AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
LITTERA SCRIPTA MANET
1985

FEDERAL REGISTER

Vol. 77 Thursday,
No. 115 June 14, 2012

Part II

Department of Education

Final Priorities, Requirements, Definitions, and Selection Criteria—Teacher Incentive Fund (TIF) Program; Notice

DEPARTMENT OF EDUCATION

[Docket ID ED–2012–OESE–0001]

RIN 1810–AB12

Final Priorities, Requirements, Definitions, and Selection Criteria—Teacher Incentive Fund (TIF) Program

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

ACTION: Notice.

CFDA Numbers: 84.374A and 84.374B

SUMMARY: The Assistant Secretary for Elementary and Secondary Education announces priorities, requirements, definitions, and selection criteria under the TIF program. The Assistant Secretary may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2012 and later years. We are taking this action so that TIF-funded performance-based compensation systems (PBCSs) will be successful and sustained mechanisms that contribute to continual improvement of instruction, to increases in teacher and principal effectiveness, and, ultimately, to improvements in student achievement in high-need schools. To accomplish these goals, we are establishing priorities, requirements, definitions, and selection criteria that are designed to ensure that TIF grantees use high-quality LEA-wide evaluation and support systems that identify effective educators in order to improve instruction by informing performance-based compensation and other key human capital decisions.

DATES: *Effective Date:* These priorities, requirements, and definitions are effective July 16, 2012.

FOR FURTHER INFORMATION CONTACT: Miriam Lund, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E245, Washington, DC 20202–6450. Telephone: (202) 401–2871 or by email: *miriam.lund@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the TIF program is to support the development and implementation of sustainable PBCSs for teachers, principals, and other personnel in high-need schools in order to increase educator effectiveness and student achievement in those schools.

Program Authority: The Department of Education Appropriations Act, 2012 (Division F, Title III of Pub. L. 112–74).

The Statutory Requirements

The Department's FY 2012 appropriation provides TIF funds for competitive grants to eligible entities to develop and implement PBCSs for teachers, principals, and other personnel in high-need schools. Eligible entities for these funds are:

(a) Local educational agencies (LEAs), including charter schools that are LEAs.

(b) States.

(c) Partnerships of—

(1) An LEA, a State, or both; and

(2) At least one nonprofit organization.

Eligible entities must use TIF funds to develop and implement, in high-need schools, a PBCS that—

(a) Considers gains in student academic achievement, as well as classroom evaluations conducted multiple times during each school year, among other factors; and

(b) Provides educators with incentives to take on additional responsibilities and leadership roles.

A grantee (1) must demonstrate that its PBCS is developed with the input of teachers and school leaders in the schools and LEAs that the grant will serve, and (2) may use TIF funds to develop or improve systems and tools that would enhance the quality and success of the PBCS, such as high-quality teacher evaluations and tools that measure growth in student achievement. In addition, an applicant must include a plan to sustain financially the activities conducted and the systems developed under the grant once the grant period has expired.

We published a notice of proposed priorities, requirements, definitions, and selection criteria for this program in the **Federal Register** on February 29, 2012 (77 FR 12257) (NPP). The NPP contained background information and our reasons for proposing the particular priorities, requirements, definitions, and selection criteria.

There are differences between the NPP and this notice of final priorities, requirements, definitions, and selection criteria (NFP) as discussed in the *Major Changes in the Final Priorities, Requirements, Definitions, and Selection Criteria* and *Analysis of Comments and Changes* sections elsewhere in this notice.

Public Comment: In response to our invitation in the NPP, 32 parties submitted comments on the proposed priorities, requirements, definitions, and selection criteria. We used these comments to revise, improve, and clarify the priorities, requirements, definitions, and selection criteria.

We group major issues according to subject and discuss other substantive issues under the title of the item to which they pertain. Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raised concerns not directly related to the proposed priorities, requirements, definitions, or 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* section that follows.

Priorities

We have made the following changes to the priorities for this program:

- We have revised *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* to clarify that the LEA-wide evaluation system must use classroom-level growth data to evaluate teachers (as defined in this notice) with regular instructional responsibilities consistent with paragraph (2)(ii) of the priority. An applicant must use classroom-level growth, rather than school-level or grade-level growth, in significant part, when evaluating teachers with regular instructional responsibilities because we believe classroom-level student growth data is the most appropriate for evaluating the individual effectiveness of these teachers. If an applicant wishes to use school-level or grade-level growth to evaluate teachers with regular instructional responsibilities, it may do so, but the Department will consider the use of those data to be the use of ''additional factors'' under paragraph (2)(iii) of Priority 2.
- We have revised paragraph (2) of *Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM*), to better align this priority with the language in *Selection Criterion (g)—Comprehensive Approach To Improving STEM Instruction.* With this change, while applicants will be required to describe how each participating LEA will identify and develop the unique competencies that characterize effective STEM teachers, they will not need to describe how those LEAs will evaluate those competencies to meet this priority.

• We have amended *Priority 4—New or Rural Applicants to the Teacher Incentive Fund,* (referred to as *Priority 4—New Applicants to the Teacher Incentive Fund in the NPP*) to give priority to projects serving rural LEAs (as defined in this notice). An applicant can meet this priority if it provides—and the Department accepts—an assurance that each LEA to be served by the project is a rural LEA or an LEA not served by a current or past TIF grant.

• We have revised *Priority 5—An Educator Salary Structure Based on Effectiveness,* by removing the language requiring applicants to propose a comprehensive revision to each participating LEA's salary structure. The revised priority no longer requires an applicant to describe the salary increase that educators (as defined in this notice) with an evaluation rating of effective or higher would receive, or how TIF funds used for salary increases would be used only to support the additional cost of the revised salaries. Instead, the priority now requires that the applicant propose a timeline for implementing a salary structure based on educator effectiveness, and describe the extent to which and how each LEA will use overall evaluation ratings to determine educator salaries as well as how TIF funds will support the salary structure based on effectiveness in high-need schools identified in response to *Requirement 3—Documentation of High-Need Schools.* While we have eased the application requirements related to this priority, to implement their new salary structures many applicants after award will need to design and implement comprehensive revisions to their salary structures. Further, we have amended the priority to require applicants to describe the feasibility of implementing the proposed salary structure and by removing language requiring that implementation begin no later than the third year of the project period.

Requirements

We have made the following changes to the requirements for this program:

• We have revised *Requirement 5—Limitations on Multiple Applications,* to specify that an LEA may participate in no more than one application in any fiscal year, an SEA may participate in no more than one group application for the General TIF Competition and no more than one group application for the TIF Competition with a Focus on STEM in any fiscal year, and a nonprofit organization may participate in multiple group applications under either one or both competitions in any fiscal year.

• We have revised *Requirement 6—Use of TIF Funds to Support the PBCS,* to clarify that TIF funds may be used to support the costs of both salaries and salary augmentations for teachers who take on additional responsibilities and leadership roles (as defined in this notice), including career ladder positions (as defined in this notice), up to the salary cost of 1 full-time equivalent position for every 12 teachers who are not in a career ladder position in the high-need schools (as defined in this notice) identified in response to *Requirement 3—Documentation of High-Need Schools.* Further, we have added an exception to the limitation on educator compensation to allow applicants to compensate educators who attend TIF-supported professional development outside of official duty hours.

Definitions

• We have defined ''rural local educational agency'', to mean an LEA that is eligible under the Small Rural School Achievement program or the Rural and Low-Income School program authorized under Title VI, Part B of the ESEA.

Selection Criteria

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

• We have amended *Selection Criterion (a)(2)(iii)—A Coherent and Comprehensive Human Capital Management System,* to evaluate the feasibility of an applicant's proposed human capital management system (HCMS) (as defined in this notice) based, in part, on any applicable LEA-level policies that might inhibit or facilitate the use of educator effectiveness as a factor in human capital decisions.

• We have amended *Selection Criterion (b)(2)(ii)—Rigorous, Valid, and Reliable Educator Evaluation Systems* to evaluate the quality of each participating LEA's evaluation system based, in part, on the evidence provided by an applicant to demonstrate the rigor and comparability of the assessment tools used for educator evaluation.

• We have amended *Selection Criterion (c)—Professional Development Systems To Support the Needs of Teachers and Principals Identified Through the Evaluation Process,* to evaluate the quality of each participating LEA's plan for professional development based, in part, on the extent to which the plan provides for school-based, job-embedded opportunities for educators to transfer new knowledge into practice.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities, requirements, definitions, and selection criteria since publication of the NPP follows.

General Comments

Comment: Several commenters expressed strong support for the TIF program, as outlined in the NPP, both for its overall effort to improve evaluation, to provide educators with support, and to provide additional compensation for effective educators and for specific components of the NPP, including the emphasis on STEM under *Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM).*

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 recommended designations of absolute, competitive preference, or invitational for the proposed priorities.

Discussion: The Department appreciates these recommendations, and has considered them in developing the notice inviting applications for the fiscal year 2012 TIF competition (NIA). To preserve future flexibility to adjust priority designations as needed to better serve the needs of LEAs, the Department is not designating in this notice whether priorities are absolute, competitive preference, or invitational.

Changes: None.

Comment: We received several comments regarding the LEA-wide provisions, such as *Priority 1—An LEA-Wide Human Capital Management System (HCMS) With Educator Evaluation Systems at the Center* and *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* included in the NPP. One commenter expressed support for Priority 1, and recommended that we designate it as absolute. According to the commenter, the priority underscores the importance of comprehensive approaches to human capital management and takes advantage of economies of scale in promoting LEA-wide strategies.

However, several commenters opposed the LEA-wide provisions in Priority 1 and Priority 2, and requested that we remove from the notice any requirement that applicants implement LEA-wide human capital management and educator evaluation systems. One commenter stated that it would be premature to require LEAs to undertake LEA-wide human capital management

reform while also working to implement a new PBCS. Another commenter argued that LEA-wide requirements may discourage LEAs from attempting new reforms. According to this and other commenters, pilot efforts are a preferable alternative to requiring LEA-wide reform because pilot efforts introduce change in manageable steps, and LEAs are often willing to bring reforms to scale after implementing a pilot demonstration.

Further, one commenter argued against requiring an LEA-wide evaluation system and PBCS, because, according to the commenter, performance-based compensation and evaluation reforms work best for high-need schools when they provide opportunities to educators in those schools that are not also available to educators in non-high-need schools.

Finally, some commenters expressed concern that an LEA-wide approach may encourage applicants to abandon rigorous measures of educator buy-in, such as teacher votes, in favor of less rigorous measures. One commenter expressed concern that Priority 1 promotes a top-down approach to human capital management reform, when, according to the commenter, these efforts are most effectively driven by teachers. One commenter predicted that these provisions would essentially eliminate applications from strong union areas.

Discussion: As noted in the NPP, we believe that, to be successful and sustainable, any PBCS must be an integral part of an HCMS that is well-designed and implemented LEA-wide. In the absence of sustainable, LEA-wide educator evaluation systems that focus on educator effectiveness and underlie key parts of the LEA's HCMS, the TIF-supported PBCS is not likely to be sustainable. For this reason, we believe it to be both reasonable and advantageous to require LEAs to undertake, under *Priority 1—An LEA-wide Human Capital Management System (HCMS) With Educator Evaluation Systems at the Center* and *Priority 2—LEA-wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* LEA-wide human capital management reforms that support each LEA's PBCSs. Further, while we agree that pilot projects may provide an LEA with the opportunity to explore the benefits of an innovative approach, and may create the possibility for long-term, large-scale implementation, we disagree with the assertion that the LEA-wide implementation requirements in this notice will discourage LEAs from attempting reform. We have designed the priorities, requirements, and definitions included in this notice to align with the provisions of the Department's Elementary and Secondary Education Act of 1965, as amended (ESEA) Flexibility initiative. Under that initiative, States that receive flexibility must agree to implement LEA-wide educator evaluation systems, and, to date, the Department has received 38 requests from States for flexibility and has granted 11 requests. Based on our experience with the ESEA Flexibility initiative, we believe that requiring LEA-wide implementation will further, rather than inhibit, LEA reform efforts.

While we wish to clarify that nothing in this notice requires applicants to implement an LEA-wide PBCS, we disagree with the assertion that an LEA-wide PBCS and evaluation system would provide fewer benefits to high-need schools than would a smaller-scale implementation plan that focuses solely on high-need schools. To the contrary, we believe that an LEA-wide evaluation system will strengthen the capacity of high-need schools, which are the only schools that may implement a TIF-funded PBCS, to use performance-based compensation to identify and attract educators from other schools in an LEA. Further, for an applicant that proposes to expand its PBCS to educators in non-high-need schools in the LEA, using non-TIF funds, nothing in this notice would preclude the applicant from designing its PBCSs to offer educators in high-need schools larger salary augmentations than those educators in non-high-need schools.

With regard to educator evaluation reform, we believe that evaluation systems are more likely to receive the broad LEA commitment that is crucial to their success and sustainability if those systems are used to evaluate every educator within the LEA. We designed the priorities, requirements, definitions, and selection criteria in this notice so that applications will be evaluated based on the extent to which the proposed project has educator involvement and support. Therefore, applicants will be less likely to receive funding if they abandon rigorous measures of teacher buy-in or use a top-down approach to project development and implementation that does not include high-quality teacher and principal involvement. Furthermore, we disagree with the assertion that the LEA-wide provisions included in this notice will inhibit unionized LEAs from applying. The Department believes that for those LEAs the process for securing widespread, high-quality educator support is more straightforward than for LEAs where unions are not designated as the exclusive representative of educators for the purposes of collective bargaining.

For these reasons, the Department declines to revise the provisions in Priorities 1 and 2 that require applicants to implement an LEA-wide HCMS and educator evaluation systems.

Changes: None.

Comment: One commenter noted that it may be difficult for charter school consortia to satisfy *Priority 1—An LEA-Wide HCMS With Educator Evaluation Systems at the Center.* The commenter expressed concern that, because charter schools are LEAs, we would require each charter school to develop its own HCMS.

Discussion: For charter-school LEAs, the HCMS described in response to *Priority 1—An LEA-Wide HCMS With Educator Evaluation Systems at the Center* must apply to the entire charter school, but, depending on the organization of the charter consortia or the involvement of a charter management organization, the HCMS may extend to more than one charter school. In the case of a charter-school LEA consortium with a single shared HCMS, an applicant could describe how the various components of the HCMS apply to each charter-school LEA, and would not need to implement a separate HCMS for each individual charter school.

Changes: None.

Comment: One commenter stated that there is insufficient evidence that evaluation systems are ready for large-scale implementation, and no evidence that evaluation systems are more important for school improvement than other investments. This commenter argued that we can help LEAs to implement educator incentive programs without requiring evaluation systems, which, according to the commenter, will be unsustainable without continued Federal assistance.

Discussion: The Department rejects the contention that there is insufficient evidence that reformed educator evaluation systems can be implemented at scale; the current efforts of numerous States and LEAs to reform their evaluation systems provide ample evidence of the viability of this strategy. The Department also does not agree that it would be worthwhile to invest in educator incentive programs that are not linked to a comprehensive educator evaluation system that meaningfully differentiates educator performance. Performance-based compensation systems (as defined in this notice) that are disconnected from an LEA's official evaluation system have proven difficult

to sustain and require a costly and burdensome duplication of effort.

Changes: None.

Comment: A few commenters stated that our encouragement of LEA-wide performance systems was laudable, but unrealistic, as TIF provides funding for only a portion of an LEA's schools. Further, one commenter argued that implementing LEA-wide educator evaluation systems would place a large financial burden on LEAs during tight budget times.

Discussion: TIF funds may be used for the development or improvement of systems and tools that would enhance the quality and success of the PBCS and benefit the entire LEA. TIF is, therefore, a potential source of funding for LEAs seeking to reform their HCMS and educator evaluation systems in what one commenter noted are tight budget times. With these and other resources, we believe that the development and implementation of LEA-wide performance systems is a very attainable goal.

Changes: None.

Comment: A few commenters noted that the LEA-wide provisions in this notice would favor small districts, charter schools, and charter management organizations over large districts because larger districts would face difficulty securing the educator support and outreach needed for implementation. To avoid penalizing larger LEAs, one commenter recommended that we relax the LEA-wide provisions of the notice to allow LEAs to participate if a substantial number of their schools, to be determined by the Department, agree to participate in the TIF-supported PBCS.

Discussion: The Department does not agree that the LEA-wide provisions in this notice disadvantage large districts. Larger LEAs typically have greater human capital, technology, and other resources needed to implement the systemic reforms promoted by the TIF program than smaller LEAs have. We also note that, to address difficulties in implementation in any type of LEA, we permit the LEA-wide educator evaluation system requirements to be phased in over time, with full implementation required at the beginning of the third project year. We decline to accept the commenter's recommendation that the Department permit an LEA to implement reformed educator evaluation systems on a non-LEA-wide basis because this approach would not result in the system-wide change we believe is necessary to support the sustainability and success of the TIF-funded PBCS.

Changes: None.

Comment: Two commenters recommended that we amend the priorities, requirements, definitions, and selection criteria so as to more strongly emphasize educator development and support as the central purpose of human capital management. One of the commenters suggested that we amend paragraph (3) of *Priority 1—An LEA-Wide Human Capital Management System (HCMS) With Educator Evaluation Systems at the Center,* to require applicants to describe human capital strategies the LEA uses or will use to ensure that high-need schools are able to support effective teachers. Further, the commenter recommended that we add a new paragraph in Priority 2 to require applicants to describe how the LEA's evaluation systems will be used to identify and address the professional development needs of educators.

A second commenter stated that evidence-based professional development is more effective in improving student outcomes than performance-based compensation, and, therefore, should be the foundation of proposed HCMSs. According to this commenter, an HCMS should focus on diagnosing areas in need of improvement, providing timely and targeted professional development to address those areas, and monitoring progress to ensure the success of educators and students. Further, this commenter noted that punitive HCMS that focus on educator dismissal are ineffective for promoting educator competency or student growth.

Discussion: The Department fully agrees that professional development must be a key component of any HCMS, and that evaluation systems are critical tools that should guide LEA- and school-level decisions regarding instructional supports. In this notice, as in the NPP, we clarify that a well-designed HCMS, including the evaluation system supporting it, must be aligned with the LEA's vision of instructional improvement (as defined in this notice) that summarizes: (1) The key competencies and behaviors of effective teaching needed to produce high levels of student achievement, and (2) how educators acquire or improve these competencies and behaviors. Accordingly, the Department believes that LEA-wide evaluation systems aligned with this vision are an extremely valuable tool for professional development and improvement. When the evaluation rubrics used in these systems include the key competencies the LEA has identified in its vision of instructional improvement, the feedback and professional learning inherent in the evaluation process will give all educators a clearer understanding of what the LEA has identified as the key competencies needed to be effective educators. Given these linkages between evaluation, professional development, and vision of instructional improvement that are provided for in this notice, we believe it is unnecessary to modify the priorities, requirements, definitions, and selection criteria to further highlight the use of evaluation information for providing educator support.

The Department disagrees with the second commenter's assertion that professional development alone is more effective in improving student outcomes than a PBCS that recognizes and rewards educators who have an impact on student achievement. Rather, it is the Department's view that student outcomes are most likely to improve when an LEA implements a coherent and comprehensive HCMS that is aligned to its vision of instructional improvement and that integrates both professional development and a PBCS.

Changes: None.

Comment: Three commenters provided feedback regarding the timeline for implementing TIF-funded projects that was included in the NPP. One commenter recommended that we revise the priorities, requirements, definitions, and selection criteria so that the first year of a TIF-funded project's implementation would take place in 2013–2014 following an optional planning period of one year. The commenter stated that this shift in the timeline would be appropriate given that the Department is likely to award grants during the most difficult time of year for applicants to begin implementation. A second commenter encouraged us to allow LEAs to pilot evaluation systems in a sample of schools prior to full implementation, rather than require LEAs to fully implement the evaluation systems in all schools simultaneously. A third commenter expressed support for the timeline for implementing of the evaluation system, and stated that the requirements provided applicants with adequate time to gain competence in building and using the new evaluation system before the LEA uses the evaluations to make decisions.

Discussion: Under the proposed priorities, requirements, definitions, and selection criteria, a grantee must begin the implementation of its TIF project at the beginning of the first year of the project period. However, we have included provisions in *Priority 1—An LEA-Wide HCMS With Educator Evaluation Systems at the Center* and *Priority 2—LEA-Wide Educator*

Evaluation Systems Based, in Significant Part, on Student Growth to allow grantees to delay the implementation of certain components of their projects. For example, under Priority 2, a grantee must implement its proposed evaluation system in at least a subset of an LEA's schools, as the official system for assigning overall evaluation ratings, by no later than the beginning of the second year of the project period. Because LEA-wide implementation would not need to begin for another year, we believe that the flexibility included in these priorities already addresses the concerns raised by the commenter because it allows for implementation of the LEA-wide evaluation system over a long period of time.

Further, the Department understands that the implementation of effective and sustained TIF-funded PBCSs requires substantial effort on the part of its grantees. For this reason, applicants under a TIF competition using the priorities, requirements, definitions, and selection criteria in this notice will be asked to provide additional information regarding their capacity for implementation (e.g., on the extent to which they have developed their evaluation system rubric, and on the extent to which they have obtained educator support), which will allow reviewers to evaluate the strength of their applications. Applicants will also provide timelines for their projects to satisfy the provisions of Priority 1 and Priority 2; these timelines will better meet local needs than would a uniform planning period for all grantees. For these reasons, we decline to allow applicants an optional planning period prior to implementation.

Changes: None.

Comment: A few commenters encouraged us to require that applicants use performance measures that are valid and reliable for use in educator evaluation, while one commenter stressed that performance measures should be validated and found reliable for each type of human capital decision prior to their use for that decision.

Discussion: The Department believes that the validity and reliability of performance measures for the determination of educator effectiveness are key for maintaining the credibility of the measures, first, among stakeholders who will use them to inform their practice and manage human capital, and, second, among the educators affected by the outcome of the evaluation using the measures and any consequences or rewards that follow. With this in mind, the Department will evaluate applicants, under *Selection Criterion (b)(2)—Rigorous, Valid, and Reliable Educator Evaluation Systems,* based on the extent to which they have provided (1) a clear rationale to support their approach to differentiating performance levels based on the level of student growth (as defined in this notice) achieved and (2) evidence, such as current research and best practices, that supports the LEA's choice of student growth models and demonstrates the rigor and comparability of assessment tools. Further, the Department will evaluate applicants, under Selection Criterion (b)(3), based on the extent to which they have made substantial progress in developing a high-quality plan for multiple teacher and principal (as defined in this notice) observations, including the procedures for ensuring a high-degree of inter-rater reliability.

We do not believe it is necessary to require that measures validated for use in evaluation be validated further for use in other human capital decisions. Rather, once measures are used to develop an educator's overall evaluation rating, we expect that the rating will be used to inform other human capital decisions in accordance with the LEA's vision of instructional improvement.

Changes: None.

Comment: We received many comments regarding the use of student growth measures to inform human capital decisions, such as the requirement, under *Priority 2—LEA-wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* to use these measures as a significant factor in educator evaluation systems. Three commenters expressed support for the use of student growth for informing educator evaluation, though one stated that student growth should not be used for other types of human capital decisions, including decisions regarding compensation.

One commenter stated that student growth should be introduced gradually into educator evaluation systems, and that both the weight given to student growth and the prevalence of its use among educators should increase following the availability of new assessments for evaluating educators and the availability of professional development aligned with the evaluation system.

Several other commenters expressed concern that the NPP relied excessively on indicators of student achievement and student growth as predictors of teacher and principal effectiveness, and offered arguments against the use of student growth to inform human capital management. One commenter, in particular, recommended that we neither require nor encourage the use of student growth in educator evaluation, and advised that we, at most, allow grantees the option of incorporating student growth into educator evaluation. A few commenters stated that the NPP put a disproportionate weight on student growth as compared with performance measures that the commenters regarded as more reliable, such as classroom observations and student surveys.

The commenters provided a number of arguments against the use of student growth. First, a few commenters cautioned against the use of value-added measures due to inaccuracy, bias, instability, and lack of precision, while others cautioned against the use of student growth, irrespective of the model used, for any human capital decision-making, including for evaluation. Second, commenters argued that the use of student growth for human capital decisions would make educators reluctant to teach or enroll English learners, students with disabilities, students of color, low-income students, and students connected with either child welfare or released from juvenile detention, or otherwise encourage educators to push students out of school using formal disenrollment, discouragement, or the excessive and disparate use of discipline. Third, some commenters stressed that an emphasis on student growth would encourage educators to teach to the test, engage in cheating behaviors, and narrow the scope of the curriculum offered to students.

Discussion: To meet *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* an applicant must describe its timeline for implementing its proposed LEA-wide educator evaluation systems. Consistent with this priority, an applicant must implement the evaluation system for at least a subset of educators or in at least a subset of schools no later than the beginning of the second year of the grant's project period, and must use the evaluation system to evaluate all educators in the LEA by no later than the beginning of the third year of the grant's project period. We find this timeline, which allows for gradual implementation, to be consistent with the recommendation presented by one of the commenters. However, from the start of this implementation, each educator's overall evaluation rating must be based, in significant part, on student growth. We believe that student growth data is a meaningful measure of educator effectiveness and that its use in TIF projects is wholly consistent with the

statutory requirement that TIF-funded PBCSs consider gains in student academic achievement. We wish to clarify for the commenters that, for the purposes of this notice, ''student growth'' means the change in student achievement for an individual student between two or more points in time, and, further, that nothing in this notice requires an applicant to use value-added measures to assess student growth.

Furthermore, student growth is just one of the multiple measures that are required under the rigorous, valid, and reliable educator evaluation systems required under Priority 2; this priority also requires two or more observations during each evaluation period and the use of additional factors determined by the LEA. While the Department agrees with commenters that student growth should not be used in isolation to make human capital management decisions, we also believe that student growth, as a meaningful measure of effectiveness, should be weighed significantly when making a number of human capital decisions, including decisions on professional development and performance-based compensation. The Department further believes that, from the start of the evaluation system's implementation, including student growth as one of multiple measures is important so that human capital decisions, such as those regarding professional development, are based upon a range of measures and do not consider any one measure in isolation. We believe the use of multiple measures, as provided for under Priority 2, ensures that no one measure is relied upon disproportionately, as some commenters fear might occur.

Further, the use of multiple measures is essential to evaluate educators based on a range of important measures, beyond student achievement, so that they may improve instruction for students with diverse learning needs and provide all students with a well-rounded, complete education that will prepare them for college and a career. Accordingly, the Department will evaluate applicants, under paragraphs (5) and (6) of *Selection Criterion (b)—Rigorous, Valid, and Reliable Educator Evaluation Systems,* based on whether the proposed educator evaluation systems evaluate the practice of teachers and principals in meeting the needs of special student populations, such as students with disabilities and English learners. While we find it worthwhile to highlight the needs of these two student subgroups, we would encourage applicants to consider how their evaluation systems might assess the competencies and behaviors of teachers, principals, and other personnel (as defined in this notice) so as to improve the capacity of school staff to instruct and support various types of students. In response to the commenters' concerns regarding school pushout and excessive or disparate use of discipline, we believe that the priorities, requirements, definitions, and selection criteria in this notice provide applicants with a unique opportunity to build comprehensive and robust evaluation systems that may monitor for these behaviors and provide the professional development that teachers and principals need to end these practices. In particular, we encourage applicants to consider how the ''additional factors'' requirement, under paragraph (2)(iii) of Priority 2, will allow for comprehensive assessments.

Regarding the comments about the use of standardized tests and potentially encouraging dishonest behavior among educators, the Department strongly disagrees with the notion that the existence of cheating or ''teaching to the test'' reflects on the merits of standardized testing or the use of standardized test data for accountability purposes. Instead, cheating robs students of their fair shot at a world-class education, and cheating reflects a willingness to lie at children's expense to avoid accountability. It is the Department's belief that standardized testing is no more vulnerable to cheating behaviors than other forms of instructional accountability; rather, under any educational performance assessment designed for either schools or educators, we must work to develop high-quality, rigorous assessment tools and work to ensure that performance metrics are fair, transparent, and rigorous.

Lastly, we disagree with the commenters' assertion that the use of student growth in educator evaluation, as provided for in the priorities, requirements, definitions, and selection criteria included in this notice, may lead to a narrowing of student curriculum. To meet Priority 2, an applicant must propose LEA-wide educator evaluation systems that generate an overall evaluation rating for every teacher in the LEA, irrespective of grade or subject taught and in accordance with applicable State and local definitions of ''teacher''. Because TIF funds may be used, under *Requirement 6—Use of TIF Funds to Support the PBCS,* to develop and improve systems and tools, such as assessments, that support the PBCS and benefit the entire LEA, TIF presents a unique opportunity for applicants to modify their existing evaluation systems so that they properly account for the full range of curriculum, be it math instruction, health instruction, arts instruction, or instruction in other subjects. It is our belief that the priorities and requirements in this notice will encourage applicants to design evaluation systems that use a range of performance assessments, both in subjects in which assessments are required and not required under section 1111(b)(3) of ESEA, to evaluate educator effectiveness. Therefore, there is no reason to assume that the use of student growth, as a factor in determining overall evaluation ratings, will lead to a narrowing of student curriculum.

Changes: None.

Comment: Four commenters recommended that we invest in research related to the impact of various human capital management decisions on educators and students. One commenter encouraged us to invest in research on effective, evaluation-driven professional development. Another commenter expressed support for the continued evaluation of TIF-funded projects. Two other commenters requested that we conduct research to determine whether performance-based compensation has had disparate impact, considering graduation rates and disciplinary action, on students of color, students from low-income communities, English learners, or students with disabilities.

Discussion: The Department recognizes that there are many aspects of performance-based compensation and human capital management systems in LEAs and schools that would benefit from additional research. The Department will continue to look to recommendations from the field, such as those made by the commenters, when determining which research questions are of the greatest significance.

Changes: None.

Comment: One commenter strongly opposed the proposed priorities, requirements, definitions, and selection criteria due to a concern that, according to the commenter, they would directly affect issues and provisions that are subject to collective bargaining under State statutes. The commenter stated that the proposed action may encourage applicants to circumvent the provisions of collectively bargained agreements, where they exist, or exclude stakeholders from providing ongoing input into subjects governed by these provisions. A second commenter recommended that we require that the elements of the applicant's proposed HCMS, including the student growth measures and their use for human capital management, be collectively bargained where unions have been

designated the exclusive representative of educators for the purposes of collective bargaining.

Discussion: The Department frequently issues regulations that may impact education-related matters that are subject to collective bargaining. Further, we disagree with the commenter's speculation that the TIF program may encourage applicants to circumvent the provisions of collectively bargained agreements or exclude stakeholders from providing ongoing input into subjects governed by these provisions. To the contrary, applicants must provide evidence that educator involvement in the design of the PBCS and the educator evaluation systems has been extensive and will continue to be extensive during the grant period. To clarify the relationship between other Federal, State, and local laws and the regulations that govern the TIF program, we have added a ''Note'' to *Requirement 2—Involvement and Support of Teachers and Principals* to inform applicants of their responsibilities if they become grantees under the TIF program. The note states that it is the responsibility of the grantee to ensure that, in observing the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under terms of collective bargaining agreements, memoranda of understanding, or other agreements between those employees and their employers, the grantee also remains in compliance with the priorities, requirements, and definitions included in this notice. The note goes on to clarify that in the event that a grantee is unable to comply with these priorities, requirements, and definitions, the Department may take appropriate enforcement action (e.g., discontinue support for the project).

With regard to the request that we require that the elements of an applicant's HCMS, including student growth measures and their use, be collectively bargained, we decline to make this change because we believe it would constitute inappropriate Federal involvement in local matters.

Changes: We have added a *Note* to Requirement 2 that clarifies the relationship between existing Federal, State, and local law and collective bargaining agreements and similar agreements between employees and employers, and the priorities, requirements, and definitions established in this notice.

Comment: Five commenters opposed the Department using Federal funds to support performance-based compensation. These commenters stated that there is a lack of evidence demonstrating that additional educator compensation results in improved academic outcomes for students. Of these commenters, four also objected to funding performance-based compensation systems due to concerns that a PBCS might encourage teachers and principals to push struggling and at-risk youth out of their classrooms and schools.

Discussion: The Department acknowledges the concerns raised by these commenters, and continues to invest in the research to assess the impact of performance-based compensation systems on student growth and educator behavior. However, in The Department of Education Appropriations Act, 2012 (Division F, Title III of Public Law 112–74), Congress authorized and appropriated funding for the TIF program specifically to support the development and use of PBCSs in high-need schools. Through the TIF program, the Department is implementing the provisions of this law.

Changes: None.

Comment: Two commenters recommended that the Department revise the priorities, requirements, definitions, and selection criteria to promote evidence-based programs. These commenters stated that, in making these changes, we would encourage applicants to direct their scarce resources toward programs that are evidence-based, sustainable, and scalable.

Discussion: The Department fully agrees that applicants should use TIF funds to support evidence-based, sustainable, and scalable approaches for improving educator effectiveness. To meet *Priority 1—An LEA-Wide HCMS With Educator Evaluation Systems at the Center* and *Priority 2—LEA–Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* applicants must implement an LEA-wide HCMS, including LEA-wide evaluation systems, which will support the implementation of a PBCS to be implemented in high-need schools under the grant. As mentioned elsewhere in this notice, it is the Department's belief that these LEA-wide systems will support the sustainability and scalability of all TIF-funded PBCSs. Moreover, we also intend, under *Selection Criterion (f)—Sustainability,* to award points to applicants that develop a feasible sustainability plan that identifies non-TIF resources that would support the PBCS and evaluations systems during and after the grant period. As Congress has authorized and appropriated funding for the TIF program specifically to support the development and implementation of PBCSs in high-need schools, we encourage applicants to embed evidence-based approaches into their plans to evaluate, develop, and reward educators as they respond to the priorities, requirements, definitions, and selection criteria in this notice. Under *Selection Criterion (b)—Rigorous, Valid, and Reliable Educator Evaluation Systems,* in particular, we intend to award points to those applicants that provide evidence supporting the LEA's (or LEAs') selection of student growth models and assessments, and to those applicants that have made substantial progress in developing procedures for ensuring a high-degree of inter-rater reliability between observers. For these reasons, we do not believe any changes are necessary; we believe that that priorities and selection criteria already address the concerns raised by the commenters.

Changes: None.

Comment: Two commenters requested that the Department further clarify the local match requirements applicable to this program.

Discussion: Nothing in the NPP or this notice requires applicants to provide a non-Federal or non-TIF match, local or otherwise, for their TIF projects. That said, it is true that we have designed the selection criteria to award points to applicants that will leverage non-TIF funds to support their projects. We have done this in view of the statutory requirement that applications for TIF grants include a plan to sustain financially the activities conducted and systems developed under the grant once the grant period has ended, and because we believe that applicants should work to ensure that TIF-funded PBCSs, and the evaluation systems that support them, are themselves sustainable. Specifically, under *Selection Criterion (f)—Sustainability,* we will award points to applicants that develop a feasible sustainability plan that identifies non-TIF resources that will be used to support the PBCS and evaluations systems during and after the grant period. In addition, for applicants applying to the TIF Competition with a Focus on STEM, under *Selection Criterion (g)—Comprehensive Approach to Improving STEM Instruction,* we will award points to applicants that propose to significantly leverage STEM-related funds across other Federal, State, and local programs when implementing a high-quality and comprehensive STEM plan.

Changes: None.

Comment: One commenter encouraged us to safeguard the privacy of educators, and the integrity of performance evaluations, by taking a stand against the publishing of individual evaluation data. The commenter expressed concern that providing individual evaluation data to the public injures the professional relationship needed to conduct meaningful evaluations and provide substantive feedback to educators. Further, in cases where evaluation systems are still under development, the data may not yet provide an accurate assessment of individual effectiveness.

Discussion: While the Department acknowledges the concerns raised by the commenter, we decline to address the release of individual educator's evaluation data in this notice. The release of this type of data is governed by State or local law and policies. We believe that directing grantees to release or withhold this type of information would constitute inappropriate Federal involvement in State and local matters.

Changes: None.

Comment: One commenter recommended that, in funding TIF applications, we give priority to applicant capacity over the quality of project design or project scope, and fund those applicants that can demonstrate the capacity to implement high-quality project design or project scope above applicants without this capacity.

Discussion: While the Department fully agrees that TIF should support applicants that have the capacity to implement an effective and sustainable PBCS, we also believe it is important to encourage applicants to propose high-quality project designs. For example, under *Selection Criterion (a)(2)(iii)—A Coherent and Comprehensive Human Capital Management System,* we will evaluate applications based on the extent to which the participating LEAs have experience using evaluation data to inform human capital decision-making. Further, under *Selection Criterion (b)(3)—Rigorous, Valid, and Reliable Educator Evaluation Systems,* we will award points to those applications that demonstrate that the participating LEAs have made substantial progress in developing a high-quality plan for completing multiple teacher and principal observations. Lastly, we have devoted all of *Selection Criterion (e)—Project Management* to project management, and will give points to applicants that have carefully considered issues such as staff and timeline for implementation.

Further, we do not designate in this notice the point values for these selection criteria. With this approach, we retain the flexibility to adjust the point allocation in future TIF competitions to achieve the appropriate balance between capacity for implementation and quality of project design in any given year. For the 2012 competition, the Department has considered the commenter's recommendations in designating point values in the NIA.

Changes: None.

Comment: One commenter requested that we broaden the eligibility requirements for the TIF program to allow more schools and LEAs to participate in TIF-funded projects. Specifically, the commenter stated that we should allow schools and LEAs located in economically depressed counties (*i.e.,* counties identified by the U.S. Department of Commerce as having a per-capita personal income below the national average, below the State average, and ranked in the bottom twenty-five percent of counties within the State in per-capita income) to be eligible for TIF funding. The commenter stated that, by broadening eligibility in this way, TIF could better assist high-need areas where Federal aid participation is low due to the cultural stigma associated with public assistance.

Discussion: While we acknowledge the concerns raised by the commenter, we decline to change the definition of *high-need school* or otherwise change the eligibility requirements. Congress has authorized and appropriated funding for the TIF program specifically to support the development and use of PBCSs in high-need schools, as opposed to schools in high-need regions, and has designated all LEAs that have those schools as entities eligible to receive TIF funds.

Changes: None.

Comment: Two commenters requested that we clarify the implications of the priorities for nonprofit applicants. Specifically, the commenters asked (1) whether, for the purposes of *Priority 1—An LEA-Wide HCMS With Educator Evaluation Systems at the Center, Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* and *Priority 5—An Educator Salary Structure Based on Effectiveness,* nonprofit applicants partnering with charter schools that are considered LEAs under State law (charter-school LEAs) are required to describe and propose reforms for the LEAs in which the charter school partners reside; (2) whether nonprofit applicants may provide a table or chart to summarize each LEA partner's HCMS in order to remain within maximum page limits; and (3) whether nonprofit applicants partnering with more than one charter school may, for the purposes of *Priority 1—An LEA-Wide HCMS With Educator Evaluation Systems at the Center,* describe how each charter school's HCMS aligns with a vision of instructional improvement shared across the consortium.

Discussion: To meet the priorities in this notice, nonprofit applicants that partner with charter-school LEAs must describe the vision of instructional improvement and HMCS, including the evaluation systems and professional development, of each charter school included in a group application. Because the charter-school LEA is not administered by the LEA within whose boundaries the charter school is located, an applicant need not, in these cases, provide a description of the HCMS (or other features) of that LEA beyond what the applicant considers to be useful in explaining the project proposal. Regarding the details of application submission, which are not addressed in this notice, we encourage interested applicants to read the TIF Application Package for the 2012 competition.

Changes: None.

Comment: One commenter suggested that the proposed priorities, requirements, definitions, and selection criteria include provisions that exceed the scope of the TIF authorizing language. Another commenter observed that the focus of TIF has moved from performance-based compensation to developing human management systems based on educator evaluation.

Discussion: Congress has authorized and appropriated funding for the TIF program specifically to support the development and use of effective and sustainable PBCSs. As we explain in the NPP and this notice, the purpose of these priorities, requirements, definitions, and selection criteria is to ensure that TIF-funded PBCSs will be successful and sustained mechanisms that contribute to continual improvement of instruction, to increases in teacher and principal effectiveness and, ultimately, to improvements in student achievement in high-need schools. To accomplish these goals, we have designed the priorities, requirements, definitions, and selection criteria to ensure that TIF grantees use high-quality LEA-wide evaluation and support systems that identify effective educators in order to improve instruction by informing performance-based compensation and other key human capital decisions.

Changes: None.

Comment: One commenter requested that we allow STEM specialty schools to participate in TIF projects, even if they are located in LEAs that are not engaged in system-wide compensation reforms.

Discussion: In years when we designate *Priority 1—An LEA-Wide HCMS With Educator Evaluation Systems at the Center* and *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth* as absolute, all applicants must implement LEA-wide HCMSs and LEA-wide evaluation systems. If the STEM specialty schools are charter-school LEAs, then they may satisfy Priority 1 and Priority 2 by implementing school-wide HCMSs and evaluation systems. However, if the STEM specialty schools are not themselves LEAs, they may not participate in the TIF project unless the LEA of which they are a part participates in the project. Because we believe that LEA-wide HCMSs and educator evaluation systems are critical for the sustainability and success of TIF-supported PBCSs, we decline to create an exception for single schools that, whether they are specialty schools or not, are not themselves LEAs so that they may participate in TIF projects in years we designate either Priority 1 or Priority 2 as absolute.

Further, given the commenter's reference to system-wide compensation reform, we wish to clarify that it is not our intent to require applicants to implement an LEA-wide PBCS. Under *Requirement 1—Performance Based Compensation for Teachers, Principals, and Other Personnel* and *Requirement 6—Use of TIF Funds To Support the PBCS,* applicants must implement a PBCS, but may only use TIF funds to provide additional compensation to educators in high-need schools identified in the application in response to *Requirement 3—Documentation of High-Need Schools.*

Changes: None.

Comment: One commenter recommended that we encourage applicants to propose evaluation systems that use consistent and sustainable observation methods implemented by school leadership. According to the commenter, the formal training of principals, including their certification and testing, is necessary for developing and sustaining an effective teaching force, and will ensure that judgments about the quality of teachers' practice are valid and reliable for use in various human capital decisions. To embed this approach into TIF projects, the commenter recommended that we encourage applicants to construct evaluation systems that measure principal effectiveness using, in part, meaningful evidence of regular teacher observations.

Discussion: The Department agrees that the training of principals may be one approach for ensuring high-quality, reliable observations, but declines to prescribe that this method be used by all grantees. While some LEAs may select principals to be the observers for teacher observations, it is also likely that other LEAs will assign that responsibility to external observers, or to those peers taking on career ladder positions. In either case, applicants should carefully consider the implications of their proposal for observation quality and sustainability; applicants will receive additional points for their proposed project based, under *Selection Criterion (b)(3)—Rigorous, Valid, and Reliable Educator Evaluation Systems,* on whether they have made substantial progress in developing a high-quality plan for conducting teacher and principal observations.

Changes: None.

Comment: A few commenters suggested that we require grantees to collect and report the discipline indicators included in the Department's Civil Rights Data Collection, and require them to take measures to improve their performance as measured by those indicators. Two commenters encouraged the Department to promote equity in schools by requiring applicants to monitor school discipline indicators and use that data to guide professional development.

Discussion: The Department fully agrees that schools should monitor student outcome data—including discipline indicators—and use those data to inform improvement efforts. Starting with the 2011–2012 school year, the Department will conduct a Civil Rights Data Collection every two years that includes every school district in the Nation where data for any one school year are collected and reported the subsequent year. As the discipline indicators included in the Civil Rights Data Collection will be provided to the public, disaggregated by LEA and by school, we find it unnecessary and burdensome to require TIF applicants to duplicate their reporting for the purposes of this program. While we encourage applicants to monitor school discipline indicators and develop appropriate human capital strategies to address this important area and thereby promote equity and improve practice in their high-need schools, we do not agree that the Department should mandate the specific additional factors that LEAs include in their educator evaluation systems. Thus, we decline to make the suggested changes, but we encourage LEAs to carefully consider how school and classroom discipline will be incorporated into evaluation and educator support systems, including professional development.

Changes: None.

Priority 1—An LEA-Wide Human Capital Management System (HCMS) With Educator Evaluation Systems at the Center

Comment: One commenter recommended that we require applicants to involve the curriculum and instructional staff of the LEA in the management, design, and implementation of the PBCS.

Discussion: The Department agrees that these central office staff are essential to the development of a well-designed and well-implemented HCMS. The knowledge and expertise needed to design and implement an LEA's HCMS will come from many individuals within the central office, including those responsible for curriculum and instruction. However, the Department believes each LEA should be free to identify the central office staff who will be best able to design and implement whatever HCMS changes may be necessary. Given the variation in organizational structure among LEAs throughout the country, we have determined that individual LEAs—not the Department—should identify the appropriate personnel for this task.

Changes: None.

Comment: One commenter recommended that we require TIF projects to have HCMSs that provide a minimum level of compensation for new teachers and paraprofessionals and a minimum rate of increase in compensation based on their years of service.

Discussion: To attract high-quality candidates into teaching and to retain effective educators in the profession (and, in particular, in high-need schools), the Department believes that compensation for educators must be competitive with other professions requiring a similar level of skill and educational attainment. Even so, compensation at the local level will vary depending on the cost of living, the labor market, and other factors unique to that area. LEAs must consider these local factors when determining the levels of compensation that will attract and retain the best and brightest to the teaching profession. Moreover, the Nation does not have a single labor market for educators. Not only will there be different geographic labor markets, but there may be (and arguably should be) different labor markets by

content area, as evidenced by shortages in particular subjects.

Further, we do not believe it is consistent with TIF's statutorily-defined purpose—supporting performance-based compensation—to require that applicants provide educators a specified salary or a specified rate of salary increase based on years of service. Congress authorized TIF to assist LEAs in developing and implementing PBCSs and, through this final notice, the Department recognizes that TIF-supported PBCSs should align with a broader HCMS if they are to be successful and sustainable. We believe that HCMSs are likely, over time, to offer competitive salaries when they are designed to attract and retain effective teachers consistent with *Priority 1—An LEA-Wide Human Capital Management System (HCMS) With Educator Evaluation Systems at the Center.*

Changes: None.

Comment: One commenter recommended that we add language to the NFP to clarify that the rights, remedies, and procedures, including due process rights, afforded school or school district employees under existing Federal, State, or local laws supersede any and all provisions established in this notice, and that, in instances where a conflict exists, non-compliance with the TIF final priorities, requirements, definitions, and selection criteria will not result in grant termination.

Discussion: The Department agrees that it should clarify the relationship between other Federal, State, and local laws and the priorities, requirements, definitions, and selection criteria that govern the TIF program. We have added a ''Note'' to *Requirement 2—Involvement and Support of Teachers and Principals* to inform applicants of their responsibilities if they were to become a grantee under the TIF program. The note states that it is the responsibility of the grantee to ensure that, in observing the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under terms of collective bargaining agreements, memoranda of understanding, or other agreements between those employees and their employers, the grantee also remains in compliance with the priorities, requirements, and definitions included in this notice. It also states that in the event that a grantee is unable to comply with these priorities, requirements, and definitions, the Department may take appropriate enforcement action (e.g., discontinue support for the project).

Changes: We have added a *Note* to Requirement 2 that clarifies the relationship between existing Federal, State, and local law and collective bargaining agreements and similar agreements between employees and employers, and the priorities, requirements, and definitions established in this notice.

Comment: One commenter advised the Department to use the TIF program to make large grant awards to entities with fully-designed HCMSs. The commenter stated that fully-designed HCMSs (i.e., those systems that bring the full range of personnel decisions into alignment with a vision of instructional improvement) are a better investment than are separate smaller grants focusing on separate, siloed components of an HCMS.

Discussion: The Department believes that a well-designed and well-implemented HCMS will be the best mechanism to support a successful and sustainable PBCS, which is the statutorily defined purpose of the TIF program. For this reason, we have designed Priority 1 to support State and LEA efforts to strengthen LEAs' HCMSs. Although we believe that every LEA already has a system in place for making hiring and related personnel decisions (that is, an HCMS), we know that some systems are less coherent or comprehensive than others.

LEA needs may vary with respect to aligning the HCMS with the LEA's instructional vision and building into the HCMS human capital decisions that are based on ratings generated by educators evaluation systems consistent with *Priority 2—LEA-wide Educator Evaluation Systems Based, in Significant Part, on Student Growth.* This being said, the Department wants to support reform-oriented LEAs wherever they may be on the continuum as they work to align their HCMS with their vision of instructional improvement. Although we do not require applicants to include the full range of personnel decisions in their proposed HCMS revisions, under *Selection Criterion (a)—A Coherent and Comprehensive Human Capital Management System* reviewers will consider the quality and comprehensiveness of each participating LEA's HCMS as described in the application, including the range of human capital decisions for which the applicant proposes to factor in educator effectiveness and the weight given to educator effectiveness when human capital decisions are made.

Changes: None.

Comment: One commenter recommended that we clarify the provisions regarding professional development that are in *Priority 1—An LEA-Wide Human Capital Management System (HCMS) With Educator Evaluation Systems at the Center,* and that we require applicants to address individual professional development, school or team improvement, and program implementation as part of their proposed professional development systems.

Discussion: To meet Priority 1, applicants must propose a timeline for implementing an HCMS such that applicants use evaluation information to inform the design and delivery of performance-based compensation by no later than the third year of the project period. Further, as professional development is one component of an HCMS, an applicant may choose to describe in its response to Priority 1 how it will use evaluation information to inform professional development, whether professional development is or will be part of its strategy for attracting and retaining effective teachers, and how professional development fits into the LEAs vision of instructional improvement.

Further, Selection Criterion (c) applies to an LEA's professional development plan for educators in the high-need schools that are part of a TIF-funded PBCS. Under Selection Criterion (c)(1), reviewers will specifically evaluate the extent to which the proposed plan will use disaggregated information from the educator evaluation systems ''to identify the professional development needs of individual educators and schools.'' Thus, we expect applicants to design professional development plans that strive for the improvement of individual educators, teams, and the broader school community, but we leave the ultimate decision on how to do that to applicants. Reviewers will evaluate and provide points under Selection Criterion (c)(1) based on the quality and comprehensiveness of applicant's proposals in this area. For this reason, we find it unnecessary to change Priority 1 because the commenter's concern is adequately addressed through the selection criteria.

Changes: None.

Comment: None.

Discussion: Upon further review of Priority 1, we have determined that it may be helpful to clarify the restrictions on the use TIF funds to support the components of the HCMS (which includes the PBCS, professional development, and LEA systems and strategies to recruit, retain, and reward effective educators). In response to Priority 1, an applicant must describe

each LEA's HCMS as it exists currently and with any planned modifications as well as the human capital strategies each LEA uses or will use to ensure that high-need schools are able to attract and retain effective educators. Applicants will be evaluated on the adequacy of the financial and nonfinancial strategies and incentives, including the PBCS, in its HCMS for attracting effective educators to work in high-need schools and retaining them in those schools. Therefore, in providing a description of the HCMS in response to Priority 1, an applicant may describe a range of systems, strategies, and incentives of which some may be supported by TIF funds while others may not. We have added the ''Note'' following Priority 1 to clarify that TIF funds may not support all of the systems, strategies, and incentives that an applicant describes in response to these and other elements of the priorities. Whether a cost can be supported with TIF funds is governed by the rules set forth in *Requirement 6—Use of TIF Funds To Support the PBCS.*

Upon review of the Priority, we also have determined that paragraph (4) of Priority 1 may not be clear that even if an applicant does not need to make modifications to an existing LEA-wide HCMS, the applicant will need to describe a timeline for using evaluation information to inform the design and delivery of professional development an award of performance-based compensation beginning in identified high-need schools no later than the third year of the grant's project period. We have revised the beginning phrase of the paragraph to clarify that all applicants must include such a timeline regardless of whether it has modification to make in its LEA-wide HCMS to meet other provisions of the Priority.

Changes: We have added a *Note* to Priority 1 stating that TIF funds can be used to support the costs of the systems and strategies described under *Priority 1—An LEA-Wide HCMS With Educator Evaluation Systems at the Center, Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM),* and *Priority 5—An Educator Salary Structure Based on Effectiveness* only to the extent allowed under *Requirement 6—Use of TIF Funds To Support the PBCS.* We also have revised paragraph (4) to clarify that all applicants must submit the timeline regardless of whether modifications are needed to an existing HCMS to ensure that it comports with paragraphs (1), (2), and (3) of the Priority.

Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth

Comment: One commenter noted that its LEA currently operates two different evaluation systems, each of which meets the needs of schools using different instructional approaches. The commenter asked that, when establishing final priorities, requirements, and definitions for the TIF program, we take this into consideration.

Discussion: By requiring an LEA-wide approach to evaluation reform under *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* we seek to prevent situations in which a TIF-funded PBCS relies upon evaluations that are separate from the official educator evaluation systems the LEA uses to provide overall evaluation ratings. With these ancillary evaluations, an LEA might evaluate the educators in high-need schools once to determine eligibility for TIF-funded performance-based compensation and then again under separate criteria that the LEA uses for purposes of the educators' overall performance ratings. Consequently, when TIF funding ends, the ancillary evaluations that had been supported by a TIF-funded project, and which are needed to inform the PBCS, are also likely to end. To avoid this scenario and increase the sustainability and impact of the TIF-funded PBCS, Priority 2 requires applicants to use the evaluation systems described in response to the priority to both inform TIF-funded performance-based compensation and assign overall evaluation ratings to every educator in an LEA. Further, these overall evaluation ratings will provide an LEA with a single index—one for teachers and one for principals—with which to identify effective educators and, using their TIF-funded PBCS, recruit them to high-need schools.

Nothing in this notice precludes an applicant from using its own funds to implement an evaluation system in addition to the systems described in response to Priority 2 if, for example, the applicant finds that such an additional system would meet the needs of unique schools or groups of educators. However, those evaluations may not be supported by TIF funds, used to inform the TIF-funded PBCS, or used to assign overall evaluation ratings.

Changes: None.

Comment: Three commenters urged us to require applicants to propose, as part of their evaluation rubrics, a minimum of four performance levels so that those rubrics align with current, evidence-based evaluation models and encourage more meaningful performance-based differentiation.

Discussion: We proposed and are now finalizing the requirement in Priority 2 that applicants include a minimum of three performance levels in their evaluation rubrics because we want to align this program with the requirements of other Department initiatives, including the ESEA Flexibility initiative. States that receive approval for ESEA flexibility will be developing, piloting, and implementing educator evaluation systems that differentiate performance using at least three levels of performance. The Department believes that an evaluation rubric that uses three performance levels provides for adequate differentiation of educator effectiveness and is a significant improvement over the binary rating system that continues to be used by many LEAs. We note that nothing in this notice precludes an applicant from proposing an evaluation rubric that uses more than three performance levels.

Changes: None.

Comment: One commenter recommended that we require TIF-funded evaluation systems to assess educator performance twice annually. The commenter stated that this would provide educators a baseline performance rating, identify early on areas in need of improvement, and allow educators greater opportunity to demonstrate professional growth.

Discussion: While the Department agrees with the commenter that educators can benefit from regular and frequent feedback on their performance, we do not believe it is necessary to require summative evaluations twice annually. Rather, we expect that the various educator evaluation systems that applicants describe in their TIF applications in response to Priority 2 will present many different models for securing multiple opportunities for performance feedback. For example, under paragraph (2)(ii) of Priority 2, applicants are required to incorporate two or more observations during each evaluation period. The observations, which will occur multiple times each year, should generate abundant feedback. Moreover, applicants that find it desirable to evaluate educators twice annually will have the flexibility to propose to do so.

Changes: None.

Comment: A few commenters recommended that we revise *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth* to require

comprehensive evaluations that consider multiple factors without specifically requiring that the evaluations consider student growth in significant part. One commenter recommended that we require applicants to consider several factors—teacher portfolios, contributions to the school community, parent feedback, and professionalism—to improve the predictive power of their evaluation tools and strengthen the utility of performance assessment for identifying areas of weakness. A few commenters recommended that the Department require consideration of student and parent surveys, and one commenter cited research concluding that student surveys, in particular, correlate as strongly with student learning as classroom observation. Two commenters advised the Department to emphasize the use of observation over student growth for educator evaluation. One commenter advised the Department to require applicants to embed classroom management, conflict prevention and resolution, and cultural competence into their teacher evaluation rubrics.

Discussion: As we have noted throughout this notice, Congress has required that any TIF-funded PBCS consider gains in student achievement (i.e., student growth), and this requires that student growth be part of an educator evaluation system that would determine which educators are eligible for performance-based compensation. We have stated previously, in announcing priorities, requirements, definitions, and selection criteria for the FY 2010 TIF competition (75 FR 28713, 28718–19), that given the wide range of possible factors that might be included in an LEA's teacher evaluation system as well as the fact that improving student achievement is the underlying purpose of the TIF program, we believe it is both appropriate and consistent with the statute to ensure that TIF grantees give student growth significant weight among the factors included in these systems.

As the comments indicate, there are many points of view, as well as many valid practices, that may guide an LEA's decision regarding the factors to include in its educator evaluation systems. Given the statutory requirement that grantees also base their educator 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. The Department believes that it is important to preserve for applicants the flexibility to identify the additional factors that will be included in their educator evaluation systems. Providing applicants this discretion will help ensure that the systems they establish are responsive to local needs, circumstances, and perspectives. For this reason, we decline to change paragraph (2)(iii) of Priority 2 to prescribe the additional factors which applicants must include in their evaluation systems. Further, we decline to change Priority 2 to indicate the relative weight that observation should carry, in relation to other factors such as student growth, in the determination of educator effectiveness.

Changes: None.

Comment: One commenter recommended that we revise Priority 2 to require TIF-funded evaluation systems to include monthly observations.

Discussion: While paragraph (2)(ii) of Priority 2 requires at least two observations during each evaluation period, the Department believes that applicants should retain the discretion to decide whether a greater number of observations should occur. We believe that a minimum of two observations per year would be sufficient if the observations and resulting feedback are high-quality: 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 under Priority 2, applicants have the flexibility to propose additional observations beyond two per year, if they choose.

Changes: None.

Comment: One commenter recommended that we require applicants to clarify how they will define student growth for the purpose of educator evaluation. This commenter recommended that we require applicants to describe how their definition of student growth will help students achieve proficiency, how their definition will help teachers to better understand their performance, and how the definition will identify educator strengths.

Discussion: The Department defines ''student growth'' as the change in student achievement for an individual student between two or more points in time. This definition, and the various options it provides for determining ''student achievement'' for grades and subjects for which assessments are and are not required under section 1111(b)(3) of the ESEA, aligns with the use of the term in other Department initiatives, including the recent ESEA Flexibility initiative. It allows applicants to choose a student growth model that best meets their needs in developing rigorous, valid, and reliable educator evaluation systems. Applications will then be evaluated, in part, under *Selection Criterion (b)(2)(ii)—Rigorous, Valid, and Reliable Educator Evaluation Systems* on the evidence they present, including current research and best practices, to support the LEA's choice of student growth models. In their response to this selection criterion, we expect that applicants will provide a full justification for their selection, which may include such considerations as those described by the commenter (e.g., how the model will help students achieve proficiency, how it will help teachers to better understand their performance) or include other evidence to support their choice of student growth models. For these reasons, we find it unnecessary to further require applicants to clarify their definition of student growth.

Changes: None.

Comment: One commenter recommended that we require LEA applicants to use widely-accepted formalized assessments to determine student growth.

Discussion: The Department believes that the definition of *student growth* in this notice is adequate to ensure the use of valid and reliable assessments and other methods that the definition includes for measuring student growth. Under this definition, applicants must use, at minimum, the formal assessments required under section 1111(b)(3) of the ESEA to measure student growth for certain grades and subjects. For grades and subjects not covered by section 1111(b)(3) of the ESEA, the definition requires that the alternative measures of student learning and performance, such as student results on assessments, be rigorous and comparable across schools. Beyond these requirements, we do not agree that these measures of student growth need to be based on assessments that, as the commenter proposes, are widely accepted and formalized.

Further, the Department has determined that TIF grantees need the flexibility to develop or adopt new assessments for certain grades and subjects. Where new assessment tools may be needed to measure student achievement, applicants should consider LEA capacity, costs, and the project timeline when determining

whether to adopt readily available, valid, and reliable instruments, rather than develop new assessment tools.

For these reasons, we decline to require applicants to use widely-accepted formalized assessments to determine student growth.

Changes: None.

Comment: Several commenters expressed concerns regarding the use of classroom-level growth for measuring teacher performance, and recommended that we allow LEAs to determine the level of student growth, be it classroom-level, school-level, or grade-level growth, appropriate for assessing educators. These commenters were particularly concerned that, under *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* applicants must use classroom-level student growth for the evaluation of teachers with regular instructional responsibilities. The commenters asserted that this provision might encourage the evaluation of teachers in non-tested grades and subjects based on their students' achievement in other subjects or based on new assessments not yet tested for reliability, standardization, or validity. Additionally, one commenter stated that requiring classroom-level growth in each subject and grade could create conflict between teachers in tested subjects and grades, who are evaluated using accepted assessment instruments, and those in non-tested grades and subjects, who might be evaluated using instruments that have not been validated.

Discussion: The Department believes that the improved educator evaluation systems implemented under Priority 2—which depend upon generating an evaluation rating that is an appropriate reflection of each educator's effectiveness—are a central component of the reforms upon which the PBCS and other human capital decisions must be based. In order to produce educator evaluation data that are reflective of an educator's effectiveness, at least for teachers with regular classroom responsibilities for whom paragraph (2)(ii) of Priority 2 requires consideration of classroom-level growth, applicants must base the student growth component of the evaluation rating on the growth of the students in a teacher's own classroom, rather than the growth of students in other classrooms. Therefore, for the vast majority of teachers, student growth must be determined at the classroom level.

Further, the Department recognizes that some teachers do not have regular instructional responsibilities, which makes evaluation based on classroom-level student growth inappropriate. For these teachers' overall evaluation ratings, LEAs are free to identify another level of student growth measurement.

Lastly, the Department does not agree with the commenter that an evaluation system that treats all classroom teachers the same, evaluating each, in significant part, on the basis of the achievement of the students they teach, will create conflict among teachers who teach different subjects. Conflict is more likely among teachers when only some teachers are evaluated using the achievement of students in their classrooms, while others are not. At the same time, the Department agrees with the commenters that the assessments used to determine student growth must, for all grades and subjects, be rigorous and comparable across the schools in the LEA, and this is reflected in our definition of *student growth.* By requiring that all measures of student growth that an LEA uses be rigorous and comparable across the LEA's schools, we believe that the definition levels the playing field sufficiently between teachers of tested grades and subjects, on the one hand, and teachers of non-tested grades and subjects, on the other. To help ensure that applicants focus their applications on this issue, we have added language to *Selection Criterion (b)(2)(ii)—Rigorous, Valid, and Reliable Educator Evaluation Systems* to make clear that reviewers will examine the rigor and comparability of assessment tools an applicant proposes to use.

Changes: The Department has added language to Selection Criterion (b)(2)(ii) so that, in considering the extent to which an applicant has provided evidence, such as current research and best practices, supporting the LEA's choice of student growth models, the Department also considers how those models demonstrate the rigor and comparability of assessment tools used.

Comment: Several commenters advised us to further clarify paragraph (3) of *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* which requires that applications include a plan for how the evaluation systems will generate an overall evaluation rating that is based, in significant part, on student growth. The commenters requested that we set clear expectations regarding how student growth must be incorporated into the proposed evaluation rubric, and otherwise promote the strong use of student growth for differentiating educators based on their performance. Of these commenters, three requested that we require that student growth comprise 50 percent of an educator's evaluation, and two commenters requested that we not specify a minimum percentage or otherwise restrict the applicant's flexibility to determine significance.

Discussion: LEAs have wide discretion in determining how to weight or otherwise combine the evaluation factors to derive an overall evaluation rating under Priority 2. However, a key requirement relates to the student growth component of the evaluation rubric: The overall evaluation rating must be based, in significant part, on an educator's student growth outcomes. While understanding the commenters' desire that student growth comprise 50 percent of an educator's evaluation, the Department has decided that such a requirement would be too inflexible, and so has not established a specific minimum weight for the student growth component of the overall rating. This is, in part, because there are reasonable ways to derive an overall rating that considers student growth, in significant part, without relying on a weighting approach. For example, an LEA may decide that student growth outcomes below an established minimum will always generate an overall rating of ineffective—regardless of the other measures included in the evaluation rubric. Generally, however, an overall rating is not based, in significant part, on student growth if the growth measure has little effect on the overall rating or will affect an overall rating in only the most extreme circumstances. Under paragraphs (b)(5)(i) and (b)(6)(i) of *Selection Criterion—Rigorous, Valid, and Reliable Educator Evaluation Systems,* peer reviewers will consider whether an applicant bases its overall evaluation rating on student growth, in significant part. In response to this criterion, applicants should carefully explain why they believe that the student growth component of their proposed overall rating calculation is significant.

While the Department appreciates the concerns of commenters who argued for giving greater weight to student growth in TIF-funded PBCSs, we continue to require that this factor be given ''significant'' weight in this final notice. In light of the statutory requirement that grantees also base their evaluations on multiple annual observations among other factors, we believe that 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.

Changes: None.

Comment: One commenter requested that we clarify in the priority that, for charter-school consortia applicants, the proposed evaluation system may extend to the entire consortium, rather than to the entire LEA in which the charter schools are located.

Discussion: In a consortium of charter schools in which each charter school is considered an LEA in its State, each of the charter schools listed in the partnership application is an LEA for purposes of Federal grants. Accordingly, each charter school in the consortium could implement its own evaluation system because doing so would result in implementing an LEA-wide evaluation system. Alternatively, all charter schools in the consortium (or group application) may choose to implement the same evaluation system in all charter schools in the consortium. In either case, the application would meet the LEA-wide requirement of Priority 2.

For the purposes of this notice, the evaluation system in a charter school that is considered an LEA has nothing to do with the evaluation system of the LEA in which the charter school is located (which might not be a part of the charter schools' TIF application).

Changes: None.

Comment: Two commenters expressed concern regarding the background statement provided for proposed *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth* in the NPP. Specifically, the commenters questioned the statement that our intent behind this priority is to ensure that educators eligible for performance-based compensation meet minimum performance thresholds on all measures included in an evaluation rubric. One of the commenters stated that interpreting Priority 2 to require that educators meet minimum thresholds on all measures in an evaluation rubric would be too restrictive for applicants that propose to use many performance measures in their evaluation rubric. Another commenter suggested that such an interpretation would require that any one of an educator's performance measures override any of the others, rather than permit applicants to propose evaluation systems that distribute weight more evenly across the various performance measures.

Discussion: In the background discussion of proposed Priority 2 contained in the NPP, we did not intend to suggest that, to consider an educator effective, LEAs must find the educator's performance to be satisfactory on each of the performance measures the LEA adopts for its evaluation systems. Rather, the LEA must determine the educator to be effective overall, taking into consideration his or her performance on all measures. Each LEA will determine the degree or weight to be given to each measure in the evaluation systems, bearing in mind that the overall rating must be based, in significant part, on student growth.

The Department believes that requiring payments made under the PBCS to be based upon an overall rating of effective or higher will ensure that grantees will provide compensation to educators eligible for performance-based compensation in high-need schools based on an evaluation of effectiveness that considers both practice and student outcome data. While the Department believes that compensating educators with very low scores on key aspects of the evaluation rubric may send the wrong message as to who should be compensated based on performance, Priority 2 leaves to applicants to determine how an LEA should ensure that its overall evaluation ratings for educators are based, in significant part, on student growth. Doing so provides great flexibility to an applicant on how to design its evaluation systems and PBCS while ensuring that an educator's impact on student achievement is central to the overall determination.

Changes: None.

Comment: None.

Discussion: Upon further consideration of the language in proposed paragraph 2(ii) of Priority 2, we believe that a slight wording change would better reflect what we intended this provision to mean. We intended this paragraph to require applicants to determine overall evaluation ratings for teachers with regular instructional responsibilities based, in part, on student growth at the classroom level. To ensure that this component of Priority 2 is sufficiently clear, we have revised this paragraph to state that, for the purpose of determining overall evaluation ratings for those teachers, student growth ''must be'', rather than ''must include'', the growth of the students included in an individual teacher's own classroom. We note that as long as applicants are using classroom-level growth to determine the overall evaluation ratings for teachers with regular instructional responsibilities to meet paragraph (2)(ii) of the priority, they may also consider whole-school growth as an additional factor under paragraph (2)(iii) of the priority.

Changes: The Department has revised paragraph (2)(ii) of Priority 2 to clarify that, for the purpose of determining overall evaluation ratings for teachers with regular instructional responsibilities, student growth must be, rather than must include, classroom-level growth.

Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM)

Comment: Several commenters recommended that we not conduct a separate TIF Competition with a Focus on STEM. The commenters expressed concern that encouraging applicants to single out educators in specific fields, such as the STEM fields, for additional compensation could cause misalignment in components of an LEA's HCMS.

Discussion: In the past several months, Federal agencies and private partners have launched national efforts, such as Educate to Innovate, to increase the number of effective STEM teachers in the Nation over the next few years. While we appreciate the commenters' concerns, the Department believes it is necessary to help States and LEAs attract and retain highly-effective STEM teachers to schools, particularly high-need schools where students are in greatest need of academic improvement. As TIF provides applicants a unique opportunity to rethink LEA-wide human capital management and revamp educator compensation, we believe it is appropriate to use the TIF program to encourage applicants to leverage this opportunity to recruit and develop top-quality STEM educators, and thereby improve STEM instruction. On the other hand, it is not our intent to prohibit, or even discourage, applicants proposing to meet *Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM*) from expanding performance-based compensation to non-STEM educators, principals, or other personnel.

Changes: None.

Comment: Several commenters requested that we designate *Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM*) as either competitive preference or invitational, but not absolute.

Discussion: As mentioned elsewhere in this notice, to preserve future flexibility to designate priorities as absolute, competitive preference, or invitational, as needed to serve the intended goals of any TIF competition, we will not designate in this notice whether the final priorities are absolute, competitive preference, or invitational. Rather, we will make these designations in the notice inviting applications for any competition in which we use one or more of the priorities. While we have considered the commenter's suggestions

in designing the TIF 2012 competition, we have determined that, consistent with our announcement in the NPP, we will designate Priority 3 as an absolute priority in the NIA and hold a separate TIF with a Focus on STEM competition in 2012.

Changes: None.

Comment: One commenter recommended replacing *Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM*) with a priority focused on providing additional pay to all teachers in high-need schools. The commenter opposed providing educators in a single field additional compensation, because doing so would create inherently unequal pay systems and communicate to educators that some fields are more important than others. In making this statement, the commenter pointed to a number of hard-to-staff fields, such as special education, bilingual education, and specialized instructional support, that are not addressed by our proposed priorities, requirements, definitions, and selection criteria.

Discussion: We do not prescribe, in either Priority 3 or *Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel,* the proportion of educators in high-need schools that must be served by the applicant's proposed PBCS. Rather, we provide applicants the flexibility to propose a PBCS that best serves the human capital needs of its high-need schools, has the full support of the school community, and considers the feasibility of sustaining the PBCS past the five-year project period. While we acknowledge that applicants proposing to meet Priority 3 may choose to limit opportunities for performance-based compensation to STEM educators, applicants would not be prohibited from expanding performance-based compensation to other educators, principals, or other personnel, such as those in the types of hard-to-staff fields mentioned by the commenter. Accordingly, applicants with shortages in the areas of special education and bilingual education would have the option to use TIF funds on performance-based compensation to attract new staff in those fields to their high-need schools. While we recognize the merits of the commenter's recommendation, and agree that comprehensive compensation systems would be ideal, we find it more important to offer applicants the flexibility to tailor their proposals to local need. We decline to replace Priority 3 with a priority focused on providing competitive pay to all teachers in high-need schools.

Changes: None.

Comment: None.

Discussion: The Department determined that a minor edit to Priority 3 will improve its alignment with *Selection Criterion (g)—Comprehensive Approach to Improving STEM Instruction* and avoid duplicating elements required under *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth.* As applicants must describe their evaluation systems under Priority 2, we do not believe it necessary to ask that applicants provide a separate description of how they propose to evaluate STEM teachers. Instead, we will require applicants to describe how each participating LEA will identify and develop the unique competencies that characterize effective STEM teachers. We will assess this description, in part, under Selection Criterion (g)(2), which makes reference to STEM-specific professional development opportunities, but not evaluation.

Changes: We have removed the term ''evaluate'' from paragraph (2) of Priority 3.

Priority 4—New Applicants to the Teacher Incentive Fund (Now New or Rural Applicants to the Teacher Incentive Fund)

Comment: Several commenters requested that we remove *Priority 4* from the final priorities, or that we designate it as either competitive preference or invitational, in order to allow previous TIF cohorts to apply for a new grant. Many commenters that are recipients of a TIF grant expressed concern that they would not be able to sustain their current programming without the financial support that TIF provides. Many commenters stated that, if Priority 4 were an absolute priority, it would slow momentum in those LEAs that have already demonstrated their willingness to pursue challenging reform efforts. Many commenters also noted that, given the provisions in the TIF NPP, the next competition would help previously served LEAs to bring their projects to scale. Further, one commenter recommended that we allow SEAs and Regional Education Service Agencies to apply as lead applicants, even if an entity were the lead applicant under a previous TIF project, as SEAs and Regional Education Service Agencies have the capacity to serve a diverse group of LEAs. The commenter noted that it was unclear whether these entities would be ineligible to apply for a new TIF grant under Priority 4. One commenter asked whether a nonprofit applicant could meet Priority 4 if it proposed to serve charter schools located in an LEA that previously participated in a TIF-supported project, but that had excluded its charter schools from participation in the previous TIF project.

Discussion: As mentioned elsewhere in this notice, to preserve future flexibility to designate priorities as absolute, competitive preference, or invitational, as needed to serve the intended goals of any TIF competition, we do not designate in this notice whether priorities are absolute, competitive preference, or invitational. We will make these designations in the notice inviting applications for any TIF competition that uses one or more of these priorities.

Priority 4 applies to all applicants, including SEAs, LEAs, and nonprofit applicants. To the extent that a regional educational service center or the like is ''a public board of education or other public authority legally constituted within a State ... to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools'' it is an LEA (See section 9101(23)(A) of the ESEA (20 U.S.C. § 7801(26)(A))). Therefore, since a regional educational service center or like agency that meets this definition is an LEA, it may apply for a TIF grant and Priority 4 applies to it.

In years we designate Priority 4 as absolute, applicants would not be eligible to receive TIF funds unless they provide an assurance, which the Department accepts, that each LEA to be served by the project has not previously participated in a TIF-supported project. In years we designate Priority 4 as a competitive preference priority, applicants that fail to meet this priority would be eligible to receive TIF funds; however, applicants that meet this priority would receive additional points or preference over an application of comparable merit that did not meet this priority. Regardless of whether this priority is designated competitive preference or absolute, SEAs and nonprofit organization applicants that have previously participated in a TIF-supported project may meet this priority, and, if they so choose, apply as a lead applicant, if they propose to serve only LEAs that have not previously participated in a TIF-supported project. In years when we designate this priority as absolute, LEA applicants (which may include regional education service agency applicants) may meet this

priority, and, if they so choose, apply as a lead applicant, only if they have not previously participated in a TIF-supported project. In years when we designate this priority as competitive preference, LEA applicants that have previously participated in a TIF-supported project may apply as a lead applicant, but may not meet this priority or receive competitive preference. Further, group applications that include charter schools in the application may meet this priority only if each charter school included is either: an LEA that has not previously participated in a TIF-supported project, or, if not an LEA, is located in an LEA that has not previously participated in a TIF-supported project.

With this priority, it is our intent to direct TIF resources to those LEAs that are ready to pursue compensation reform, but have not yet benefited from the Federal financial assistance available under TIF to help support effective and sustained PBCSs and related areas of reform. We agree that this year's notice inviting applications would provide current and former TIF grantees a unique opportunity to bring their projects to scale, and, in years this priority is designated either competitive or invitational, we would encourage entities to submit an application. At the same time, the Department notes that, consistent with the TIF authorizing statute, all current and former TIF grantees were expected to sustain their PBCSs past the conclusion of the project period. As they have already implemented a PBCS with Federal TIF funding, these grantees have already had an opportunity to convince stakeholders of the merits of performance-based compensation and thereby solicit the local investment needed for sustainability and scale up. In order to provide new LEAs with the same opportunity, we decline to remove Priority 4 from this notice.

Changes: None.

Comment: One commenter recommended that we amend proposed *Priority 4—New Applicants to the Teacher Incentive Fund* to give preference to rural applicants because these applicants are often not able to successfully compete for Federal discretionary grants.

Discussion: We agree that this notice should help the Department ensure geographic diversity among TIF grantees, and have modified Priority 4 to give priority to applicants that propose to serve only rural LEAs. We have limited the rural component of the priority to applicants that propose to serve only rural LEAs in order to ensure that the priority is not undermined by applicants that might otherwise seek to include only one or some rural LEAs in the project. We also have modified the title of the priority accordingly.

Changes: The Department has modified Priority 4 to give priority to applicants that agree to serve either only LEAs that have not previously participated in a TIF-supported project, or only rural LEAs.

Priority 5—An Educator Salary Structure Based on Effectiveness

Comment: Several commenters requested that we revise Priority 5 to allow applicants to choose between performance-based compensation systems that either award bonuses or are implemented through a salary structure, rather than require that all applicants revise their salary schedules. While two commenters expressed support for our effort to encourage salary schedule reform so that salary is linked to performance—one because adjustments to the salary schedule would influence base pay, increase career earnings, and factor into pension calculations—they and other commenters expressed concern about making Priority 5 absolute (i.e., requiring that applicants meet it). One commenter disagreed with these views, and suggested that we require applicants to include a plan to transition from performance-based compensation to a salary structure based on effectiveness. Many other commenters expressed concern that such a requirement may lead to negative consequences. For example, a commenter stated that such a requirement might dissuade LEAs from applying for a TIF grant because teacher salary schedules are often subject to collective bargaining, and many LEAs would be unwilling to commit to a scope of work that has not been negotiated. A second commenter cited one State's laws regarding performance-based compensation—which requires the implementation of performance-based compensation, but allows compensation to take the form of a bonus or new salary—and argued that greater flexibility for TIF applicants would enable high-need schools to satisfy both State law and the priorities, requirements, definitions, and selection criteria included in this notice. A third commenter expressed concern that requiring all applicants to revise their salary schedules would reduce overall TIF participation, as it would create significant resource and stakeholder challenges.

A fourth commenter advised against promoting any tie between newly developed evaluation systems and educator salary before the new evaluation system has been tested for reliability, and cautioned that linking educator salary to what could be flawed evaluation ratings may work against TIF's goal of teacher retention. A fifth commenter expressed concern that it would be difficult to convince teachers in schools not participating in the TIF grant to support changes to their salary schedule, and such an effort would require significant outreach at the outset of the project.

Discussion: As mentioned elsewhere in this notice, to preserve future flexibility to designate priorities as absolute, competitive preference, or invitational, as needed to serve the goals of the TIF program, we do not designate in this notice whether priorities are absolute, competitive preference, or invitational. We will make these designations in the notice inviting applications for any TIF competition that uses one or more of these priorities. In response to the first comment, in years when Priority 5 is designated as a competitive preference or invitational priority, applicants would be able to choose whether their proposed PBCS would be implemented through a salary structure based on educator effectiveness or through a bonus structure. In years when Priority 5 is designated as an absolute priority, applicants would be required to implement their proposed PBCS through a salary structure based on educator effectiveness.

The Department agrees with many of the commenters about the practical concerns that applicants will need to address in responding to Priority 5. We also recognize the challenges local laws and collective bargaining can pose to such a change within an LEA. However, the Department believes one way to increase the likelihood that a PBCS continues after the end of the grant period, and is sustained through local budget fluctuations, is to award additional compensation not as incentive awards or bonuses, but rather as part of an educator's salary. In response to the challenges raised by commenters, the Department has modified the priority by removing the language that would have required implementation of the salary structure beginning no later than the third year of the project period. Instead, to meet this priority, applicants must describe a timeline for implementing a salary structure based on effectiveness as well as the extent to which the proposed implementation is feasible, given that implementation will depend upon stakeholder support and applicable LEA-level policies. We believe that these changes will provide LEAs with

the flexibility needed for this type of work. As a result of these changes, LEAs addressing Priority 5 will not be held to a uniform deadline. Rather, proposed timelines will be based on local contexts. Thus, we believe Priority 5 will not dissuade LEAs from applying to the program.

The flexibility when Priority 5 is designated as a competitive preference or invitational priority addresses a commenter's concern regarding an applicant's ability to meet both State law and the priorities, requirements, definitions, and selection criteria included in the notice as well as one commenter's concern that requiring applicants to revise their salary schedules would reduce overall TIF participation by creating significant resource and stakeholder challenges. Our revision to the timeline requirement will allow an applicant to ensure a high-quality implementation of the evaluation system and the subsequent linkages to the salary structure. In addition, we believe that a sustained performance-based salary structure will enhance an LEA's ability to retain effective teachers.

We understand the commenter's concern about the Department's making Priority 5 an absolute priority and will take that concern into consideration in any decision to designate the Priority as absolute, a competitive preference, or invitational. Finally, we agree with the commenter who expressed concern that change of this scope would require significant outreach at the outset of the project. The Department believes that significant outreach is required for all types of performance-based compensation reform and has designed this notice so that applicants must include evidence that educators in each participating LEA have been involved, and will continue to be involved, in the development and implementation of the PBCS and evaluation systems described in the application.

Changes: We have revised Priority 5 to require that each applicant describe, as part of its plan for implementing the PBCS, a timeline for implementing the proposed LEA salary structure as well as a rationale for why the applicant views its implementation plan as feasible. We also have removed language from the priority that would have required implementation of the salary structure beginning no later than the third year of the project period.

Comment: One commenter recommended that we add language to *Priority 5—An Educator Salary Structure Based on Effectiveness* to require that the proposed salary structure be collectively bargained or agreed upon by the organization representing educators. Further, the commenter recommended that the priority stipulate that the process for creating any new salary structure be transparent to ensure that performance-based compensation is attainable and that teachers clearly understand the criteria for earning additional compensation.

Discussion: With regard to the request that we require that elements of an applicant's proposal, including a proposal for a salary schedule based on educator effectiveness, be collectively bargained, we decline to make this change because we believe it would constitute inappropriate Federal involvement in local matters. With regard to the comment about the transparency of the new salary structure, we believe that a transparent and inclusive process is essential for a change of this scope and scale to be successful. To this end, applicants must provide evidence that educator involvement in the design of the PBCS and the educator evaluation systems has been extensive and will continue to be extensive during the grant period. Thus, we do not believe that any change is required at this time.

Changes: None.

Comment: A few commenters expressed concerns regarding the impact of a salary schedule, based on effectiveness, on educator behaviors and TIF's objective of attracting and retaining effective educators. The commenters argued that salary structures based on effectiveness, compared with performance-based bonuses, do not give educators the same incentive to remain in high-need schools or to maintain high-levels of performance. Moreover, the commenters noted that, under a salary schedule based on effectiveness, if an effective teacher decides to move from a high-need school to a school that is not high-need, it may prove difficult to reduce the teacher's salary. Similarly, if an effective teacher earns a higher salary due to performance, but lags in performance at a later point, it may again be difficult, and potentially impermissible, to remove the performance increment from the teacher's salary. Further, one commenter noted that there would be a significant delay between performance and compensation, which would potentially weaken the performance incentive. This is because, quite often, student growth does not become available until six months following the end of the school year. Once the data is received, it is unlikely that an LEA would be able to change base salary until the beginning of the next school year.

Discussion: The Department believes a salary structure based on effectiveness will not negatively impact the goal of attracting and retaining effective educators in high-need schools. In fact, we believe the opposite is likely to occur where the proposed salary structure results in a highly sustainable PBCS that may be more resistant to budgetary fluctuations at the local level than other PBCS designs. The concerns expressed by commenters generally do not consider the flexibility an applicant has in developing a salary structure based on educator effectiveness. We disagree with the commenters who expressed concern that a salary structure based on effectiveness does not give educators the same incentive to remain in high-need schools or to maintain high levels of performance. Salary structures may contain many performance-based incentives, including potential for greater base-pay progression at high-need schools or career-ladder position opportunities only at high-need schools. Although an LEA may not lower the salary of an educator moving from a high-need school to a low-need school, in this instance, the move would result in lower income potential. The concern that a salary structure based on effectiveness does not provide an incentive for educators to maintain high-levels of performance or is problematic in addressing lags in performance does not acknowledge that the typical salary structure provides educators with an annual increase in income based on years of service with no consideration given to effectiveness. Lastly, the potential delay between performance and receipt of performance-based compensation (often due to delays in an LEA's receipt of student growth data) is no greater for a PBCS delivered through a salary structure than through a bonus system. In both instances, applicants need to consider how best to address this challenge in designing an effective PBCS.

Changes: None.

Comment: Two commenters provided feedback regarding the impact of a salary schedule, based on effectiveness, on sustainability and educator evaluation. One commenter speculated that, to sustain a new salary structure during tough budget times, municipalities might raise the criteria for a determination of effectiveness so that fewer teachers would be awarded a higher salary. Under this scenario, according to the commenter, bonuses would become less accessible and this,

in turn, could undermine educator collaboration and result in declines in educator base pay. A second commenter expressed concern that salary schedules, based on effectiveness, would be harder to sustain than bonuses, because adjustments to base pay would increase pension obligations while bonuses would not.

Discussion: The Department believes a new salary structure will enhance sustainability and secure educator performance-based compensation past the duration of the TIF grant. We further believe that a PBCS delivered through a salary structure based on effectiveness will be more likely to be maintained during periods of budget fluctuations as compared with a bonus structure that is ancillary to an LEA's official salary structure and, therefore, easily discontinued during such periods. As one commenter speculated, during tough budget times an LEA could respond by attempting to reduce educator salaries. We do not believe this would be either unique to a salary structure based on effectiveness or more likely to occur under such a salary structure. Further, we believe that a salary structure based on effectiveness may impact pension obligations, but, as previously discussed, a typical salary schedule provides for annual increases to an educator's salary with no consideration for educator effectiveness. These increases have the same impact on pension obligations as increases that do take effectiveness into consideration.

Changes: None.

Comment: One commenter requested clarification of whether *Priority 5—An Educator Salary Structure Based on Effectiveness* pertained only to schools supported under the TIF grant or to all schools in the LEA.

Discussion: Under Priority 5, applicants will have the discretion to choose how broadly to implement the comprehensive salary schedule based on effectiveness. At a minimum, the salary schedule discussed in Priority 5 must include educators participating in the PBCS in the high-need schools identified in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.* We have revised paragraph (b) of Priority 5 to make this clear. The LEA may choose to extend the salary schedule to cover additional teachers or additional schools but should carefully consider the restrictions on the use of TIF funds described in *Requirement 6—Use of TIF Funds to Support the PBCS.*

Changes: We have revised paragraph (b) of Priority 5 to require applicants to describe in their proposal how each LEA will use TIF funds to support the salary structure based on effectiveness in the high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.*

Comment: None.

Discussion: Upon further review, the Department has determined that paragraph (b) of proposed *Priority 5—An Educator Salary Structure Based on Effectiveness*—which required applicants to describe how TIF funds used for salary increases would be used only to support the additional cost of the revised salaries for educators in high-need schools—might erroneously suggest to applicants that TIF funds may not be used to support the entire cost of salary for effective educators who accept career ladder positions. Under *Requirement 6—Use of TIF Funds to Support the PBCS,* applicants may use TIF funds to support the entire cost of salary, up to 1 full-time equivalent position for every 12 teachers who are not in a career ladder position. As paragraph (b) of proposed Priority 5 seemed to conflict with Requirement 6, we have revised Priority 5 to require applicants to describe how each LEA will use TIF funds to support the salary structure based on effectiveness in the high-need schools.

Changes: We have removed from this priority language that would have required applicants to describe how TIF funds used for salary increases would be used only to support the additional cost of the revised salaries. Further, we have revised paragraph (b) of Priority 5 to require applicants to describe in their proposal how each LEA will use TIF funds to support the salary structure based on effectiveness in the high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.*

Comment: None.

Discussion: Upon further review, the Department has determined that additional revisions are necessary to improve *Priority 5—An Educator Salary Structure Based on Effectiveness.* First, after publishing the NPP, we realized that some LEAs may already have salary structures that meet or are close to satisfying the requirements of this priority. For this reason, we have removed the language requiring a comprehensive revision of an existing salary schedule. Second, the Department recognizes that there might be instances where only a discrete portion of an educator's salary increase would be based on the educator's overall evaluation rating and that the remaining increase would be based on other factors. In such a case, an applicant may use TIF funds to pay for only the discrete portion of the educator's salary increase that would be based on the educator's overall evaluation rating. By revising this priority to require applicants to describe the extent to which each LEA will use these evaluation ratings to determine educator salaries, the Department intends that applicants should describe only the part of the salary structure that constitutes the increase attributable to the PBCS.

Changes: We have revised Priority 5 by removing the requirement that an applicant propose ''a comprehensive revision'' of an existing salary schedule. In paragraph (b) of the priority, we have added language requiring the applicant to describe the extent to which each LEA will use the overall rating of the evaluation to determine educator salaries.

Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel

Comment: A few commenters stated that applicants should not be allowed to propose PBCSs based solely on Design Model 2; instead these commenters urged us to require all applicants to implement a PBCS consistent with Design Model 1. Three commenters expressed concern that *Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel* is inconsistent with the TIF authorizing statute, which requires both performance-based compensation and incentives to encourage educators to take on additional responsibilities and leadership roles. According to these commenters, each applicant must offer both components, and the Department may not allow applicants to select only one for their TIF project. Further, a number of commenters expressed concern that Design Model 2 would support a very limited concept of performance-based compensation, and stated that any TIF-funded PBCS should provide all educators, not simply teacher leaders or principals, an opportunity to receive additional compensation.

Discussion: We disagree that Design Model 2 is inconsistent with the TIF authorizing statute. As the commenters stated, the TIF statute requires the Department to make funding available to applicants to support their implementation of PBCSs for educators in high-need schools and offer educators incentives to take on additional leadership roles and responsibilities. More specifically, the FY 2012 TIF authorizing statute (Pub. L. 112–74) provides that TIF-supported PBCSs must consider gains in student

academic achievement as well as classroom evaluations conducted multiple times during each school year among other factors and provide educators with incentives to take on additional responsibilities and leadership roles.

Under Design Model 1, applicants would establish a PBCS under which they provide performance-based compensation to effective educators and would provide those educators with incentives to take on additional leadership roles and responsibilities. Under Design Model 2, applicants would include additional leadership roles and responsibilities in the PBCS, and then provide performance-based compensation to teachers who have received an overall evaluation rating of effective or higher and who accept a career ladder position as both another factor in the PBCS and an additional role or responsibility. Consistent with Priority 2 of this notice, applicants under either design model must propose to use student growth, multiple observations, and other factors in the determination of each educator's overall evaluation rating, which aligns with the statutory requirements governing educator eligibility for performance-based compensation. We also note in response to the last comment that an applicant has the option to offer performance-based compensation to other personnel who work in identified high-need schools under either design model.

Further, it is our intent to give an LEA flexibility to use its best judgment in designing a PBCS that will increase educator effectiveness and student achievement. While a PBCS under Design Model 2 could make a smaller number of teachers eligible for performance-based compensation than a PBCS under Design Model 1, as some commenters suggest, a PBCS under Design Model 2 might still produce greater gains in teacher effectiveness and student achievement. Achieving these important goals does not depend solely on the number of teachers eligible for compensation. It depends on a variety of factors, including the quality of the evaluation system and the job-embedded professional development the career ladder teachers provide. For these reasons, we decline to remove Design Model 2 from this notice.

Changes: None.

Comment: A few commenters recommended that we allow applicants to award forms of compensation not described in *Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel.* A few commenters recommended that we allow applicants to provide separate performance-based incentives to educators based on the outcome of separate measures of performance, such as classroom observation and student growth. One of the commenters explained that performance-based compensation systems offering separate awards for student performance and practice are attractive to teachers, who can easily recognize the relationship between their work and the resulting award. Additionally, one commenter recommended that we allow applicants to propose whole-school awards, based on school-level performance, as part of their PBCS. The commenter expressed concerns about the effects of individual performance-based compensation on turnaround schools, which could erode collegiality in fragile schools. The commenter asserted that whole-school awards may help to promote a shared sense of ownership of reform amongst educators in high-need schools.

Discussion: We acknowledge the potential merits of either providing whole-school compensation based on school-level performance or rewarding educators based on separate measures of performance, as these approaches may prove effective for encouraging specific practices or behaviors. However, we believe that the effectiveness and sustainability of a PBCS, and its impact on increasing student achievement in high-need schools is much greater if TIF dollars reward only individual educators determined to be effective based on a comprehensive evaluation that uses multiple factors, student growth, and observations of educator practice. We believe that, by using rigorous evaluations to identify the highest quality educators, and then rewarding these educators with opportunities for advancement and additional compensation, high-need schools will be in the best position to attract and retain the highly-skilled workforce needed to help students achieve. Further, we recognize the importance of communicating to educators the nuances of any proposed PBCS or evaluation system so that educators may recognize the relationship between their efforts and accomplishments and the resulting rewards and other consequences. We note, however, that this challenge is present regardless of the design of the proposed reform.

Accordingly, we decline to revise Requirement 1 to allow for either whole-school compensation or compensation based on separate measures for performance. That said, nothing in this notice prohibits applicants from providing performance-based compensation outside of the proposed TIF-funded PBCS, provided that non-TIF funds are used for performance-based compensation.

Changes: None.

Comment: One commenter recommended that we fund additional compensation for teachers and principals who take on additional responsibilities and leadership roles, even if they have not shown a record of classroom effectiveness. This commenter noted that teacher attrition and turnover has created challenges for many schools, and claimed that additional compensation for additional responsibilities should enable schools to compensate teachers for their work, encourage them to advance based on their interests and accomplishments, and provide them with opportunities for leadership while maintaining the teacher's instructional responsibilities. A second commenter expressed support for the requirement limiting awards for taking on additional responsibilities to those who have demonstrated effectiveness, but noted that implementation of career ladder programs may be delayed in areas where the evaluation system has not yet been developed.

Discussion: The purpose of the TIF program is to support LEA implementation of an effective and sustainable PBCS that rewards educators determined to be effective based on student growth, multiple observations, and other factors, and to provide educators with incentives to take on additional responsibilities and leadership roles. The Department believes that, to best meet this purpose, all payments made to educators under a PBCS, including those provided to take on additional responsibilities and leadership roles, must be made to educators determined to be effective. Requirement 2, like all of the priorities, requirements, definitions, and selection criteria contained in this notice are designed to do this.

As mentioned elsewhere in this notice, it is the Department's belief that, by using rigorous evaluations to identify the highest quality educators, and, subsequently, rewarding these educators with opportunities for advancement and additional compensation, high-need schools will be in the best position to attract and retain the highly-skilled workforce needed to help students in those schools to achieve. While grantees may wish to supplement their TIF project, using local dollars, so that educators who have not been determined to be effective under the LEA's evaluation system are rewarded

for accepting additional responsibilities, they may do so, but they may only use TIF dollars for educators who have been determined to be effective.

We fully recognize that the development of the required PBCSs and related evaluation systems as well as the procedures for directing TIF funds to purposes permitted under this notice will require applicants to consider carefully their timelines for implementing the evaluation systems and PBCSs. Moreover, some applicants, if awarded a TIF grant, will need time to implement their PBCSs and evaluation systems, and meet the other requirements and priorities we have established for this program. We believe that the timelines we have established provide sufficient time for grantees to do so. Under Priority 2, applicants must propose a plan to implement their evaluations for at least a subset of teachers or schools in the LEA by the beginning of the second project year. Under paragraph (4) of Priority 1, applicants must use evaluation information to inform the design and delivery of professional development and the award of performance compensation under their proposed PBCS (to educators in high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools*) by the third project year. While applicants may, at their discretion, begin implementation sooner, we have established these timelines as base requirements to help applicants that need time to put their PBCSs and evaluation systems in place, for reasons such as those noted by one of the commenters.

Comment: One commenter opposed our restricting applicants from offering effective educators an opportunity to receive additional compensation for taking on career ladder positions and for taking on additional responsibilities and leadership roles.

Discussion: Applicants proposing to implement Design Model 1 must provide, as part of their PBCS, additional compensation to effective teachers (and, at their discretion, effective principals) who voluntarily accept additional responsibilities and leadership roles. To satisfy Design Model 1, therefore, applicants must compensate effective teachers (and, at their discretion, effective principals) for taking on additional responsibilities and leadership roles, which may include career ladder positions. However, under Design Model 2, applicants are required to offer effective teachers career ladder positions and do not have the option of offering other types of additional responsibilities and leadership roles. Through this restriction, we intend to reserve this design model for LEAs that wish to move ahead with an improvement strategy that relies heavily on career ladder positions and the comprehensive career ladder program that these positions require to be successful in improving teacher practice and student achievement. We expect that an LEA opting for this design model will develop a comprehensive plan through which career ladder teachers will get the extensive training and release time they need to make a significant difference in teacher practice in each participating high-need school. By contrast, the other types of additional responsibilities and leadership roles contemplated under the definition of that term in the NIA may be very limited in their scope and effect. To ensure that any career ladder program proposed under Design Model 2 is both comprehensive and coherent, we decline to expand the model to allow applicants to provide additional compensation to effective teachers who take on other types of additional responsibilities and leadership roles.

Changes: None.

Comment: One commenter opposed limitations restricting applicants to only one of the two PBCS design models, and recommended that we revise Requirement 1 to allow applicants to include both components in their PBCS proposal.

Discussion: We fully agree that applicants should have the flexibility to implement any of the allowable PBCS components included in Design Models 1 and 2. We view Design Model 1 as inclusive of all of the components of Design Model 2, because career ladder positions, which are specifically referenced in Design Model 2, are included in the definition of *additional responsibilities and leadership roles.* For this reason, we do not believe any change is necessary to respond to this comment.

Changes: None.

Comment: One commenter suggested that we encourage applicants to offer career ladder positions to a team of educators, rather than individuals, to build team collaboration among instructional leadership and thereby increase the impact of their work.

Discussion: The Department recognizes the merit of offering career ladder positions to a team of educators, rather than doing so to selected individuals, and encourages applicants to consider the benefits of this approach. However, we believe that applicants should have the flexibility to tailor their proposed PBCSs to best meet the needs of their high-need schools.

Changes: None.

Comment: One commenter recommended that we require teachers and principals who receive performance-based compensation to share their effective practices with other educators.

Discussion: We fully agree that effective teachers and principals should be provided opportunities to demonstrate instructional leadership and share their practices with peers. We believe that this is adequately addressed by *Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel,* which requires applicants proposing to implement Design Model 1 to offer effective teachers, and, at their discretion, effective principals, opportunities to take on additional responsibilities and leadership roles. Similarly, Design Model 2 requires applicants to offer career ladder positions to effective teachers and allows applicants to offer additional compensation to principals, at their discretion, for taking on additional responsibilities and leadership roles. We have defined *additional responsibilities and leadership roles,* including *career ladder positions,* to mean meaningful, school-based opportunities to strengthen instruction and instructional leadership in a systemic way. While this certainly may include responsibilities to share effective practices with other educators, we believe that how to define these responsibilities, too, is best left to each participating LEA and those with whom it collaborates on the components of its PBCS.

Changes: None.

Comment: One commenter recommended that we revise the proposed priorities, requirements, definitions, and selection criteria to provide applicants with the flexibility to propose collaboratively developed compensation systems that integrate the following salary schedule principles: (a) A professional growth salary schedule must start with a professional-level salary of at least $40,000 for all beginning teachers entering the classroom, a minimum of $25,000 for education support professionals, and educators should be able to reach their ''maximum'' salary on the schedule within 10 years; (b) a professional growth salary schedule must be co-created or designed with educators through collective bargaining or, where there is no collective bargaining, agreed to by the organization representing educators, and it must allow for the strictly voluntary participation of current educators; (c) a professional growth salary schedule must contain

several levels through which educator progress is based on prescribed skills, knowledge, licenses, certifications, degrees, responsibilities, and accomplishments; (d) each level of any professional growth salary schedule should build on previous ones and contain salary increases for specified time periods within each level; (e) generally, early levels on any professional growth salary schedule should be linked to the probationary period of employment, advancement through the initial levels should be required, and movement through later levels may be voluntary; (f) a professional growth salary schedule must be linked to a professional development system that has been locally developed with educators and tied to high-quality professional development standards; (g) any professional growth salary schedule should clearly define what will be measured and how those measurements will be conducted; (h) any professional growth salary schedule should be tied to locally developed, research-based, professional learning opportunities targeted to the needs of the students; (i) a professional growth salary schedule must have adequate and sustainable sources of funding, both initially and on an ongoing basis, and grants should be viewed only as temporary resources that are not capable of sustaining a career salary program; (j) any professional growth salary schedule should be accessible to everyone who is eligible, without quotas; (k) any professional growth salary schedule should be locally bargained or, where there is no collective bargaining, agreed to with the organization representing the educators, flexible and structured for the contexts in which they will be implemented; (l) a professional growth salary schedule must be understandable to educators and the public; (m) an annual assessment of any professional growth salary schedule should be undertaken to determine its effectiveness in improving educator salaries, teaching quality, and the recruitment and retention of high-quality staff; and (n) all parties must agree on, and clarify, who is eligible to participate in a professional growth salary schedule.

Discussion: We believe that the proposed priorities, requirements, definitions, and selection criteria encourage applicants to collaboratively develop compensation systems. Under *Requirement 2—Involvement and Support of Teachers and Principals,* we require each applicant to provide evidence that educators have been involved, and will continue to be involved, in the development and implementation of the PBCS and evaluation systems described in the application. Under *Selection Criterion (d)—Involvement of Educators,* we will evaluate applicants based on the quality of educator involvement in the development of those same PBCSs and evaluation systems.

Further, the Department has reviewed the salary schedule principles submitted by the commenter, and has determined that the final priorities, requirements, definitions, and selection criteria allow applicants to develop compensation systems in ways that align with these principles. Given that applicants will have the flexibility requested by the commenters, we do not believe a change is necessary.

Changes: None.

Comment: None.

Discussion: Upon further review, we have determined that the ''Note'' in Requirement 1 should be amended to provide additional context for the charts provided in that Requirement. These charts illustrate how applicants can design their PBCS to meet the definition of a *PBCS.*

Changes: We have amended the note in Requirement 1 to provide an applicant with additional context for the charts found in the Requirement.

Requirement 2—Involvement and Support of Teachers and Principals

Comment: One commenter appeared to interpret Priority 1 as requiring LEAs to make significant modifications to their HCMSs, and expressed concern that applicants would not be able to secure educator support for systems still in their development stages. While the commenter acknowledged that educator support was important, the commenter stated that this support is only one of multiple factors that should be considered in the decision to implement a PBCS.

Discussion: The TIF authorizing statute requires that each TIF grantee demonstrate that its PBCS has been developed with the input of teachers and principals in the schools and LEAs to be served by the grant. Further, it is the Department's belief that ongoing involvement by educators in the development and implementation of the PBCS and evaluation systems is critical to the success and sustainability of the PBCS, and that educators are more likely to embrace these reforms if they have had a role in developing and implementing them. Accordingly, we believe it is appropriate and consistent with the statute to require each applicant to include in its application evidence of the involvement of educators in participating LEAs in the design of the PBCS, as well as in the design of the underlying evaluation systems that inform the PBCS. Further, under this requirement, an applicant must include in its application evidence demonstrating how educators in the participating LEAs will be involved in an ongoing basis with the implementation of the PBCS and evaluation systems. Beyond educator involvement, an applicant must also provide a description of the extent to which the applicant has educator support for the proposed PBCS and evaluation systems.

In requiring this description in the application, it is not our intent to require that applicants demonstrate in their applications that they have already secured a specific level of educator support; rather, under Selection Criterion (d), we will evaluate applications based on the strength of educator support that those applications describe in response to *Requirement 2—Involvement and Support of Teachers and Principals.* Applications that reflect low levels of educator support can be expected to receive a lower score under Selection Criterion (d). Conversely, applications that reflect higher levels of educator support can be expected to receive a higher score.

Changes: None.

Comment: Three commenters recommended that we prescribe the forms of evidence that an applicant must submit, and the processes in which applicants must engage, to meet *Requirement 2—Involvement and Support of Teachers and Principals.* One commenter suggested that we require applicants to conduct an educator vote, as such a process would be a definitive method for assessing whether there is sufficient support to implement a PBCS. A second commenter recommended that we require applicants to collaborate with effective teachers and a diverse cross-section of stakeholders in designing and implementing the PBCS. According to this commenter, involving these stakeholders would help to create professional education communities where top performers help to solve complex challenges. This commenter also recommended that we provide strong guidelines for submitting letters of support to ensure that these letters are genuine and represent a significant portion of educators. A third commenter recommended that we require applicants to collaborate with recognized educator representatives.

Discussion: While applicants must submit evidence of educator involvement to meet *Requirement 2—*

Involvement and Support of Teachers and Principals, we do not believe it is necessary or appropriate to prescribe the composition of educators that an applicant must include in the collaboration. We anticipate that some high-scoring applicants may engage in ongoing collaborative efforts where a handful of effective teachers and principals continuously work with district officials to manage the design and implementation of the PBCS and evaluations systems. Conversely, some high-scoring applicants may seek less substantive or formal involvement and input, but pursue feedback on a larger scale, and provide all educators in high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools* with opportunities to provide feedback on the development and implementation of the project. Thus, while the commenters' recommendations regarding the form of collaboration are all reasonable and may be very appropriate for certain LEAs, we do not accept any of them as procedures the Department should mandate for all LEAs that would participate in a TIF project.

Further, while evidence of educators' support in the form of letters or other communications that endorse the specifics of the applicant's proposal may make a stronger application for TIF funds, the Department has chosen not to require applicants to submit evidence of educator support in their applications in order to satisfy Requirement 2. Rather, to meet this requirement, applicants must provide a description of the extent to which the applicant has educator support for the proposed PBCS and educator evaluation systems. We will then evaluate the evidence provided to support this description, under paragraph (2) of *Selection Criterion (d)—Involvement of Educators;* applications that include strong evidence of educator support can be expected to receive a greater number of points under paragraph (2) than applications that do not include this level of support.

As the Department is letting applicants decide how best to describe educator support in their applications without requiring applicants to submit evidence of educator support in their TIF applications, we decline to prescribe the methods an applicant may use to submit evidence for the purposes of Selection Criterion (d)(2).

Changes: None.

Comment: One commenter recommended that we not allow educator representation to influence determinations of applicant eligibility. This commenter also stated that, to ensure the highest return on the TIF investment, we should not award funds to applicants when union policy would prohibit implementation of the PBCS or evaluation system.

Discussion: As mentioned elsewhere in this notice and in the NPP, educator involvement and support is critical to the successful implementation and sustainability of any applicant's proposed PBCS and evaluation systems. For this reason, each applicant must provide evidence of educator involvement in the development and implementation of both components of its project, and must describe the extent to which it has educator support for both of these components. Further, under *Selection Criterion (d)—Involvement of Educators,* applications that demonstrate strong evidence of educator involvement and support can be expected to receive more points than those that do not.

With these requirements and selection criteria, we believe it unnecessary to include the additional restriction, recommended by the commenter, which would prohibit the involvement of LEAs whose unions have policies prohibiting implementation of the PBCS or evaluation system. We hope that those unions would be willing to reconsider their positions and see the benefit of the reforms that we are proposing through the priorities, requirements, definitions, and selection criteria described in this notice. In addition, we have added a ''Note'' to Requirement 2 to clarify that it is the responsibility of the grantee to ensure that, in observing the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under terms of collective bargaining agreements, memoranda of understanding, or other agreements between these employees and their employers, the grantee also remains in compliance with the priorities, requirements, and definitions included in this notice. Further, this ''Note'' clarifies that if a grantee is unable to comply with these priorities, requirements, and definitions, the Department may take appropriate enforcement action (e.g., discontinue support for the project).

At the same time, the Department agrees that local policies, including union policies, may have a strong impact on the feasibility of an applicant's proposal. For this reason, we have revised both *Priority 5—An Educator Salary Structure Based on effectiveness* and *Selection Criterion (a)—A Coherent and Comprehensive Human Management Capital System (HMCS)* to address the impact of local policies on project feasibility.

Changes: Under *Priority 5—An Educator Salary Structure Based on effectiveness,* we have included new language (in paragraph (c)) directing applicants to describe the feasibility of its proposed salary structure's implementation, considering, in part, applicable local policies. In addition, under *Selection Criterion (a)(2)(iii)—A Coherent and Comprehensive Human Capital Management System,* we have added language to allow the Secretary to consider LEA-level policies that might inhibit or facilitate modifications needed to use educator effectiveness as a factor in human capital decisions when evaluating project feasibility. We have also added a *Note* to Requirement 2 to clarify that it is the responsibility of the grantee to ensure that, in observing the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under terms of collective bargaining agreements, memoranda of understanding, or other agreements between these employees and their employers, the grantee also remains in compliance with the priorities, requirements, and definitions included in this notice. Further, this *Note* clarifies that, in the event that a grantee is unable to comply with these priorities, requirements, and definitions, the Department may take appropriate enforcement action (e.g., discontinue support for the project).

Requirement 3—Documentation of High-Need Schools

We received no comments regarding Requirement 3.

Requirement 4—SEA and Other Group Applications

Comment: One commenter asked whether an LEA that was part of a group application in a previous TIF project, but not the lead applicant for that project, is eligible to apply for TIF funding under the priorities, requirements, definitions, and selection criteria in this notice.

Discussion: Priority 4—New or Rural Applicants to the Teacher Incentive Fund and *Requirement 7—Limitation on Using TIF Funds in High-Need Schools Served by Existing TIF Grants* address eligibility for LEA applicants that previously participated in a TIF-supported project. As noted elsewhere in this notice, we designate whether a priority is absolute, competitive preference, or invitational in the notice

inviting applications for a competition. For competitions in which we designate Priority 4 as absolute, applicants would not be eligible to receive TIF funds unless they provide an assurance, which the Department accepts, that each LEA to be served by the project has not previously participated in a TIF-supported project. In years when we designate Priority 4 as a competitive preference, LEA applicants that fail to provide this assurance would still be eligible to receive TIF funds although ineligible to receive the additional points available under the Priority. We consider an LEA to have previously participated in a TIF-supported project if it participated, or was included, in a previous or current TIF grant. For example, an LEA has previously participated if a previous TIF application that the Department funded identified it as a recipient of services under a previous TIF competition—even if the funded project did not move into full implementation, did not continue to receive funding throughout the entire performance period, or the LEA for some reason did not directly benefit from its participation in the project. Similarly, we consider an LEA to have previously participated if the grantee added the LEA as a participant in the project after a TIF project's initial funding.

Where Priority 4 is designated as a competitive preference, *Requirement 7—Limitation on Using TIF Funds in High-Need Schools Served by Existing TIF Grants* will impact the permissible scope of an application, submitted under a new TIF competition, that involves an LEA that is currently participating in a TIF project at the beginning of the new grant's project period. Under Requirement 7, applicants must provide an assurance that TIF funds received under the competition will only be used to implement the PBCS in high-need schools that are not served, as of the beginning of the grant's project period or as planned in the future, by an existing TIF grant. Thus, if all the high-need schools in an LEA are already being served—or will be served—by a current TIF grant as of the beginning of the grant's project period, that LEA would not be eligible to receive funds or otherwise participate in a grant funded under this competition. Current TIF grantees with one or more high-need schools that are not served—and will not be served—by the current grant as of the beginning of the grant's project period would be eligible to receive funds under this notice.

Changes: None.

Comment: One commenter recommended that we remove the requirement that SEAs or other group applicants must implement a full HCMS when partnering with LEAs. According to the commenter, this change would allow SEAs and other group applicants to form partnerships with LEAs while also maintaining their flexibility to apply for a different scope of work, such as a PBCS, educator evaluation system, or salary structure overhaul.

Discussion: We are not certain that we understand this comment fully. We believe that the commenter recommended that we not require SEAs or nonprofit organizations that apply as part of group application to enter into an MOU with participating LEAs. It appears that the commenter believes that, in entering into such an MOU, SEAs and nonprofit organizations would thereby take on responsibility for the development of the LEAs' HCMSs. The commenter stated that, if we did not require SEAs or nonprofit organizations to execute such an MOU, we would enable them to have a different scope of work, such as the PBCS, educator evaluation system, or salary structure overhaul.

It appears that the commenter misinterpreted the purpose of the MOU that group applicants would execute under Requirement 4. Under paragraph (1) the MOU would contain a commitment by each participating LEA to implement the HCMS, including the educator evaluation systems and the PBCS, described in the application, and under paragraph (5) the MOU must contain a description of the activities that each member of the group will perform. Requirement 4 does not require that an SEA or nonprofit organization partner must take responsibility for developing the HCMS. While the participating LEA(s) in the group or partnership application must do so, the responsibility of SEA or nonprofit organization partners, if any, to assist the LEA(s) would be determined by the partners and described in the MOU.

Under *Priority 1—An LEA-wide Human Capital Management System (HCMS) with Educator Evaluation Systems at the Center,* and *Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel,* each participating LEA must have a TIF-funded PBCS that is implemented as part of an LEA-wide HCMS. As we have explained elsewhere in this notice, we believe that integrating a PBCS within an LEA's larger HCMS will help ensure that the PBCS is a successful mechanism for improving classroom instruction and educator effectiveness, and that an LEA is more likely to sustain a PBCS that is embedded within a comprehensive HCMS. All TIF applications, whether from individual LEAs or from groups of LEAs, SEAs, or nonprofit organizations, must propose ways to ensure that the participating LEA(s) implement this responsibility, but how a group does this is up to the group to decide. We, therefore, decline to make a change in the requirement based on this comment.

Changes: None.

Requirement 5—Submitting an Application for One Competition

Comment: None.

Discussion: In reviewing proposed *Requirement 5—Submitting an Application for One Competition,* under which all eligible applicants were prohibited from applying to both competitions offered in any fiscal year, the Department has determined that this restriction was overly broad. With this restriction, our original intent was to encourage each applicant to develop one high-quality application that reflects the goals of the participating LEAs that will implement the new evaluation systems, HCMS, and PBCS. Based on this rationale, we have now determined that the restriction of one application per fiscal year need only apply to LEAs. Further, the Department has decided to rephrase this restriction to clarify that an LEA can participate in only one application—an application in the General TIF Competition or an application in the TIF Competition with a Focus on STEM. This means that an LEA may be included in only one application for one competition in any fiscal year—whether it applies on its own or with a group of LEAs, an SEA, or a nonprofit organization. Because the LEA will be the primary actor in any TIF project, the Department believes that this clarification is essential to avoid multiple awards for the same project.

The Department has also determined that its goals can be achieved by allowing an SEA to participate in a group application for one competition (General) and to participate in another group application for the other competition (TIF Competition with a Focus on STEM) so long as the LEAs in each group application are different. To minimize the risk of double funding, an SEA can participate in only one application for each competition.

Similarly, with the focus on not having multiple applications from any one LEA, the Department has decided not to restrict the number of group applications in which a nonprofit organization can participate. If two or more applications from the same entity

(an SEA or a non-profit) are successful, the Department will allocate any overlapping costs to the appropriate grant during the post-award period.

Changes: The Department has revised *Requirement 5— Submitting an Application for One Competition* to stipulate the number of applications, and the number of competitions, that any applicant may participate in during any fiscal year, with special rules for LEAs, SEAs, and nonprofits. In new paragraph (a) of this requirement, we state that an LEA may participate in only one application in any fiscal year. In new paragraph (b) of this requirement, we state that an SEA may participate in a group application for each of the competitions in any fiscal year. In new paragraph (c) of this requirement, we state that a non-profit organization may participate in an unlimited number of group applications for each competition in any fiscal year. Finally, to be consistent with the substantive changes to this requirement, we have changed the name of the requirement to ''*Limitations on Multiple Applications.*''

Requirement 6—Use of TIF Funds To Support the PBCS

Comment: In the NPP, we requested comments regarding the use of TIF funds to support the full amount of salary and salary augmentations associated with career ladder positions and other additional responsibilities and leadership roles. We received several comments responding to this request. Two commenters recommended that we fund only salary augmentations, and not full salaries, for career ladder positions. One of those two commenters noted that this approach would be more consistent with our goal of enhancing project sustainability. At the same time, the commenter recommended that we place no limit on salary augmentations associated with additional responsibilities and leadership roles because this compensation may be more effective for improving student outcomes than compensation awarded strictly on the basis of educator performance.

Several commenters recommended that we support the cost of both salaries and salary augmentations, even in spite of, according to one commenter, the potential risks to project sustainability. These commenters noted that master teachers have the greatest impact when they are fully released from instructional responsibilities to provide full-time support to other teachers (e.g., by analyzing data, conducting evaluations, coaching teachers individually, and facilitating instructional team meetings); however, LEAs often do not have the funding to support non-instructional positions. Therefore, without TIF support, most LEAs could not fully release their master teachers from instructional responsibilities. One commenter shared that its LEA could not continue to support full-time master teacher positions without TIF support, even though the LEA currently relies on an assortment of Federal, State, and local funds. Several commenters recommended that we fund one salary augmentation and one salary for a given number of classroom teachers to allow for appropriate TIF support that meets the needs of small and large schools.

Specifically, a few commenters recommended that we fund the full-time salary of one fully-released master teacher for every 15 classroom teachers and, additionally, the salary augmentation for one mentor teacher, who would retain some instructional responsibilities, for every eight regular classroom teachers. One commenter recommended a ratio of one master teacher for every 12 to 15 classroom teachers and one mentor teacher for every six to eight classroom teachers. While acknowledging this approach may cause concern for project sustainability, one commenter argued that financial support is critical for ensuring that career ladder positions have a strong foundation for lasting implementation.

Discussion: We greatly appreciate all of the thoughtful comments provided on this critical issue. After careful consideration of the recommendations provided, we have revised *Requirement 6—Use of TIF Funds to Support the PBCS* to limit the amount of TIF funds available to support the costs of career ladder positions and other additional responsibilities and leadership roles for teachers.

In setting this limit, we balance several considerations, including the desire to promote the sustainability of projects funded by the TIF program while also promoting the routine delivery of job-embedded professional development in the high-need schools. While the availability of TIF support should not encourage applicants to propose projects too large to sustain beyond the grant's project period, TIF funds should provide applicants, and their stakeholders, an opportunity to realize the benefits of full-time, fully-released career ladder positions for providing high-quality, job-embedded professional development. By providing this opportunity, we believe Requirement 6 will increase the likelihood that career ladder positions will garner the support, including financial support, needed to sustain the applicant's PBCS once grant funds are spent.

For these reasons, we are revising Requirement 6 to allow applicants to use TIF funds for full-time salaries of teachers in career ladder positions in participating high-need schools up to a ceiling. As suggested by several commenters, this ceiling is expressed as a ratio. We carefully considered the recommendations made by commenters based on current work in the field regarding individuals in career ladder positions, such as master teacher, mentor teacher, and others, taking on additional roles and responsibilities. Our approach differs from commenters' recommendations by providing one ratio for both career ladder positions and other additional roles and responsibilities to allow for the greatest flexibility for project design to best meet local needs.

In light of these recommendations, we have determined that TIF funds may support the cost of up to one full-time equivalent position for every 12 teachers who are not in a career ladder position in the high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.* This ratio falls within the range of the commenters recommendations. Further, we believe that the ratio reflects an appropriate use of TIF dollars for additional responsibilities and leadership roles, particularly in view of the flexibility provided to grantees to configure the various positions that TIF funds would support.

Thus, if there are 48 classroom teachers in these participating high-need schools, TIF funds may be used to support the full-time salary of up to four career ladder positions. This approach provides applicants with significant flexibility by enabling an LEA to design its program of additional responsibilities and leadership roles using only full-time career ladder positions, only part-time positions, or some combination of both, as necessary to implement either PBCS Design Model 1 or Design Model 2. Thus, in the preceding example, while TIF funds could support four full-time positions, the applicant could elect instead to use the amount of available funds differently. For example, rather than supporting four full-time positions, the applicant could use TIF funds to support two full-time positions and four half-time positions. In the latter case, TIF funds would support two salaries and four salary augmentations (i.e., an additional amount of compensation over

and above what the LEA would otherwise pay the effective teacher).

Further, we intend for this limitation to apply to compensation for both career ladder positions and educators who take on additional responsibilities and leadership roles in accordance with the priorities, requirements, and definitions in this notice. In the preceding example, an applicant using Design Model 1 may use TIF-funds to support the costs of two full-time positions, and four salary augmentations for effective teachers who accept additional responsibilities and leadership roles. As several commenters noted, both full-time and part-time career ladder positions, and similar activities, can play a critical role in supporting teacher growth and student outcomes.

Changes: We have revised *Requirement 6—Use of TIF Funds to Support the PBCS* to clarify that applicants may use TIF funds to support the costs of both salaries and salary augmentations up to the cost of one full-time equivalent position for every 12 teachers who are not in a career ladder position in the high-need schools identified in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.* This new element of the requirement appears in paragraph (b)(3) of Priority 5.

Comment: Two commenters requested that we allow TIF funds to be used to assist schools that are not high-need. One commenter requested that we allow applicants to use TIF funds to assist all schools within an LEA or a State. A second commenter requested that we allow TIF funds to be used to provide professional development to schools that are not high-need because doing so would allow for the efficient use of scarce resources without harm to the high-need schools.

Discussion: While the Department does not dispute the potential advantages of LEA-wide PBCSs or professional development opportunities, the statutory authority for the TIF program does not allow applicants to use TIF funds to support performance-based compensation for educators working in schools that are not high-need. By law, TIF funds may be used only for additional compensation to teachers, principals, and other personnel who work in high-need schools. While the authorizing statute also permits TIF funds to be used to help develop and implement the tools and systems, such as evaluation systems, that would be needed to implement a PBCS in non-high-need schools and that would help to identify what professional development educators in non-high-need schools may need, additional compensation and professional development for teachers, principals, and other personnel who work in non-high-need schools must be paid for with non-TIF funds.

Changes: None.

Comment: One commenter asked whether TIF funds may be used for direct services for students. Specifically, the commenter asked whether TIF funds could be used to support a STEM Academy for students run by effective teachers taking on career ladder positions or other additional responsibilities and leadership roles.

Discussion: Under the priorities, requirements, and definitions in this notice, TIF funds generally may not be used to provide direct services to students. Given the purpose of the TIF program, we have trouble envisioning how TIF funds may be used to provide direct services for students except perhaps, under PBCS Design Model 1, as part of an LEA's incentives for effective teachers to take on additional leadership roles and responsibilities. In this regard, the definition of *additional responsibilities and leadership roles provides* that these are ''meaningful school-based responsibilities that teachers may voluntarily accept to strengthen instruction or instructional leadership in a systemic way''. So any direct services to students would need to be provided within the context of strengthening instruction or instructional leadership in a systemic way.

To the extent that (1) the *additional responsibilities and leadership roles* assumed by the teachers in a STEM academy involve the provision of direct services to students, and (2) the STEM academy is located in a high-need school that is identified in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools,* TIF funds may be used for incentives for the academy's teachers to take on these additional responsibilities and leadership roles.

Changes: None.

Comment: One commenter requested that the Department allow grantees to use TIF funds to address specific components of an LEA's broader HCMS. For example, the commenter stated that the Department should allow an LEA that already has a robust teacher evaluation system to use TIF funds to build and implement a principal evaluation system as long as the LEA demonstrates alignment between the two.

Discussion: TIF funds may be used to support the development and implementation of the PBCS in the high-need schools identified in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.* TIF funds may also be used both to support (1) the development and improvement of systems and tools that are necessary to implement the PBCS under the priorities, requirements, and definitions contained in this notice, and (2) the processes the LEA uses to act on the information generated by these systems and tools, for example, in determining to whom to award performance-based compensation. In keeping with these general principles, TIF funds may be used for costs needed to make proposed modifications to an LEA's HCMS that are needed to address *Priority 1—An LEA-Wide Human Capital Management System (HCMS) with Educator Evaluation Systems at the Center,* where these costs are reasonable and necessary for the development or improvement of systems and tools that support the PBCS.

Further, consistent with the TIF authorizing statute, TIF funds may be used for the development and improvement of systems and tools that support the PBCS and benefit the entire LEA, but not for the LEA-wide implementation of these systems and tools. Therefore, the salaries of staff who are charged with implementing these systems and tools that would be charged to TIF funds are subject to basic principles regarding allocation of costs charged to Federal grant funds among different programs or cost objectives. For example, given the timelines in this notice, the costs related to new evaluation systems can be considered development and improvement costs up to the first year of LEA-wide implementation. From the beginning of the first year of LEA-wide implementation, these costs would no longer be considered development or improvement costs for purposes of the TIF program; rather, they are implementation costs, which TIF funds cannot support on an LEA-wide basis. Under generally applicable Federal cost principles related to cost allocation, TIF funds may only support that proportion of the total implementation costs that benefit the high-need schools identified in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.*

Changes: None.

Comment: None.

Discussion: As proposed, *Requirement 6—Use of TIF Funds to Support the PBCS* generally restricted grantees from using TIF funds to compensate educators except in two circumstances: when the compensation is part of the PBCS or involves compensating an educator who is

employed or hired to help administer the TIF project. The Department has determined that a third exception to the general restriction is appropriate. This third exception would allow grantees to use TIF funds to compensate educators who work in high-need schools identified in the application as included in the TIF project for attending professional development that addresses needs identified through the educators' evaluation results and that educators need to enable them to benefit from the PBCS. As the provision of professional development to these educators with TIF funds is itself permissible, we view payment of reasonable and necessary compensation to educators for their time attending TIF-related professional development outside of official duty hours as likewise permissible. In this situation, TIF funds may only be used to compensate educators if the PBCS-related professional development they attend occurs outside of the educators' official duty hours.

Changes: We have revised the last paragraph of this requirement (paragraph (c)) to clarify that TIF funds may be used to compensate educators for attending TIF-related professional development outside their official duty hours.

Requirement 7—Limitation on Using TIF Funds in High-Need Schools Served by Existing TIF Grants

We received no comments regarding Requirement 7.

Definitions

Performance-based Compensation System (PBCS)

Comment: One commenter requested that we clarify paragraph (b)(1) of the definition of *performance-based compensation system (PBCS).* This paragraph describes the optional recruitment components of a PBCS. This commenter recommended that we revise this paragraph to specify that additional compensation may be provided to educators transferring from one high-need school to another and to first-year teachers in a high-need school. The commenter stated that this change would help high-need schools address common challenges with recruitment and retention.

Discussion: It was not our intent in the NPP to allow TIF-funded PBCSs to support either educator recruitment for first year teachers, for whom there may be no evaluation information available, or educator transfers between high-need schools. These proposals would not necessarily support the overall purpose of the TIF program—to improve educator effectiveness and student achievement in high-need schools. However, nothing in this notice precludes applicants from proposing to use non-TIF funds to provide additional compensation to first-year teachers or to effective educators who transfer from one high-need school to another.

Changes: None.

Comment: One commenter requested that we revise paragraph (b)(1) of the definition of *performance-based compensation* by removing the requirement that compensation for educators who previously worked in another LEA and who are hired to work in a high-need school be based on an overall evaluation rating of effective or higher under evaluation systems that are comparable to the applicant's proposed evaluation systems. The commenter expressed concern that this element of the definition would increase applicant burden, as applicants would have to investigate the evaluation systems of other LEAs.

Discussion: The TIF authorizing statute requires that TIF-funded performance-based compensation be provided on the basis of a PBCS that considers student growth, multiple observations, and other factors. In the case of an educator hired from another LEA, payment of performance-based compensation would thus be based on the new LEA's PBCS—not the former LEA in which the educator had worked. Accordingly, applicants may not use TIF funds to provide additional compensation to educators transferring from another LEA, where those educators have not been evaluated using factors that are comparable to the receiving LEA's proposed evaluation system and the provisions of the TIF authorizing statute. While we acknowledge that there is some burden associated with investigating another LEA's educator evaluation system, the only alternative to the exception we have provided would be to prohibit payment of additional compensation to educators who previously worked in another LEA and who are hired to work in a high-need school. We believe the exception we have provided is preferable.

Changes: None.

Rural Local Educational Agency

Comment: None.

Discussion: We have modified Priority 4 to give priority to applicants that propose to serve only rural LEAs to help ensure geographic diversity. The Department needs to define the term ''rural local educational agency'' for the purpose of this notice. In developing this definition, the Department chose to highlight those LEAs eligible to receive funds under the Department's Rural Education Achievement Program, including the Small Rural School Achievement program and the Rural and Low-Income School program.

Changes: We have defined ''rural local educational agency'' in this notice as an LEA that is eligible under the Small Rural School Achievement program or the Rural and Low-Income School program authorized under Title VI, Part B of the ESEA.

Student Growth

Comment: One commenter recommended that we amend the definition of *student growth* to reduce the emphasis on standardized tests, and promote the use of other assessment instruments and other measures, in order to avoid incenting teachers to teach to the test and to ensure that educators provide instruction that promotes 21st century skills.

Discussion: As mentioned elsewhere in this notice, Congress has authorized and appropriated funds for the TIF program to support the development of PBCSs that consider gains in student achievement (i.e., student growth), and the Department believes that student growth is a meaningful measure of teacher and principal effectiveness that should be a significant part of rigorous, transparent, and fair evaluation systems that include multiple measures. The Department strongly disagrees with the notion that the existence of cheating reflects on the merits of standardized testing or the usage of standardized test data for accountability purposes. Moreover, the Department believes that standardized testing has no special vulnerability to this type of behavior; rather, under any system of educational accountability, we must work to ensure that the metrics used are as fair, transparent, and rigorous as possible. Further, under the definition of *student growth* in this notice, applicants have broad flexibility to select the assessments used to measure student achievement for those grades and subjects not required to be assessed under section 1111(b)(3) of the ESEA, and to supplement the assessments in grades and subjects that are required under section 1111(b)(3) with other measures of student learning. For these reasons, we decline to amend the definition of *student growth* as requested by the commenter.

Changes: None.

Vision of Instructional Improvement

Comment: Two commenters requested that we expand the definition of *vision of instructional improvement* to include

cultural competency, classroom management, social and emotional learning, and conflict prevention and resolution among the key competencies for which LEAs must evaluate educators. One of the commenters noted that school safety, school discipline, and academic achievement are interlinked, and cited research showing that positive, evidence-based and preventative approaches to discipline resulted in higher attendance, achievement, and teacher morale.

Discussion: The Department agrees that competencies related to school climate may support educator efforts to help students attain higher levels of academic achievement. At the same time, however, we do not believe it is necessary or appropriate to require LEAs participating in a TIF project to develop or amend their vision of instructional improvement in any particular way. Rather, to meet Priority 1, applicants must articulate how their HCMS aligns or will align with the LEA's vision, leaving to the LEA whether it chooses to adjust it for purposes of implementing a TIF-funded project. Therefore, we decline to amend the definition of *vision of instructional improvement* to include specific competencies as recommended by the commenters.

Changes: None.

Selection Criteria

Comment: One commenter recommended that we revise *Selection Criterion (a)—A Coherent and Comprehensive Human Capital Management System (*HCMS), to reward applicants who have in place policies that support the usage of evaluation information from human capital decision-making.

Discussion: The Department agrees with the commenter's recommendation, and has amended Selection Criterion (a)(2)(iii) to allow the Secretary to provide more points to applicants whose local policies would support the usage of evaluation information for human capital decision-making.

Changes: The Department has amended Selection Criterion (a)(2)(iii) to allow the Secretary to consider the extent to which the LEA has applicable LEA-level policies that might either inhibit or facilitate modifications needed to use educator effectiveness as a factor in human capital decision-making.

Comment: Two commenters recommended the addition of new measures to Selection Criteria (b)(5) and (b)(6)(*Rigorous, Valid, and Reliable Educator Evaluation Systems*). One commenter requested that we amend Selection Criterion (b) to encourage applicants to use a range of prescribed factors, reflective of a principal's many responsibilities, to evaluate principal performance. Another commenter suggested that we amend Selection Criterion (b) to encourage applicants to develop comprehensive evaluations, where multiple factors are equally weighted in each applicant's proposed evaluation rubric, instead of evaluations where student growth receives significant weight. According to this commenter, comprehensive evaluations will properly assess whether students are provided the opportunities to learn 21st century skills without giving educators incentives to push students out of school or take steps to artificially raise test scores.

Discussion: We agree with the commenters that there are merits to using a range of factors to evaluate principal and teacher effectiveness. However, the Department believes that applicants should have the flexibility to select which other factors, apart from student growth and multiple evaluations, that they will use as part of their evaluation rubrics. We decline to prescribe factors beyond those required by statute, and outlined in Selection Criterion (b).

Changes: None.

Comment: Two commenters recommended that we make changes to *Selection Criterion (c)—Professional Development Systems to Support the Needs of Teachers and Principals Identified Through the Evaluation Process,* to encourage applicants to propose strong, evidence-based professional development supports as part of their TIF project. One commenter stated that, to remain consistent with research and best practice, we should amend Selection Criterion (c) to encourage applicants to propose professional development opportunities that are both job-embedded and ongoing. Another commenter recommended that we amend Selection Criterion (c) to award additional points to applicants who provide a methodology for examining the impact of their proposed professional development on student growth and instructional practice.

Discussion: We agree that applicants should propose ongoing, job-embedded supports as part of the professional development opportunities offered to educators, and have amended Selection Criterion (c)(3) accordingly. With respect to the comment regarding awarding additional points to applicants who provide a methodology for examining the impact of the proposed professional development on student growth and instructional practice, we believe such a change is unnecessary. We believe that our new Selection Criterion (c)(3) is sufficient to encourage applicants to propose school-based, job-embedded professional development opportunities likely to improve instructional and leadership practice, without prescribing how applicants should demonstrate that these supports are effective.

Changes: The Department has revised Selection Criterion (c) by adding a new paragraph (3) under which the Department will consider the extent to which each participating LEA has a high-quality plan to provide school-based, job-embedded opportunities for educators to transfer new knowledge into instructional and leadership practices.

Comment: One commenter suggested that we amend *Selection Criterion (f)—Sustainability,* to allow an applicant to make adjustments and improvements to its PBCS, as needed, during and after the project period has ended. Citing what the commenter considered a model performance-based compensation system, which differs significantly from the pilot project that preceded it, the commenter expressed concern that proposed Selection Criterion (f) would not allow for the continual improvement that was critical for bringing that system to its current state.

Discussion: We do not agree that Selection Criterion (f) precludes an applicant from making adjustments and improvements to its educator evaluation systems and PBCS.

Moreover, the Department certainly agrees that it is important to continually improve projects based on a formal project evaluation. In this regard, under *Selection Criterion (e)—Project Management,* an applicant will be awarded points depending on the extent to which its management plan includes an effective evaluation plan. The Department also believes that any adjustments and improvements made to a project based on the results of a formal evaluation that examines the project during various phases of implementation can help ensure the project's long-term sustainability.

Regardless of how applications are evaluated, grantees are free to work to continually improve their projects once awarded a TIF grant. We fully expect all grantees to make adjustments and improvements in their projects subject to the following conditions: That any changes that might affect the scope of the project first receive Department approval, and that the project remain consistent with their approved applications and the priorities,

requirements and definitions contained in this notice.

Changes: None.

Comment: One commenter expressed concern that minimal attention is given to project evaluation under *Selection Criterion (e)—Project Management;* this commenter requested that we add a new selection criterion focused on project evaluation. The commenter noted that, as many educators and school officials are skeptical of performance-based compensation, rigorous and independent evaluation of each project would help to increase the credibility of compensation reforms.

Discussion: The Department fully agrees that an evaluation of each TIF project would help to build the evidence supporting performance-based compensation, and, therefore, local support both for sustaining the PBCS beyond the project period and, more generally, for compensation reform based on PBCSs. For this reason, we proposed and have included Selection Criterion (e)(4) so that when evaluating applications, we can award points based on the effectiveness of the project evaluation plans included in the applications. Further, the Department has recently invested in two rigorous, national evaluations of performance-based compensation—one of which is an evaluation of grantees that received funds under the TIF fiscal year 2010 competition (the TIF 2010 competition)—that will provide the field with information related to the commenter's request. For these reasons, we decline to include a new selection criteria focused on project evaluation.

Changes: None.

Comment: One commenter recommended that we add a new selection criterion, under which we would award points to those applicants that articulate how they will modify and improve their project, as needed, with the goal of continual improvement.

Discussion: The Department agrees that it is important for TIF grantees to continually improve projects, whether based on a formal project evaluation or other data the grantee gathers about project implementation. That said, the Department does not believe it is necessary to include a new selection criterion solely focused on the goal of continual improvement. Under *Selection Criterion (e)—Project Management,* an applicant will receive points depending on the extent to which the proposed project's management plan includes an effective evaluation plan. In addition, we expect all grantees during the course of their project period to work to secure and examine data with which to continually improve their projects and project outcomes, consistent with their approved applications and the priorities, requirements, and definitions contained in this notice.

Changes: None.

Final Priorities

The Assistant Secretary establishes the following 5 priorities for the TIF program. The Assistant Secretary may apply one or more of these priorities in FY 2012 and later years in which this program is in effect.

Priority 1—An LEA-Wide Human Capital Management System (HCMS) With Educator Evaluation Systems at the Center

To meet this priority, the applicant must include, in its application, a description of its LEA-wide HCMS, as it exists currently and with any modifications proposed for implementation during the project period of the grant. The application must describe—

(1) How the HCMS is or will be aligned with the LEA's vision of instructional improvement;

(2) How the LEA uses or will use the information generated by the evaluation systems it describes in its application to inform key human capital decisions, such as decisions on recruitment, hiring, placement, retention, dismissal, compensation, professional development, tenure, and promotion;

(3) The human capital strategies the LEA uses or will use to ensure that high-need schools are able to attract and retain effective educators; and

(4) Whether or not modifications are needed to an existing HCMS to ensure that it includes the features described in response to paragraphs (1), (2), and (3) of this priority, a timeline for implementing the described features, provided that the use of evaluation information to inform the design and delivery of professional development and the award of performance-based compensation under the applicant's proposed PBCS in high-need schools begins no later than the third year of the grant's project period in the high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.*

Note: TIF funds can be used to support the costs of the systems and strategies described under this priority, *Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM),* and *Priority 5—An Educator Salary Structure Based on Effectiveness* only to the extent allowed under *Requirement 6—Use of TIF Funds to Support the PBCS.*

Priority 2: LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth.

To meet this priority, an applicant must include, as part of its application, a plan describing how it will develop and implement its proposed LEA-wide educator evaluation systems. The plan must describe—

(1) The frequency of evaluations, which must be at least annually;

(2) The evaluation rubric for educators that includes at least three performance levels and the following—

(i) Two or more observations during each evaluation period;

(ii) Student growth, which for the evaluation of teachers with regular instructional responsibilities must be growth at the classroom level; and

(iii) Additional factors determined by the LEA;

(3) How the evaluation systems will generate an overall evaluation rating that is based, in significant part, on student growth; and

(4) The applicant's timeline for implementing its proposed LEA-wide educator evaluation systems. Under the timeline, the applicant must implement these systems as the LEA's official evaluation systems for assigning overall evaluation ratings for at least a subset of educators or schools no later than the beginning of the second year of the grant's project period. The applicant may phase in the evaluation systems by applying them, over time, to additional schools or educators so long as the new evaluation systems are the official evaluation systems the LEA uses to assign overall evaluation ratings for all educators within the LEA no later than the beginning of the third year of the grant's project period.

Priority 3: Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM)

To meet this priority, an applicant must include a plan in its application that describes the applicant's strategies for improving instruction in STEM subjects through various components of each participating LEA's HCMS, including its professional development, evaluation systems, and PBCS. At a minimum, the plan must describe—

(1) How each LEA will develop a corps of STEM master teachers who are skilled at modeling for peer teachers pedagogical methods for teaching STEM skills and content at the appropriate grade level by providing additional compensation to teachers who—

(i) Receive an overall evaluation rating of effective or higher under the evaluation system described in the application;

(ii) Are selected based on criteria that are predictive of the ability to lead other teachers;

(iii) Demonstrate effectiveness in one or more STEM subjects; and

(iv) Accept STEM-focused career ladder positions;

(2) How each LEA will identify and develop the unique competencies that, based on evaluation information or other evidence, characterize effective STEM teachers;

(3) How each LEA will identify hard-to-staff STEM subjects, and use the HCMS to attract effective teachers to positions providing instruction in those subjects;

(4) How each LEA will leverage community support, resources, and expertise to inform the implementation of its plan;

(5) How each LEA will ensure that financial and non-financial incentives, including performance-based compensation, offered to reward or promote effective STEM teachers are adequate to attract and retain persons with strong STEM skills in high-need schools; and

(6) How each LEA will ensure that students have access to and participate in rigorous and engaging STEM coursework.

Priority 4: New or Rural Applicants to the Teacher Incentive Fund

To meet this priority, an applicant must provide at least one of the two following assurances, which the Department accepts:

(a) An assurance that each LEA to be served by the project has not previously participated in a TIF-supported project.

(b) An assurance that each LEA to be served by the project is a rural local educational agency (as defined in this notice).

Priority 5: An Educator Salary Structure Based on Effectiveness

To meet this priority, an applicant must propose, as part of its PBCS, a timeline for implementing no later than in the fifth year of the grant's project period a salary structure based on effectiveness for both teachers and principals. As part of this proposal, an applicant must describe—

(a) The extent to which and how each LEA will use overall evaluation ratings to determine educator salaries;

(b) How each LEA will use TIF funds to support the salary structure based on effectiveness in the high-need schools listed in response to Requirement 3(a); and

(c) The extent to which the proposed implementation is feasible, given that implementation will depend upon stakeholder support and applicable LEA-level policies.

Note: To meet *Priority 2—LEA-wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* an applicant must implement its proposed PBCS in the high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools* by the beginning of the third year of the grant's project period. If the timeline for implementing the salary structure proposed under this Priority 5 does not meet that deadline, the applicant must describe, under *Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel,* a proposed PBCS that the LEA will implement until the proposed salary structure is implemented.

Types of Priorities

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

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

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

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Requirements

The Assistant Secretary establishes the following requirements for the TIF program. The Assistant Secretary may apply one or more of these requirements in FY 2012 and later years in which this program is in effect. These requirements are in addition to the statutory requirements that apply to the program and any priorities, definitions, and selection criteria we announce in the notice inviting applications for a TIF competition.

Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel

In its application, an applicant must describe, for each participating LEA, how its proposed PBCS will meet the definition of a *PBCS* set forth in this notice.

Note: The following charts illustrate how applicants can design their PBCS to meet the definition of *PBCS.* Chart 1 describes the two types of design models that meet the statutory requirements. Chart 2 identifies additional optional features that could be implemented as part of a PBCS. To ensure that funded applications reflect a diversity of PBCSs, the Secretary reserves the right to fund a sufficient number of high-quality Design Model 1 and Design Model 2 projects, as shown in Chart 1.

CHART 1—PBCS DESIGN OPTIONS TO MEET STATUTORY REQUIREMENTS

Design model	Mandatory elements
1 * ..... * Corresponds to paragraph (a)(1) of the PBCS definition.	Proposed PBCS provides both of the following: (1) Additional compensation for *teachers and principals* who receive an overall rating of effective or higher under the evaluation systems described in the application. (2) Of those teachers and principals eligible for compensation under paragraph (1), additional compensation for *teachers and, at the applicant's discretion, for principals,* who take on *additional responsibilities and leadership roles* (as defined in this notice).
2* ..... * Corresponds to paragraph (a)(2) of the PBCS definition.	Proposed PBCS provides both of the following: (1) Additional compensation for *teachers* who receive an overall rating of effective or higher under the evaluation system described in the application and who take on *career ladder positions* (as defined in this notice). (2) Additional compensation for one or both of the following: (A) *Principals* who receive an overall rating of effective or higher under the evaluation system described in the application, or

CHART 1—PBCS DESIGN OPTIONS TO MEET STATUTORY REQUIREMENTS—Continued

Design model	Mandatory elements
	(B) *Principals* who receive an overall rating of effective or higher under the evaluation system described in the application and who take on *additional responsibilities and leadership roles* (as defined in this notice).

CHART 2—PBCS OPTIONAL FEATURES

	Optional elements
Compensation for Transfers to High-Need Schools.	Proposed PBCS provides additional compensation for educators (*which at the applicant's option may be for teachers or principals or both*) who receive an overall rating of effective or higher under the evaluation systems described in the application or under comparable evaluation systems in another LEA, and who either: (1) Transfer to a high-need school from a school of the LEA that is not high-need, or (2) For educators who previously worked in another LEA, are hired to work in a high-need school.
Compensation for Other Personnel	Proposed PBCS provides additional compensation for other personnel, who are not teachers or principals, based on performance standards established by the LEA so long as those standards, in significant part, include student growth, which may be school-level student growth.

Requirement 2—Involvement and Support of Teachers and Principals

In its application, the applicant must include—

(a) Evidence that educators in each participating LEA have been involved, and will continue to be involved, in the development and implementation of the PBCS and evaluation systems described in the application;

(b) A description of the extent to which the applicant has educator support for the proposed PBCS and educator evaluation systems; and

(c) A statement indicating whether a union is the exclusive representative of either teachers or principals in each participating LEA.

Note: It is the responsibility of the grantee to ensure that, in observing the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under terms of collective bargaining agreements, memoranda of understanding, or other agreements between these employees and their employers, the grantee also remains in compliance with the priorities, requirements, and definitions included in this notice. In the event that a grantee is unable to comply with these priorities, requirements, and definitions, the Department may take appropriate enforcement action (e.g., discontinue support for the project).

Requirement 3—Documentation of High-Need Schools

Each applicant must demonstrate, in its application, that the schools participating in the implementation of the TIF-funded PBCS are high-need schools (as defined in this notice), including high-poverty schools (as defined in this notice), priority schools (as defined in this notice), or persistently lowest-achieving schools (as defined in this notice). Each applicant must provide, in its application—

(a) A list of high-need schools in which the proposed TIF-supported PBCS would be implemented;

(b) For each high-poverty school listed, the most current data on the percentage of students who are eligible for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act or are considered students from low-income families based on another poverty measure 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-poverty school 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-poverty school; and

(c) For any priority schools listed, documentation verifying that the State has received approval of a request for ESEA flexibility, and that the schools have been identified by the State as priority schools.

Requirement 4—SEA and Other Group Applications

(a) Applications from the following are group applications:

(1) Any application from two or more LEAs.

(2) Any application that includes one or more SEAs.

(3) Any application that includes a nonprofit organization.

(b) An applicant that is a nonprofit organization must apply in a partnership that includes one or more LEAs, and must identify in the application the LEA(s) and any SEA(s) with which the proposed project would be implemented.

(c) An applicant that is an SEA must apply for a grant under this program as part of a group application that includes one or more LEAs in the same State as the SEA, and must identify in the application the LEA(s) in which the project would be implemented.

(d) All group applications must include a Memorandum of Understanding (MOU) or other binding agreement signed by all of the members of the group.

At a minimum, the MOU or other agreement must include—

(1) A commitment by each participating LEA to implement the HCMS, including the educator evaluation systems and the PBCS, described in the application;

(2) An identification of the lead applicant;

(3) A description of the responsibilities of the lead applicant in managing any grant funds and ensuring overall implementation of the proposed project as described in the application if approved by the Department;

(4) A description of the activities that each member of the group will perform; and

(5) A statement binding each member of the group to every statement and assurance made in the application.

(e) In any group application identified in paragraph (a) of this requirement, each entity in the group is considered a grantee.

Requirement 5—Limitations on Multiple Applications

(a) An LEA applicant may participate in no more than one application in any fiscal year.

(b) An SEA applicant may participate in no more than one group application for the General TIF Competition, and no more than one group application for the TIF Competition with a Focus on STEM in any fiscal year.

(c) Nonprofit organization applicants may participate in one or more group applications for the General TIF Competition, and in one or more applications for the TIF Competition with a Focus on STEM, in any fiscal year.

Requirement 6—Use of TIF Funds To Support the PBCS

(a) LEA-Wide Improvements to Systems and Tools

TIF funds may be used to develop and improve systems and tools that support the PBCS and benefit the entire LEA.

(b) Performance-Based Compensation and Professional Development

(1) *High Need Schools.* TIF funds may be used to provide performance-based compensation and related professional development in the high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.* TIF funds may not be used to provide performance-based compensation or professional development in schools other than those high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.*

(2) *PBCSs.* TIF funds may be used to compensate educators only when the compensation is provided as part of the LEA's PBCS, as described in the application.

(3) *For Additional Responsibilities and Leadership Roles.* When a proposed PBCS provides additional compensation to effective educators who take on additional responsibilities and leadership roles, TIF funds may be used for either the entire amount of salary for career ladder positions, or for salary augmentations (i.e., an additional amount of compensation over and above what the LEA would otherwise pay the effective teacher), or both. TIF-funds may be used to fund additional compensation for additional responsibilities and leadership roles up to the cost of 1 full-time equivalent position for every 12 teachers, who are not in a career ladder position, located in the high-need schools listed in response to Requirement 3(a).

(c) Other Permissible Types of Compensation

Nothing in this requirement precludes the use of TIF funds to compensate educators who are hired by a grantee to administer or implement the TIF-supported PBCS, or to compensate educators who attend TIF-supported professional development outside their official duty hours, or to develop or improve systems and tools needed to support the PBCS.

Requirement 7—Limitation on Using TIF Funds in High-Need Schools Served by Existing TIF Grants

Each applicant must provide an assurance, in its application, that, if successful under this competition, it will use the grant award to implement the proposed PBCS and professional development only in high-need schools that are not served, as of the beginning of the grant's project period or as planned in the future, by an existing TIF grant.

Final Definitions

The Assistant Secretary establishes the following definitions for the TIF program. The Assistant Secretary may apply one or more of these definitions in FY 2012 and later years in which this program is in effect.

Additional responsibilities and leadership roles means:

(a) In the case of teachers, meaningful school-based responsibilities that teachers may voluntarily accept to strengthen instruction or instructional leadership in a systemic way, such as additional responsibilities related to lesson study, professional development, and peer evaluation, and may also include career ladder positions.

(b) In the case of principals, additional responsibilities and leadership roles that principals may voluntarily accept, such as a position in which an effective principal coaches a novice principal.

Career ladder positions means school-based instructional leadership positions designed to improve instructional practice, which teachers may voluntarily accept, such as positions described as master teacher, mentor teacher, demonstration or model teacher, or instructional coach, and for which teachers are selected based on criteria that are predictive of the ability to lead other teachers.

Educators means teachers and principals.

High-need school means:

(a) A high-poverty school, or

(b) A persistently lowest-achieving school, or

(c) In the case of States that have received the Department's approval of a request for ESEA flexibility, a priority school.

High-poverty 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-poverty school under this definition is determined on the basis of the most currently available data.

Human capital management system (HCMS) means a system by which an LEA makes and implements human capital decisions, such as decisions on recruitment, hiring, placement, retention, dismissal, compensation, professional development, tenure, and promotion.

Other personnel means school-based personnel who are not serving in a teacher or principal position. Other personnel may include, for example, school counselors, media specialists, or para-educators.

Performance-based compensation system (PBCS) means a system that—

(a) Provides additional compensation for teachers and principals in one of the following circumstances—

(1)(i) Design Model 1. Additional compensation for teachers and principals who receive an overall evaluation rating of effective or higher under the evaluation systems described in the application; and

(ii) Of those teachers and principals eligible for compensation under paragraph (a)(1)(i) of this definition, additional compensation for teachers and, at the applicant's discretion, for principals, who take on additional responsibilities and leadership roles; or

(2)(i) Design Model 2. Additional compensation for teachers who receive an overall evaluation rating of effective or higher under the evaluation system described in the application and who take on career ladder positions; and

(ii) Additional compensation for (A) principals who receive an overall evaluation rating of effective or higher under the evaluation system described in the application, or (B) principals who receive an overall evaluation rating of effective or higher under the evaluation system described in the application and who take on additional responsibilities and leadership roles.

(b) May provide the following compensation:

(1) Additional compensation for educators (which at the applicant's option may be for teachers or principals or both) who receive an overall evaluation rating of effective or higher under the evaluation systems described in the application or under comparable evaluation systems in another LEA, and who either: (i) Transfer to a high-need school from a school of the LEA that is not high-need, or, (ii) for educators who previously worked in another LEA, are hired to work in a high-need school.

(2) Additional compensation for other personnel, who are not teachers or principals, based on performance standards established by the LEA so long as those standards, in significant part, include student growth, which may be school-level student growth.

Persistently lowest-achieving school means, as determined by the State:

(i) Any Title I school in improvement, corrective action, or restructuring that—

(a) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or

(b) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and

(ii) Any secondary school that is eligible for, but does not receive, Title I funds that—

(a) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or

(b) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

To identify the persistently lowest achieving schools, a State must take into account both:

(i) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and

(ii) The school's lack of progress on those assessments over a number of years in the ''all students'' group.

Principal means any person who meets the definition of that term under State or local law. At an LEA's discretion, it may also include an assistant or vice principal or a person in a position that contributes to the organizational management or instructional leadership of a school.

Priority school means a school that has been identified by the State as a priority school pursuant to the State's approved request for Elementary and Secondary Education Act (ESEA) flexibility.

Rural local educational agency means an LEA that is eligible under the Small Rural School Achievement program or the Rural and Low-Income School program authorized under Title VI, Part B of the ESEA. Applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *http://www2.ed.gov/nclb/freedom/local/reap.html.*

Student growth means the change in student achievement for an individual student between two or more points in time. For the purpose of this definition, student achievement means—

(a) For grades and subjects in which assessments are required under section 1111(b)(3) of ESEA: (1) A student's score on such assessments and may include (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided those measures are rigorous and comparable across schools within an LEA.

(b) For grades and subjects in which assessments are not required under section 1111(b)(3) of ESEA: Alternative measures of student learning and performance such as student results on pre-tests, end-of-course tests, and objective performance-based assessments; student learning objectives; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools within an LEA.

Teacher means any person who meets the definition of that term under State or local law.

Vision of instructional improvement means a summary of the key competencies and behaviors of effective teaching that an LEA views as necessary to produce high levels of student achievement, as well as how educators acquire or improve these competencies and behaviors.

Final Selection Criteria

The Assistant Secretary announces two sets of selection criteria—the General TIF Competition selection criteria (selection criteria (a) through (f)) and the TIF Competition with the Focus on STEM selection criteria (selection criterion (g))—to be used to review an applicant's proposal for funding under any FY 2012 competition and any future competitions. The Assistant Secretary may apply General TIF Competition selection criteria, in whole or in part, in any year in which we conduct a General TIF Competition. The Assistant Secretary may apply the TIF Competition with a Focus on STEM selection criteria, in whole or in part, together with one or more of the General TIF Competition selection criteria, in any year in which we conduct a TIF Competition with a Focus on STEM. In combination with or in place of the General TIF Competition selection criteria or the TIF Competition with a Focus on STEM selection criteria, the Assistant Secretary may apply the general selection criteria in the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.210; criteria based on statutory provisions in accordance with 34 CFR 75.209; or any combination thereof in any year in which there is a TIF competition. In the notice inviting applications, or the application package, or both, we will announce the maximum possible points assigned to each criterion.

(a) *A Coherent and Comprehensive Human Capital Management System (HCMS).* We will consider the quality and comprehensiveness of each participating LEA's HCMS as described in the application. In determining the quality of the HCMS, as it currently exists and as the applicant proposes to modify it during the grant period, we will consider the extent to which the HCMS described in the application is—

(1) Aligned with each participating LEA's clearly described vision of instructional improvement; and

(2) Likely to increase the number of effective educators in the LEA's schools, especially in high-need schools, as demonstrated by—

(i) The range of human capital decisions for which the applicant proposes to consider educator effectiveness—based on the educator evaluation systems described in the application.

(ii) The weight given to educator effectiveness—based on the educator evaluation systems described in the application—when human capital decisions are made;

(iii) The feasibility of the HCMS described in the application, including the extent to which the LEA has prior experience using information from the educator evaluation systems described in the application to inform human capital decisions, and applicable LEA-level policies that might inhibit or facilitate modifications needed to use educator effectiveness as a factor in human capital decisions;

(iv) The commitment of the LEA's leadership to implementing the

described HCMS, including all of its component parts; and

(v) The adequacy of the financial and nonfinancial strategies and incentives, including the proposed PBCS, for attracting effective educators to work in high-need schools and retaining them in those schools.

(b) *Rigorous, Valid, and Reliable Educator Evaluation Systems.* We will consider, for each participating LEA, the quality of the educator evaluation systems described in the application. In determining the quality of each evaluation system, we will consider the extent to which—

(1) Each participating LEA has finalized a high-quality evaluation rubric, with at least three performance levels (e.g., highly effective, effective, developing, unsatisfactory), under which educators will be evaluated;

(2) Each participating LEA has presented:

(i) A clear rationale to support its consideration of the level of student growth achieved in differentiating performance levels; and

(ii) Evidence, such as current research and best practices, supporting the LEA's choice of student growth models and demonstrating the rigor and comparability of assessments;

(3) Each participating LEA has made substantial progress in developing a high-quality plan for multiple teacher and principal observations, including identification of the persons, by position and qualifications, who will be conducting the observations, the observation tool, the events to be observed, the accuracy of raters in using observation tools and the procedures for ensuring a high degree of inter-rater reliability;

(4) The participating LEA has experience measuring student growth at the classroom level, and has already implemented components of the proposed educator evaluation systems;

(5) In the case of teacher evaluations, the proposed evaluation system—

(i) Bases the overall evaluation rating for teachers, in significant part, on student growth;

(ii) Evaluates the practice of teachers, including general education teachers and teachers of special student populations, in meeting the needs of special student populations, including students with disabilities and English learners;

(6) In the case of principal evaluations, the proposed evaluation system—

(i) Bases the overall evaluation rating on, in significant part, student growth; and

(ii) Evaluates, among other factors, a principal's practice in—

(A) Focusing every teacher, and the school community generally, on student growth;

(B) Establishing a collaborative school culture focused on continuous improvement; and

(C) Supporting the academic needs of special student populations, including students with disabilities and English learners, for example, by creating systems to support successful co-teaching practices, providing resources for research-based intervention services, or similar activities.

(c) *Professional Development Systems to Support the Needs of Teachers and Principals Identified Through the Evaluation Process.* We will consider the extent to which each participating LEA has a high-quality plan for professional development to help all educators located in high-need schools, listed in response to Requirement 3(a), to improve their effectiveness. In determining the quality of each plan for professional development, we will consider the extent to which the plan describes how the participating LEA will—

(1) Use the disaggregated information generated by the proposed educator evaluation systems to identify the professional development needs of individual educators and schools;

(2) Provide professional development in a timely way;

(3) Provide school-based, job-embedded opportunities for educators to transfer new knowledge into instructional and leadership practices; and

(4) Provide professional development that is likely to improve instructional and leadership practices, and is guided by the professional development needs of individual educators as identified in paragraph (c)(1) of this criterion.

(d) *Involvement of Educators.* We will consider the quality of educator involvement in the development and implementation of the proposed PBCS and educator evaluation systems described in the application. In determining the quality of such involvement, we will consider the extent to which—

(1) The application contains evidence that educator involvement in the design of the PBCS and the educator evaluation systems has been extensive and will continue to be extensive during the grant period; and

(2) The application contains evidence that educators support the elements of the proposed PBCS and the educator evaluation systems described in the application.

(e) *Project Management.* We will consider the quality of the management plan of the proposed project. In determining the quality of the management plan, we will consider the extent to which the management plan—

(1) Clearly identifies and defines the roles and responsibilities of key personnel;

(2) Allocates sufficient human resources to complete project tasks;

(3) Includes measurable project objectives and performance measures; and

(4) Includes an effective project evaluation plan;

(5) Specifies realistic and achievable timelines for:

(i) Implementing the components of the HCMS, PBCS, and educator evaluation systems, including any proposal to phase in schools or educators.

(ii) Successfully completing project tasks and achieving objectives.

(f) *Sustainability.* We will consider the quality of the plan to sustain the proposed project. In determining the quality of the sustainability plan, we will consider the extent to which the sustainability plan—

(1) Identifies and commits sufficient non-TIF resources, financial and nonfinancial, to support the PBCS and educator evaluation systems during and after the grant period; and

(2) Is likely to be implemented and, if implemented, will result in a sustained PBCS and educator evaluation systems after the grant period ends.

(g) *Comprehensive Approach to Improving STEM Instruction.* To meet Priority 3, we will consider the quality of an applicant's plan for improving educator effectiveness in STEM instruction. In determining the quality of the plan, we will consider the extent to which—

(1) The financial and nonfinancial strategies and incentives, including the proposed PBCS, are adequate for attracting effective STEM educators to work in high-need schools and retaining them in these schools;

(2) The proposed professional development opportunities—

(a) Will provide college-level STEM skills and content knowledge to STEM teachers while modeling for teachers pedagogical methods for teaching those skills and that content at the appropriate grade level; and

(b) Will enable STEM teachers to provide students in high-need schools with increased access to rigorous and engaging STEM coursework appropriate for their grade level, including college-level material in high schools;

(3) The applicant will significantly leverage STEM-related funds across

other Federal, State, and local programs to implement a high-quality and comprehensive STEM plan; and

(4) The applicant provides evidence (e.g., letters of support) that the LEA has or will develop extensive relationships with STEM experts and resources in industry, academic institutions, or associations to effectively implement its STEM plan and ensure that instruction prepares students to be college-and-career ready.

This notice does not preclude us 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 these priorities, requirements, and definitions, we invite applications through a notice in the **Federal Register.**

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and therefore subject to the requirements of the Executive order and subject to review by Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

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

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

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

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

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 regulatory action is ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits—both quantitative and qualitative—of this regulatory action and have determined that the benefits justify the costs.

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

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

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

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

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

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

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

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

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

Need for Federal Regulatory Action

These priorities, requirements, definitions, and selection criteria are needed to implement the TIF program. The Department does not believe that the authorizing legislation for this program, by itself, provides a sufficient level of detail to ensure that the program achieves the greatest national impact in promoting the development and implementation of PBCSs. The authorizing and appropriations language is very brief and provides only broad parameters to govern the program. The priorities, requirements, definitions, and selection criteria in this notice clarify the types of activities the Department seeks to fund, and permit the Department to evaluate proposed projects using selection criteria that are based on the purpose of the program and are closely aligned with the Department'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 of the Education Department General Administrative Regulations in selecting grant recipients. However, the Department does not believe the use of those general criteria would be appropriate for a TIF program competition 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 on those included in this notice. For example, the Department considered—

(1) Limiting eligible LEA applicants to those that already have in place the basic infrastructure necessary to generate student growth data at the classroom level. However, we took an alternative approach because we recognize that one purpose of the TIF program is to nurture innovation and reform in LEAs that may be beginning their reform efforts in this area.

(2) Requiring an applicant to commit a certain percentage of non-TIF funds to the project in order to help ensure the project's sustainability after the grant period. However, we took an alternative approach that requires the PBCS to be part of an LEA-wide HCMS because we believe that having the PBCS implemented as part of an LEA-wide

HCMS will help generate project sustainability. Further, we believe that the selection criteria that direct reviewers to assess the degree of LEA commitment, both financial and nonfinancial, and its effect on project sustainability, will be sufficient to ensure that funded projects are sustained after the end of the grant period.

The priorities, requirements, definitions, and selection criteria in this notice reflect and promote the purpose of the TIF program. They also align TIF, where possible and permissible, with other Presidential and Departmental priorities, such as the State Fiscal Stabilization Fund, the Race to the Top Fund, the School Improvement Grants program, and the ESEA Flexibility initiative. Through this regulatory action, the Department provides an eligible applicant with a great deal of flexibility in designing the systems and selecting the activities to carry out its proposed project. The Secretary believes that the priorities, requirements, definitions, and selection criteria in this notice appropriately balance the need for specific programmatic guidance while providing each applicant with flexibility to design innovative and enduring PBCSs.

Summary of Costs and Benefits

The Department believes that these priorities, requirements, definitions, and selection criteria do not impose significant costs on eligible States, LEAs, or nonprofit organizations that would receive assistance through the TIF program. The Secretary also believes that the benefits of implementing the priorities and requirements contained in this notice justify any associated costs.

The Department believes that the priorities, requirements, definitions, and selection criteria in this notice will result in the selection of high-quality applications to implement activities that will improve the quality of teaching and educational administration. Through these priorities, requirements, and selection criteria, we clarify the scope of activities we expect to support with program funds and the expected burden to prepare an application and implement a project under the program. A potential applicant must consider carefully the resources needed to prepare a strong application and its capacity to implement a successful project.

The Department believes that the costs imposed on an applicant by the priorities, requirements, definitions, and selection criteria are largely limited to the paperwork burden of preparing an application and that the benefits of implementing this regulatory action will justify any costs incurred by the applicant. This is because, during the project period, the applicant will pay the costs of actually carrying out activities under a TIF grant with program funds and any matching funds. Further, many of the systems that TIF funds will support, including educator evaluation systems and systems of professional development, are ones that LEAs regularly support with their own funds. Thus, the costs of implementing a TIF project using these priorities, requirements, definitions, and selection criteria will not be a significant burden for any eligible applicant, including a small entity.

Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements associated with this regulatory action.

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 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 regulatory action. This table is based on funds available for new awards under the FY 2012 appropriation. Expenditures are classified as transfers to States, LEAs, and nonprofit organizations.

Accounting Statement Classification of Estimated Expenditures

Category	Transfers (in millions)
Annual Monetized Transfers	$284.5.
From Whom to Whom	Federal Government to States, LEAs, and nonprofits.

Effect on Other Levels of Government

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

Waiver of Congressional Review Act

These priorities, requirements, definitions, and selection criteria have been determined to be a major rule 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 TIF program, authorized under the Department of Education Appropriations Act, 2012 (Division F, Title III of Public Law 112–74), which was signed into law on December 23, 2011. The Department must award TIF funds under this authority to qualified applicants by September 30, 2012, 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, 2012 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 Department of Education Appropriations Act, 2012 to applicants by September 30, 2012. The Department has therefore determined that, pursuant to section 808(2) of the CRA, the 60-day delay in the effective date generally required for congressional review is impracticable, contrary to the public interest, and waived for good cause.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation process to provide the public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department

can properly assess the impact of collection requirements on respondents.

This notice contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We estimate that each applicant will spend approximately 248 hours of staff time to address the priorities, requirements, definitions, and selection criteria, prepare the application, and obtain necessary clearances. Based on the number of applications the Department received in the FY 2010 competition, 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. The total estimated cost for all applicants is $892,800.

In the NPP we invited comment on the paperwork burden estimated for this collection. We did not receive any comments.

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. The OMB control number assigned to this information collection is 1810–0700.

Regulatory Flexibility Act Certification

The Secretary certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this 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 priorities, requirements, definitions, and selection criteria will be limited to paperwork burden related to preparing an application and that the benefits of implementing these priorities, requirements, definitions, and selection criteria would outweigh any costs incurred by the applicant.

Participation in the TIF program is voluntary. For this reason, the priorities, requirements, definitions, and selection criteria included in this notice will impose no burden on small entities unless they apply for funding under the TIF program using the priorities, requirements, definitions, and selection criteria in this notice. We expect that in determining whether to apply for TIF funds, an eligible entity will evaluate the costs of preparing an application and implementing a TIF project and weigh them against the benefits likely of 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 173,172 nonprofit organizations that had an educational mission and reported revenue to the Internal Revenue Service (IRS) by December 2011, 168,669 (over 97 percent) had revenues of less than $5 million. In addition, there are 12,358 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 apply. In the FY 2010 TIF competition, approximately 23 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 FY 2012 competition will be similar to the FY 2010 competition because only a limited number of nonprofit organizations are working actively on the development of PBCSs and many of these organizations are larger organizations. Thus, the likelihood that the priorities, requirements, definitions, and selection criteria in this notice will have a significant economic impact on small entities is minimal.

In addition, the Secretary believes that the priorities, requirements, definitions, and selection criteria 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 regulatory action. That is, the length of the applications those entities would submit in the absence of this regulatory action and the time needed to prepare an application would be comparable if the competition relied exclusively on the selection criteria in 34 CFR 75.210 for this competition.

Further, this 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 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 the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

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

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

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** is available via the Federal Digital System at *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

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

Delegation of Authority: The Secretary of Education has delegated authority to

Michael Yudin, Deputy Assistant Secretary for Policy for Elementary and Secondary Education to perform the functions and duties of the Assistant Secretary for Elementary and Secondary Education.

Dated: June 7, 2012.

Michael Yudin,

Deputy Assistant Secretary for Policy and Strategic Initiatives, delegated the authority to perform the functions and duties of the Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–14276 Filed 6–13–12; 8:45 am]

BILLING CODE 4000–01–P