agree, as part of its application, to implement a planning period of up to one year, during which it will use its TIF funds to develop the core element or elements it lacks; and

(2) Include, in its application, a plan for how it will implement the core element or elements it lacks during the planning period.

Core Elements.

(a) A plan for effectively communicating to teachers, administrators, other school personnel, and the community at-large the components of its PBCS;

(b) The involvement and support of teachers, principals, and other personnel (including input from teachers, principals, and other personnel in the schools and LEAs to be served by the grant) and the involvement and support of unions in participating LEAs (where they are the designated exclusive representatives for the purpose of collective bargaining) that is needed to carry out the grant;

(c) Rigorous, transparent, and fair evaluation systems for teachers and principals that differentiate effectiveness using multiple rating categories that take into account student growth (as defined in this notice) as a significant factor, as well as classroom observations conducted at least twice during the school year. The evaluation process must: (1) Use an objective, evidence-based rubric aligned with professional teaching or leadership standards and the LEA's coherent and integrated approach to strengthening the educator workforce; (2) provide for observations of each teacher or principal at least twice during the school year by individuals (who may include peer reviewers) who are provided specialized training; (3) incorporate the collection and evaluation of additional forms of evidence; and (4) ensure a high degree of inter-rater reliability (*i.e.,* agreement among two or more raters who score approximately the same);

(d) A data-management system [1] that can link student achievement (as defined in this notice) data to teacher and principal payroll and human resources systems; and

(e) A plan for ensuring that teachers and principals understand the specific measures of teacher and principal effectiveness included in the PBCS, and receive professional development that enables them to use data generated by these measures to improve their practice.

Planning Period Requirements. Each grantee that implements a planning period to develop the core element or elements it lacks, is—

(a) Required to demonstrate in its annual performance report or other interim performance report that it has implemented any of the five core elements it had lacked at the start of the project; and

(b) Prohibited from using TIF program funds to provide incentive payments to teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) until it has implemented a PBCS that, to the Secretary's satisfaction, has all five core elements.

Professional Development. Each applicant must demonstrate, in its

[1] Successful applicants that receive Teacher Incentive Fund program grant awards must ensure that the program's PBCS, including the necessary data systems, complies with the Family Educational Rights and Privacy Act (FERPA), including the regulations in 34 CFR Part 99, as well as any applicable State and local requirements regarding privacy.

application, that its proposed PBCS will include a high-quality professional development component for teachers and principals consistent with the definition of the term *professional development* in section 9101(34) of the ESEA.

The applicant must demonstrate that its PBCS has a professional development component in place, or a specific plan for developing one, that is directly linked to the specific measures of teacher and principal effectiveness included in the PBCS. The professional development component of the PBCS must—

(1) Be based on needs assessed either at the high-need schools (as defined in this notice) participating in the applicant's proposed PBCS or LEA-wide;

(2) Be targeted to individual teachers' and principals' needs as identified in the evaluation process;

(3) Provide—

(a) Those teachers and principals in participating TIF schools who do not receive differentiated compensation based on effectiveness under the PBCS with the tools and skills they need to improve their effectiveness in the classroom or school and be able to raise student achievement (as defined in this notice); and

(b) Those teachers and principals who are deemed to be effective and who, therefore, receive differentiated compensation under the PBCS, with the tools and skills they need to (1) continue effective practices in the classroom or school and raise student achievement (as defined in this notice), and (2) successfully assume additional responsibilities and leadership roles (as defined in this notice);

(4) Support teachers and principals to better understand and use the measures of effectiveness in the PBCS to improve practice and student achievement (as defined in this notice); and

(5) Include a process for regularly assessing the effectiveness of this professional development in improving teacher and leadership practice to increase student achievement (as defined in this notice) and making modifications necessary to improve its effectiveness.

High-Need Schools Documentation. Each applicant must demonstrate, in its application, that the schools to be served by the proposed PBCS are high-need schools (as defined in this notice). Each applicant must provide, in its application, a list of schools in which the proposed PBCS will be implemented as well as the most current data on the percentage of each identified school's students who are eligible for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that the LEA uses (*see* section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5))). Data provided to demonstrate eligibility as a high-need school (as defined in this notice) must be school-level data; the Department will not accept LEA- or State-level data for purposes of documenting whether a school is a high-need school (as defined in this notice).

Additional Eligibility Requirement. Each applicant that currently participates in a TIF project must confirm in its application either that—

(a) Its proposed PBCS would be available to educators in high-need schools (as defined in this notice) in which the LEA does not currently make a TIF-supported PBCS available; or

(b) If the applicant's current TIF project serves only principals or only teachers, its proposed project would add teachers or principals, respectively, who work in high-need schools (as defined in this notice) and who are not eligible for performance-based compensation under the applicant's current TIF project's PBCS.

If awarded a grant, the grantee must maintain its PBCS for teachers and principals in high-need schools (as defined in this notice) for the duration of the new TIF project period. An applicant may also propose to have other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) who work in high-need schools (as defined in this notice) benefit from the PBCS.

Final TIF Evaluation Competition Requirements

In addition to the requirements and priorities for the Main TIF competition, which applicants for the TIF Evaluation competition are also required to meet, the Secretary includes the following requirements for the TIF Evaluation competition only:

Budget Information. In exchange for its agreement to participate in the national TIF Evaluation, a successful applicant for the TIF Evaluation competition will receive a minimum of $1 million of additional funding over the 5-year grant period (above the amount of funding awarded to it to implement the PBCS proposed in its application) for the four pairs of schools selected to participate in the evaluation. For each additional pair of schools participating in the evaluation, a successful applicant will receive an additional $250,000, up to a maximum total additional award of $2 million.

An applicant for the TIF Evaluation competition must provide, in its application, a proposed budget that indicates how it plans to use the additional funds the Department would award. While these additional funds must be used for TIF-related activities, examples of acceptable expenses include the costs of:

(1) Academic coaches such as mathematics and reading coaches, and Master, Mentor, or Lead Teacher salaries beyond those the Department will otherwise fund under the Main TIF competition (the Department approves expenses related to one salary, per position, per high-need school (as defined in this notice) within the project scope);

(2) Activities such as expenses related to release time for teachers to attend professional development beyond those the Department will otherwise fund under the Main competition (the Department does not allow for an unreasonable amount of substitute teacher salaries to compensate for this release time);

(3) Support for the PBCS that would otherwise need to be paid with non-TIF funds in order to implement the applicant's plan for fiscal sustainability under absolute priority 2; and

(4) Costs associated with participating in the national evaluation, such as preparing administrative student records for use by the national evaluator.

Incentive Amounts. Consistent with absolute priority 1, an applicant for the TIF Evaluation competition must demonstrate, in its application, that it will implement a PBCS that uses—

(1) Incentive payments to principals based on differentiated levels of effectiveness in which—

(a) The average principal payout (defined as the total amount of principal payments divided by the total number of principals in the schools participating in the differentiated effectiveness incentive payment component of the PBCS) is substantial (*e.g.,* 5 percent of the average principal salary);

(b) The criteria for determining whether a principal is eligible for payment are challenging (*e.g.,* payments are made to only those who perform significantly better than the current average performance among study schools within the LEA) [2] and

(c) There is an expectation of meaningful differences in resulting principal pay (*e.g.,* at least some principals could reasonably expect to receive an incentive payment of three

[2] For the purposes of the TIF Evaluation competition, an "LEA" includes consortia and intermediary units, so long as they are considered an LEA under State law.

times the average principal payout, and the applicant's documentation of cost projections is consistent with this expectation); and

(2) Incentive payments to teachers based on differentiated levels of effectiveness in which—

(a) The average teacher payout (defined as the total amount of teacher payments divided by the total number of teachers in the schools participating in the differentiated effectiveness incentive payment component of the PBCS) is substantial (*e.g.,* 5 percent of the average teacher salary);

(b) The criteria for determining whether a teacher is eligible for payment are challenging (*e.g.,* payments are made only to those who perform significantly better than the current average performance among study schools within the LEA); and

(c) There is an expectation of meaningful differences in resulting teacher pay (*e.g.,* at least some teachers could reasonably expect to receive an incentive payment of three times the average teacher payout and the applicant's documentation of cost projections is consistent with this expectation).

Implementation of Evaluation. Each applicant under the TIF Evaluation competition must agree, in its application, to implement its differentiated effectiveness incentive component of the PBCS and a 1 percent across-the-board annual bonus in at least one LEA in accordance with the implementation plan developed by the Institute of Education Sciences (IES) evaluator, Mathematica Policy Research (*http://www.mathematica-mpr.com/education/tifgrantee.asp*). Specifically, the IES evaluator will select by lottery one-half of the evaluation schools within the LEA (*i.e.,* "Group 1") to implement the applicant's proposed differentiated effectiveness incentive payment component of the PBCS. The other half of the schools within the LEA (*i.e.,* "Group 2") participating in the evaluation will implement a 1 percent across-the-board annual bonus for teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools). The applicant must identify, in its application, the schools that are proposed for participation in the evaluation.

In participating LEAs that have the five core elements in place at the time of the initial grant award, the first group of schools in that LEA (Group 1 schools) must begin implementation of all components of the PBCS at the beginning of the 2010–2011 school year. In a participating LEA that does not yet have in place the five core elements necessary to implement a successful PBCS at the time of award, the first group of schools in that LEA (Group 1 schools) must begin implementation of all components of the PBCS no later than the 2011–2012 school year.

The following table illustrates the TIF Evaluation random assignment plan, depending on the amount of planning time an applicant needs:

	Random assignment [a]	Pay component of PBCS [b]
LEAs Ready for 2010–11 Implementation	Group 1	Differentiated pay implemented starting in 2010–11.
	Group 2	Across-the-board annual 1 percent bonus implemented starting in 2010–11 through 2014–15.
LEAs Ready for 2011–12 Implementation	Group 1	Differentiated pay implemented starting in 2011–12.
	Group 2	Across-the-board annual 1 percent bonus implemented starting in 2011–12 through 2014–15.

[a] For each LEA, the IES evaluator will randomly assign the schools participating in the Evaluation into 2 groups (Groups 1 and 2).
[b] The school year listed is the first year in which the differentiated effectiveness incentive component of the PBCS will be implemented in the LEA's schools participating in the designated group.

Commitment to Evaluation. An applicant for the TIF Evaluation competition must demonstrate, in its application, that each participating LEA and school is willing to participate in the TIF Evaluation. Documentation demonstrating this commitment must include, for each participating LEA—

(1) A letter from the LEA superintendent and the principals of the participating schools stating that those officials agree to meet the TIF Evaluation competition requirements, including adhering to the implementation plan of the IES evaluator, which involves selection through a lottery of those schools to implement the differentiated effectiveness component among the schools participating in the evaluation.

(2) A letter from the research office or research board of the participating LEA that expresses an agreement to comply with the TIF Evaluation requirements (if the LEA requires such research office approval).

Advance Notice. Each applicant must agree, in its application, to work with the IES evaluator to notify all eligible schools participating in the TIF Evaluation at least two months prior to the assigned Group 1 implementation schedule. The Department will waive this advance notice for any applicants that are eligible to implement their PBCS in 2010–11 (*i.e.,* meet the five core requirements) so long as the program is implemented according to the evaluator's assigned group status (**Note:** The evaluator will be ready to assign group status immediately upon grant award, or if the applicant prefers, the applicant can discuss with Mathematica prior to grant award how to comply with the evaluation requirements by contacting Mathematica at *http://www.mathematica-mpr.com/education/tifgrantee.asp*).

Implementation of All Non-differentiated Effectiveness Incentive Components. Each applicant must agree, in its application, to implement the non-differentiated effectiveness incentive components of its PBCS (*e.g.,* bonuses for leadership or additional responsibilities and professional development activities) in all of the LEA's participating schools (those in Groups 1 and 2) starting at the same time as the differentiated effectiveness incentive component of its PBCS is implemented in the Group 1 schools. The schools in Group 2 must not implement the differentiated effectiveness incentive component of its PBCS for the duration of the TIF grant.

Scope of Schools. An applicant for the TIF Evaluation competition must demonstrate, in its application, that it will implement a PBCS in eight or more high-need schools (as defined in this notice) in an LEA that has students in tested subjects or grades (*i.e.,* students in grades three through eight). At least two of the schools proposed to participate in the TIF Evaluation must be from within the same grade configuration (*i.e.,* if elementary schools are proposed there are at least two elementary schools among the minimum of eight schools all within the same LEA; if middle schools are proposed there are at least two middle schools among the minimum of eight

schools all within the same LEA). Applicants that include multiple LEAs must meet the scope of schools requirement in at least one LEA. In addition, no LEA will have more than 16 high-need schools (as defined in this notice) selected for the TIF Evaluation.

An applicant that is a consortium of small LEAs or an intermediary unit that is considered an LEA under State law does not have to have eight eligible schools in a participating LEA provided that the consortium or intermediary unit serves a coordinating function (*i.e.,* data are available from a centralized or coordinating entity). In this case, the minimum number of schools required for the consortium or intermediary unit is still eight, and within the eight, each school is at least paired with another school at the same grade level and within the same State. The Department will use the number of eligible schools, up to 16 per LEA, that a successful applicant makes available for the TIF Evaluation.

Local Evaluation. In order to be eligible to receive points under the selection criteria, TIF Evaluation competition applicants must include a description of its local evaluation, demonstrated in its response to the selection criterion *Quality of Local Evaluation.* For the purposes of the TIF Evaluation competition, the score for this part of the application will not be used to rank the application. For the purposes of the Main TIF competition, if applicable, the score for this part of the application will be used to rank the application. If an applicant is selected under the TIF Evaluation competition, the local evaluation plan will not be reviewed and will not be applicable for program implementation.

Final Definitions

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

High-need school means a school with 50 percent or more of its enrollment from low-income families, based on eligibility for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use (*see* section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5)). For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-need school under this definition is determined on the basis of the most currently available data.

Student achievement means—

(a) For tested grades and subjects—

(1) A student's score on the State's assessments under the ESEA; and

(2) As appropriate, other measures of student learning, such as those described in paragraph (b) of this definition, provided that they are rigorous and comparable across schools; and

(b) For non-tested grades and subjects, alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Student growth means the change in student achievement (as defined in this notice) for an individual student between two or more points in time. A State or LEA may also include other measures that are rigorous and comparable across schools.

High-need students means students at risk of educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools, who are far below grade level, who have left school before receiving a regular high-school diploma, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English learners.

Additional responsibilities and leadership roles means additional duties teachers may voluntarily accept, such as: (1) Serving as master or mentor teachers who are chosen through a performance-based selection process (including through assessment of their teaching effectiveness and the ability to work effectively with other adults and students) and who have responsibilities to share effective instructional practices and/or to assess and improve the teaching effectiveness of other teachers in the school; (2) roles in induction and mentoring of novice teachers or high-need students (as defined in this notice); (3) tutoring students; or (4) roles in establishing and developing learning communities designed to continually improve the capacity of all teachers in a school to advance student learning, using a shared set of practices, instructional principles, or teaching strategies.

Selection Criteria

The Secretary establishes the following selection criteria for evaluating an application under the TIF program. We may apply one or more of these criteria in any year in which this program is in effect. In the notice inviting applications, we will announce the maximum possible points assigned to each criterion.

(a) *Need for the project.* In determining the need for the proposed project, the Secretary will consider the extent to which the applicant establishes that—

(1) The high-need schools (as defined in this notice) whose educators would be part of the PBCS have difficulty—

(i) Recruiting highly qualified or effective teachers, particularly in hard-to-staff subjects or specialty areas, such as mathematics, science, English language acquisition, and special education; and

(ii) Retaining highly qualified or effective teachers and principals.

(2) Student achievement (as defined in this notice) in each of the schools whose educators would be part of the PBCS is lower than in what the applicant determines are comparable schools in the LEA, or another LEA in its State, in terms of key factors such as size, grade levels, and poverty levels;

(3) A definition of what it considers a "comparable" school for the purposes of paragraph (2) of this selection criterion is established.

(b) *Project design.* The Secretary will consider the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary will consider the extent to which the proposed PBCS—

(1) Is part of a proposed LEA or statewide strategy, as appropriate, for improving the process by which each participating LEA rewards teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) in high-need schools (as defined in this notice) based upon their effectiveness as determined in significant part by student growth (as defined in this notice). With regard to the effectiveness of teachers, principals, and other personnel, the Secretary will consider whether—

(i) The methodology the LEA or SEA proposes to use in its PBCS to determine the effectiveness of a school's teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) includes valid and reliable measures of student growth (as defined in this notice);

(ii) The participating LEA would use the proposed PBCS to provide performance awards to teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) that are of sufficient size to affect the behaviors of teachers,

principals, and other personnel and their decisions as to whether to go to, or remain working in, the high-need school; and

(iii) The applicant provides a clear explanation of how teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) are determined to be "effective" for the purposes of the proposed PBCS.

(2) Has the involvement and support of teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools), including input from teachers, and principals, and other personnel in the schools and LEAs to be served by the grant, and the involvement and support of unions in participating LEAs where they are the designated exclusive representatives for the purpose of collective bargaining that is needed to carry out the grant;

(3) Includes rigorous, transparent, and fair evaluation systems for teachers and principals that differentiate levels of effectiveness using multiple rating categories that take into account data on student growth (as defined in this notice) as a significant factor, as well as classroom observations conducted at least twice during the school year;

(4) Includes a data-management system, consistent with the LEA's proposed PBCS, that can link student achievement (as defined in this notice) data to teacher and principal payroll and human resources systems; and

(5) Incorporates high-quality professional development activities that increase the capacity of teachers and principals to raise student achievement (as defined in this notice) and are directly linked to the specific measures of teacher and principal effectiveness included in the PBCS.

(c) *Adequacy of Support for the Proposed Project.* In determining the adequacy of the support for the proposed project, the Secretary considers the extent to which—

(1) The management plan is likely to achieve the objectives of the proposed project on time and within budget, and includes clearly defined responsibilities and detailed timelines and milestones for accomplishing project tasks;

(2) The project director and other key personnel are qualified to carry out their responsibilities, and their time commitments are appropriate and adequate to implement the project effectively;

(3) The applicant will support the proposed project with funds provided under other Federal or State programs and local financial or in-kind resources; and

(4) The requested grant amount and project costs are sufficient to attain project goals and reasonable in relation to the objectives and design of the project.

(d) *Quality of Local Evaluation.* In determining the quality of the local project evaluation, the Secretary considers the extent to which the applicant's evaluation plan—

(1) Includes the use of strong and measurable performance objectives (that are clearly related to the goals of the project) for raising student achievement (as defined in this notice), increasing the effectiveness of teachers, principals and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools), and retaining and recruiting effective teachers, principals, and other personnel;

(2) Will produce evaluation data that are quantitative and qualitative; and

(3) Includes adequate evaluation procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

This notice does not preclude the Department from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

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

Executive Order 12866:

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 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 set forth in the Executive order.

Pursuant to the Executive order, it has been determined that this regulatory action will have an annual effect on the economy of more than $100 million because the amount of government transfers provided through the TIF program will exceed that amount. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(1) of the Executive order.

The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits of the final priorities, requirements, definitions, and selection criteria justify the costs.

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

Need for Federal Regulatory Action

These final priorities, requirements, definitions, and selection criteria are needed to implement the TIF program. The Secretary does not believe that the statute, by itself, provides a sufficient level of detail to ensure that the program achieves the greatest national impact in promoting educational innovation. The authorizing language is very brief and provides only broad parameters governing the program. The final priorities, requirements, definitions, and selection criteria established in this notice provide greater clarity on the types of activities the Department seeks to fund, and permit the Department to fund projects that are closely aligned with the Secretary's priorities.

In the absence of specific selection criteria for the TIF program, the Department would use the general selection criteria in 34 CFR 75.210 in selecting grant recipients. The Secretary does not believe the use of those general criteria would be appropriate for the Main TIF grant and TIF Evaluation competitions, because they do not focus on the development of PBCSs or activities most likely to increase the quality of teaching and school administration and improve educational outcomes for students.

Regulatory Alternatives Considered

The Department considered a variety of possible priorities, requirements, definitions, and selection criteria before deciding to establish those included in

this notice. The final priorities, requirements, definitions, and selection criteria are those that the Secretary believes best capture the purposes of the program while clarifying what the Secretary expects the program to accomplish and ensuring that program activities are aligned with Departmental priorities. The final priorities, requirements, definitions, and selection criteria also provide eligible applicants with flexibility in selecting activities to apply to carry out under the program. The Secretary believes that the final priorities, requirements, definitions, and selection criteria thus appropriately balance a limited degree of specificity with broad flexibility in implementation.

Summary of Costs and Benefits

The Secretary believes that the final priorities, requirements, definitions, and selection criteria do not impose significant costs on eligible applicants. The Secretary also believes that the benefits of the final priorities, requirements, definitions, and selection criteria outweigh any associated costs.

The Secretary believes that the final priorities, requirements, definitions, and selection criteria will result in the selection of high-quality applications to implement activities that are most likely to improve the quality of teaching and educational administration. The final priorities, requirements, definitions, and selection criteria are intended to provide clarity as to the scope of activities the Secretary expects to support with program funds and the expected burden of work involved in preparing an application and implementing a project under the program. Eligible applicants need to consider carefully the effort that will be required to prepare a strong application, their capacity to implement a project successfully, and their chances of submitting a successful application.

The Secretary believes that the costs imposed on applicants by the final priorities, requirements, definitions, and selection criteria will be limited to paperwork burden related to preparing an application and that the benefits of the final priorities, requirements, definitions, and selection criteria outweigh any costs incurred by applicants. The costs of carrying out activities will be paid for with program funds and with matching funds. Thus, the costs of implementation are not a burden for any eligible applicants, including small entities. However, under the final selection criteria the Secretary will assess the extent to which an eligible applicant is able to sustain a project once Federal funding through the TIF program is no longer available. Thus, eligible applicants should propose activities that they will be able to sustain without funding from the program and, thus, in essence, should include in their project plan the specific steps they will take for sustained implementation of the proposed project.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whithouse.gov/omb/Circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final regulatory action. This table provides our best estimate of the Federal payments to be made to States, LEAs, and nonprofit organizations under this program as a result of this final regulatory action. This table is based on funds available for new awards under this program from the ARRA supplemental appropriation and the fiscal year 2010 appropriation. Expenditures are classified as transfers to those entities.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers (in millions)
Annual Monetized Transfers.	$437.0.
From Whom to Whom	Federal Government to States, LEAs, and nonprofits.

Paperwork Reduction Act of 1995: The requirements and selection criteria established in this notice require the collection of information that is subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The Department has received approval to submit the information collections described in this section for OMB review under emergency processing.

We estimate that each applicant will spend approximately 248 hours of staff time to address the requirements and selection criteria, prepare the application, and obtain necessary clearances. Based on the number of applications the Department received in the first competition it held (in FY 2006), we expect to receive approximately 120 applications for these funds. The total number of hours for all expected applicants is an estimated 29,760 hours. We estimate the total cost per hour of the applicant-level staff who carry out this work to be $30 per hour. Therefore, the total estimated cost for all applicants will be $892,800.

Waiver of Congressional Review Act: These regulations have been determined to be major for purposes of the Congressional Review Act (CRA) (5 U.S.C. 801, *et seq.*). Generally, under the CRA, a major rule takes effect 60 days after the date on which the rule is published in the **Federal Register.** Section 808(2) of the CRA, however, provides that any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.

These final priorities, requirements, definitions, and selection criteria are needed to implement the new TIF authority provided by the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2010 and the ARRA. The Department must award TIF funds authorized under both the Appropriations Act and the ARRA to qualified applicants by September 30, 2010, or the funds will lapse. Even on an extremely expedited timeline, it is impracticable for the Department to adhere to a 60-day delayed effective date for the final priorities, requirements, definitions, and selection criteria and make grant awards to qualified applicants by the September 30, 2010 deadline. When the 60-day delayed effective date is added to the time the Department will need to receive applications (approximately 45 days), review the applications (approximately 21 days), and finally approve applications (approximately 65 days), the Department will not be able to award funds authorized under the Appropriations Act and ARRA to applicants by September 30, 2010. The delayed effective date would be impracticable and contrary to the public interest. The Department has therefore determined that, pursuant to section 808(2) of the CRA, the 60-delay in the effective date generally required for congressional review is impracticable, contrary to the public interest, and waived for good cause.

Regulatory Flexibility Act Certification

The Secretary certifies that this final regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this proposed regulatory action may affect are (1) small LEAs, and (2) nonprofit organizations applying for and receiving funds under this program in partnership with an LEA or SEA. The Secretary

believes that the costs imposed on an applicant by the final priorities, requirements, definition, and selection criteria will be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals outweigh any costs incurred by the applicant.

Participation in the TIF program is voluntary. For this reason, the final priorities, requirements, definitions, and selection criteria impose no burden on small entities unless they apply for funding under a TIF program using the priorities, requirements, definitions, and selection criteria established in this notice. We expect that in determining whether to apply for TIF funds, an eligible entity will evaluate the requirements of preparing an application and implementing a TIF project, and any associated costs, and weigh them against the benefits likely to be achieved by implementing the TIF project. An eligible entity will probably apply only if it determines that the likely benefits exceed the costs of preparing an application and implementing a project. The likely benefits of applying for a TIF program grant include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of its TIF application to spur development and implementation of PBCSs without Federal funding through the TIF program.

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 Urban Institute's National Center for Charitable Statistics reported that of 146,802 nonprofit organizations that had an educational mission and reported revenue to the Internal Revenue Service (IRS) by January 2010, 142,357 (97 percent) had revenues of $5 million or less. In addition, there are 12,484 LEAs in the country that meet the SBA's definition of small entity. While these entities are eligible to apply for funding under the TIF program, the Secretary believes that only a small number of them will be interested in applying, thus reducing the likelihood that the priorities, requirements, definitions, and selection criteria proposed in this notice will have a significant economic impact on small entities. In the first TIF competition that the Department held in FY 2006, approximately 21 nonprofit organizations applied for funding in partnership with an LEA or SEA, and few of these organizations appeared to be a small entity. The Secretary has no reason to believe that a future competition under this program would be different. To the contrary, we expect that the competitions run under Public Law 111–8 and the ARRA will be similar to the FY 2006 competition because only a limited number of nonprofit organizations are working actively on the development of teacher and school leader PBCSs and many of these organizations are larger organizations.

In addition, the Secretary believes that the priorities, requirements, definitions, and selection criteria established in this notice do not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the final action. That is, the length of the applications those entities would submit in the absence of the final regulatory action and the time needed to prepare an application would likely be the same.

Further, this final regulatory action may help a small entity determine whether it has the interest, need, or capacity to implement activities under the program and, thus, prevent a small entity that does not have such an interest, need, or capacity from absorbing the burden of applying.

This final 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 and with any matching funds provided by private-sector partners.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR 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 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 computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: 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) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

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

Dated: May 18, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

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