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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1022

Fair Credit Reporting; Permissible Purposes for Furnishing, Using, and Obtaining Consumer Reports

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Advisory opinion.

SUMMARY: The Consumer Financial Protection Bureau (Bureau) is issuing this advisory opinion to outline certain obligations of consumer reporting agencies and consumer report users under section 604 of the Fair Credit Reporting Act (FCRA). This advisory opinion explains that the permissible purposes listed in FCRA section 604(a)(3) are consumer specific, and it affirms that a consumer reporting agency may not provide a consumer report to a user under FCRA section 604(a)(3) unless it has reason to believe that all of the consumer report information it includes pertains to the consumer who is the subject of the user's request. The Bureau notes that disclaimers will not cure a failure to have a reason to believe that a user has a permissible purpose for a consumer report provided pursuant to FCRA section 604(a)(3). This advisory opinion also reminds consumer report users that FCRA section 604(f) strictly prohibits a person who uses or obtains a consumer report from doing so without a permissible purpose.

DATES: This advisory opinion is effective on July 12, 2022.

FOR FURTHER INFORMATION CONTACT: Seth Caffrey, Pavneet Singh, Laura Stack, or Ruth Van Veldhuizen, Senior Counsels, Office of Regulations at (202) 435–7700 or *https://reginquiries.consumerfinance.gov/.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The Bureau is issuing this advisory opinion through the procedures for its Advisory Opinions Policy.[1] Refer to those procedures for more information.

I. Advisory Opinion

A. Background

Consumer reporting agencies collect and assemble or evaluate information about, among other things, the credit, criminal, employment, and rental histories of hundreds of millions of Americans. They package this information into consumer reports,[2] which are used by creditors, insurers, landlords, employers, and others to make eligibility and other decisions about consumers. This collection, assembly, evaluation, dissemination, and use of vast quantities of often highly sensitive personal and financial information about consumers poses significant risks to consumer privacy.

The FCRA regulates consumer reporting.[3] Congress enacted the statute ''to ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy.'' [4] One of the problems with the credit reporting industry that Congress recognized and sought to remedy with the FCRA was that ''information in a person's credit file [was] not always kept strictly confidential.'' [5] The statute was enacted to ''prevent an undue invasion of the individual's right of privacy in the collection and dissemination of credit information.'' [6] As courts have recognized, ''[a] major purpose of the [FCRA] is the privacy'' of consumer data.[7]

The FCRA protects consumer privacy in multiple ways, including by limiting the circumstances under which consumer reporting agencies may disclose consumer information. For example, FCRA section 604, entitled ''Permissible purposes of consumer reports,'' identifies an exclusive list of ''permissible purposes'' for which consumer reporting agencies may provide consumer reports,[8] including in accordance with the written instructions of the consumer to whom the report relates and for purposes relating to credit, employment, and insurance.[9] The statute states that a consumer reporting agency may provide consumer reports under these circumstances ''and no other.'' In addition, FCRA section 607(a) requires that ''[e]very consumer reporting agency shall maintain reasonable procedures designed to . . . limit the furnishing of consumer reports to the purposes listed under section 604.'' [10] And FCRA section 620 imposes criminal liability on any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to an unauthorized person.[11]

In addition to imposing permissible purpose limitations on consumer reporting agencies, the FCRA limits the circumstances under which third parties may obtain and use consumer report information from consumer reporting agencies. FCRA section 604(f) provides that ''a person shall not use or obtain a

[1] 85 FR 77987 (Dec. 3, 2020).

[2] *See* 15 U.S.C. 1681a(d) (defining ''consumer report'').

[3] *See* 15 U.S.C. 1681–1681x.

[4] *Safeco Ins. Co. of Am.* v. *Barr,* 551 U.S. 47, 52 (2007); *see also* 15 U.S.C. 1681 (recognizing ''a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy'').

[5] S. Rep. No. 91–517, at 4 (1969) (noting, as an example of this problem, ''a reporter for a major TV network was able to obtain 10 out of 20 reports requested at random from 20 credit bureaus by using the name of a completely fictitious company under the guise of offering the individuals credit''). When introducing the bill that would become the FCRA, Senator Proxmire observed that ''[w]hat is disturbing is the lack of any public standards to ensure that the information [collected by consumer reporting companies] is kept confidential and used only for its intended purpose. The growing accessibility of this information through computer- and data-transmission techniques makes the problem of confidentiality even more important.'' 15 Cong. Rec. 2413 (1969).

[6] S. Rep. No. 91–517, at 1 (1969).

[7] *Trans Union Corp.* v. *FTC,* 81 F.3d 228, 234 (D.C. Cir. 1996).

[8] 15 U.S.C. 1681b(a) (providing that, ''[s]ubject to subsection (c), any consumer reporting agency may furnish a consumer report under the following circumstances and no other''). FCRA section 604(c) defines when consumer reporting companies may furnish consumer reports in connection with credit and insurance transactions not initiated by the consumer. 15 U.S.C. 1681b(c). Other sections of the FCRA identify additional limited circumstances under which consumer reporting companies are permitted or required to disclose certain information to government agencies. *See* 15 U.S.C. 1681f, 1681u, 1681v. Further, the Debt Collection Improvement Act of 1996, Public Law 104–134, sec. 31001(m)(1), allows the head of an executive, judicial, or legislative agency to obtain a consumer report under certain circumstances relating to debt collection. *See* 31 U.S.C. 3711(h).

[9] 15 U.S.C. 1681b(a)(2), (a)(3)(A), (a)(3)(B), (a)(3)(C).

[10] 15 U.S.C. 1681e(a).

[11] 15 U.S.C. 1681r.

consumer report for any purpose unless'' the consumer report ''is obtained for a purpose for which the consumer report is authorized to be furnished under [FCRA section 604]'' and ''the purpose is certified in accordance with FCRA section 607 by a prospective user of the report through a general or specific certification.'' [12] FCRA section 619 imposes criminal liability on any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses.[13]

The FCRA's permissible purpose provisions are thus central to the statute's protection of consumer privacy. Consumers suffer harm when consumer reporting agencies provide consumer reports to persons who are not authorized to receive the information or when recipients of consumer reports obtain or use such reports for purposes other than permissible purposes. These harms include the invasion of consumers' privacy, as well as reputational, emotional, physical, and economic harms. The Bureau and the Federal Trade Commission (FTC) have collectively brought numerous enforcement actions to address violations of the FCRA's permissible purpose provisions.[14] For example, in a case that resulted in a 2006 settlement with a consumer reporting agency, the FTC alleged that the agency violated the FCRA's permissible purpose provisions by providing consumer reports to persons without a permissible purpose, resulting in at least 800 cases of identity theft.[15] More recently, in 2020, a group of companies and individuals settled Bureau allegations that they obtained consumer reports without a permissible purpose when they obtained consumer reports for use in marketing debt relief services.[16] Also in 2020, a mortgage broker settled FTC allegations that it used consumer reports for other than a permissible purpose when, in response to negative reviews on a website, it publicly posted information it had obtained from a consumer report about the reviewer.[17]

In light of the importance of the FCRA's permissible purpose provisions to the protection of consumer privacy, the Bureau is issuing this advisory opinion to affirm that consumer reporting agencies may not provide a consumer report pursuant to FCRA section 604(a) under any circumstance not expressly permitted by this section. In particular, the permissible purposes identified in FCRA section 604(a)(3) are consumer specific—that is, they apply only with respect to the consumer who is the subject of the user's request—and a consumer reporting company may not provide a consumer report to a user under FCRA section 604(a)(3) unless it has reason to believe that all of the consumer report information it includes pertains to the consumer who is the subject of the user's request. For example, consumer reporting agencies violate the FCRA's permissible purpose provisions if they provide consumer reports on multiple consumers (*e.g.,* consumers with the same name) in response to a request where the user only has a permissible purpose to obtain a report on a single individual because that would inherently involve providing at least one consumer report on an individual with respect to whom the user did not have a permissible purpose. The Bureau notes that disclaimers will not cure a failure to have a reason to believe that a user has a permissible purpose for a consumer report provided pursuant to FCRA section 604(a)(3). The Bureau also is issuing this advisory opinion to highlight that FCRA section 604(f) strictly prohibits a person who uses or obtains a consumer report from doing so without a permissible purpose.

B. Coverage

Section C.1 of this advisory opinion applies to all ''consumer reporting agencies,'' as that term is defined in FCRA section 603(f). Section C.2 of this advisory opinion applies to all persons that obtain or use, or seek to obtain or use, ''consumer reports,'' as that term is defined in FCRA section 603(d).

C. Legal Analysis

1. FCRA Section 604(a)(3)

Section 604(a) of the FCRA identifies a limited set of ''permissible purposes'' for which a consumer reporting company may provide a consumer report to a user.[18] The Bureau is aware that some consumer reporting agencies use insufficient identifiers in matching procedures, such as name-only matching, which can result in the provision of consumer reports to persons without a permissible purpose to receive them. The permissible purposes for which consumer reports are most commonly sought are those identified in FCRA section 604(a)(3), including for purposes related to credit, employment, insurance, and rental housing. Under section 604(a)(3), a consumer reporting company may provide a consumer report when it has ''reason to believe'' that the user requesting the report has one of the permissible purposes specified therein with respect to the consumer who is the subject of the user's request. The Bureau interprets the permissible purposes in FCRA section 604(a)(3) to apply only with respect to the consumer who is the subject of the user's request.

The Bureau's interpretation is based on the plain language of FCRA section

[12] 15 U.S.C. 1681b(f). FCRA section 607(a) requires that consumer reporting companies, among other things, must require that prospective users of consumer reports ''certify the purposes for which the information is sought, and certify that the information will be used for no other purpose.'' 15 U.S.C. 1681e(a).

[13] 15 U.S.C. 1681q.

[14] *See, e.g., United States* v. *Vivint Smart Home, Inc.,* No. 2:21-cv-00267 (D. Utah 2021), *https://www.ftc.gov/system/files/documents/cases/de2_complaint_against_vivint_smart_home.pdf* (alleging that the defendant violated FCRA section 604(f) by obtaining consumer reports about consumers who had not applied for credit in order to improve credit applicants' ability to satisfy the defendant's credit criteria); *In re Clarity Servs., Inc.,* 2015–CFPB–0030 (Dec. 3, 2015), *https://files.consumerfinance.gov/f/201512_cfpb_consent-order_clarity-services-inc-timothy-ranney.pdf* (alleging that the defendant violated FCRA section 604(f) by obtaining consumer reports to create presentations to market its analytical services to lenders and other financial service providers); *United States* v. *Direct Lending Source, Inc.,* No. 3:12-cv-02441 (S.D. Cal. 2012), *https://www.ftc.gov/sites/default/files/documents/cases/2012/10/121010directlendingcmpt.pdf* (alleging that the defendant violated FCRA section 604(f) by obtaining consumer reports without a permissible purpose and selling them to entities that targeted consumers in financial distress for loan modification, debt relief, and foreclosure relief services); *In re Fajilan & Assocs.,* No. C–4332 (Aug. 17, 2011), *https://www.ftc.gov/sites/default/files/documents/cases/2011/08/110819statewidecmpt.pdf* (alleging that the respondents furnished consumer reports to hackers in violation of FCRA section 604); *In re ACRAnet, Inc.,* No. C–4331 (Aug. 17, 2011), *https://www.ftc.gov/sites/default/files/documents/cases/2011/08/110809acranetcmpt.pdf* (same); *In re SettlementOne Credit Corp.,* No. C–4330 (Aug. 17, 2011), *https://www.ftc.gov/sites/default/files/documents/cases/2011/08/110819settlementonecmpt.pdf* (same).

[15] *United States* v. *Choicepoint, Inc.,* No. 1:06-cv-00198–GET, at ¶ 12 (N.D. Ga. 2006), *https://www.ftc.gov/sites/default/files/documents/cases/2006/01/0523069complaint.pdf.*

[16] *Bureau of Consumer Fin. Prot.* v. *Chou Team Realty, LLC et al.,* No. 8:20-cv-00043, at ¶¶ 57–59, 69, 77–78, 89–106 (C.D. Cal. 2020), *https://files.consumerfinance.gov/f/documents/cfpb_chou-team-realty-monster-loans_complaint_2020-01.pdf.*

[17] *United States* v. *Mortgage Sols. FCS, Inc.,* No. 4:20-cv-00110–DMR, at ¶¶ 11–14 (N.D. Cal. 2020), *https://www.ftc.gov/system/files/documents/cases/mortgage_solutions_complaint.pdf.* In addition to continuing to enforce the FCRA's permissible purpose provisions and protect the privacy of consumer reports, the Bureau's supervisory work also has focused on ensuring compliance with the FCRA's permissible purpose requirements by consumer reporting companies and consumer report users. *See, e.g.,* Bureau of Consumer Fin. Prot., *Supervisory Highlights,* at 3–4 (Sept. 2020), *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-22_2020-09.pdf;* Bureau of Consumer Fin. Prot., *Supervisory Highlights Consumer Reporting Special Edition,* at 16–17 (Dec. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-20_122019.pdf.*

[18] 15 U.S.C. 1681b(a).

604(a)(3) itself, which makes clear that whether a user has a permissible purpose under that section is analyzed on a consumer-by-consumer basis. For example, FCRA section 604(a)(3)(A) permits a consumer reporting company to provide a consumer report ''to a person which it has reason to believe . . . intends to use the information in connection with a credit transaction involving *the consumer* on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, *the consumer*.'' [19] Similarly, FCRA section 604(a)(3)(F) permits a consumer reporting company to provide a consumer report ''to a person which it has reason to believe . . . has a legitimate business need for the information . . . in connection with a business transaction that is initiated by *the consumer* or to review an account to determine whether *the consumer* continues to meet the terms of the account.'' [20]

The Bureau's interpretation also is consistent with the FCRA's purpose and structure. As explained in part I.A, Congress enacted the FCRA in part to address ''a need to insure that consumer reporting agencies exercise their grave responsibilities with . . . a respect for the consumer's right to privacy.'' [21] The FCRA achieves this by, among other things, narrowly limiting the circumstances under which a consumer reporting company may provide consumer report information to third parties. The statute is structured so that the permissible purposes in section 604(a) function as exceptions to the general rule that a consumer reporting company may not provide consumer reports to third parties.[22] Interpreting FCRA section 604(a)(3) to allow a consumer reporting company to provide consumer report information to a third party about a consumer with respect to whom the third party does not have a permissible purpose would undermine the statutory scheme and threaten consumer privacy with respect to the often highly sensitive information collected by consumer reporting agencies.[23]

A consumer reporting company may not provide a consumer report under FCRA section 604(a)(3) unless it has reason to believe that the user has a permissible purpose with respect to the consumer about whom the report is requested. A user's request to a consumer reporting company for a report about a consumer does not give the consumer reporting company a reason to believe that the user has a permissible purpose to obtain a consumer report about other consumers. Accordingly, a consumer reporting company may not provide a consumer report under FCRA section 604(a)(3) unless it has reason to believe that all of the consumer report information it includes pertains to the consumer who is the subject of the user's request.

The use of poor matching procedures, such as name-only matching, can lead to violations of the FCRA's permissible purpose provisions. As the Bureau has observed, some consumer reporting agencies obtain information from sources that do not have or use identifying information other than consumer names, and they include such information in consumer reports without taking additional steps to match the information to the consumer who is the subject of the report.[24] The Bureau has recently affirmed that, ''[i]n preparing consumer reports, it is not a reasonable procedure to assure maximum possible accuracy to use insufficient identifiers to match information to the consumer who is the subject of the report.'' [25] In addition to running afoul of the FCRA's accuracy provisions, a consumer reporting company that uses insufficient identifiers in its matching procedures, such as name-only matching, cannot rely on these procedures to form a reason to believe that all of the information it includes in a consumer report pertains to the consumer who is the subject of the user's request.

For example, when a consumer reporting company conducts a public records search using name-only matching and identifies one or more individuals with the same name as the consumer who is the subject of the user's request, it sometimes might provide the user with a report containing a possible match or list of possible matches instead of taking further steps to match the information to the specific consumer who is the subject of the request.[26] Under these circumstances, a consumer reporting company has not formed a reason to believe that all of the information it includes in a consumer report pertains to the consumer who is the subject of the user's request. If the report includes information that identifies (even if not by name) consumers who are possible matches and information that bears on the credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living of those consumers, the consumer reporting company will have provided consumer reports about those consumers to a user that does not have a permissible purpose for them.[27]

The Bureau is aware that some consumer reporting agencies that use inadequate matching procedures include disclaimers with their consumer reports. For example, one consumer reporting company stated when providing a consumer report: ''This record is matched by First Name, Last Name ONLY and may not belong to your subject. Your further review of the State Sex Offender Registry is required in order to determine if this is your subject.'' [28] Disclaimers will not cure a

[19] 15 U.S.C. 1681b(a)(3)(A) (emphasis added).

[20] 15 U.S.C. 1681b(a)(3)(F) (emphasis added).

[21] 15 U.S.C. 1681(a)(4).

[22] 15 U.S.C. 1681b(a) (providing that, in general, ''[s]ubject to subsection (c), any consumer reporting agency may furnish a consumer report under the following circumstances and no other'').

[23] The Bureau's interpretation of FCRA section 604(a)(3) also is consistent with the statute's purpose and structure with respect to accuracy. *See* 15 U.S.C. 1681e(b). As discussed below, a consumer reporting agency's use of poor matching procedures can lead to violations of the FCRA's permissible purpose requirements, as well as its accuracy requirements.

[24] Bureau of Consumer Fin. Prot., *Fair Credit Reporting; Name-Only Matching Procedures,* 86 FR 62468, 62472 (Nov. 10, 2021).

[25] *Id.* at 62471.

[26] *See, e.g., Erickson* v. *First Advantage Background Screening Corp.,* 981 F.3d 1246, 1249 (11th Cir. 2020) (defendant furnished a consumer report about plaintiff that included a record belonging to plaintiff's father using name-only matching; defendant included with the consumer report the statement: ''[t]his record is matched by First Name, Last Name ONLY and may not belong to your subject. Your further review of the State Sex Offender Registry is required in order to determine if this is your subject.''); *see also United States* v. *Infotrack Info. Servs.,* 14-cv-02054, at ¶¶ 16–17 (N.D. Ill. 2014), *https://www.ftc.gov/system/files/documents/cases/140409infotrackcmpt.pdf* (defendant consumer reporting agency, using name-only matching, identified more than one individual with a record in the National Sex Offender registry and reported all identified individuals as ''possible matches'' to users). *Erickson* and *Infotrack* concerned alleged violations of the FCRA's accuracy provisions, 15 U.S.C. 1681e(b), not its permissible purpose provisions.

[27] *See, e.g., Erickson,* 981 F.3d at 1249 (consumer report directed the user to a public database ''to compare the 'demographic data and available photographs,' noting that the user might 'conclude that the records do not belong to''' the subject of the user's request); *Dodgson* v. *First Advantage Background Screening Corp.,* 2018 WL 1807014, *1 (N.D. Ga. 2018) (noting that the record belonging to plaintiff's father that was included in plaintiff's consumer report ''contained at the very least an address that did not match plaintiff's address''); *Infotrack,* 14-cv-02054, at ¶ 16 (''Defendants would forward reports that included names and pictures of several different people with the same name who were convicted sex offenders and listed in the National Sex Offender Registry. Defendants' practice and procedure resulted in furnishing consumer reports to employers that included National Sex Offender Registry records of individuals who could not have been the subject of the inquiry.'').

[28] *Erickson,* 981 F.3d at 1249.

failure to have a reason to believe that a user has a permissible purpose for a consumer report provided pursuant to FCRA section 604(a)(3). A disclaimer does not change the fact that the consumer reporting company has failed to satisfy the requirements of 604(a)(3) and has provided a consumer report about a consumer to a person lacking a permissible purpose with respect to that consumer.

2. FCRA Section 604(f)

FCRA section 604(f) prohibits a person from using or obtaining a consumer report ''unless . . . the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under [FCRA section 604]'' and ''the purpose is certified in accordance with FCRA section 607 by a prospective user of the report through a general or specific certification.'' [29] Congress amended the FCRA to include section 604(f) in September 1996.[30] Before the 1996 amendments, FCRA section 604 did not impose limitations on users of consumer reports, only on consumer reporting agencies. The Bureau interprets FCRA section 604(f) to provide that consumer report users are strictly prohibited from using or obtaining consumer reports without a permissible purpose. Although some courts have applied a ''reason to believe'' standard for persons using or obtaining a consumer report, as at least one court has noted, the opinion most commonly cited in support of this standard was decided before the 1996 amendments.[31] Based on its plain language, the 1996 addition of FCRA section 604(f) clearly imposes a strict prohibition on using or obtaining a consumer report without a permissible purpose.[32]

Users of consumer reports must ensure that they do not violate consumer privacy by obtaining consumer reports when they lack a permissible purpose for doing so. For example, in 2018 a company settled Bureau allegations that it violated FCRA section 604(f) when its agents obtained consumer reports for consumers who were not seeking an extension of credit from the company and the company had no other permissible purpose for the consumer reports it obtained.[33] In some instances, for example, the company's agents initiated credit applications for the wrong consumer by incorrectly inputting consumer information into the company's application system or by selecting the wrong consumer from a list of possible consumers identified in the system. When these applications were initiated in error, the company obtained a consumer report for a consumer with respect to which it had no permissible purpose, violating the FCRA's permissible purpose provisions and the privacy of the consumers that were the subject of those reports, and also generating an inquiry on the consumers' credit reports.[34]

II. Regulatory Matters

This advisory opinion is an interpretive rule issued under the Bureau's authority to interpret the FCRA, including under section 1022(b)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act,[35] which authorizes guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial laws.[36]

As an interpretive rule, this advisory opinion is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.[37] Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[38] The Bureau has also determined that this advisory opinion does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.[39]

Pursuant to the Congressional Review Act,[40] the Bureau will submit a report containing this interpretive rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2022–14823 Filed 7–11–22; 8:45 am]

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[29] 15 U.S.C. 1681b(f). As noted above, FCRA section 607(a) requires that a consumer reporting agency must, among other things, require that prospective users of consumer reports ''certify the purposes for which the information is sought, and certify that the information will be used for no other purpose.'' 15 U.S.C. 1681e(a).

[30] Consumer Credit Reporting Reform Act of 1996, Public Law 104–208, Div. A, tit. II, sec. 2404.

[31] *See, e.g., Blumenfeld* v. *Regions Bank,* No. 4:16–CV–01652–ACA, 2018 WL 4216369, at *5 (N.D. Ala. 2018) (holding that ''[FCRA section 604(f)] does not incorporate the 'reason to believe' language from [FCRA section 604(a)],'' and noting that the opinion in *Korotki* v. *Att'y Servs. Corp. Inc.,* 931 F. Supp. 1269, 1276 (D. Md. 1996) (applying section 604(a)(3)'s ''reason to believe'' standard to users), was decided prior to the 1996 amendments to the FCRA that added section 604(f)).

[32] Pursuant to FCRA sections 616 and 617, a person is civilly liable to a consumer for violations of section 604(f) if they have negligently or willfully failed to comply with the requirement. 15 U.S.C. 1681n, 1681o.

[33] *In re State Farm Bank, FSB,* 2018–CFPB–0009, at ¶¶ 17–19 (Dec. 6, 2018), *https://files.consumerfinance.gov/f/documents/bcfp_state-farm-bank_consent-order.pdf.*

[34] *Id.*

[35] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[36] 12 U.S.C. 5512(b)(1).

[37] 5 U.S.C. 553(b).

[38] 5 U.S.C. 603(a), 604(a).

[39] 4 U.S.C. 3501–3521.

[40] 5 U.S.C. 801 *et seq.*

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Fees for Reviews of the Rule Enforcement Programs of Designated Contract Markets and Registered Futures Associations; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Notification of 2021 schedule of fees; correction.

SUMMARY: The Commodity Futures Trading Commission (Commission) is correcting a document published in the **Federal Register** on June 17, 2022. The document contained incorrect assessed fee data for four of the entities in Table 2. This document corrects the data contained in those inaccurate sixteen cells in Table 2.

DATES: Each self-regulatory organization is required to remit electronically the applicable fee on or before August 16, 2022.

FOR FURTHER INFORMATION CONTACT: Joel Mattingley, Chief Financial Officer, Commodity Futures Trading Commission; (202) 418–5310; Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; *jmattingley@cftc.gov.* For information on electronic payments, contact Jennifer Fleming; (202) 418–5034; *jfleming@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In FR Rule Doc. 2022–13141, appearing on page 36409 in the **Federal Register** of Friday, June 17, 2022, Table 2—Schedule of Fees is corrected to read as follows:

TABLE 2—SCHEDULE OF FEES

	3-Year average actual costs	3-Year total volume (%)	Adjusted volume costs	2021 assessed fee
Cantor Futures Exchange, L.P	$26,418	0.03	$13,319	$13,319
CBOE Futures Exchange, LLC	26,625	1.24	17,482	17,482
Chicago Board of Trade	27,058	33.31	125,158	27,058
Chicago Mercantile Exchange, Inc	293,282	42.97	290,666	290,666
Eris Exchange, LLC	11,057	0.00	5,540	5,540
ICE Futures U.S., Inc	105,620	6.59	74,885	74,885
Minneapolis Grain Exchange, Inc	13,321	0.05	6,813	6,813
Nasdaq OMX Futures Exchange, Inc	37,051	0.27	19,444	19,444
New York Mercantile Exchange/Commodity Exchange, Inc	49,377	15.11	75,328	49,377
Nodal Exchange, LLC	11,825	0.08	6,180	6,180
North American Derivatives Exchange, Inc	48,248	0.21	24,844	24,844
OneChicago, LLC Futures Exchange	20,425	0.13	10,648	10,648
Subtotal	670,307	100.00	670,307	546,255
National Futures Association	538,738	.....	.....	538,738
Total	1,209,044	100.00	670,307	1,084,993

Columns may not add due to rounding.

Issued in Washington, DC, on this 7th day of July, 2022, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–14820 Filed 7–11–22; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–USCG–2022–0592]

Special Local Regulation; Poquoson Seafood Festival Workboat Races; Back River, Poquoson, VA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation for the Poquoson Seafood Festival Workboat Races on the Back River, VA, on September 18, 2022, to provide for the safety of life on navigable waterways during this event. Coast Guard regulations for marine events within the Fifth Coast Guard District identifies the regulated area for this event in Poquoson, VA. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or local law enforcement vessel approved by the Captain of the Port (COTP).

DATES: The regulations in 33 CFR 100.501 will be enforced for the location identified for the Poquoson Seafood Festival Workboat Races in table 3 to paragraph (i)(3) to § 100.501 from 10 a.m. until 6 p.m. on September 18, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email LCDR Ashley Holm, Chief, Waterways Management Division, Sector Virginia, U.S. Coast Guard; telephone 757–668–5580; email *Ashley.E.Holm@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation in 33 CFR 100.501 for the Poquoson Seafood Festival Workboat Races from 10 a.m. to 6 p.m. on September 18, 2022. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Fifth Coast Guard District, § 100.501, specifies the location of the regulated area for the Poquoson Seafood Festival Workboat Races which encompasses portions of the Back River. During the enforcement periods, if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or local law enforcement vessel approved by the COTP.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and Broadcast Notice to Mariners.

Dated: July 6, 2022.

Jennifer A. Stockwell,

Captain, U.S. Coast Guard, Captain of the Port Virginia.

[FR Doc. 2022–14770 Filed 7–11–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0571]

Special Local Regulations; Columbia River Cross Channel Swim, Columbia River, Pasco, WA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations for the 3 Rivers Road Runners Columbia River Cross Channel Swim September 10, 2022, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Thirteenth Coast Guard District identifies the regulated area for this event in Pasco, WA. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any official patrol vessel. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the Captain of the Port, Sector Columbia River.

DATES: The regulations in 33 CFR 100.1302 will be enforced on September 10, 2022 from 7:30 a.m. until 10:30 a.m.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email LT Sean Murphy, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, email *D13-SMB-MSUPortlandWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.1302 for the Columbia River Cross Channel Swim regulated area from 7:30 a.m. to 10:30 a.m. on September 10, 2022. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Thirteenth Coast Guard District, § 100.1302, specifies the location of the regulated area for the Columbia River Cross Channel Swim which encompasses all navigable waters, bank-to-bank of the Columbia River in Pasco, Washington, between river mile 332 and river mile 335. During the enforcement period, as reflected in § 100.1302, if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any official patrol vessel.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, and marine information broadcasts.

Dated: July 1, 2022.

M. Scott Jackson,

Captain, U.S. Coast Guard, Captain of the Port Columbia River.

[FR Doc. 2022–14741 Filed 7–11–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2019–0822]

RIN 1625–AA01

Anchorage Grounds; Atlantic Ocean, Delaware

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the anchorage regulations for the Delaware Bay and River, and adjacent waters, by establishing two offshore deep-water anchorages. The purpose of this rule is to improve navigation safety by accommodating recent and anticipated future growth in vessel size and the volume of vessel traffic entering the Delaware Bay and River, and to preserve areas traditionally used or needed for anchoring.

DATES: This rule is effective August 11, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0822 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Elizabeth Marshall, Sector Delaware Bay, U.S. Coast Guard; telephone (215) 271–4851, email *Elizabeth.J.Marshall@uscg.mil;* or Mr. Matt Creelman, Fifth Coast Guard District (dpw), U.S. Coast Guard; telephone (757) 398–6230, email *Matthew.K.Creelman2@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

ACPARS Atlantic Coast Port Access Route Study
AIS Automatic Identification System
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NOI Notice of Intent
NPRM Notice of Proposed Rulemaking
PARS Port Access Route Study
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

In 2011, the Coast Guard received requests to formally establish anchorages in the Atlantic Ocean offshore from the Delaware coast in response to the Atlantic Coast Port Access Route Study (ACPARS). The ACPARS is available at *https://navcen.uscg.gov/?pageName=PARSReports.* The Federal Pilots and the Mariners' Advisory Committee for the Bay and River Delaware requested formal anchorage grounds be established to the east and the west of the Southeastern Approach traffic separation scheme in order to preserve areas traditionally used for anchoring from offshore development. The Coast Guard held meetings on July 12, 2018, and August 21, 2018, with maritime stakeholders and waterway users to discuss the impacts to vessel traffic and navigation safety on the Delaware Bay and River due to the expansion of the Panama Canal and the planned deepening of the Delaware River from 40 to 45 feet. The attendees determined that the increased volume of vessel traffic and the size of vessels calling on the Delaware Bay and River, combined with planned and potential offshore development, heightened the need to formally establish new anchorage grounds.

On November 29, 2019, the Coast Guard published a Notice of Inquiry (NOI) in the **Federal Register** (81 FR 25854). There, we stated why we issued the NOI and invited comments on our inquiry into the establishment of two anchorages offshore Delaware Bay and one inshore, at the breakwater of Cape Henlopen. We received 42 comments.

After considering all comments on the NOI, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (87 FR 16126) on March 22, 2022. There, we stated why we issued the NPRM and why we decided to move forward with only two of the proposed anchorages: Anchorage C—Cape Henlopen and Anchorage D—Indian River. We invited comments on the proposed rulemaking. We received one comment.

III. Legal Authority and Need for Rule

The legal basis and authorities for this rule are found in 46 U.S.C. 70006 and 33 CFR 1.05–1, DHS Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory anchorage grounds.

The purpose of this rule is to improve navigation safety by accommodating recent and anticipated future growth in cargo vessel size and volume of vessel traffic entering the Delaware Bay and River, and to preserve areas traditionally used or needed for anchoring.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published March 22, 2022. That comment had two parts. First, that we consider revising the regulatory language used to describe the anchorage coordinates in order to aid cartography and comprehension. Second, that we consider the impact of a sunken wreck located within the area of Anchorage D—Indian River on anchoring vessels. In this section, we discuss how we responded to each part of this comment and the Final Rule.

A. Regulatory Language

Regarding the language used in the Rule, the comment recommended revising paragraphs (a)(19) and (a)(20) by removing text reading, ''The waters bounded by a line connecting the following points:,'' and replacing it

with, ''All waters bound by the following points:.'' The Coast Guard agrees with this recommendation with the intent to assist cartography. The revision has been implemented into the regulatory text at the end of this rulemaking. All other regulatory text remaining unchanged.

B. Wreckage in Anchorage D—Indian River

The comment identifies a sunken wreck located at 74°50′32.463″ W, 38°30′31.788″ N (WGS 1984), which is located within the boundaries of Anchorage D—Indian River and requests the Coast Guard determine the possibility of adverse effects caused by this obstruction in the anchorage ground. The Coast Guard finds that this wreckage is relatively small in nature compared to the overall size of the anchorage area and charted depth of water, which leaves sufficient area within the anchorage for the use of vessels to anchor away from this obstruction. The Coast Guard also believes this is a well-documented and well-charted wreckage, and that a prudent mariner would avoid anchoring over such an object. The Coast Guard finds that overall risk of adverse effects from wreckage to be very low and made no changes to this rule in response.

C. Final rule

This rule formally establishes two new anchorage grounds, Anchorage C—Cape Henlopen and Anchorage D—Indian River. Anchorage C—Cape Henlopen will be located in the Atlantic Ocean approximately 9.4 miles east of the Delaware coast in naturally deep water with charted depths between 41 and 85 feet. Anchorage D—Indian River will be located in the Atlantic Ocean beginning approximately 6 miles east of the Delaware coast in naturally deep water with charted depths between 40 and 85 feet. The specific coordinates for these anchorage grounds are included in the regulatory text at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the location and size of the proposed anchorage grounds, as well as the vessel traffic and anchoring data provided by the Coast Guard Navigation Center. The regulation would ensure approximately 27 square miles of anchorage grounds are designated to provide necessary commercial deep draft anchorages and enhance the navigational safety of commercial vessels transiting to, from, and within the Delaware Bay and River. The impacts on routine navigation are expected to be minimal because the proposed anchorage areas are located outside of the established traffic separation zones and are consistent with current anchoring habits of vessels that call on the Delaware River. When not occupied, vessels would be able to maneuver in, around, and through the anchorages.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard did not receive any comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The number of small entities impacted and the extent of the impact, if any, is expected to be minimal. Anchorage C—Cape Henlopen and Anchorage D—Indian River are located in an area of the Atlantic Ocean, which is not a popular or productive fishing location. Further, the location is not in an area routinely transited by vessels heading to, or returning from, known fishing grounds. Finally, the anchorage is located in an area that is not currently used by small entities, including small vessels, for anchoring due to the depth of water naturally present in the area.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves amending the regulations for Delaware Bay and River anchorage grounds by establishing two new anchorage regulations; Anchorage C—Cape Henlopen and Anchorage D—Indian River. It is categorically excluded from further review under paragraph L59(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2071; 46 U.S.C. 70034; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 110.157 by adding paragraphs (a)(18), (a)(19) and (a)(20) to read as follows:

§ 110.157 Delaware Bay and River.

(a) * * *

(18) *Reserved.*

(19) *Anchorage C—Cape Henlopen.* All waters bound by the following points:

Latitude	Longitude
38°40′54.00″ N	74°52′00.00″ W
38°40′56.08″ N	74°48′51.34″ W
38°37′36.00″ N	74°'48′30.00″ W

(DATUM: NAD 83)

(20) *Anchorage D—Indian River.* All waters bound by the following points:

Latitude	Longitude
38°34′56.25″ N	74°52′19.12″ W
38°33′40.91″ N	74°54′41.50″ W
38°31′31.08″ N	74°55′27.96″ W
38°29′07.35″ N	74°53′29.25″ W
38°28′56.87″ N	74°50′28.69″ W
38°30′07.37″ N	74°48′08.38″ W

(DATUM: NAD 83)

* * * * *

Dated: June 29, 2022.

S.N. Gilreath,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2022–14676 Filed 7–11–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–USCG–2022–0586]

Safety Zone; Fireworks Display; John H. Kerr Reservoir, Clarksville, VA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Virginia Lake Festival on July 16, 2022, Clarksville, VA, to provide for the safety of life on navigable waterways during this event. Coast Guard regulations for marine events within the Fifth Coast Guard District identifies the regulated area for this event. During the enforcement period, entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Virginia.

DATES: The regulations in 33 CFR 165.506 will be enforced for the location identified as Item 12 in table 3 to paragraph (h)(3) from 9:30 p.m. until 10 p.m. on July 16, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email LCDR Ashley Holm, Chief, Waterways Management Division, Sector Virginia, U.S. Coast Guard; telephone 757–668–5580 email *Ashley.E.Holm@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in 33 CFR 165.506 for the Virginia Lake Festival regulated area from 9:30 p.m. to 10 p.m. on July 16, 2022. This action is being taken to provide for the safety of life on navigable waterways during this event. Coast Guard regulations for safety zones within the Fifth Coast Guard District, § 165.506, specifies the location of the regulated area for the Virginia Lake Festival which encompasses portions of the John H. Kerr Reservoir. During the enforcement periods, entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Virginia.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and Broadcast Notice to Mariners.

Dated: July 6, 2022.

Jennifer A. Stockwell,

Captain, U.S. Coast Guard, Captain of the Port Virginia.

[FR Doc. 2022–14771 Filed 7–11–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2022–OSERS–0038]

Final Priority and Requirements—Technical Assistance on State Data Collection—The Rhonda Weiss National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Data in Accessible Formats

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority and requirements.

SUMMARY: The Department of Education (Department) announces a priority, including requirements, for the Rhonda Weiss National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data in Accessible Formats (Accessible Data Center) under the Technical Assistance on State Data Collection program, Assistance Listing Number 84.373Q. The Department may use this priority for competitions in fiscal year (FY) 2022 and thereafter. We

will use the priority to award a cooperative agreement for an Accessible Data Center to focus attention on an identified need to support States in collecting, reporting, analyzing, and publishing their data in formats that provide equitable access and visualizations to persons with disabilities, particularly those with blindness, visual impairments, motor impairments, and intellectual disabilities. The Accessible Data Center will customize its technical assistance (TA) to meet each State's specific needs.

DATES: The final priority and requirements are effective August 11, 2022.

FOR FURTHER INFORMATION CONTACT: Rebecca Smith, U.S. Department of Education, 400 Maryland Avenue SW, Room 5038B, Potomac Center Plaza, Washington, DC 20202–5108. Telephone: (202) 258–9436. Email: *Rebecca.Smith@ed.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet the data collection and reporting requirements under Part B and Part C of the Individuals with Disabilities Education Act (IDEA). Funding for the program is authorized under section 611(c)(1) of IDEA. This section gives the Secretary authority to reserve not more than ½ of 1 percent of the amounts appropriated under Part B for each fiscal year to provide TA activities authorized under section 616(i) of IDEA, to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation. For FY 2022, the inflation adjusted amount is $37,300,000. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the IDEA Part B and Part C data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. In addition, the Consolidated Appropriations Act, 2021, Public Law 116–260, gives the Secretary authority to use funds reserved under section 611(c) of IDEA to provide TA to States to improve their capacity to administer and carry out other services and activities to improve data collection, coordination, quality, and use under Parts B and C of IDEA.

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), 1442; and the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, 1601.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Program Regulations: 34 CFR 300.702.

We published a notice of proposed priority and requirements (NPP) for this program in the **Federal Register** on March 17, 2022 (87 FR 15148). That document contained background information and our reasons for proposing the particular priority, including the requirements.

There are no differences between the proposed priority and the final priority other than minor technical changes.

Public Comment: In response to our invitation in the NPP, seven parties submitted comments on the priority, including the requirements.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the priority.

Analysis of Comments and Changes: An analysis of the comments follows.

Comment: Several commenters expressed general support for the proposed Accessible Data Center.

Discussion: We appreciate the commenters' support for the proposed Accessible Data Center.

Changes: None.

Comment: One commenter responded to our directed question about common challenges experienced by stakeholders with disabilities, particularly those with blindness, visual impairments, motor impairments, and intellectual disabilities, when accessing educational data on government websites. The commenter noted that many persons with visual and/or intellectual disabilities have trouble accessing information that is in either a table or graphical format because many screen readers do not recognize the information contained within, and magnifiers have limited utility.

Discussion: We agree with the commenter that screen readers and magnifiers alone are often insufficient for many persons with disabilities, particularly those with visual and/or intellectual disabilities, but also those with motor impairments. We also note that it is challenging to view data columns using screen readers and, when using magnifiers, heading and column descriptors do not automatically move when scrolling through Excel pages. Similarly, it can be difficult for persons with visual impairments to read and interpret charts and graphs that rely on chromatically similar colors to differentiate between data series, or where shading is not used to delineate the lines. Under the priority, applicants must propose tools they will develop, based on accessibility best practices, that exceed all Federal accessibility requirements. For this reason, we do not feel additional specification in the priority is necessary.

Changes: None.

Comment: One commenter responded to our directed question about accessibility features and interactive elements of a data reporting system that are necessary to allow stakeholders with disabilities, particularly those with blindness, visual impairments, motor impairments, and intellectual disabilities, to access and use data to answer their essential questions. The commenter stated that necessary accessibility features include text-to-speech/screen reader, speech recognition, high contrast themes, magnifiers, keyboard shortcuts, sans serif fonts, and closed captioning on all videos referenced or used.

Discussion: We appreciate the commenter's response to the directed question. We agree with the commenter's list of accessibility features and interactive elements of a data reporting system to allow stakeholders with disabilities to access and use data to answer their essential questions. We note that the accessibility features and interactive elements identified by the commenter are consistent with current Federal accessibility requirements. Under the priority, applicants must propose tools they will develop, based on accessibility best practices, that exceed all Federal accessibility requirements and are designed to accommodate continued enhancements to meet States' changing needs and updates in accessibility best practice.

Changes: None.

FINAL PRIORITY:

Technical Assistance on State Data Collection—The Rhonda Weiss[1] *National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Data in Accessible Formats.*

Under this priority, the Department provides funding for a cooperative agreement to establish and operate the Rhonda Weiss National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data in Accessible Formats (Accessible Data Center).

The Accessible Data Center will provide TA to help States better meet current and future IDEA Part B and Part C data collection and reporting requirements, improve data quality, and analyze and use the data reported to provide equitable access and visualizations to persons with disabilities. The Accessible Data Center's work will comply with the privacy and confidentiality protections in the IDEA Part B and C regulations, which incorporate provisions in the Family Educational Rights and Privacy Act (FERPA) and include IDEA-specific provisions and will not provide the Department with access to child-level data. The Accessible Data Center must achieve, at a minimum, the following expected outcomes:

(a) Improved accessibility of the IDEA Part B and Part C data reported and published under IDEA sections 616 and 618;

(b) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B and Part C data in accessible formats;

(c) Development of an open license, accessible software program, for the publication of dynamic data products (consistent with the open licensing requirement in 2 CFR 3474.20); and

(d) Development and documentation of a knowledge base related to the accessible reporting and dynamic presentation of data.

In addition, the Accessible Data Center must provide a range of targeted and general TA products and services for improving States' capacity to accurately collect, report, analyze, and use IDEA section 616 and section 618 data in accessible formats for persons with disabilities, particularly those with blindness, visual impairments, motor impairments, and intellectual disabilities. Such TA must include, at a minimum—

(a) Working with the Department to develop open-source electronic tools to assist States in reporting their IDEA data in accessible formats that allow for dynamic visualizations that can be manipulated for persons with and without disabilities. The tools must utilize accessibility best practices, exceed all Federal accessibility requirements, and be designed to accommodate continued enhancements to meet States' changing needs and updates in accessibility best practice;

(b) Developing a plan to maintain appropriate functionality of the open-source electronic tools described in paragraph (a) as changes are made to data collections, reporting requirements, accessibility best practices, and accessibility requirements;

(c) Developing universal TA products, including a user manual and instructions, and conducting training with State staff on use of the open-source electronic tools; and

(d) Developing white papers and presentations that include tools and solutions to challenges in the collection, reporting, analysis, and use of IDEA data in accessible formats.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance of the Project,'' how the proposed project will—

(1) Address State challenges in collecting, analyzing, reporting, and using the IDEA Part B and Part C data reported under IDEA sections 616 and 618 in formats that are both accessible to persons with visual impairments and/or other disabilities and also dynamic, to promote enhanced data use that will improve data quality and identify programmatic strengths and areas for improvement. To meet this requirement the applicant must—

(i) Demonstrate knowledge of IDEA data collections, including data required under IDEA sections 616 and 618;

(ii) Demonstrate knowledge of accessible reporting and dynamic visualization, and document areas for further knowledge development;

(iii) Present information about the difficulties State educational agencies (SEAs), State lead agencies (LAs), local educational agencies (LEAs), early intervention service (EIS) providers, and schools have encountered in meeting the requirements of section 504 of the Rehabilitation Act when reporting IDEA data; and

(iv) Present information about the difficulties SEAs, State LAs, LEAs, EIS providers, and schools have in developing dynamic data visualizations for public use; and

(2) Improve outcomes in collecting, analyzing, reporting, and using the IDEA Part B and Part C data in formats that are accessible to persons with visual impairments and/or other disabilities.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients and end users for TA and information; and

(ii) Ensure that products and services meet the needs of the intended TA recipients and end users;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *https://osepideasthatwork.org/sites/default/files/2021-12/ConceptualFramework_Updated.pdf* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and use evidence-based practices (EBPs).[2]

[1] The Center is named in remembrance of Rhonda Weiss, who was a senior attorney with the U.S. Department of Education, a staunch advocate for disability rights, and a champion for ensuring equity and accessibility for persons with disabilities. For more information on Rhonda and her work to ensure equity and accessibility for persons with disabilities please see *www.washingtonpost.com/dc-md-va/2021/12/13/blind-government-lawyer-disabilities-rights/.*

[2] For purposes of these requirements, ''evidence-based practices'' (EBPs) means, at a minimum, demonstrating a rationale (as defined in 34 CFR

To meet this requirement, the applicant must describe—

(i) The current research on the capacity of SEAs, State LAs, LEAs, and EIS providers to report and use data, specifically section 616 and section 618 data, in a manner that allows persons with vision and/or other disabilities, as well as those without, to access and dynamically manipulate data, as both a means of improving data quality and identifying strengths and areas for improvement;

(ii) How it will analyze and incorporate the views of end users regarding the accessibility of tools currently available for data collection, reporting, analysis, and use. Specifically, how it will assess the overall accessibility, data manipulability, and the accessibility of dynamic data visualizations for persons with and without disabilities; and

(iii) How the proposed project will incorporate current research, EBPs, and the needs of end users in the development and delivery of its products and services;

(5) How it will develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on the capacity needs of SEAs, State LAs, LEAs, and EIS programs/EIS providers to meet IDEA data collection and reporting requirements, data analysis, and use of the IDEA Part B and Part C data reported under IDEA sections 616 and 618 in a manner that allows individuals with vision and/or other disabilities, as well as those without, to access and dynamically manipulate data;

(ii) Its proposed approach to universal, general TA,[3] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[4] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,[5] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of SEA, State LAs, LEA, and EIS program/provider personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA, State LA, LEA, and EIS program/provider levels;

(C) Its proposed plan for assisting SEAs and State LAs (and LEAs, in conjunction with SEAs and EIS programs/providers, in conjunction with State LAs) to build or enhance training systems to meet IDEA Part B and Part C data collection and reporting requirements in a manner that allows individuals with vision and/or other disabilities, as well as those without, to access and dynamically manipulate data. This includes professional development based on adult learning principles and coaching;

(D) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, State LAs, regional TA providers, LEAs, EIS providers, schools, and families) to ensure there is communication between each level and there are systems in place to support the capacity needs of SEAs, State LAs, LEAs, and EIS providers to meet IDEA data collection and reporting requirements, as well as support data analysis and the use of IDEA Part B and Part C data, in a manner that allows individuals with vision and/or other disabilities, as well as those without, to access and dynamically manipulate data; and

(E) Its proposed plan for collaborating and coordinating with Department-funded projects, including those providing data-related support to States, where appropriate, to align complementary work and jointly develop and implement products and services to meet the purposes of this priority. Such Department-funded projects include the IDEA Data Center (IDC), the Center for IDEA Early Childhood Data Systems (DaSy), the Center for IDEA Fiscal Reporting (CIFR), the Center for the Integration of IDEA Data (CIID), EdFacts, and the research and development investments of the Institute of Education Sciences/National Center for Education Statistics; and

(6) Its proposed plan to develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[6] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these requirements;

77.1) based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

[3] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with Accessible Data Center staff and including one-time, invited or offered conference presentations by Accessible Data Center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the Accessible Data Center's website by independent users. Brief communications by Accessible Data Center staff with recipients, either by telephone or email, are also considered universal, general TA.

[4] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more Accessible Data Center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[5] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between Accessible Data Center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

[6] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, or have any financial interest in the outcome of the evaluation.

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the annual performance report and at the end of Year 2 for the review process; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements:

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one- and one-half day kick-off meeting in Washington, DC, or virtually, after receipt of the award, and an annual planning meeting in Washington, DC, or virtually, with the Office of Special Education Programs (OSEP) project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two- and one-half day project directors' conference in Washington, DC, or virtually, during each year of the project period; and

(iii) Three annual two-day trips, or virtually, to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility; and

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate.

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)).

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

Note: This document does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

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

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy,

productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

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

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

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

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

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

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

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

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

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

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

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

We are issuing the final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

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

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Potential Costs and Benefits

The Department believes that the costs associated with the final priority will be minimal, while the benefits are significant. The Department believes that this regulatory action does not impose significant costs on eligible entities. Participation in this program is voluntary, and the costs imposed on applicants by this regulatory action will be limited to paperwork burden related to preparing an application. The benefits of implementing the program to focus attention on an identified need to improve State capacity to accurately collect, report, analyze, and use the IDEA Part B and Part C data reported under IDEA sections 616 and 618, in accessible formats for persons with disabilities, will outweigh the costs incurred by applicants, and the costs of carrying out activities associated with the application will be paid for with program funds. For these reasons, we have determined that the costs of implementation will not be burdensome for eligible applicants, including small entities.

Regulatory Alternatives Considered

The Department believes that the priority is needed to administer the program effectively.

Paperwork Reduction Act of 1995

The final priority contains information collection requirements that are approved by OMB under control number 1820–0028; the final priority does not affect the currently approved data collection.

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

The small entities that this final regulatory action will affect are LEAs, including charter schools that operate as LEAs under State law; institutions of higher education; other public agencies; private nonprofit organizations; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by the final priority will be limited to paperwork burden related to preparing an application and that the benefits of this final priority will outweigh any costs incurred by the applicant.

Participation in the Accessible Data Center grant program is voluntary. For this reason, the final priority will impose no burden on small entities unless they apply for funding under the program. We expect that in determining whether to apply for Accessible Data Center funds, an eligible entity will evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving a grant to establish and operate the Accessible Data Center. An eligible entity will most likely apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the final priority will not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the final action. That is, the length of the applications those entities would submit in the absence of the final regulatory action and the time needed to prepare an application will likely be the same.

This final regulatory action will not have a significant economic impact on a small entity once it receives a grant because it will be able to meet the costs of compliance using the funds provided under this program.

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

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

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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

Katherine Neas,

Deputy Assistant Secretary, delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2022–14852 Filed 7–8–22; 4:15 pm]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2021–0393; FRL–9756–02–R10]

Air Plan Approval; OR; Vehicle Inspection Program and Medford-Ashland PM_{10} Maintenance Plan Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Oregon state implementation plan (SIP) submitted by the State of Oregon (Oregon) on December 9, 2020 and December 22, 2021. The revisions update the SIP-approved vehicle inspection program for the Portland and Medford areas. The EPA is approving the SIP submittal as consistent with Clean Air Act (Act or CAA) requirements. Additionally, the EPA is making a technical correction to the Medford-Ashland particulate matter (PM_{10}) maintenance plan that incorrectly identified a street-sweeping commitment as a transportation control measure (TCM).

DATES: This action is effective on August 11, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2021–0393. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Claudia Vaupel, (206) 553–6121, *vaupel.claudia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

I. Background

On May 11, 2022, EPA proposed to approve Oregon's SIP revision for the vehicle inspection program (VIP) in the Portland and Medford areas (87 FR 28783). The SIP revision updates the rules to improve clarity, add requirements for the onboard diagnostics system, and remove references to the enhanced dynamometer test that is no longer required as of January 1, 2007.[1] EPA also proposed to correct the nomenclature used to describe the street sweeping commitment in the Medford-Ashland SIP as a TCM. EPA clarified that the street sweeping commitment is not a TCM, within the meaning of 40 CFR 93.101, and further clarified that Oregon is not obliged to treat the street sweeping commitment in its SIP as a TCM. An explanation of the CAA requirements, a detailed analysis of the submittal, and the EPA's reasons for approval were provided in the notice of proposed rulemaking. The public comment period for this proposed rulemaking closed on June 10, 2022. The EPA received no comments during the public comment period.

II. Final Action

The EPA is approving the SIP revision submitted by Oregon on December 9, 2020 and December 22, 2021. We are approving the following rule amendments (state effective November 19, 2020): OAR 340–256–0010, –0100, –0130, –0200, –0300, –0310, –0330, –0340, –0355, –0356, –0370, –0380, –0390, –0400, –0420, –0440, –0450, –0465, –0470, –0350 (repeal), –0410 (repeal), –0460 (repeal). The EPA is also correcting the nomenclature in the Medford-Ashland PM_{10} maintenance plan used to describe the street sweeping control measure as a TCM.

III. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of certain provisions and removing certain provisions from incorporation by reference, as described in sections I and II of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable

[1] The EPA approved phasing out the enhanced test on December 19, 2011. (*See* 76 FR 78571).

under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and it will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 30, 2022.

Casey Sixkiller,

Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart MM—Oregon

■ 2. In § 52.1970, amend Table 2 in paragraph (c) by revising the entries for ''256–0010'', ''256–0130'', and ''256–200'' and under the heading ''Emission Control System Inspection'' entries ''256–0300'' through ''256–0470'' to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) [1]

State citation	Title/subject	State effective date	EPA approval date	Explanations
CHAPTER 340—DEPARTMENT OF ENVIRONMENTAL QUALITY				
*	*	*	*	*
Division 256—Motor Vehicles				
256–0010	Definitions	11/19/2020	7/12/2022, [Insert **Federal Register** citation].	
Visible Emissions				
*	*	*	*	*
256–0130	Motor Vehicle Fleet Operation	11/19/2020	7/12/2022, [Insert **Federal Register** citation].	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) [1]—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
	Certification of Pollution Control Systems			
256–0200	County Designations	11/19/2020	7/12/2022, [Insert **Federal Register** citation].	
	Emission Control System Inspection			
256–0300	Scope	11/19/2020	7/12/2022, [Insert **Federal Register** citation].	
256–0310	Government-Owned Vehicle, Permanent Fleet Vehicle and United States Government Vehicle Testing Requirements.	11/19/2020	7/12/2022, [Insert **Federal Register** citation].	
256–0330	Department of Defense Personnel Participating in the Privately Owned Vehicle Import Control Program.	11/19/2020	7/12/2022, [Insert **Federal Register** citation].	
256–0340	Light Duty Motor Vehicle and Heavy Duty Gasoline Motor Vehicle Emission Control Test Method for Basic Program.	11/19/2020	7/12/2022, [Insert **Federal Register** citation].	
256–0355	Emissions Control Test Method for OBD Test Program.	11/19/2020	7/12/2022, [Insert **Federal Register** citation].	
256–0356	Emissions Control Test Method for On-Site Vehicle Testing for Automobile Dealerships.	11/19/2020	7/12/2022, [Insert **Federal Register** citation].	
256–0370	Renewal of Registration for Light Duty Motor Vehicles and Heavy Duty Gasoline Motor Vehicles Temporarily Operating Outside of Oregon.	11/19/2020	7/12/2022, [Insert **Federal Register** citation].	
256–0380	Light Duty Motor Vehicle Emission Control Test Criteria for Basic Program.	11/19/2020	7/12/2022, [Insert **Federal Register** citation].	
256–0390	Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria.	11/19/2020	7/12/2022, [Insert **Federal Register** citation].	
256–0400	Light Duty Motor Vehicle Emission Control Standards for Basic Program.	11/19/2020	7/12/2022, [Insert **Federal Register** citation].	
256–0420	Heavy-Duty Gasoline Motor Vehicle Emission Control Standards.	11/19/2020	7/12/2022, [Insert **Federal Register** citation].	
256–0440	Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Vehicle Pollution Control Systems and Execute Certificates.	11/19/2020	7/12/2022, [Insert **Federal Register** citation].	
256–0450	Gas Analytical System Licensing Criteria for Basic Program.	11/19/2020	7/12/2022, [Insert **Federal Register** citation].	
256–0465	Test Equipment Licensing Criteria for OBD Test Program.	11/19/2020	7/12/2022, [Insert **Federal Register** citation].	
256–0470	Agreement With Independent Contractor; Qualifications of Contractor; Agreement Provisions.	11/19/2020	7/12/2022, [Insert **Federal Register** citation].	
*	* * * * * *			

[1] The EPA approves the requirements in Table 2 of this paragraph (c) only to the extent they apply to (1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and (2) any additional pollutants that are required to be regulated under Part C of Title I of the CAA, but only for the purposes of meeting or avoiding the requirements of Part C of Title I of the CAA.

* * * * *

[FR Doc. 2022–14390 Filed 7–11–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 220325–0079; RTID 0648–XC147]

Pacific Halibut Fisheries; Catch Sharing Plan; Inseason Action

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: This document announces six additional season dates for Pacific halibut recreational fisheries in the International Pacific Halibut Commission's regulatory Area 2A off Washington, Oregon, and California. Specifically, this action adds the dates of July 14–16 and 28–30 for the Oregon Central Coast subarea. This action is intended to conserve Pacific halibut and provide angler opportunity where available.

DATES: This action is effective July 7, 2022, through October 31, 2022. Submit comments on or before July 27, 2022.

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2022–0003, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0003 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Scott M. Rumsey, c/o Kathryn Blair, West Coast Region, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will post them for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Docket: This rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov/.* Background information and documents are available at the NOAA Fisheries website at *https://www.fisheries.noaa.gov/action/2022-pacific-halibut-catch-sharing-plan* and at the Pacific Fishery Management Council's (Council) website at *https://www.pcouncil.org.* Other comments received may be accessed through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, phone: 562–980–4034, fax: 562–980–4018, or email: *joshua.lindsay@noaa.gov.*

SUPPLEMENTARY INFORMATION: On April 1, 2022, NMFS published a final rule approving changes to the Pacific halibut Area 2A Catch Sharing Plan and implementing recreational (sport) management measures for 2022 (87 FR 19007), as authorized by the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773–773(k)). The 2022 Catch Sharing Plan provides a recommended framework for NMFS' annual management measures and subarea allocations based on the 2022 Area 2A Pacific halibut catch limit of 1,490,000 pounds (lb) (675.9 metric tons (mt)) set by the International Pacific Halibut Commission (IPHC). These Pacific halibut management measures include recreational fishery season dates and subarea allocations.

Federal regulations at 50 CFR 300.63(c), ''Flexible Inseason Management Provisions for Sport Halibut Fisheries in Area 2A,'' allow the NMFS' Regional Administrator to modify annual regulations during the season. These inseason provisions allow the Regional Administrator to modify sport (recreational) fishing periods, bag limits, size limits, days per calendar week, and subarea quotas, if it is determined it is necessary to meet the allocation objectives and the action will not result in exceeding the catch limit.

NMFS has determined that, due to lower than expected landings in portions of Oregon, specifically the Central Coast subarea, inseason action to modify the 2022 annual regulations for the recreational fishery is warranted at this time to provide additional opportunity for fishery participations to achieve the Area 2A allocations as published in the final rule (87 FR 19007; April 1, 2022). As stated above, inseason modification of the fishing season is authorized by Federal regulations at 50 CFR 300.63(c). After consulting with IPHC, the Council, and the Oregon Department of Fish and Wildlife (ODFW), NMFS determined the following inseason action is necessary to meet the management objective of attaining the subarea allocations, and is consistent with the inseason management provisions allowing for the modification of sport fishing periods and sport fishing days per calendar week. Notice of these additional dates and closure of the fisheries will also be announced on the NMFS hotline at 206–526–6667 or 800–662–9825.

Inseason Action

Description of the action: This inseason action implements six additional dates for spring all-depth fishing in the Oregon Central Coast subarea during the 2022 recreational fishery.

Reason for the action: The purpose of this inseason action is to provide additional opportunity for anglers in the Oregon Central Coast subarea on July 14–16 and 28–30. The recreational fishery in this subarea opened on May 12, 2022. NMFS has determined that these additional dates are warranted due to lower than expected landings through June 2022, and the expectation that a substantial amount of subarea allocation will go unharvested without additional fishing dates. As of June 23, anglers in the Oregon Central Coast subarea have harvested 83,156 lb (37.72 mt) of the 169,963 lb (77.09 mt) allocation (49 percent), leaving 86,807 lb (39.38 mt) remaining (51 percent of the subarea allocation). This is a result of poor weather and ocean conditions preventing anglers from safely participating in the recreational fishery off the coast of Oregon. After 163,231 lb (74.04 mt) of the subarea allocation went unharvested in 2021, NMFS included more season days in 2022. NMFS implemented season dates of May 12, seven days per week, through June 30, and July 7–9 and 21–23, in the April 1, 2022 final rule (87 FR 19007), to allow anglers more opportunity to achieve the Oregon Central Coast allocation. However, catch information to date shows that even with the increased fishing dates provided for in the final rule, the fishery is unlikely to take the full subarea allocation. Without the additional fishing days in this action, the season dates implemented in the April 1, 2022 (87 FR 19007) final rule would likely result in substantial unharvested allocation in this subarea.

After consulting with ODFW, it was determined that in order for anglers to have the opportunity to achieve the subarea allocation in Central Oregon, and with little risk of the subarea or coastwide allocation being exceeded, additional season dates were warranted for participants in the Oregon Central Coast subarea. Therefore, through this action NMFS is announcing new season

dates in July that were not previously implemented in the April 1, 2022, final rule (87 FR 19007). Specifically, the additional season dates for spring all-depth fishing in the Oregon Central Coast subarea are July 14–16 and 28–30.

Notice of these additional dates will also be announced on the NMFS hotline at 206–526–6667 or 800–662–9825.

Weekly catch monitoring reports for the recreational fisheries in Washington, Oregon, and California are available on their respective state Fish and Wildlife agency websites. NMFS and the IPHC will continue to monitor recreational catch obtained via state sampling procedures until NMFS has determined there is not sufficient allocation for another full day of fishing, and the area is closed by the IPHC, or the season closes on September 30, whichever is earlier.

Classification

NMFS issues this action pursuant to the Northern Pacific Halibut Act of 1982. This action is taken under the regulatory authority at 50 CFR 300.63(c), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. ODFW provided updated landings data to NMFS on June 23, 2022, showing that the fishery participants in the recreational fishery off of the Oregon Central Coast had only caught 49 percent of the subarea allocation. NMFS uses fishing rates from previous years to determine the number of recreational fishing dates needed to attain subarea allocations. NMFS implemented season dates of May 12, seven days per week, through June 30, including more season dates in 2022 than in 2021. Even with the fishery open each day for over half of May and all of June, the level of attainment of the allocation for 2022 is substantially lower than anticipated when the 2022 final rule setting the 2022 recreational fishery season dates was developed. This action should be implemented as soon as possible to allow fishery participants to take advantage of the additional fishing dates prior to the end of the season. As the fishery closes on October 31, 2022, implementing this action through proposed and final rulemaking would limit the benefit this action would provide to fishery participants. Without implementation of additional season dates, a significant portion of the Oregon Central Coast subarea allocation is unlikely to be harvested, limiting economic benefits to the participants and not meeting the goals of the Catch Sharing Plan and the 2022 management measures. It is necessary that this rulemaking be implemented in a timely manner so that planning for these new fishing days can take place, and for business and personal decision making by the regulated public impacted by this action, which includes recreational charter fishing operations, associated port businesses, and private anglers who do not live near the coastal access points for this fishery, among others. To ensure the regulated public is fully aware of this action, notice of this regulatory action will also be provided to anglers through a telephone hotline, news release, and by the relevant state fish and wildlife agencies. NMFS will receive public comments for 15 days after publication of this action, in accordance with 50 CFR 300.63(c)(4)(ii). No aspect of this action is controversial, and changes of this nature were anticipated in the process described in regulations at 50 CFR 300.63(c).

For the reasons discussed above, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date and make this action effective immediately upon filing for public inspection, as a delay in effectiveness of this action would constrain fishing opportunity and be inconsistent with the goals of the Catch Sharing Plan and current management measures, as well as potentially limit the economic opportunity intended by this rule to the associated fishing communities. NMFS regulations allow the Regional Administrator to modify sport fishing periods, bag limits, size limits, days per calendar week, and subarea quotas, provided that the action allows allocation objectives to be met and will not result in exceeding the catch limit for the subarea. NMFS recently received information on the progress of landings in the recreational fisheries in the Oregon subarea, indicating additional dates should be added to the fishery to ensure optimal and sustainable harvest of the subarea allocation. As stated above, it is in the public interest that this action is not delayed, because a delay in the effectiveness of these new dates would not allow the allocation objectives of the recreational Pacific halibut fishery to be met.

Dated: July 7, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–14843 Filed 7–7–22; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 220510–0113; RTID 0648–XC101]

Fisheries Off West Coast States; Modification of the West Coast Salmon Fisheries; Inseason Actions #12 Through #15

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason modification of 2022 management measures.

SUMMARY: NMFS announces four inseason actions in the 2022 ocean salmon fisheries. These inseason actions modify the commercial ocean salmon fisheries in the area from the United States (U.S.)/Canada border to Cape Falcon, Oregon.

DATES: The effective dates for the inseason actions are set out in this document under the heading Inseason Actions and the actions remain in effect until superseded or modified.

FOR FURTHER INFORMATION CONTACT: Dana Preedeedilok at 562–980–4019, Email: *dana.preedeedilok@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The 2022 annual management measures for ocean salmon fisheries (87 FR 29690, May 16, 2022), announced management measures for the commercial and recreational fisheries in the area from the U.S./Canada border to the U.S./Mexico border, effective from 0001 hours Pacific Daylight Time (PDT), May 16, 2022, until the effective date of the 2023 management measures, as published in the **Federal Register**. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Chairman of the Pacific Fishery Management Council (Council), and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions).

Management of the salmon fisheries is divided into two geographic areas: north of Cape Falcon (NOF) (U.S./Canada

border to Cape Falcon, OR), and south of Cape Falcon (SOF) (Cape Falcon, OR, to the U.S./Mexico border). The actions described in this document affect the NOF commercial salmon fishery, as set out under the heading Inseason Action below.

Consultations with the Council Chairperson on these inseason actions occurred on May 16, 2022; May 25, 2022; and June 9, 2022. Representatives from NMFS, Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife, and Council staff participated in these consultations.

These inseason actions were announced on NMFS' telephone hotline and U.S. Coast Guard radio broadcast on the date of the consultations (50 CFR 660.411(a)(2)).

Inseason Actions

Inseason Action #12

Description of the action: Inseason action #12 modifies the Chinook salmon landing and possession limit for the commercial salmon troll fishery in the area between Leadbetter Point and Queets River (Westport subarea) to 150 Chinook salmon per vessel per week (Thursday–Wednesday) starting 12:01 a.m. May 19, 2022.

Effective date: Inseason action #12 took effect on May 16, 2022 and remains in effect until superseded.

Reason for the action: Inseason action #12 established a landing and possession limit for the area between Leadbetter Point and Queets River (Westport subarea), where it has not existed before, in response to an increase in vessels entering the fishery and an increase in Chinook salmon landings. The establishment of a landing and possession limit in this area will preserve the length of the season and ensure that the Chinook salmon quota is not exceeded.

Inseason Action #13

Description of the action: Inseason action #13 modifies the Chinook salmon landing and possession limit for the commercial salmon troll fishery across the entire NOF area, regardless of subarea, to: 40 Chinook salmon per vessel per week (Thursday–Wednesday) starting 12:01 a.m. May 26 through 11:59 p.m. June 8, 2022; and 20 Chinook salmon per vessel per week (Thursday–Wednesday) starting 12:01 a.m. June 9 through 11:59 p.m. June 29, 2022.

Effective date: Inseason action #13 took effect on May 25, 2022, and remains in effect until June 29, 2022.

Reason for the action: In the area NOF, there has been an increase of vessels entering the fishery resulting in an overall increase in Chinook salmon landings. The purpose of inseason #13 is to modify the landing and possession limits for the entire area to avoid exceding the quota set preseason.

Ineseason Action #14

Description of the action: Inseason action #14 modifes the Chinook salmon landing and possession limit for the commercial salmon troll fishery NOF from 20 Chinook salmon per vessel per week (Thursday–Wednesday) to 25 Chinook salmon per vessel per week (Thursday–Wednesday) starting at 12:01 a.m. on June 10, 2022.

Effective date: Inseason action #14 took effect on June 10, 2022, and remains in effect until superseded.

Reason for the action: Due to increasing fuel prices and lowered landing and possesion limit, there have been impacts on the economics of the fishery and effort has declined. The increase in the landing and possession limit will result in increased fishing interest and allow greater access to approach the quota without exceeding it. The NOF May–June commercial salmon fishery has a quota of 18,000 Chinook salmon. Of that quota, 16,457 were caught, leaving a quota of 1,543 Chinook salmon uncaught. Any remaining quota from the May–June fishery may be rolled over to the July–September fishery on an impact-neutral basis.

Inseason Action #15

Description of the action: Inseason action #15 modifies the commercial salmon troll fishery in the area NOF. Starting at 11:59 p.m. on June 15, 2022, through June 30, 2022, this fishery is closed.

Effective date: Inseason action #15 took effect on June 15, 2022, and remains in effect until June 30, 2022.

Reason for the action: The purposed of inseason action #15 is to avoid exceeding the area of NOF quota for Chinook salmon.

The NMFS West Coast Regional Administrator (RA) considered the landings of Chinook salmon to date, fishey catch and effort to date, the amount of quota remaining, and the timing of the action relative to the length of the season, and determined that these inseason actions were necessary to avoid exceeding the subarea quotas set preseason, provide greater fishing opportunity, and provide economic benefit to the fishery dependent community. Inseason actions to modify quotas and/or fishing seasons is authorized under 50 CFR 660.409(b)(1)(i).

All other restrictions and regulations remain in effect as announced for the 2022 ocean salmon fisheries (87 FR 29690, May 16, 2022).

The RA determined that these inseason actions were warranted based on the best available information on Pacific salmon abundance forecasts, landings to date, anticipated fishery effort and projected catch, and the other factors and considerations set forth in 50 CFR 660.409. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone (3–200 nautical miles (5.6–370.4 kilometers) off the coasts of the states of Washington, Oregon, and California) consistent with these Federal actions. As provided by the inseason notice procedures at 50 CFR 660.411, actual notice of the described regulatory action was given, prior to the time the action was effective, by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

NMFS issues these actions pursuant to section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). These actions are authorized by 50 CFR 660.409, which was issued pursuant to section 304(b) of the MSA, and are exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. Prior notice and opportunity for public comment on this action was impracticable because NMFS had insufficient time to provide for prior notice and the opportunity for public comment between the time Chinook salmon abundance, catch, and effort information were developed and fisheries impacts were calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best scientific information available and that fishery participants can take advantage of the additional fishing opportunity these changes provide. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (87 FR 29690, May 16, 2022), the Fishery Management Plan (FMP), and regulations implementing the FMP under 50 CFR 660.409 and 660.411.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date, as a delay in effectiveness of this action would restrict fishing at levels inconsistent with the goals of the FMP and the current management measures.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 6, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–14753 Filed 7–11–22; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 132
Tuesday, July 12, 2022

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0818; Project Identifier AD–2022–00299–R]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Leonardo S.p.a. Model A109, A109A, A109A II, A109C, A109K2, A109E, A109S, and AW109SP helicopters modified by Supplemental Type Certificate (STC) SR01812LA. This proposed AD was prompted by a report of certain floats not deploying due to a faulty plunger assembly. This proposed AD would require repairing or replacing certain float assemblies. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 26, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- For service information identified in this NPRM, contact Apical Industries, Inc., Jason Gardiner, 3030 Enterprise Ct., Vista, CA 92081, United States; phone: (760) 542–2096; email: *jgardiner@dartaero.com*; website: *https://www.dartaerospace.com/.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0818; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Johann S. Magana, Aerospace Engineer, Cabin Safety & Environmental Systems Section, Los Angeles ACO Branch, Compliance & Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5322; email *johann.magana@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0818; Project Identifier AD–2022–00299–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Johann S. Magana, Aerospace Engineer, Cabin Safety & Environmental Systems Section, Los Angeles ACO Branch, Compliance & Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5322; email *johann.magana@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA received a report of two forward floats not deploying after an inadvertent activation. It was discovered that the plunger assembly caused the forward floats to not deploy. Further investigation revealed that a design change in 2009 of the plunger assembly inadvertently changed the position of the bushing from a press fit to a threaded fit. The dimensions for the threaded fit were preventing the bushing from fully clearing the ball bearings when bottom out on the solenoid on the valve assemblies. The plunger assembly is contained within the float assembly and reservoir assembly. An emergency float kit consists of float assemblies, reservoir assemblies, and additional components. These emergency float kits (634.4100 Kit Series) are installed on Leonardo S.p.a. Model A109, A109A, A109A II, A109C, A109K2, A109E, A109S, and AW109SP helicopters modified by STC SR01812LA; this STC is held by Apical Industries, Inc., d/b/a DART Aerospace (DART). This condition, if not

addressed, could result in the helicopter either rolling to one side or capsizing in an event of an emergency landing on water.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type designs.

Related Service Information

The FAA reviewed DART Service Bulletin SB2021–05, dated December 6, 2021. This service bulletin specifies replacing certain serial-numbered float assemblies or, if the serial number is not included as part of the service bulletin, contacting DART to validate effectivity. The service bulletin also provides procedures for removing the float assemblies from the helicopter, discharging the reservoirs, shipping the float assemblies, and re-installing the float assemblies.

The FAA also reviewed DART's Instructions for Continued Airworthiness ICA109–1, Rev. U, dated October 27, 2020. This service information provides description, operation, disassembly, inspection, assembly, repair, and testing instructions as well as an illustrated parts list for emergency float kits and emergency float with life raft kits.

Proposed AD Requirements in This NPRM

This proposed AD would require repairing or replacing each float assembly part number 644.0501, 644.0502, 644.0503, 644.0504, 644.0505, or 644.0506 in certain emergency float kits with a method approved by the Manager, Los Angeles ACO Branch, FAA. These actions would be required within 300 hours time-in-service or 6 months after the effective date of the final rule of this proposed AD, whichever occurs first.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 25 helicopters of U.S. registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Replacing each float assembly would take about 4 work-hours for an estimated cost of $340 per helicopter and up to $8,500 for the U.S. fleet. The FAA has received no definitive data that would enable the FAA to provide parts cost estimates for the proposed actions; however, according to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Leonardo S.p.a.: Docket No. FAA–2022–0818; Project Identifier AD–2022–00299–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 26, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model A109, A109A, A109A II, A109C, A109K2, A109E, A109S, and AW109SP helicopters, certificated in any category, modified by Supplemental Type Certificate SR01812LA with A109 Float (with/without Liferafts System) DART Aerospace 634.4100 Kit Series part number (P/N) 634.4101, 634.4102, 634.4103, 634.4104, 634.4106, or 634.4107 with float assembly P/N 644.0501, 644.0502, 644.0503, 644.0504, 644.0505, or 644.0506 installed.

(d) Subject

Joint Aircraft System Component (JASC) Code: 2560, Emergency Equipment.

(e) Unsafe Condition

This AD was prompted by a report of two forward floats not deploying after an inadvertent activation. The FAA is issuing this AD to ensure the affected floats work as intended. The unsafe condition, if not addressed, could result in the helicopter either rolling to one side or capsizing in an event of an emergency landing on water.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

Within 300 hours time-in-service or within 6 months after the effective date of this AD, whichever occurs first, remove each float assembly identified in paragraph (c) of this AD and repair or replace it in accordance with a method approved by the Manager, Los Angeles ACO Branch, FAA. For a repair or replacement method to be approved by the Manager, Los Angeles ACO Branch, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures

found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(i) Related Information

For more information about this AD, contact Johann S. Magana, Aerospace Engineer, Cabin Safety & Environmental Systems Section, Los Angeles ACO Branch, Compliance & Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5322; email *johann.magana@faa.gov.*

Issued on July 5, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–14696 Filed 7–11–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0817; Project Identifier MCAI–2022–00369–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model Airbus A350–941 and A350–1041 airplanes. This proposed AD was prompted by a determination that, in the event of rapid decompression at a specific location of the airplane, possible deflections of the passenger floor cross beams may result in wiring damages, leading to potential system losses. This proposed AD would require amending the existing airplane flight manual (AFM) to update the landing performance database, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 26, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0817.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0817; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0817; Project Identifier MCAI–2022–00369–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and 206–231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0054, dated March 23, 2022 (EASA AD 2022–0054) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus A350–941 and A350–1041 airplanes. EASA AD 2022–0054 supersedes EASA AD 2022–0045, dated March 16, 2022 (EASA AD 2022–0045), which was issued to correct the unsafe condition. However, the revision of the AFM referenced in EASA AD 2022–0045 did not include the required amendments.

This proposed AD was prompted by a determination that, in the event of rapid decompression at a specific location of the airplane, possible deflections of the passenger floor cross beams may result in wiring damages, leading to potential system losses. The FAA is proposing this AD to address this potential unsafe condition, which could lead to an increase of the landing distance, exceeding the value provided in the current in-flight failure data file for landing, and potentially resulting in a runway excursion. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0054 describes procedures for revising the existing Airbus A350 AFM to update the landing performance database.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0054 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

EASA AD 2022–0054 requires operators to ''inform all flight crews'' of revisions to the AFM, and thereafter to ''operate the aeroplane accordingly.'' However, this proposed AD would not specifically require those actions as those actions are already required by FAA regulations. FAA regulations require operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flight crew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. Therefore, including a requirement in this proposed AD to operate the airplane according to the revised AFM would be redundant and unnecessary. Further, compliance with such a requirement in an AD would be impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the airplane in such a manner would be unenforceable.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0054 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0054 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0054 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0054. Service information required by EASA AD 2022–0054 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0817 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD would affect 30 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$2,550

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Airbus SAS: Docket No. FAA–2022–0817; Project Identifier MCAI–2022–00369–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 26, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and A350–1041 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a determination that, in the event of rapid decompression at a specific location of the airplane, possible deflections of the passenger floor crossbeams may result in wiring damages, leading to potential system losses. The FAA is issuing this AD to address this unsafe condition, which could lead to an increase of the landing distance, exceeding the value provided in the current in-flight failure data file for landing, and potentially resulting in a runway excursion.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0054, dated March 23, 2022 (EASA AD 2022–0054).

(h) Exceptions to EASA AD 2022–0054

(1) Where EASA AD 2022–0054 refers to March 30, 2022 (the effective date of EASA AD 2022–0045, dated March 16, 2022), this AD requires using the effective date of this AD.

(2) Where EASA AD 2022–0054 specifies to ''inform all flight crews, and thereafter, operate the aeroplane accordingly'' this AD does not require those actions as those actions are already required by existing FAA operating regulations.

(3) Where the ''AFM Amendment'' paragraph of EASA AD 2022–0054 specifies implementing an AFM [airplane flight manual] revision, for this AD, replace the text ''implement the AFM revision, as defined in this [EASA] AD'' with ''revise the existing AFM to incorporate the aircraft performance database specified in the AFM revision, as defined in this [EASA] AD.''

(4) The ''Remarks'' section of EASA AD 2022–0054 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For EASA AD 2022–0054, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0817.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

Issued on July 5, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–14691 Filed 7–11–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2022–0008]

RIN 0651–AD60

Standardization of the Patent Term Adjustment Statement Regarding Information Disclosure Statements

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) proposes to revise the rules of practice pertaining to patent term adjustment to require that the patent term adjustment statement regarding information disclosure statements be submitted on an Office form. Use of the Office form will streamline certain aspects of prosecution by more accurately capturing and accounting for the patent term adjustment without unnecessary back-and-forth between the USPTO and applicant. It will also save resources by eliminating the need for a manual review of the patent term adjustment statement.

DATES: Comments must be received by September 12, 2022 to ensure consideration.

ADDRESSES: For reasons of government efficiency, comments must be submitted through the Federal eRulemaking Portal at *www.regulations.gov.* To submit comments via the portal, enter docket number PTO–P–2022–0008 on the

homepage and click ''Search.'' The site will provide a search results page listing all documents associated with this docket. Find a reference to this document and click on the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. Attachments to electronic comments will be accepted in Adobe® portable document format or Microsoft Word® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing comments via the portal. If electronic submission of comments is not feasible due to a lack of access to a computer and/or the internet, please contact the USPTO using the contact information below (at **FOR FURTHER INFORMATION CONTACT**) for special instructions.

FOR FURTHER INFORMATION CONTACT: Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration, at 571–272–7757. You can also send inquiries by email to *patentpractice@uspto.gov.*

SUPPLEMENTARY INFORMATION: This rulemaking pertains to the patent term adjustment regulations establishing the circumstances that will, or will not, be considered a failure of an applicant to engage in reasonable efforts to conclude prosecution (processing or examination) of an application and any resulting reduction of patent term adjustment (37 CFR 1.704).

Regulations establishing the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application and the resulting reduction of any patent term adjustment are set forth in 37 CFR 1.704(c)(1) through (14).

Additionally, 37 CFR 1.704(d)(1) provides a safe harbor by setting forth the circumstances that will not be considered a failure to engage in reasonable efforts to conclude processing or examination of the application. Specifically, 37 CFR 1.704(d)(1) provides that a paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under 37 CFR 1.704(c)(6), (8), (9), or (10) if it is accompanied by the required statement. The provision at 37 CFR 1.704(d)(1) also provides that a request for continued examination in compliance with § 1.114 with no submission other than an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under 37 CFR 1.704(c)(12) if it is accompanied by the required statement. The statement required to accompany the paper or request for continued examination must state that each item of information contained in the information disclosure statement (1) was first cited in any communication from a patent office in a counterpart foreign or international application or from the Office, and this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement; or (2) is a communication that was issued by a patent office in a counterpart foreign or international application or by the Office, and this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement.

This rulemaking proposes amending 37 CFR 1.704(d) to include new paragraph (d)(3) requiring that filers submit the patent term adjustment statement under 37 CFR 1.704(d)(1) on the Office form (PTO/SB/133) to derive benefit under 37 CFR 1.704(d). The changes proposed in this rulemaking facilitate the current patent term adjustment statement requirement through the use of an existing Office form.

Form PTO/SB/133 includes the patent term adjustment statement required by 37 CFR 1.704(d)(1). Specifically, the form includes the statement that ''[e]ach item of information contained in the information disclosure statement was first cited in any communication from a patent office in a counterpart foreign or international application or from the Office, and this communication was not received by any individual designated in 37 CFR 1.56(c) more than thirty days prior to the filing of the information disclosure statement.'' The form also includes the alternative statement that ''[e]ach item of information contained in the information disclosure statement is a communication that was issued by a patent office in a counterpart foreign or international application or by the Office, and this communication was not received by any individual designated in 37 CFR 1.56(c) more than thirty days prior to the filing of the information disclosure statement.'' The filer of the form could select one or both of these statements.

Use of form PTO/SB/133 aims to: (1) ensure the accurate capture of the presence of a patent term adjustment statement under 37 CFR 1.704(d)(1) by the USPTO's IT system, and (2) eliminate the need to manually review an applicant's patent term adjustment statement to determine whether it is proper under 37 CFR 1.704(d)(1). Furthermore, as a result of using the form, the USPTO's automated process for calculating patent term adjustment will be more likely to account for the patent term adjustment statement, thereby eliminating the need to file a request for reconsideration of patent term adjustment under 37 CFR 1.705(b). Form PTO/SB/133 is available at *www.uspto.gov/sites/default/files/documents/sb0133.pdf.* The Office of Management and Budget (OMB) has determined that, under 5 CFR 1320.3(h), form PTO/SB/133 does not collect ''information'' within the meaning of the Paperwork Reduction Act of 1995.

Filers who submit a 37 CFR 1.704(d)(1) patent term adjustment statement without using Office form PTO/SB/133 and filers who submit Office form PTO/SB/133 with any modification to the patent term adjustment statement (that is, modifications to either or both of the statements indicated on the form) will not receive the benefit of the safe harbor under 37 CFR 1.704(d). Under such circumstances, the concurrently filed paper containing only an information disclosure statement, in compliance with §§ 1.97 and 1.98, or the concurrently filed paper containing a request for continued examination, in compliance with § 1.114, with no submission other than an information disclosure statement, in compliance with §§ 1.97 and 1.98, will be treated as not accompanied by a patent term adjustment statement under 37 CFR 1.704(d)(1).

Additionally, the USPTO's patent term adjustment algorithm is being modified to detect when a patent term adjustment statement under 37 CFR 1.704(d)(1) is filed using the Office form. The Office has created a particular document code for the filing of this patent term adjustment statement form under 37 CFR 1.704(d). Once modified, the patent term adjustment algorithm will recognize that the Office form (PTO/SB/133) has been filed concurrently with (*i.e.,* on the same date as) the information disclosure statement and, accordingly, will not assess a reduction in patent term adjustment under the applicable applicant delay sections of 37 CFR 1.704(c) for the patent.

The Office reviewed a sampling of patent term adjustment statements that were independently submitted without the use of Office form PTO/SB/133 and found that a portion of those statements were deficient by failing to meet the required language of 37 CFR 1.704(d). Requiring the use of the form will eliminate these types of deficiencies, and use of Office form PTO/SB/133 will thus ensure legal compliance, so long as the patent term adjustment statement is not modified. Because the USPTO's patent term adjustment algorithm will now automatically determine that a reduction in patent term should not be assessed in view of a submitted form PTO/SB/133, the Office will also not need to expend resources to manually review the provided patent term adjustment statement under 37 CFR 1.704(d). The Office will rely on the presentation to the Office (whether by signing, filing, submitting, or later advocating) of this form, whether by a practitioner or non-practitioner, as a certification under 37 CFR 11.18(b) that the existing text and any certification statements on the form have not been altered.

The submission of a patent term adjustment statement under 37 CFR 1.704(d) does not require a fee. However, in certain cases, a fee is required. Specifically, the Office has provided a procedure for applicants to seek a waiver under 37 CFR 1.183 to allow for a late-filed patent term adjustment statement under 37 CFR 1.704(d). Section 1.183 provides for an applicant to petition for suspension of rules and requires the fee under 37 CFR 1.17(f). If accompanied by a petition under 37 CFR 1.183, an applicant may submit the patent term adjustment statement under 37 CFR 1.704(d) after the timely filing of the information disclosure statement. Applicants have additionally submitted such a patent term adjustment statement under 37 CFR 1.704(d) accompanied by a petition under 37 CFR 1.183 along with the filing of a request for reconsideration of the patent term adjustment indicated on the patent (37 CFR 1.705(b)) in order to receive the benefit of the safe harbor under 37 CFR 1.704(d). The Office has generally granted such 37 CFR 1.183 petitions.

Once the USPTO's patent term adjustment algorithm is modified to automatically detect when a patent term adjustment statement form under 37 CFR 1.704(d) is filed, the Office may consider eliminating the procedure of generally granting such 37 CFR 1.183 petitions. Additionally, applicants should keep in mind that a petition under 37 CFR 1.183 may only be used to request acceptance of the late-filed patent term adjustment statement under 37 CFR 1.704(d)(1). Under no circumstances may the information disclosure statement be filed more than 30 days from the applicable communication under 37 CFR 1.704(d)(1)(i) or (ii), the 30-day period being non-extendable per 37 CFR 1.704(d)(2).

Discussion of Specific Rules

The following is a discussion of the proposed amendments to 37 CFR part 1.

Section 1.704: Section 1.704(d) is proposed to be amended to include new paragraph (d)(3) requiring that the statement under paragraph (d)(1) of this section be submitted on a form provided by the Office (PTO/SB/133). Absent the patent term adjustment statement under 37 CFR 1.704(d) provided on the Office form, submitted concurrently with the information disclosure statement, an applicant will be assessed a reduction of the period of patent term adjustment under the appropriate provision in § 1.704. Newly proposed § 1.704(d)(3) also includes language, mirroring that in existing § 1.4(d)(5), regarding the prohibition of changing an existing form's text and patent term adjustment statements.

Rulemaking Considerations

A. Administrative Procedure Act: The changes proposed by this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Perez* v. *Mortg. Bankers Ass'n,* 135 S. Ct. 1199, 1204 (2015) (Interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers.'' (citation and internal quotation marks omitted)); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive); *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.). Specifically, this rulemaking proposes to revise Office rules to require the use of the provided Office form for filing statements under 37 CFR 1.704(d).

The proposed revision creates paragraph 37 CFR 1.704(d)(3) requiring that the ''statement under paragraph (d)(1) of this section must be submitted on the Office form (PTO/SB/133) provided for such a patent term adjustment statement.''

Accordingly, prior notice and opportunity for public comment for the changes proposed by this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. See *Perez,* 135 S. Ct. at 1206 (Notice-and-comment procedures are required neither when an agency ''issue[s] an initial interpretive rule'' nor ''when it amends or repeals that interpretive rule.''); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice-and-comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(A))). However, the Office has chosen to seek public comment before implementing the rule to benefit from the public's input.

B. Regulatory Flexibility Act: For the reasons set forth herein, the Senior Counsel for Regulatory and Legislative Affairs, Office of General Law, of the USPTO has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes in this proposed rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b).

This rulemaking does not propose to impose any additional fees on applicants. This rulemaking specifically proposes to revise Office rules to require the use of an Office form for statements under 37 CFR 1.704(d)(1) through the creation of paragraph 37 CFR 1.704(d)(3). This new requirement only seeks to facilitate the current statement requirement, pursuant to 37 CFR 1.704(d)(1) and set forth in the Manual of Patent Examining Procedure 2732, through the use of an existing Office form containing the required statement language.

For the foregoing reasons, the changes in this proposed rule will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the Office has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the proposed rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that

maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across Government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808), the USPTO will submit a report containing any final rule resulting from this rulemaking and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act of 1969: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act of 1995: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. The rules of practice pertaining to patent term adjustment and extension have been reviewed and approved by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) under OMB control number 0651–0020. Although this action proposes a requirement to use Office form PTO/SB/133 when making a statement under 37 CFR 1.704(d), OMB has determined that, under 5 CFR 1320.3(h), form PTO/SB/133 does not collect ''information'' within the meaning of the Paperwork Reduction Act of 1995. Because the changes proposed in this rulemaking would not affect the information collection requirements or fees associated with the information collections approved under OMB control number 0651–0020 or any other information collection, the Office is not resubmitting an information collection package to OMB for its review and approval.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

P. E-Government Act Compliance: The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and record keeping requirements, Small businesses.

For the reasons set forth in the preamble, USPTO proposes to amend 37 CFR part 1 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Section 1.704 is amended by adding new paragraph (d)(3) to read as follows:

§ 1.704 Reduction of period of adjustment of patent term.

* * * * *

(d) * * *

(3) The statement under paragraph (d)(1) of this section must be submitted on the Office form (PTO/SB/133) provided for such a patent term adjustment statement. Otherwise, the paper or request for continued examination will be treated as not accompanied by a statement under paragraph (d)(1) of this section. No changes to statements on this Office form may be made. The presentation to

the Office (whether by signing, filing, submitting, or later advocating) of this form, whether by a practitioner or non-practitioner, constitutes a certification under § 11.18(b) of this chapter that the existing text and any certification statements on this form have not been altered.

* * * * *

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2022–14668 Filed 7–11–22; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 226

[Docket No. 220706–0150]

RTID 0648–XR123

Listing Endangered or Threatened Species; 90-Day Finding on a Petition To Revise the Critical Habitat Designation for the North Pacific Right Whale

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: 90-day petition finding; request for information

SUMMARY: We, NMFS, announce a 90-day finding on a petition to revise the critical habitat designation for the North Pacific right whale (*Eubalaena japonica*) under the Endangered Species Act (ESA). In April 2008, we issued a final rule designating approximately 3,050 square kilometers (~1,175 square miles) and approximately 91,850 square kilometers (~35,460 square miles) of critical habitat for North Pacific right whales in the Gulf of Alaska and the Southeast Bering Sea, respectively. The petition requests we revise this critical habitat.

We find that the petition presents substantial scientific information indicating the petitioned action may be warranted. We are hereby initiating a review of the currently designated critical habitat to determine whether revision is warranted. To ensure a comprehensive review, we are soliciting scientific and commercial information pertaining to this action.

DATES: Scientific and commercial information pertinent to the petitioned action must be received by September 12, 2022.

ADDRESSES: You may submit comments, information, or data on this document identified by docket number NOAA–NMFS–2022–0050, by one of the following methods:

- *Federal e-Rulemaking Portal:* Go to *www.regulations.gov.* In the Search box, enter the above docket number for this notice. Then, click on the Search icon. On the resulting web page, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written information to Jon Kurland, Regional Administrator for Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: NMFS may not consider comments or other information if sent by any other method, to any other address or individual, or received after the comment period ends. All comments and information received are a part of the public record and NMFS will post the comments for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the petition prepared for this action are available from *http://www.regulations.gov* or from the NMFS website (see *https://www.fisheries.noaa.gov/species/north-pacific-right-whale#conservation-management*).

FOR FURTHER INFORMATION CONTACT: Jenna Malek, NMFS Alaska Region, *jenna.malek@noaa.gov,* (907) 271–1332.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 2022, we received a petition from the Center for Biological Diversity and Save the North Pacific Right Whale requesting revision to the critical habitat designation for the North Pacific right whale. Currently, North Pacific right whale critical habitat consists of two areas of approximately 3,050 square kilometers (~1,175 square miles) and approximately 91,850 square kilometers (~35,460 square miles) in the Gulf of Alaska and the Southeast Bering Sea, respectively (73 FR 19000, April 8, 2008). The petition requests we revise this critical habitat to connect the two existing critical habitat areas by extending the Southeast Bering Sea boundary west and south to the Fox Islands, through Unimak Pass to the edge of the continental slope, and east to the Gulf of Alaska critical habitat area off the coast of Kodiak Island.

The Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*) defines critical habitat as: (i) The specific areas within the geographical area currently occupied by the species, at the time it is listed . . . on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed . . . upon a determination by the Secretary that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)(A)). Joint NMFS-Fish and Wildlife Service (FWS) regulations for designating critical habitat at 50 CFR 424.12(b)(1)(ii) state that the agencies will identify physical and biological features essential to the conservation of the species at an appropriate level of specificity using the best available scientific data. A physical and biological feature may be a single habitat characteristic or a more complex combination of characteristics, may include characteristics that support ephemeral or dynamic habitat conditions, and may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity (50 CFR 424.02). ''Special management considerations or protection'' means any method or procedure useful in protecting physical and biological features essential to the conservation of the species (50 CFR 424.02).

Section 4(b)(2) of the ESA requires us to designate, and make revisions to, critical habitat for listed species based on the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary of Commerce may exclude any particular area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

Section 4(b)(3)(D)(i) of the ESA requires, to the maximum extent practicable, that within 90 days of receipt of a petition to revise a critical habitat designation, the Secretary of Commerce make a finding on whether

that petition presents substantial scientific information indicating that the petitioned revision may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(D)(i)).

The ESA implementing regulations issued jointly by NMFS and FWS (50 CFR 424.14(i)(1)(i)) state that ''substantial scientific or commercial information'' refers to credible scientific information that would lead a reasonable person conducting an impartial scientific review to conclude that the revision proposed in the petition may be warranted. In evaluating whether substantial scientific information is provided in a petition to revise critical habitat, the Secretary must consider whether the petition contains: (1) a description and map(s) of the areas that the current designation does not include that should be included, or includes that should no longer be included, and a description of the benefits of designating or not designating these specific areas of critical habitat; (2) a description of physical or biological features essential for the conservation of the species and whether they may require special management considerations or protections; (3) information indicating that the specific areas petitioned to be added to critical habitat contain one or more of the physical or biological features that are essential to the conservation of the species and may require special management considerations or protection; or (4) information indicating that areas designated as critical habitat do not contain the physical and biological features essential to the conservation of the species involved or do not require special management considerations or protection (50 CFR 424.14(e)(1–4)).

At the 90-day stage, we evaluate the petitioner's request based upon the information in the petition, including its references and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us evaluate the petition. We will accept the petitioner's sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude that it supports the petitioner's assertions. If we find that a petition presents substantial information indicating that the revision may be warranted (a ''positive 90-day finding''), within 12 months after receiving the petition, we are required to determine how we intend to proceed with the requested critical habitat revision and promptly publish notice of such intention in the **Federal Register** (16 U.S.C. 1533(b)(3)(D)(ii)). Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope at the 90-day stage, a ''positive 90-day finding'' does not prejudge the outcome of our review.

Current Critical Habitat Designation

Prior to the mid-2000s, right whales in the North Pacific and North Atlantic were considered the same species. Critical habitat for right whales was initially designated in 1994 for the North Atlantic population (59 FR 28793, June 3, 1994, and revised in 2006 to include habitat for the North Pacific population (71 FR 38277, July 6, 2006). Genetic analyses conducted in the early 2000s indicated that the North Atlantic and North Pacific populations were two distinct species of right whales (Rosenbaum et al. 2000, Gaines et al. 2005, Kaliszewska et al. 2005), leading to their separate listing under the ESA in 2008 (73 FR 12024, March 6, 2008). Following this listing, the two critical habitat areas originally designated in 2006 for the North Pacific population were finalized as critical habitat for North Pacific right whales (73 FR 19000, April 8, 2008). In the Gulf of Alaska, critical habitat was identified as a polygon delineated by a series of lines connecting the following coordinates in order: 57°03′ N/153°00′ W, 57°18′ N/151°30′ W, 57°00′ N/151°30′ W, 56°45′ N/153°00′ W, and returning to 57°03′ N/153°00′ W. In the Bering Sea, critical habitat was also identified by a polygon, delineated by a series of straight lines connecting the following coordinates in order: 58°00′ N/168°00′ W, 58°00′ N/163°00′ W, 56°30′ N/161°45′ W, 55°00′ N/166°00′ W, 56°00′ N/168°00′ W and returning to 58°00′ N/168°00′ W.

The designation of critical habitat for North Pacific right whales uses the term primary constituent element (PCE). The critical habitat implementing regulations in 50 CFR 424 were revised in 2016 (81 FR 7414; February 11, 2016), and as part of these revisions the term ''PCE'' was removed and replaced with ''physical or biological features'' (PBFs). The shift in terminology was intended to simplify and clarify the designation process, and did not change the approach used by NMFS in determining what areas qualify as critical habitat under the ESA. Thus, this change in terminology will not alter our review and analysis of North Pacific right whale critical habitat.

At the time of designation, there were significant gaps in the knowledge of North Pacific right whale biology and ecology; little was known about the PBFs that might be essential for their conservation. However, several species of large copepods and other zooplankton are known to constitute the primary prey of North Pacific right whales, based on examination of harvested whales and limited plankton tows conducted near feeding whales. As such, PBFs identified were the copepods *Calanus marshallae, Neocalanus cristatus,* and *N. plumchrus,* and the euphausiid *Thysanoessa raschii,* in areas where right whales are known or thought to feed (73 FR 19000, April 8, 2008). In addition to the occurrence of large zooplankton, NMFS concluded that it is likely that certain physical forcing mechanisms are present in these areas, which act to concentrate the identified prey species in densities which allow for efficient foraging by right whales (73 FR 19000, April 8, 2008).

Analysis of Petition

The petition lists recent sources of information on North Pacific right whale presence and habitat use in and around currently designated critical habitat in the Gulf of Alaska and the Southeast Bering Sea. The Center for Biological Diversity and Save the North Pacific Right Whale propose that the critical habitat be revised to connect the two existing critical habitat areas by extending the Bering Sea area boundary west and south to the Fox Islands, through Unimak Pass to the edge of the continental slope, and east to the Kodiak Island critical habitat area. The petitioners state that this revision encompasses ''a key migratory point'' and provides ''connectivity between two essential foraging grounds'' (Center for Biological Diversity and Save the North Pacific Right Whale, 2022, p. ii).

Oceanographic data indicate that Unimak Pass is a very biologically productive area with high concentrations of phyto- and zooplankton due to the mixing of waters from the North Pacific and Bering Canyon along the Bering Sea shelf. This productivity attracts a large diversity of fish and marine birds and mammals, including North Pacific right whales, as evidenced by acoustic and visual detections. Based on acoustic moorings

deployed in the center of Unimak Pass annually from 2009 to 2015, various types of North Pacific right whale vocalizations were detected on 37 of 1,778 days and vocalizations were detected across all years and seasons (Wright et al. 2018). These acoustic detections suggest that North Pacific right whales utilize Unimak Pass throughout the year and that this may be important habitat for the species.

North Pacific right whales have also been visually observed in and around Unimak Pass as recently as February 2022. Commercial fisherman reported sighting at least two right whales just outside of the pass in February, providing the first visual confirmation of the species in the area during that time of year.

In the Barnabas Trough and Albatross Bank area of the Gulf of Alaska, there have been increased sightings and detections of North Pacific right whales in and around currently designated critical habitat. Though historic data indicate that individuals were harvested commercially in the Gulf, there has been limited evidence of their presence since the 1960s. Similar to Unimak Pass, there is high biological productivity near Barnabas Trough and Albatross Bank, due to the tidal mixing that results in nutrient rich waters throughout the summer months. The North Pacific right whale sightings and detections that have occurred in this area have corresponded with high densities of North Pacific right whale primary prey, the essential feature of the designated critical habitat, and fecal samples that indicate recent feeding (Wade *et al.* 2011).

In 2015, Ferguson *et al.* identified a biologically important area (BIA) for North Pacific right whale feeding that encompasses and extends beyond the designated critical habitat in the Gulf of Alaska. The BIA is based on opportunistic sighting data, acoustics recordings, and historical whaling data (Ferguson *et al.* 2015). In August 2021, two pairs of North Pacific right whales were sighted by NOAA Fisheries scientists: one pair was feeding at the edge of critical habitat in Barnabas Trough, and the other pair was in the vicinity of the southeast edge of the feeding BIA. The identification of the BIA based on a diversity of data, recent visual sightings, and acoustic detections suggest that North Pacific right whale utilization of areas in the Gulf of Alaska may extend past the currently designated critical habitat.

Petition Finding

Based on the information presented and referenced in the petition, as well as all other information readily available in our files, and pursuant to the criteria specific in 50 CFR 424.14(c) and (e), we find the recent information presented by the petitioners on the distribution and behavior of North Pacific right whales in the Gulf of Alaska and the Southeast Bering Sea to constitute substantial information indicating that revision of critical habitat may be warranted.

Information Solicited

To ensure that our review of North Pacific right whale critical habitat is complete and based on the best available scientific and commercial information, we are soliciting relevant information from the public, governmental agencies, tribes, the scientific community, industry, environmental entities, and any other interested parties concerning: (1) The essential habitat needs and use of the whales; (2) the areas of the Gulf of Alaska and the Southeastern Bering Sea proposed in the petition for inclusion as critical habitat; (3) the physical and biological features that are essential to the conservation of North Pacific right whales and that may require species management considerations or protection; (4) information regarding potential benefits or impacts of designating any particular areas, including information on the types of Federal actions that may affect the area's physical and biological features; and (5) current or planned activities in the areas the petition requests to be added as critical habitat and costs of potential modifications of those activities due to critical habitat designation.

We request that all data and information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address (see **ADDRESSES**).

References Cited

The complete citations for the references used in this document can be obtained by contacting NMFS (See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Dated: July 7, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2022–14838 Filed 7–11–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 87, No. 132
Tuesday, July 12, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Small Claims Patent Court Study

AGENCY: Administrative Conference of the United States (ACUS).

ACTION: Notice; extension of comment period.

SUMMARY: On May 3, 2022, the Administrative Conference of the United States (ACUS) published a notice inviting public comments on issues associated with and options for designing a small claims patent court. ACUS is now extending the period for interested persons to submit comments.

DATES: ACUS is extending the comment period for the notice published May 3, 2022 (87 FR 26183). Comments must be received on or before August 26, 2022.

ADDRESSES: You may submit comments by email at *info@acus.gov* (with ''Small Claims Patent Court Comments'' in the subject line of the message); online by clicking ''Submit a comment'' near the bottom of the project web page found at *https://www.acus.gov/research-projects/us-patent-small-claims-court;* or by U.S. Mail addressed to Small Claims Patent Court Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036. Commenters should not include information, such as personal information or confidential business information, that they do not wish to appear on the ACUS website. For the full ACUS public comment policy, please visit *https://www.acus.gov/policy/public-comment-policy.*

FOR FURTHER INFORMATION CONTACT: Kazia Nowacki, Attorney Advisor, Administrative Conference of the United States, 1120 20th Street NW, Suite 706 South, Washington, DC 20036; Telephone (202) 480–2080; email *knowacki@acus.gov.*

SUPPLEMENTARY INFORMATION: On May 3, 2022, ACUS published a notice requesting public comments on issues associated with and options for designing a small claims patent court (87 FR 26183). In the notice, ACUS stated that it welcomed views, information, and data on all aspects of a potential small claims patent court or small claims patent proceedings and its impacts. ACUS also listed nine topics on which it was seeking specific feedback.

ACUS has determined that an extension of the public comment period is appropriate to allow interested persons additional time to submit comments for ACUS's consideration.

Dated: July 6, 2022.

Shawne McGibbon,

General Counsel.

[FR Doc. 2022–14727 Filed 7–11–22; 8:45 am]

BILLING CODE 6110–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Information Collection Request; 60-Day Notice and Request for Comments

AGENCY: United States Agency for International Development/Nigeria Mission (USAID/Nigeria).

ACTION: Notice of information collection; request for comment.

SUMMARY: The U.S. Agency for International Development/Nigeria Mission (USAID/Nigeria), as part of the Agency's continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the following new information collection, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of the information on the respondents.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: To access and review the electronic Google forms survey tool, please, use: *https://docs.google.com/forms/d/1yLickwSlp8zgZfOp_I8QGE3uJKC5XHMSVglgDVbeKoo/edit?usp=sharing.* Interested persons are invited to submit comments regarding the proposed information collection to Tessie Kuhe, Gender and Inclusive Development Advisor, USAID/Nigeria Program Office at *tkuhe@usaid.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Tessie Kuhe, Gender and Inclusive Development Advisor, USAID/Nigeria Program Office at *tkuhe@usaid.gov* or +234 814 957 6062.

SUPPLEMENTARY INFORMATION:

Title of Collection: USAID/Nigeria Implementing Partner Gender and Inclusion Survey.

OMB Number: Not yet known.

Expiration Date: Not yet known.

Type of Request: New collection.

Form Number: Not yet known.

Affected Public: Gender Focal Points of USAID/Nigeria Implementing Partners in Nigeria.

Estimated Number of Respondents: 50.

Estimated Total Annual Burden Hours: 20–25 hours.

Abstract: The USAID/Nigeria Mission is conducting an Implementing Partner Gender and Inclusion Survey to understand the extent to which gender and inclusion are being integrated by Implementing Partners into its Activities in Nigeria. The information will be used for planning and policy development purposes by USAID//Nigeria under its 2020–2025 Country Development and Cooperation Strategy (CDCS). If the collection is not conducted, it will affect the ability of USAID/Nigeria to do adaptive planning and policy development. Method of collection will be electronic using Google forms survey. The data will be collected and maintained by the USAID/Nigeria Program Office on their Google platform.

Dated: July 6, 2022.

Tessie Kuhe,

Gender and Inclusive Development Advisor, USAID/Nigeria Program Office.

[FR Doc. 2022–14785 Filed 7–11–22; 8:45 am]

BILLING CODE 6116–02–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Privacy Act of 1974: New System of Records

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of a new system of records.

SUMMARY: The U.S. Department of Agriculture, Foreign Agricultural Service, proposes a new system of records USDA/FAS–10, Foreign Agricultural Service International Fellowship and Exchanges Database System (FAS–IFEDS). This system is being developed for Global Programs to store crucial fellowship information and to document the relationship of a fellow with USDA. In accordance with the Privacy Act of 1974, and Office of Management and Budget (OMB) Circular No. A–108, the U.S. Department of Agriculture, Foreign Agricultural Service, proposes a new system of records entitled ''Department of Agriculture, Foreign Agricultural Service, International Fellowship and Exchanges Database System''. This system is maintained by Global Programs and centralizes data from all constituent groups across all fellowships, in a single system.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is effective upon publication, subject to a 30-day notice and comment period in which to comment on the routine uses described in the routine uses section of this system of records notice. Please submit your comments by August 11, 2022.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the directions in the instructions paragraph.
- *Mail:* Please send one copy of your comment to USDA/FAS–10, to Assistant Chief Information Officer, FAS, USDA 1400 Independence Avenue SW, Mail Stop 1063, Washington, DC 20250–0002. Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/.*
- *Email: FAS-IFEDS-SORN@usda.gov.* Include USDA/FAS–10 in the subject line of the message.

Instructions: All submissions received must include the agency name and docket number FAS 2021–0001 for this notice of proposed rulemaking (''NPRM'' or ''proposed rule''). All properly completed comments received will be posted without change to the Federal eRulemaking portal, *www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Christopher Wood, Assistant Chief Information Officer, FAS, USDA, *christopher.wood@usda.gov,* 202–369–5946.

Docket: Access to the rulemaking docket associated with this document can be obtained through the Federal eRulemaking Portal at *www.regulations.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, (5 U.S.C. 552a), requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's Regulations implementing the Privacy Act are contained in the Code of Federal Regulations in 7 CFR 1, subpart G. USDA/Foreign Agricultural Service system of records was last published in the **Federal Register** in +FR FAS 9 (November 19, 2019). The Foreign Agricultural Service International Fellowship and Exchanges Database System (FAS–IFEDS) serves a Global Programs need under the authority of Congress in Section 3306 of the Agriculture Improvement Act of 2018, Public Law 115–334, amending Section 1473G of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, to leverage alumni engagement. FAS is initiating the SORN to include, all fellows and alumni, and all USDA Fellowship Programs.

The Foreign Agricultural Service International Fellowship and Exchanges Database System (FAS–IFEDS) is primarily a personal database and is used to collect information concerning fellows and alumni that includes the personally-identifiable information (PII) related to fellows and alumni, in addition to the information pertaining to the institution, implementer, and fellowship. The FAS–IFEDS system collects the following information (that may be considered *PII*): first name, middle name, last name, gender, salutation, birth date, birth city, citizenship country, country of residence, work phone, permanent home address, work address, personal email, work email, emergency contact information (US implementer), and emergency contact information (family contact: name, relationship, home phone, cell phone, and email).

FAS will share information from the system in accordance with the requirements of the Privacy Act. A full list of routine uses is included in the routine uses section of the document published with this notice.

A report on the new system of records, required by 5 U.S.C. 552a(r), as implemented by Office of Management and Budget Circular A–108, was sent to the Chairman, Committee on Homeland Security and Government Affairs, United States Senate; the Chairwoman, Committee on Oversight and Reform, House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

Daniel Whitley,

Administrator,

Foreign Agricultural Service.

In accordance with 5 U.S.C. 552a(r), USDA has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

USDA/FAS–10, USDA/FAS, Foreign Agricultural Service International Fellowship and Exchanges Database System, (FAS–IFEDS). USDA/FAS–10 is also referred to as the Foreign Agricultural Service International Fellowship and Exchange Database System (FAS–IFEDS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The system owner is USDA/FAS, 1400 Independence Avenue SW, Mail Stop 1063, Washington, DC 20250–0002. The electronic record system is maintained on servers that are physically hosted in the Salesforce Government Cloud. Salesforce is located at The Landmark @On Market Street, Suite 300, San Francisco, California 94105. The physical location and technical operation of the system is at the Salesforce Government Cloud's Chicago (Elk Grove, IL) and Washington (Ashburn, VA) data centers. The HubSpot application uses cloud storage and computes services from Amazon Web Services (AWS) and Google Cloud Platform (GCP). HubSpot's production infrastructure is centralized in AWS and GCP cloud hosting facilities and is managed by the HubSpot engineering team.

SYSTEM MANAGER(S):

Information Technology Project Manager, FAS, USDA, 1400 Independence Avenue SW, Mail Stop 1063, Washington DC 20250–0002, 202–843–3857.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 2.601

PURPOSE(S) OF THE SYSTEM:

The USDA Foreign Agricultural Service International Fellowship and Exchange Database System (IFEDS) is a database used by the FAS' Fellowship Programs Division to record relevant data pertaining to individuals and organizations that have taken part in the various programs and exchanges the division coordinates. As a system of record, IFEDS will better enable Fellowship Programs staff by enabling accurate and efficient data input as well as timely data retrieval. Records contained withing IFEDS will be used to satisfy statistical inquiries, communicate with Fellows and alumni, and associate multiple relevant datapoints with each other. IFEDS will not be accessible to the public, the data will be shared on a need-to-know basis with partners in other agencies, universities, or other affiliated organizations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include, individuals who are referenced or identified in records created or compiled as part of the process of documenting the USDA Fellowship Programs including, but not limited to, fellows, fellowships, institutions, implementors, or alumni. All individuals, even if they are not users of the FAS–IFEDS, who are mentioned or referenced in any documents entered into FAS–IFEDS by a user are also covered. This group may include, but is not limited to, vendors, agents, and other business personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system are created or compiled as part of the process of documenting the USDA Fellowship Program. Such records include: first name, middle name, last name, gender, salutation, birth date, birth city, citizenship country, country of residence, work phone, permanent home address, work address, personal email, work email, emergency contract information (US implementer), and emergency contact information (family contact: name, relationship, home phone, cell phone, and email). This information is collected from the applicant process that occurs prior to acceptance into the fellowship program. Information is updated with fellows and alumni, after the application process to reflect current information.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from, but not limited to, fellows, fellowships, institutions, implementors, or alumni as well as other individuals or groups. This group may include, but is not limited to, vendors, agents, and other business personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, records contained in this system may be disclosed outside of USDA as a routine use pursuant to 5 U.S.C. 552a(b)(3), to the extent that such uses are compatible with the purposes for which the information was collected. Such permitted routine uses include the following:

a. To the Department of Justice when: (a) USDA or any component thereof; or (b) any employee of USDA in his or her official capacity, or any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and USDA determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is deemed by USDA to be for a purpose that is compatible with the purpose for which USDA collected the records.

b. To a congressional office in response to an inquiry from that congressional office made at the written request of the individual about whom the records pertains.

c. Disclosure may be made to the United States Civil Rights Commission in response to its request for information, per 42 U.S.C. 1975a.

d. To the National Archives and Records Administration (NARA) or other Federal government agencies pursuant to records management activities being conducted under 44 U.S.C. 2904 and 2906.

e. To appropriate agencies, entities, and persons when (1) USDA suspects or has confirmed that there has been a breach of the system of records; (2) USDA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, USDA (including its information system, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA's efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm.

f. To another Federal agency or Federal entity, when information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

g. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, USDA may disclose the record to the appropriate agency, whether Federal, foreign, State, local, tribal, or other public authority responsible for enforcing, investigating, or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

h. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the USDA or other agency representing the USDA determines that the records are both relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

i. To contractors and their agents, grantees, experts, consultants, and other performing or working on a contract, service, grant, cooperative agreement, or other assignment for the USDA, when necessary to accomplish an agency function related to this system of records.

j. To the news media and the public, with the approval of the Chief Privacy Officer, the Office of Communications and in consultation with counsel, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

FAS is responsible for maintaining the storage of FAS–IFEDS records. Electronic records are stored within Salesforce Government Cloud, who maintains the physical aspects of the

system and records storage. The physical location and technical operation of the system is at the Salesforce Government Cloud's Chicago (Elk Grove, IL) and Washington (Ashburn, VA) data centers. FAS requires users to take specific measures to safeguard authenticators. FAS manages authenticators by requiring individuals to take and have devices implement authentication protection measures. All user roles safeguard authenticators by not divulging or posting PIN data and protecting authentication devices. Device authenticators use safeguarding by restricting access to devices based on the principle of least privilege and separation of duties. Use of control enhancement prevents non-privileged users from executing privileged functions to include disabling, circumventing, or altering implemented security safeguards and countermeasures. Electronic storage is on and maintained through a storage area network (SAN) at the Salesforce Government Cloud. Records are maintained on storage arrays occurring through the redundant SAN fabrics built using Cisco MDS 9513 switches. A contingency plan is in place that maintains, full restoration without deterioration of the security safeguards originally planned and implemented. Use of an alternate storage maintains security safeguards equivalent to the primary site. Salesforce uses IPsec to encrypt the SAN replication between Production data centers. Storage arrays send encrypted data between data centers using AES–256 via a FIPS 140–2 validated encryption module. The storage array includes high-speed Fiber Channel disks with large caches. DataGuard servers protect against data corruption of the records at the SAN layer. Maintenance and use of user and admin roles protect against data corruption of the records at the application layer.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Access to and use of FAS–IFEDS records are limited to individuals with appropriate clearance or permission who need to know for the performance of official duties. Users complete security awareness training, covering procedures for handling sensitive information, including personally identifiable information (PII). Annual refresher training is mandatory. All USDA employees and contractors with authorized access undergo thorough background security investigation. FAS–IFEDS does not interface or connect directly with Salesforce Government Cloud for personnel data. USDA personnel with user or administrative role access may enter data into FAS–IFEDS, on a periodic basis. USDA personnel with user or administrative role access may search and retrieve records by (1) date of birth, (2) country, (3) region, (4) institution, (5) subject matter expertise, (6) gender, (7) fellowship, (8) program, (9) fellowship start date, (10) fellowship end date, or (11) agricultural topic. An individual record search can occur by name using the global search. Users are limited to conducting searches electronically from within the FAS–IFEDS application. Search results are displayed through the graphical user interface (GUI) and in the form of reports. Salesforce Government Cloud is the retrieval location of electronic records.

FAS–IFEDS access and authentication meets USDA policies and practices for the retrievability of records including the use of identification cards, network access, and electronic authentication methods. FAS–IFEDS user access is role, responsibility, and privilege based; centralized on a need to know. Documented in a user guide are the policies and procedures of user access. User access is managed by the FAS–IFEDS administrator.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with National Archives and Records Administration (NARA) General Record Schedule (GRS) 2.3.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The administrative, technical, and physical safeguards implemented for FCRMS meet the policy and control requirements set forth in system security plan documentation and subject to monitoring consistent with applicable laws, regulations, agency policies, procedures, and practices. Access to and use of FAS–IFEDS records are limited to individuals with appropriate clearances or permissions who need to know the information for performance of official duties. Users complete security awareness training, covering procedures for handling sensitive information, including personally identifiable information (PII). Annual refresher training is mandatory. All USDA employees and contractors with authorized access undergo thorough background security investigation. Personnel retain paper records, when applicable, in a locked or secured office or office building that can only be accessed by authorized FAS employees. Electronic records are stored within Salesforce, who maintains the system. FAS requires users to take specific measures to safeguard authenticators. Manages authenticators by requiring individuals to take and have devices implement authentication protection measures. All user roles safeguard authenticators by not divulging or posting PIN data and protecting authentication devices. Device authenticators use safeguarding by restricting access to devices based on the principle of least privilege and separation of duties. Use of control enhancement prevents non-privileged users from executing privileged functions to include disabling, circumventing, or altering implemented security safeguards and countermeasures. Implements a contingency plan that maintains full restoration without deterioration of the security safeguards originally planned and implemented. Use of an alternate storage provides security safeguards equivalent to the primary site. Enforcing physical access authorizations at entry and exit points to the facility where the system resides by verifying individual access; controlling ingress and egress; maintaining physical access audit logs; controlling areas designated as publicly accessible; escorting visitors and monitoring visitor activity; securing keys, combinations, and other physical access devices; conducting inventories, at least annually; and changing combinations and keys, at least annually and, or when keys are lost, combinations are compromised, or individuals are transferred or terminated.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Foreign Agricultural Service FOIA/Privacy Act Officer, whose contact information can be found at *https://www.dm.usda.gov/foia/poc.htm.* If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief FOIA Officer, Department of Agriculture, 1400 Independence Avenue SW, South Building Room 4104, Washington, DC 20250–0706, email: *USDAFOIA@ocio.usda.gov.*

The request should include a daytime phone number and email. Provide as much information as possible about the subject matter of the records you are requesting. This will help facilitate the search process.

When seeking records about yourself from this FAS–IFEDS system of records, or any other Department system of records, your request must conform with the Privacy Act regulations set forth in 7 CFR 1.112 (Procedures for requests pertaining to individual records in a record system.) You must submit a written request in accordance with the instructions set forth in the system of records.

Provide your full name, date, name of system of records, and either: (1) have your signature witnessed by a notary; or (2) include the following statement immediately above the signature on your request letter: ''I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].'' Requests that do not contain the required declaration will be processed under the Freedom of Information Act (FOIA) and, if records are found, you may not receive as much information, including information about you. If additional information is required to fulfill a Privacy Act request, you will be notified. If you want records about yourself to be released to a third party (such as an academic institution, foreign government entity, or other organization requesting records on your behalf), the third party may receive greater access if they have permission from you. You will need a signed and dated statement that the Foreign Agricultural Service may release records pertaining to you. Include your name; date of birth; name of the person or organization to whom you want your records disclosed (where applicable); their contact information; list of records that may be released (all, emails, contact records, etc.). The person about whom the records will be released should include a statement indicating that they understand that knowingly or willingly seeking records about another person under false pretenses and or without their consent is punishable by a fine of up to $5,000.

When the request if for one of access, the request should include the full name of the individual making the request, the name of the system of records, a statement of whether the requester desires to make a personal inspection of the records or to be supplied with copies by mail or email. In accordance with 7 CFR 1.113, prior to inspection of the records, the requester shall present sufficient identification (*e.g.* driver's license, employee identification card, social security card, credit cards) to establish that the requester is the individual to whom the records pertain. No identification shall be required, however, if the records are required by 5 U.S.C. 552 to be released. If FAS determines to grant the requested access, fees may be charge in accordance with § 1.120 before making the necessary copies. In place of a notarization, your signature may be submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization.

CONTESTING RECORDS PROCEDURES:

Individuals seeking to contest or amend records maintained in this system of records must direct their request to the address indicated in the ''RECORD ACCESS PROCEDURES'' paragraph, above and must follow the procedures set forth in 7 CFR part 1, subpart G, 1.116 (Request for correction or amendment to record). All request must state clearly and concisely what records is being contested, the reasons for contesting it, and the proposed amendment to the record. A determination whether a record may be amended will be made within 10 days of its receipt.

NOTIFICATION PROCEDURES:

Individuals may be notified if a record in this system of records pertains to them when the individuals request information utilizing the same procedures as those identified in the ''RECORD ACCESS PROCEDURES'' paragraph, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None

[FR Doc. 2022–14842 Filed 7–11–22; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Directive Publication Notice

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, provides direction to employees through issuances in its Directive System, comprised of the Forest Service Manual and Forest Service Handbooks. The Agency must provide public notice of and opportunity to comment on any directives that formulate standards, criteria, and guidelines applicable to Forest Service programs. Once per quarter, the Agency provides advance notice of proposed and interim directives that will be made available for public comment during the next three months, proposed and interim directives that were previously published for public comment but not yet finalized and issued during the last three months, and notice of final directives issued in the last three months.

DATES: This notice identifies proposed and interim directives that will be published for public comment between July 1, 2022, and September 30, 2022; proposed and interim directives that were previously published for public comment but not yet finalized and issued; and final directives that have been issued since April 1, 2022.

ADDRESSES: Questions or comments may be provided by email to *SM.FS.Directives@usda.gov* or in writing to 201 14th Street SW, Washington, DC 20250, Attn: Directives and Regulations staff, Mailstop 1132.

FOR FURTHER INFORMATION CONTACT: Jay Lowe at 703–231–8079 or *james.lowe@usda.gov.*

Individuals who use telecommunications devices for the deaf or hard of hearing (TDD) may call the Federal Relay Service (FRS) at 800–877–8339 24 hours a day, every day of the year, including holidays.

You may register to receive email alerts at *https://www.fs.usda.gov/about-agency/regulations-policies.*

SUPPLEMENTARY INFORMATION:

Proposed and Interim Directives

Consistent with 16 U.S.C. 1612(a) and 36 CFR part 216, Public Notice and Comment for Standards, Criteria and Guidance Applicable to Forest Service Programs, the Forest Service publishes for public comment Agency directives that formulate standards, criteria, and guidelines applicable to Forest Service programs. Agency procedures for providing public notice and opportunity to comment are specified in Forest Service Handbook (FSH) 1109.12, Chapter 30, Providing Public Notice and Opportunity to Comment on Directives.

The following proposed directives are planned for publication for public comment from July 1, 2022, to September 30, 2022:

1. FSH 2409.12, Timber Cruising Handbook, Chapters 30, Cruising Systems; 40, Cruise Planning, Data Recording, and Cruise Reporting; 60, Quality Control; and 70, Designating Timber for Cutting.

2. FSH 2409.15, Timber Sale Administration Handbook, Chapters 20, Measuring and Accounting for Included Timber; 40, Rates and Payments; and 60, Operations and Other Provisions.

The primary method of public outreach for these proposed directives is publication on the Forest Service website at *https://www.fs.usda.gov/about-agency/regulations-policies,*

publication in the **Federal Register**, use of the GovDelivery email service, and other Agency communications resources, which may include a press release, blog post, or social media.

Previously Published Directives That Have Not Been Finalized

The following proposed and interim directives have been published for public comment but have not yet been finalized:

1. Forest Service Manual (FSM) 2200, Rangeland Management, Chapters Zero Code; 2210, Rangeland Management Planning; 2220, Management of Rangelands (Reserved); 2230, Grazing Permit System; 2240, Rangeland Improvements; 2250, Rangeland Management Cooperation; and 2270, Information Management and Reports; FSH 2209.13, Grazing Permit Administration Handbook, Chapters 10, Term Grazing Permits; 20, Grazing Agreements; 30, Temporary Grazing and Livestock Use Permits; 40, Livestock Use Permits; 50, Tribal Treaty Authorizations and Special Use Permits; 60, Records; 70, Compensation for Permittee Interests in Rangeland Improvements; 80, Grazing Fees; and 90, Rangeland Management Decision Making; and Forest Service Handbook 2209.16, Allotment Management Handbook, Chapter 10, Allotment Management and Administration.

2. FSM 3800, Landscape Scale Restoration Program.

Final Directives That Have Been Issued Since April 1, 2022

1. FSM 2710, Special Use Authorizations, and FSH 2709.11, Special Uses Handbook, Chapter 50, Standard Forms and Supplemental Clauses. The Forest Service published final directives related to the storage and use of explosives authorized by special use authorizations. Some special use permit holders use various types of explosives and sometimes military munitions for avalanche mitigation, tree and rock removal, road construction, maintenance, and other construction projects. Holders of ski area permits and state transportation authorities maintain additional magazines for these purposes.

The final directives clarify the role and jurisdiction of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Department of the Army, states, and the Forest Service over explosives use and storage when authorized on National Forest System lands, including explosives magazine security. These directives provide that special use authorization holders that are authorized to store and use explosives must comply with all ATF regulations, state and Army requirements, if applicable, and Forest Service requirements. The directives make compliance with the special use authorization contingent upon continued compliance with these requirements. The directives provide for training of permit administrators to ensure that they can effectively monitor the requirements of a holder's operating plan, including required magazine security provisions. The 60-day comment period for this directive began June 23, 2020, and closed August 22, 2020. Five public comments were received on the proposed directives, which can be viewed at *https://cara.fs2c.usda.gov/Public/ReadingRoom?project=ORMS-2226.* The final directives were issued May 12, 2022, and can be viewed at *https://www.fs.fed.us/im/directives/fsh/2709.11/wo_2709.11_50_Amend%202022-2.docxhttps://www.fs.fed.us/im/directives/fsm/2700/wo_2710_Amend-2022-2.docx.*

2. FSM 7700, Travel Management, Chapters Zero and 10, Travel Planning. The Forest Service has issued final directives that clarify how electric bicycles (e-bikes) are managed on National Forest System lands. The directives add a definition of e-bikes as a class of motor vehicle, including separate definitions for Class 1, 2 and 3 e-bikes; establish criteria for consideration in designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for e-bike use that are not currently designated for motor vehicle use; update the definition of ''bicycle,'' and align Forest Service directives with regulations promulgated by the U.S. Department of the Interior bureaus by adding e-bike definitions and requiring site-specific decision-making and environmental analysis. The 30-day comment period for these directives began September 24, 2020, and closed October 26, 2020. Over 9,140 public comments were received on the proposed directives, which can be viewed at *https://cara.fs2c.usda.gov/Public/ReadingRoom?project=ORMS-2619.* Approximately 6,020 were unique letters; only five percent included substantive comments. The final directives provide for managing all classes of e-bikes as motor vehicles and require local-level decision-making and environmental analysis to allow use of e-bikes on non-motorized trails, consistent with the Forest Service's Travel Management Rule. The final directives were issued March 31, 2022, and can be viewed at *https://www.fs.fed.us/im/directives/fsm/7700/wo_7700-Amend-2022-1_updated.docx. https://www.fs.fed.us/im/directives/fsm/7700/wo_7710-Amend-2022-2_updated.docx.*

Dated: July 7, 2022.

James Lowe,

Acting Branch Chief, Directives and Regulations, Business Operations.

[FR Doc. 2022–14777 Filed 7–11–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–22–ELECTRIC–0015]

60-Day Notice of Proposed Information Collection: Review Rating Summary, RUS Form 300; OMB Control No.: 0572–0025

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 the United States Department of Agriculture (USDA), Rural Utilities Service, (RUS), announces its intention to request an extension of a currently approved information collection and invites comments on this information collection.

DATES: Comments on this notice must be received by September 12, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Rural Utilities Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select ''RUS–22–ELECTRIC–0015'' to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

FOR FURTHER INFORMATION CONTACT: MaryPat Daskal, Chief, Branch 1, Rural Development Innovation Center—Regulations Management Division, United States Department of Agriculture, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 720–7853. Email *MaryPat.Daskla@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320)

implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies the following information collection that Rural Utilities Service is submitting to OMB as extension to an existing collection with Agency adjustment.

Title: 7 CFR part 1730, Review Rating Summary, RUS Form 300.

OMB Control Number: 0572–0025.

Expiration Date of Approval: November 30, 2022.

Type of Request: Revision of a currently approved information collection.

Estimate of Burden: Public reporting for this collection of information is estimated to average 6 hours per response.

Respondents: Not-for-profit institutions and other businesses.

Estimated Number of Respondents: 151.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Hours per Response: 4

Estimated Total Annual Burden on Respondents: 604 hours.

Abstract: The Rural Utilities Service (RUS) manages loan programs in accordance with the RE Act of 1936, as amended (7 U.S.C. 901 *et seq.*). An important part of safeguarding loan security is to see that RUS financed facilities are being responsibly used, adequately operated, and adequately maintained. Future needs must be anticipated to ensure that facilities will continue to produce revenue and loans will be repaid as required by the RUS mortgage. A periodic operations and maintenance (O&M) review, using the RUS Form 300, in accordance with 7 CFR part 1730, is an effective means for RUS to determine whether the Borrower's systems are being properly operated and maintained, thereby protecting the loan collateral. The O&M review is also used to rate facilities and can be used for appraisals of collateral as prescribed by OMB Circular A–129, Policies for Federal Credit Programs and Non-Taxable Receivables.

The loans and loan guarantees finance the construction of electric distribution, transmission, and generation facilities, including system improvements and replacement required to furnish and improve electric service in rural areas, as well as demand side management, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems. Loans are made to cooperatives as well as to corporations, states, territories and subdivisions and agencies such as municipalities, people's utility districts, and nonprofit, limited dividend or mutual associations that provide retail electric service needs to rural areas or supply the power needs of distribution borrowers in rural areas.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used.

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Copies of this information collection can be obtained from Arlette Mussington, Rural Development Innovation Center—Regulations Management Division, at (202) 720–2825. Email: *arlette.mussington@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service

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[FR Doc. 2022–14760 Filed 7–11–22; 8:45 am]

BILLING CODE 3410–15–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meetings

TIME AND DATE: July 29, 2022, 1 p.m. EDT (2 hours).

PLACE: Public Meeting Hosted via Zoom. Access information is provided below: *https://www.zoomgov.com/j/1618682477?pwd=L09Fa1l|R2|1NFVFNXUwT2dwWFV|QT09.*

Meeting ID: 161 868 2477.

Passcode: 569066.

One tap mobile: +16692545252,, 1618682477# US (San Jose), +16692161590,,1618682477# US (San Jose).

Dial by your location: +1 669 254 5252 US (San Jose), +1 669 216 1590 US (San Jose), +1 646 828 7666 US (New York), +1 551 285 1373 US.

Meeting ID: 161 868 2477.

Find your local number: https://www.zoomgov.com/u/admZHYbUH3.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Chemical Safety and Hazard Investigation Board (CSB) will convene a public meeting on Friday, July 29, 2022, at 1 p.m. EDT. This meeting serves to fulfill its quarterly July public meeting requirement. The Board will review the CSB's progress in meeting its mission and highlight current investigations and safety recommendations.

CONTACT PERSON FOR MORE INFORMATION: Hillary Cohen, Communications Manager, at *public@csb.gov* or (202) 446–8094. Further information about this public meeting can be found on the CSB website at: *www.csb.gov.*

SUPPLEMENTARY INFORMATION:

Background

The CSB is an independent federal agency charged with investigating incidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

Public Participation

The meeting is free and open to the public. This meeting will only be available via ZOOM. Close captions (CC) will be provided. There will be an opportunity for public comment at the end of the meeting. To submit public comments for the record please email us at *public@csb.gov.*

Dated: July 7, 2022.

Tamara Qureshi,

Assistant General Counsel, Chemical Safety and Hazard Investigation Board.

[FR Doc. 2022–14934 Filed 7–8–22; 4:15 pm]

BILLING CODE 6350–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Webex at 12:00 p.m. ET on Tuesday, July 19, 2022, to discuss their report on Legal Financial Obligations in the state.

DATES: The meeting will take place on Tuesday, July 19, 2022, from 12:00 p.m.–1:30 p.m. ET.

Link to Join (Audio/Visual): https://tinyurl.com/f4duk4tf.

Telephone (Audio Only): Dial (800) 360–9505 USA Toll Free; Access code: 2761 845 7469.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, DFO, at *vmoreno@usccr.gov* or (434) 515–0204.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *vmoreno@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov*. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, North Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Committee Discussion
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: July 6, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–14738 Filed 7–11–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Webex at 12:00 p.m. ET on Tuesday, August 30, 2022, to discuss their report on Legal Financial Obligations in the state.

DATES: The meeting will take place on Tuesday, August 30, 2022, from 12:00 p.m.–1:30 p.m. ET.

Link to Join (Audio/Visual): https://tinyurl.com/4xcrn4xp.

Telephone (Audio Only): Dial (800) 360–9505 USA Toll Free; Access code: 2764 972 8605.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, DFO, at *vmoreno@usccr.gov* or (434) 515–0204.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *vmoreno@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov*. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, North Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Committee Discussion
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: July 6, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–14736 Filed 7–11–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee, Revision of Virtual Meeting Platform and Additional Meeting Information

AGENCY: Commission on Civil Rights.

ACTION: Notice; revision of virtual meeting platform and additional meeting information.

SUMMARY: The Commission on Civil Rights is holding a meeting of the Tennessee Advisory Committee on Wednesday, August 24, 2022, at 12:00 p.m. (CT). This notice revises the meeting date and virtual meeting information. The notice is in the **Federal Register** of Wednesday, August 3, 2022 on FR Doc 2022–13390, in the second column of page 37496 and the first column of 37497.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, (434) 515–0204, *vmoreno@usccr.gov.*

Revision: The meeting will now take place on Wednesday, August 24, 2022, at 12:00 p.m. (CT) and not Wednesday, August 3, 2022.

Replace Webex virtual details as follows: https://civilrights.webex.com/civilrights/j.php?MTID=mab53dc5460800e198ea35953e0241884.

Join via phone: 800–360–9505 USA Toll Free; Access Code: 2763 908 5121#.

Dated: July 6, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–14734 Filed 7–11–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Connecticut Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the Connecticut Advisory Committee to the U.S. Commission on Civil Rights will hold a fourth briefing via web conference or phone call on Friday, July 22, 2022, at 1:00 p.m. (ET). The purpose of the meeting is to review, edit, and vote of the report on zoning practices in Connecticut.

DATES: July 22, 2022, Friday, at 1:00 p.m. (ET):

Join by Web Conference: WebEx link: *https://tinyurl.com/mr2m43x5;* password, if needed: USCCR–CT.

Join by Phone Only, Dial: 1–800–360–9505; Access Code: 2763 045 7288#.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez at *ero@usccr.gov* or by phone at 202–539–8246.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the WebEx link and/or phone number/access code above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing. may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web links provided for these meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Barbara de La Viez at *ero@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 539–8246. Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Friday, July 22, 2022, at 1:00 p.m. (ET)

I. Welcome and Roll Call
II. Review Report on Zoning Practices in Connecticut
III. Vote on Zoning Report
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: July 7, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–14844 Filed 7–11–22; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–878]

Stainless Steel Flanges From India: Preliminary Results of Countervailing Duty Administrative Review; 2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of stainless steel flanges from India during the period of review, January 1, 2020, through December 31, 2020. Interested parties are invited to comment on these preliminary results.

DATES: Applicable July 12, 2022.

FOR FURTHER INFORMATION CONTACT: Eliza Siordia, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3878.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2021, Commerce published a notice of initiation of an administrative review of the countervailing duty order on stainless steel flanges from India.[1]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[2] A list of topics discussed in the Preliminary Decision Memorandum is included at Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise covered by the *Order* is stainless steel flanges from India. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily find that there is a subsidy, *i.e.,* a financial contribution that gives rise to a benefit to the recipient, and the subsidy is specific.[3] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Companies Not Selected for Individual Review

The Act and Commerce's regulations do not directly address the subsidy rate

[1] *See Initiation and Countervailing Duty Administrative Reviews,* 86 FR 67685 (November 29, 2021), as corrected by *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 73734 (December 28, 2021); *see also Stainless Steel Flanges from India: Countervailing Duty Order,* 83 FR 50336 (October 5, 2018) (*Order*).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Countervailing Duty Administrative Review: Stainless Steel Flanges from India; 2020,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[3] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 777A(e)(2) of the Act provides that ''the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5) {of the Act}.'' Section 705(c)(5)(A) of the Act states that for companies not investigated, in general, we will determine an all-others rate by weight-averaging the countervailable subsidy rates established for each of the companies individually investigated, excluding zero and *de minimis* rates or any rates based solely on the facts available.

Accordingly, to determine the rate for companies not selected for individual examination, Commerce's practice is to weight average the net subsidy rates for the selected mandatory respondents, excluding rates that are zero, *de minimis,* or based entirely on facts available.[4] We preliminarily determine that Chandan Steel Limited (Chandan) and Goodluck India Limited (Goodluck) received countervailing subsidies that are above *de minimis* and are not based entirely on facts available. Therefore, we preliminarily determine to apply the weighted-average of the net subsidy rates calculated for Chandan and Goodluck using publicly ranged sales data submitted by those respondents to the non-selected companies.[5] For a list of the 39 companies for which a review was requested, and which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent, *see* Appendix II to this notice.

Preliminary Results of Review

For the period January 1, 2020, through December 31, 2020, we preliminarily find that the following net subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Chandan Steel Limited	4.31
Goodluck India Limited[6]	3.34
Non-Selected Companies Under Review[7]	4.14

Assessment Rate

Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries in accordance with the final results of this review. If the assessment rate calculated in the final results is zero or *de minimis,* we will instruct CBP to liquidate all appropriate entries without regard to countervailing duties. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above, except, where the rate calculated in the final results is *de minimis,* no cash deposit will be required on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[8] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[9] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[10] Case and rebuttal briefs should be filed using ACCESS[11] and must be served on interested parties.[12] Executive summaries should be limited to five pages total, including footnotes. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[13]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance using Enforcement and Compliance's ACCESS system.[14] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.[15] If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Final Results of Review

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

[4] *See, e.g., Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 37386, 37387 (June 29, 2010).

[5] *See* Memorandum, ''Calculation of Subsidy Rate for Non-Selected Companies Under Review,'' dated concurrently with this **Federal Register** notice.

[6] Entries for Goodluck India Limited may have been made under the company name Good Luck Engineering Co. or Goodluck Engineering Co. *See* Preliminary Decision Memorandum.

[7] *See* Appendix II for a list of companies not selected for individual examination.

[8] *See* 19 CFR 351.224(b).

[9] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *See generally* 19 CFR 351.303.

[12] *See* 19 CFR 351.303(f).

[13] *See Temporary Rule.*

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CFR 351.310.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: July 5, 2022.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Period of Review
V. Rate for Non-Examined Companies
VI. Subsidies Valuation Information
VII. Benchmarks and Interest Rates
VIII. Analysis of Programs
IX. Recommendation

Appendix II—List of Non-Selected Companies

Ae Engineers and Exporters
Armstrong International Pvt. Ltd.
Avini Metal Limited
Balkrishna Steel Forge Pvt. Ltd.
Bebitz Flanges Works Pvt. Ltd.
BFN Forgings Private Limited
Broadway Overseas Ltd.
CD Industries (Prop. Kisaan Engineering Works Pvt. Ltd.).
CHW Forge Private
Dart Global Logistics Pvt.
Dongguan Good Luck Industrial Co., Ltd.
Dongguan Good Luck Furniture Industrial Co., Ltd.
Echjay Forgings Private Limited
Emerson Process Management
Expeditors International
Fivebros Forgings Pvt. Ltd.
Fluid Controls Pvt. Ltd.
G I Auto Private.
G. I. Auto Pvt. Ltd.
Hilton Metal Forging Limited
Jai Auto Pvt. Ltd.
Jay Jagdamba Ltd.
Jay Jagdamba Profile Private Limited
Jay Jagdamba Forgings Private Limited
Katariya Steel Distributors
Kisaan Die Tech Pvt. Ltd.
Pashupati lspat Pvt. Ltd.
Pashupati Tradex Pvt., Ltd.
Pradeep Metals Ltd.
Rajan Techno Cast.
Rajan Techno Cast Pvt. Ltd.
Rolex Fittings India Pvt. Ltd.
Rollwell Forge Pvt. Ltd.
Safewater Lines (I) Pvt. Ltd.
Saini Flange Pvt. Ltd.
Saini Flanges Private.
Shree Jay Jagdamba Flanges Pvt. Ltd.
Transworld Enterprises
Viraj Profiles Ltd.

[FR Doc. 2022–14792 Filed 7–11–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of May 2022 Approved International Trade Administration Trade Mission

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is announcing one upcoming trade mission that will be recruited, organized, and implemented by ITA. This mission is:

- Indo Defense—Aerospace and Defense Trade Mission in Jakarta and Bandung, Indonesia—10/31–11/4/2022

A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: *https://www.trade.gov/trade-missions.*

For each mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*https://www.trade.gov/trade-missions-schedule*) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

FOR FURTHER INFORMATION CONTACT: Jeffrey Odum, Events Management Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6397 or email *Jeffrey.Odum@trade.gov.*

The Following Conditions for Participation Will Be Used for the Mission

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation to allow the Department of Commerce to evaluate their application. If the Department of Commerce receives an incomplete application, the Department may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for the mission by the recruitment deadline, the mission may be cancelled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least 51% U.S. content by value. In the case of an organization, the applicant must certify that, for each entity to be represented by the organization, the products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content.

An organization applicant must certify to the above for all of the companies it seeks to represent on the mission.

In addition, each applicant must:

- Certify that the export of products and services that it wishes to market through the mission is in compliance with U.S. export controls and regulations;
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

The Following Selection Criteria Will Be Used for the Mission

Targeted mission participants are U.S. firms, services providers and organizations providing or promoting U.S. products and services that have an interest in entering or expanding their business in the mission's destination country. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of an organization, represented firm's or service provider's) products or services to these markets;
- The applicant's (or in the case of an organization, represented firm's or service provider's) potential for business

in the markets, including likelihood of exports resulting from the mission; and

• Consistency of the applicant's (or in the case of an organization, represented firm's or service provider's) goals and objectives with the stated scope of the mission.

Balance of applicants' size and location may also be considered during the review process.

Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these exclusions.

Trade Mission Participation Fees

If and when an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade Mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/.* Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Definition of Small- and Medium-Sized Enterprise

For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies as a ''small business'' under the Small Business Administration's (SBA) size standards (*https://www.sba.gov/document/support--table-size-standards*), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool [*https://www.sba.gov/size-standards/*] can help you determine the qualifications that apply to your company.

Important Note About the COVID–19 Pandemic

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission countries. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees, accordingly, prepare an agenda for virtual activities, and notify the previous selected applicants with the option to opt-in to the new virtual program.

Mission List: (additional information about trade missions can be found at *https://www.trade.gov/trade-missions*).

Indo Defense—Aerospace and Defense Trade Mission to Indonesia

Dates: October 31–November 4, 2022

Summary

The United States Department of Commerce, International Trade Administration (ITA) is organizing an Indo Defense—Aerospace and Defense Trade Mission (IDADTM) to Indonesia from October 31–November 4, 2022. This trade mission will be done in conjunction with Indo Defense Expo & Forum, which runs from November 2–5.

The IDADTM will include representatives from a variety of U.S. aerospace and defense industry manufacturers and service providers. This mission will involve combined activities connected to the Indo Defense Expo and Forum as well as tailored programs for U.S. companies seeking to identify and vet Indonesian partners. U.S. Original Equipment Manufacturers and defense service providers will have a major presence at the show which will be bolstered by participation in this trade mission.

Delegates will benefit from the guidance and insights of ITA's commercial teams working in these markets. The mission will introduce U.S. firms to aerospace and defense stakeholders in the region and assist U.S. companies in finding foreign business partners to export their products and services to Indonesia.

Proposed Timetable

* *Note:* The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

Sunday, October 30, 2022	▪ Arrive in Jakarta.
Monday, October 31, 2022	▪ Welcoming Remarks & Introductions. ▪ Half day of briefing. ▪ Travel to Bandung.
Tuesday, November 1, 2022	▪ Site visit to defense State-Owned Enterprises manufacturing facilities in Bandung, West Java. ▪ Return to Jakarta.
Wednesday, November 2, 2022	▪ Full day of matchmaking. ▪ Evening reception at the Ambassador's residence.
Thursday, November 3, 2022	▪ Indo Defense Expo & Forum participation. ▪ Show Time Business-to-Government and Business-to-Business Meeting Program.

Friday, November 4, 2022	▪ Optional Indo Defense Expo Visit. ▪ Program Concludes. ▪ Return to U.S.

Participation Requirements

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 10 and a maximum of 15 firms and/or trade associations/organizations will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After a firm or trade association/organization has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the Indo Defense—Aerospace and Defense Trade Mission will be $3,100 for small or medium-sized enterprises (SMEs) [1]; and $4,500 for large firms or trade associations/organizations. The fee for each additional firm representative (large firm or SME/trade organization) is $1,000. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations/organizations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than September 19, 2022. The U.S. Department of Commerce will review applications and inform applicants of selection decisions on a rolling basis. Applications received after September 19, 2022 will be considered only if space and scheduling constraints permit.

Contacts

Jason Sproule, Global Aerospace & Defense Team Leader, U.S. Export Assistance Center, 444 Flower Street, 37th Floor, Los Angeles, CA 90071, Tel: (213) 894–8785, Email: *Jason.Sproule@trade.gov*

Elliot Brewer, International Trade Specialist/Indonesia Desk Officer, International Trade Administration, Washington, United States, Tel: +1 202 430 8025, Email: *Elliott.Brewer@trade.gov*

Kyungsoo Kim, Global Asia Team Leader, U.S. Export Assistance Center, 77 W Jackson, Ste. 707, Chicago, IL 60604, Email: *Kyungsoo.Kim@trade.gov*

Paul Taylor, Commercial Attaché, Embassy of the United States of America, Jl. Medan Merdeka Selatan No. 3, Jakarta 10110, Indonesia, Tel: +62.21.5083–1000, Email: *paul.taylor@trade.gov*

Kalung Riang, Commercial Specialist, Embassy of the United States of America, Jl. Medan Merdeka Selatan No. 3, Jakarta 10110, Indonesia, Tel. +62.21.5083–1618, Email: *Kalung.Riang@trade.gov*

David Nufrio, Deputy Director, International Trade Administration, Washington, United States, Tel: +1 202 482 5175, Email: *David.Nufrio@trade.gov*

Andrey Piroozgar, International Trade Specialist, U.S. Export Assistance Center, 77 W Jackson, Ste. 707, Chicago, IL 60604, Email: *Andrey.Piroozgar@trade.gov*

Luke Yanos, International Trade Specialist, International Trade Administration, Washington, United States, Tel: +1 202 308–0953, Email: *Luke.Yanos@trade.gov*

Gemal Brangman,

Director, ITA Events Management Task Force.

[FR Doc. 2022–14743 Filed 7–11–22; 8:45 am]

BILLING CODE 3510–DR–P

[1] For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies under the Small Business Administration's (SBA) size standards (*https://www.sba.gov/document/support--table-size-standards*), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool [*https://www.sba.gov/size-standards/*] can help you determine the qualifications that apply to your company.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that chlorinated isocyanurates (chlorinated isos) from the People's Republic of China (China) were sold in the United States at less than normal value during the period of review (POR) June 1, 2020, through May 31, 2021. Interested parties are invited to comment on these preliminary results.

DATES: Applicable July 12, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Carey, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3964.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2021, Commerce initiated the administrative review of the antidumping duty (AD) order on chlorinated isos from China covering the period June 1, 2020, through May 31, 2021.[1] This review covers two producers/exporters; Heze Huayi Chemical Co., Ltd. (Heze Huayi) and Juancheng Kangtai Chemical Co., Ltd. (Kangtai). On February 24, 2022, Commerce extended the deadline for the preliminary results of this administrative review by 120 days, until June 30, 2022.[2]

For details regarding the events that occurred subsequent to the initiation of this review, *see* the Preliminary Decision Memorandum.[3] The

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 41821 (August 3, 2021).

[2] *See* Memorandum, ''Chlorinated Isocyanurates from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated February 24, 2022.

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2020–

Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The products covered by the order are chlorinated isos, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones.[4] Chlorinated isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). Export prices have been calculated in accordance with section 772 of the Act. Because China is a non-market economy within the meaning of section 771(18) of the Act, normal value has been calculated in accordance with section 773(c) of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is included as an appendix to this notice.

Preliminary Results of Review

Commerce preliminarily determines that Heze Huayi and Kangtai have established their eligibility for a separate rate and that the following weighted-average dumping margins exist for the period June 1, 2020, through May 31, 2021:

Exporter	Weight-average dumping margin (percent)
Heze Huayi Chemical Co. Ltd	27.34
Juancheng Kangtai Chemical Co. Ltd	43.79

Assessment Rates

Upon issuance of the final results of the administrative review, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[5] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For each individually examined respondent in this review whose weighted-average dumping margin in the final results of review is not zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce intends to calculate importer-specific assessment rates for antidumping duties, in accordance with 19 CFR 351.212(b)(1).[6] Where the respondent reported reliable entered values, Commerce intends to calculate importer-specific *ad valorem* assessment rates by aggregating the amount of dumping calculated for all U.S. sales to the importer and dividing this amount by the total entered value of the merchandise sold to the importer.[7] Where the respondent did not report entered values, Commerce will calculate importer-specific assessment rates by dividing the amount of dumping for reviewed sales to the importer by the total quantity of those sales. Commerce will calculate an estimated *ad valorem* importer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis*; however, Commerce will use the per-unit assessment rate where entered values were not reported.[8] Where an importer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted average dumping margin is zero or *de minimis*, or an importer-specific *ad valorem* assessment rate is zero or *de minimis*, Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[9] For entries that were not reported in the U.S. sales database submitted by an exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.,* at the individually-examined exporter's cash deposit rate), Commerce will instruct CBP to liquidate such entries at the China-wide rate.[10]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed above that have a separate rate, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except, if the rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), then a cash deposit rate of zero will be established for that company); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that are currently eligible for a separate rate, the cash deposit rate will continue to be equal to the exporter-specific weighted-average dumping margin published for the most recently completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the cash deposit rate established for the China-wide entity, 285.63 percent; and (4) for all exporters of subject merchandise that are not located in China and that are not eligible for a separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

2021Antidumping Duty Administrative Review: Chlorinated Isocyanurates from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] For a complete description of the Scope of the Order, *see* Preliminary Decision Memorandum.

[5] *See* 19 CFR 351.212(b)(1).

[6] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification*).

[7] *See* 19 CFR 351.212(b)(1).

[8] *Id.*

[9] *See Final Modification,* 77 FR at 8103.

[10] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Disclosure and Public Comment

Commerce intends to disclose the calculations for these preliminary results within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs within 30 days after the date of publication of these preliminary results of review.[11] Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[12] Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[13] Case and rebuttal briefs should be filed using ACCESS [14] and must be served on interested parties.[15] Executive summaries should be limited to five pages total, including footnotes. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[16]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

Final Results of the Review

Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1), unless otherwise extended.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 19 CFR 351.221(b)(4).

Dated: June 30, 2022.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiation.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–14790 Filed 7–11–22; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See* 19 CFR 351.309(c)(1)(ii).

[12] *See* 19 CFR 351.309(d)(1) and (2); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[13] *See* 19 CFR 351.309(c) and (d); *see also* 19 CFR 351.303 (for general filing requirements).

[14] *See* generally 19 CFR 351.303.

[15] *See* 19 CFR 351.303(f).

[16] *See Temporary Rule.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC103]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to QuarterNorth Energy LLC (QuarterNorth) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from July 1, 2022, through December 31, 2022.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding,

feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322; January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

QuarterNorth plans to conduct a single checkshot velocity survey within Green Canyon OCS Lease Block 39. See Section 1.1 of QuarterNorth's application for a map. QuarterNorth plans to use an 8-element, 1,170 cubic inch (in^3) airgun array. Please see QuarterNorth's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by QuarterNorth in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398; January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No checkshot velocity surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) is generally conservative for use in evaluation of these survey types. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29212, 29220; June 22, 2018). Coil was selected as the best available proxy survey type for QuarterNorth checkshot survey because the spatial coverage of the planned surveys is most similar to the coil survey pattern. For the planned survey, a single checkshot velocity survey for the collection of borehole seismic data is planned to occur at the surface above a well head located in approximately 1,923 feet (ft) of water. Receivers will be lowered directly into the well from a wireline. There will be no towing or movement of the airgun array, as it will be operated at a static location above the well. The coil survey pattern in the model was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Because QuarterNorth's planned survey is expected to cover no additional area as a stationary source the coil proxy is most representative of the effort planned by QuarterNorth in terms of predicted Level B harassment.

In addition, all available acoustic exposure modeling results assume use of a 72-element, 8,000 in^3 array. Thus, estimated take numbers for this LOA are considered conservative due to the differences in both the airgun array (8-elements, 1,170 in^3), and in daily survey area planned by QuarterNorth (as mentioned above), as compared to those modeled for the rule.

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

The survey is planned to occur for a maximum of 1 day in Zone 5. The survey may occur in either season. Therefore, the take estimates for each species are based on the season that has the greater value for the species (*i.e.,* winter or summer).

In this case, use of the exposure modeling produces results that are smaller than average GOM group sizes for multiple species (Maze-Foley and Mullin, 2006). NMFS' typical practice in such a situation is to increase exposure estimates to the assumed average group size for a species in order to ensure that, if the species is encountered, exposures will not exceed the authorized take number. However, other relevant considerations here lead to a determination that increasing the estimated exposures to average group sizes would likely lead to an overestimate of actual potential take. In this circumstance, the very short survey duration (six hours over the course of a day) and relatively small Level B harassment isopleths produced through use of the 8-element, 1,170 in^3 airgun array (compared with the modeled 72-element, 8,000 in^3 array) mean that it is unlikely that certain species would be encountered at all, much less that the encounter would result in exposure of a greater number of individuals than is estimated through use of the exposure modeling results. As a result, in this case NMFS has not increased the estimated exposure values to assumed average group sizes in authorizing take.

Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322; January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438; January 19, 2021).

The take numbers for authorization, which are determined as described above, are used by NMFS in making the

necessary small numbers determinations, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391; January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take [1]	Abundance [2]	Percent abundance
Rice's whale	0	51	n/a
Sperm whale	26	2,207	1.2
Kogia spp	[3] 10	4,373	0.2
Beaked whales	116	3,768	3.1
Rough-toothed dolphin	20	4,853	0.4
Bottlenose dolphin	95	176,108	0.1
Clymene dolphin	56	11,895	0.5
Atlantic spotted dolphin	38	74,785	0.1
Pantropical spotted dolphin	255	102,361	0.2
Spinner dolphin	68	25,114	0.3
Striped dolphin	22	5,229	0.4
Fraser's dolphin	6	1,665	0.4
Risso's dolphin	17	3,764	0.4
Melon-headed whale	37	7,003	0.5
Pygmy killer whale	9	2,126	0.4
False killer whale	14	3,204	0.4
Killer whale	0	267	n/a
Short-finned pilot whale	11	1,981	0.5

[1] Scalar ratios were not applied in this case due to brief survey duration.
[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the killer whale, the larger estimated SAR abundance estimate is used.
[3] Includes 1 takes by Level A harassment and 9 takes by Level B harassment.

Based on the analysis contained herein of QuarterNorth's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes and therefore is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to QuarterNorth authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: July 5, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–14740 Filed 7–11–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC168]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will hold a public webinar meeting.

DATES: The meeting will be held on Thursday, July 28, 2022, from 9 a.m. until 1 p.m. EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to the calendar prior to the meeting at *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will meet via webinar to review previously adopted 2023 commercial and recreational Annual Catch Limits, Annual Catch Targets, commercial quotas, and recreational harvest limits for summer flounder, scup, and black sea bass and recommend changes as appropriate. In addition, the Monitoring Committee will review commercial management measures for all three species and recommend changes if needed. During this meeting, the Monitoring Committee will consider recent fishery performance as well as recommendations from the Advisory Panel, Scientific and Statistical Committee, and Council staff. Meeting materials will be posted to *www.mafmc.org.*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 7, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–14786 Filed 7–11–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC126]

Marine Mammals; File No. 20648

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that Heidi Pearson, Ph.D., University of Alaska—Southeast, 11120 Glacier Hwy, AND1, Juneau, Alaska 99801, has applied for an amendment to Scientific Research Permit No. 20648–01.

DATES: Written, telefaxed, or email comments must be received on or before August 11, 2022.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 20648 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 20648 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Courtney Smith, Ph.D., or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 20648 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 20648, issued on June 14, 2019 (84 FR 27767), authorizes the permit holder to conduct vessel-based and unmanned aerial surveys on the following species: fin (*Balaenoptera physalus*), humpback (*Megaptera novaeangliae;* range-wide including those from the endangered Mexico Distinct Population Segment), gray (*Eschrichtius robustus*), killer (*Orcinus orca*); minke (*Balaenoptera acutorostrata*), and sperm (*Physeter macrocephalus*) whales, Dall's (*Hocoenoides dalli*) and harbor porpoises (*Phocoena phocoena*), and Pacific white-sided dolphins (*Lagenorhynchus obliquidens*). Researchers may use the following methods on all or some of the above listed species: observation, photographic identification, photogrammetry, passive acoustic recording, tagging (suction-cup), remote biopsy and other biological sampling (breath/exhaled air, fecal, swabbed and sloughed skin), and sonar for prey mapping. A minor amendment to the permit, which increased the number of takes per animal from two to four, was issued on September 18, 2020. The permit holder is requesting the permit be amended to increase the number of annual biopsy takes of humpback whales authorized from 50 to 75, with a maximum of four biopsy samples per year from the same animal. Samples would be collected a minimum of 30 days apart. No changes to the permitted objectives, methods, or locations are proposed. The permit expires on June 1, 2024.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 6, 2022.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–14751 Filed 7–11–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC167]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Spiny Dogfish Advisory Panel will hold a public meeting. See **SUPPLEMENTARY INFORMATION** for agenda details.

DATES: The meeting will be held on Thursday, July 28, 2022, from 3 p.m. until 5 p.m.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to the calendar prior to the meeting at *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the Advisory Panel to create a Fishery Performance Report that includes advisor input on related specifications and management measures.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 7, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–14783 Filed 7–11–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC134]

Fisheries of the Exclusive Economic Zone off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Cost Recovery Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of fee percentage.

SUMMARY: NMFS publishes notification of a 2.23 percent fee for cost recovery under the Bering Sea and Aleutian Islands Crab Rationalization Program. This action is intended to provide holders of crab allocations with the 2022/2023 crab fishing year fee percentage so they can calculate the required cost recovery fee payment, which must be submitted by July 31, 2023.

DATES: The Crab Rationalization Program Registered Crab Receiver permit holder is responsible for submitting the fee liability payment to NMFS by July 31, 2023.

FOR FURTHER INFORMATION CONTACT: Mason Smith, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS Alaska Region administers the Bering Sea and Aleutian Islands Crab Rationalization Program (Program) in the North Pacific. Fishing under the Program began on August 15, 2005. Regulations implementing the Program can be found at 50 CFR part 680.

The Program is a limited access privilege program authorized by section 313(j) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Program includes a cost recovery provision to collect fees to recover the actual costs directly related to the management, data collection, and enforcement of the Program. The Program is consistent with the cost recovery provisions included under section 304(d)(2)(A) of the Magnuson-Stevens Act. NMFS developed the cost recovery regulations to conform to statutory requirements and to reimburse the agency for the actual costs directly related to the management, data collection, and enforcement of the Program. The cost recovery provision allows collection of 133 percent of the actual management, data collection, and enforcement costs up to 3 percent of the ex-vessel value of crab harvested under the Program. The Program provides that a proportional share of fees charged be forwarded to the State of Alaska for reimbursement of its share of management and data collection costs for the Program.

A crab allocation holder generally incurs a cost recovery fee liability for every pound of crab landed. Catcher vessel and processor quota shareholders split the cost recovery fees equally with each paying half, while catcher/processor quota shareholders pay the full fee percentage for crab processed at sea. The crab allocations subject to cost recovery include Individual Fishing Quota, Crew Individual Fishing Quota, Individual Processing Quota, Community Development Quota, and the Adak community allocation. The Registered Crab Receiver (RCR) permit holder must collect the fee liability from the crab allocation holder who is landing crab. Additionally, the RCR permit holder must collect their own fee liability for all crab delivered to the RCR. The RCR permit holder is responsible for submitting this payment to NMFS on or before July 31, in the year following the crab fishing year in which landings of crab were made.

The dollar amount of the fee due is determined by multiplying the fee percentage (not to exceed 3 percent) by the ex-vessel value of crab debited from the allocation. Program details may be found in the implementing regulations at 50 CFR 680.44.

Fee Percentage

Each year, NMFS calculates and publishes in the **Federal Register** the fee percentage according to the factors and methodology described at § 680.44(c)(2). The formula for determining the fee percentage is the ''direct program costs'' divided by ''value of the fishery,'' where ''direct program costs'' are the direct program costs for the Program for the previous fiscal year, and ''value of the fishery'' is the ex-vessel value of the catch subject to the crab cost recovery fee liability for the current year. Fee collections for any given year may be less than or greater than the actual costs and fishery value for that year, as regulations establish the fee percentage in the first quarter of the crab fishing year based on the fishery value and costs in the prior year.

According to the fee percentage formula described above, the estimated percentage of costs to value for the 2021/2022 fishery was 2.23 percent. Therefore, the fee percentage will be 2.23 percent for the 2022/2023 crab fishing year. This is an increase by approximately 1.14 percentage points from the 2021/2022 crab fishing year fee percentage of 1.09 percent (86 FR 35756, July 7, 2021). Direct program costs for managing the fishery increased by approximately 9 percent from 2021/2022 to 2022/2023, while fishery value decreased by approximately 47 percent, resulting in the increased fee percentage. Similar to previous years, the largest direct program costs were incurred by the NOAA Office of Law Enforcement and the Alaska Department of Fish and Game, respectively.

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

Dated: July 6, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–14729 Filed 7–11–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC169]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a meeting that is open to the public.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a meeting of its Individual Fishing Quota (IFQ) Focus Group. There will be a virtual option for the public to listen to the plenary sessions and provide public comments.

DATES: The meeting will convene on Tuesday, August 2, 2022, from 9 a.m. to 5 p.m., EDT and Wednesday, August 3, 2022, from 9 a.m. to 4 p.m., EDT.

ADDRESSES: The meeting will take place at the Gulf Council office. Please visit the Gulf Council website at *www.gulfcouncil.org* for meeting materials.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Ava Lasseter, Anthropologist, Gulf of Mexico Fishery Management Council; *ava.lasseter@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The meeting will begin with introductions and discussion of the meeting format, followed by a review of the agenda and meeting objectives. The focus group will

review and discuss the IFQ programs' current goals and objectives, and recommend their replacement and/or retention. The focus group will work to define the changes needed for an improved Red Snapper and Grouper-Tilefish IFQ Program, and will address minimizing discards, fairness and equity, and new entrants' issues. The focus group will discuss the next steps for the group. Other Business. Public comment will be available as time allows at the end of each day in-person and virtually.

—Meeting Adjourns

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org.* You may register for the webinar to listen-in only by visiting *www.gulfcouncil.org* and click on the Council meeting on the calendar.

Although other non-emergency issues not on the agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take-action to address the emergency.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 7, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–14784 Filed 7–11–22; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0017, Market Surveys

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the collections of information associated with market investigations.

DATES: Comments must be submitted on or before September 12, 2022.

ADDRESSES: You may submit comments, identified by ''Market Surveys,'' Collection Number 3038–0017, by any of the following methods:

- The Agency's website, at *https://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher J. Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Adam Charnisky, Market Analyst, Division of Market Oversight, Commodity Futures Trading Commission, (312) 596–0630; email: *acharnisky@cftc.gov,* and refer to OMB Control No. 3038–0017.

SUPPLEMENTARY INFORMATION: Under the PRA,[1] Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

Title: Market Surveys (OMB Control No. 3038–0017). This is a request for extension of a currently approved information collection.

Abstract: Under Commission Rule 21.02, 17 CFR 21.02, upon call by the Commission, information must be furnished related to futures or options positions held or introduced by futures commission merchants, members of contract markets, introducing brokers, foreign brokers, and for options positions, by each reporting market. This rule is designed to assist the Commission in prevention of market manipulation and is promulgated pursuant to the Commission's rulemaking authority contained in section 8a of the Commodity Exchange Act, 7 U.S.C. 12a (2010). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable

[1] 44 U.S.C. 3501 *et seq.*

[2] 17 CFR 145.9.

laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The respondent burden for this collection is estimated to be as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
21.02	100	Annually	100	1.75	175

Respondents/Affected Entities: Futures commission merchants, members of contract markets, introducing brokers, foreign brokers, contract markets.

Estimated number of respondents: 100.

Estimated total annual burden on respondents: 175 hours.

Frequency of collection: Annually.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: July 7, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–14782 Filed 7–11–22; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 22–C0002]

Vornado Air, LLC

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

The Commission publishes in the **Federal Register** any settlement that it provisionally accepts under the Consumer Product Safety Act. Published below is a provisionally accepted Settlement Agreement with Vornado Air, LLC, containing a civil penalty in the amount of seven million, five hundred thousand dollars ($7,500,000), subject to the terms and conditions of the Settlement Agreement.[1]

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by July 27, 2022.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment 22–C0002, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (240) 863–8938 (mobile), (301) 504–7479 (office); email: *cpsc-os@cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: Caitlin O'Donnell, Trial Attorney, Division of Enforcement and Litigation, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; *codonnell@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: July 7, 2022.

Alberta E. Mills,

Secretary.

United States of America Consumer Product Safety Commission, CPSC Docket No. 22–C0002

In the Matter of: Vornado Air, LLC

Settlement Agreement

1. In accordance with the Consumer Product Safety Act (''CPSA''), 15 U.S.C. §§ 2051–2089, and 16 C.F.R. § 1118.20, Vornado Air, LLC (''Vornado'' or ''the Firm''), and the United States Consumer Product Safety Commission (''Commission''), through its staff, hereby enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order resolve staff's charges set forth below.

The Parties

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. §§ 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Vornado is a privately held company, organized and existing under the laws of the state of Delaware, with its principal place of business in Andover, Kansas.

Staff Charges

4. Between 2009 and 2015, Vornado manufactured, distributed, and offered for sale approximately 350,000 VH101 Personal Vortex Heaters (''Subject Products'').

5. The Subject Products are ''consumer products'' that were ''distribut[ed] in commerce,'' as those terms are defined or used in sections 3(a)(5) and (8) of the CPSA, 15 U.S.C. § 2052(a)(5), (8). Vornado is a ''manufacturer'' and ''distributor'' of the Subject Products, as such terms are defined in sections 3(a)(7) and (11) of the CPSA, 15 U.S.C. § 2052(a)(7), (11).

Violation of CPSA Section 19(a)(4)

6. The Subject Products contain a defect which could create a substantial product hazard and create an unreasonable risk of serious injury or death because they can overheat when in use, posing fire and burn hazards.

7. Vornado received and investigated multiple reports of overheating and fire involving the Subject Products. Despite possessing information that reasonably supported the conclusion that the Subject Products contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death, Vornado did not immediately report to the Commission.

8. In December 2017, Vornado received notice of a potential claim alleging that an elderly man succumbed to injuries sustained in a fire involving a Vornado space heater that was suspected to be one of the Subject Products.

9. In January 2018, Vornado filed an Initial Report with the Commission under 15 U.S.C. § 2064(b). In that report, the Firm stated that it had not yet confirmed that the heater involved in the fatal fire was a unit of the Subject Products.

[1] The Commission voted (4–0–1) to provisionally accept the proposed Settlement Agreement and Order pertaining to Vornado Air, LLC. Chair Hoehn-Saric, Commissioners Baiocco, Trumka and Boyle voted to provisionally accept the Settlement Agreement and Order. Commissioner Feldman voted to take other action. Chair Hoehn-Saric, Commissioners Feldman and Trumka issued respective statements with their votes which can be found here: Commissioners | *CPSC.gov*

10. In February 2018, Vornado filed a Full Report with the Commission under 15 U.S.C. § 2064(b) concerning the Subject Products.

11. Vornado and the Commission jointly announced a Fast Track recall of the Subject Products on April 4, 2018. The press release announcing the recall stated that the Subject Products can overheat while in use, posing fire and burn hazards, and that 15 fire incidents had been reported.

12. On August 22, 2018, after the Firm confirmed that one of the Subject Products was, in fact, involved in the fatal fire, the recall was re-announced. The press release included a description of the December 2017 fatal fire incident as well as an updated total of 19 fire incidents.

Failure to Timely Report

13. Despite having information reasonably supporting the conclusion that the Subject Products contained a defect or created an unreasonable risk of serious injury or death, Vornado did not notify the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3), (4), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

14. Because the information in Vornado's possession about the Subject Products constituted actual and presumed knowledge, Vornado knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

15. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Vornado is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

Response of Vornado

16. Vornado's settlement of this matter does not constitute an admission of the staff's charges as set forth in paragraphs 4 through 15 above, and Vornado denies staff's allegations that it failed to notify the Commission in a timely matter in accordance with section 15(b) of the CPSA and that there was any ''knowing'' violation of the CPSA as that term is defined in 15 U.S.C. § 2069(d).

17. At all relevant times, Vornado had a product safety compliance program, which included pre-market third-party laboratory testing of the Subject Products to applicable safety standards and rigorous quality assurance measures. Vornado took reasonable measures to monitor field reports and evaluate returned units of the Subject Products.

18. Vornado notified the Commission under section 15(b) and conducted a voluntary recall of the Subject Products under the Fast Track program prior to confirming product identification or causation of the reported fire that resulted in a fatality.

19. Vornado enters into this Agreement to settle this matter without the delay and unnecessary expense of litigation. Vornado does not admit that it violated the CPSA or any other law, and Vornado's willingness to enter into this Agreement and Order does not constitute, nor is it evidence of, an admission by Vornado of liability or violation of any law.

Agreement of the Parties

20. Under the CPSA, the Commission has jurisdiction over the matter involving the Subject Products and over Vornado.

21. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Vornado or a determination by the Commission that Vornado violated the CPSA's reporting requirements.

22. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Vornado shall pay a civil penalty in the amount of seven million five hundred thousand dollars ($7,500,000) within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via *http://www.pay.gov,* for allocation to, and credit against, the payment obligations of Vornado under this Agreement. Failure to make such payment by the date specified in the Commission's final Order shall constitute Default.

23. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by Vornado to the United States, and interest shall accrue and be paid by Vornado at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b) from the date of Default, until all amounts due have been paid in full (hereinafter ''Default Payment Amount'' and ''Default Interest Balance''). Vornado shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or exercise any other rights granted by law or in equity, including, but not limited to, referring such matters for private collection, and Vornado agrees not to contest, and hereby waives and discharges any defenses to, any collection action undertaken by the United States, or its agents or contractors, pursuant to this paragraph. Vornado shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

24. After staff receives this Agreement executed on behalf of Vornado, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register**, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the **Federal Register**, in accordance with 16 C.F.R. § 1118.20(f).

25. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) the Commission's final acceptance of this Agreement and service of the accepted Agreement upon Vornado, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect, and shall be binding upon the parties.

26. Effective upon the later of: (1) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Vornado, and (2) the date of issuance of the final Order, for good and valuable consideration, Vornado hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement:

(i) an administrative or judicial hearing;

(ii) judicial review or other challenge or contest of the Commission's actions;

(iii) a determination by the Commission of whether Vornado failed to comply with the CPSA and the underlying regulations;

(iv) a statement of findings of fact and conclusions of law; and

(v) any claims under the Equal Access to Justice Act.

27. Vornado shall maintain a compliance program and a system of internal controls and procedures designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed, or sold by Vornado, and which shall contain the following elements:

(i) written standards, policies, and procedures, including those designed to ensure that information that may relate to or impact CPSA compliance is conveyed effectively to personnel responsible for CPSA compliance, whether or not an injury has been reported;

(ii) procedures for reviewing claims and reports for safety concerns and for implementing corrective and preventive actions when compliance deficiencies or violations are identified;

(iii) procedures requiring that information required to be disclosed by Vornado to the Commission is recorded, processed, and reported in accordance with applicable law;

(iv) procedures requiring that all reporting made to the Commission is timely, truthful, complete, accurate, and in accordance with applicable law;

(v) procedures requiring that prompt disclosure is made to Vornado's senior management of any significant deficiencies or material weaknesses in the design or operation of such compliance program or internal controls that affect adversely, in any material respect, Vornado's ability to record, process, and report to the Commission in accordance with applicable law;

(vi) mechanisms to effectively communicate to all applicable Vornado employees, through training programs or other means, compliance-related company policies and procedures to prevent violations of the CPSA;

(vii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;

(viii) Vornado's senior management responsibility for CPSA compliance; and

(ix) retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to CPSC staff upon request.

28. The Firm shall submit a report under CPSA section 16(b), sworn to under penalty of perjury:

(i) describing in detail its compliance program and internal controls and the actions the Firm has taken to comply with each subparagraph of paragraph 27;

(ii) affirming that during the reporting period the Firm has reviewed its compliance program and internal controls, including the actions referenced in subparagraph (a) of this paragraph, for effectiveness, and that it complies with each subparagraph of paragraph 27, or describing in detail any non-compliance with any such subparagraph; and

(iii) identifying any changes or modifications made during the reporting period to the Firm's compliance program or internal controls to ensure compliance with the terms of the CPSA and, in particular, the requirements of CPSA section 15 related to timely reporting.

Such reports shall be submitted annually to the Director, Office of Compliance, Division of Enforcement and Litigation, for a period of three (3) years beginning 12 months after the Commission's Final Order of Acceptance of the Agreement. The first report shall be submitted 30 days after the close of the first 12-month reporting period, and successive reports shall be due annually on the same date thereafter. Without limitation, the Firm acknowledges and agrees that failure to make such timely and accurate reports as required by this Agreement and Order may constitute a violation of section 19(a)(3) of the CPSA.

29. Notwithstanding and in addition to the above, upon request of staff, Vornado shall promptly provide to CPSC written documentation identifying any material changes or improvements to the Firm's compliance program or internal controls and the effective date of those changes or improvements. Vornado shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials, and any personnel deemed necessary by staff, to evaluate Vornado's compliance with the terms of the Agreement.

30. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

31. Vornado represents that the Agreement:

(i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever;

(ii) has been duly authorized; and

(iii) constitutes the valid and binding obligation of Vornado, enforceable against Vornado in accordance with its terms. The individuals signing the Agreement on behalf of Vornado represent and warrant that they are duly authorized by Vornado to execute the Agreement.

32. The signatories represent that they are authorized to execute this Agreement.

33. The Agreement is governed by the laws of the United States.

34. The Agreement and the Order shall apply to, and be binding upon, Vornado and each of its successors, transferees, and assigns; and a violation of the Agreement or Order may subject Vornado, and each of its successors, transferees, and assigns, to appropriate legal action.

35. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.

36. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party, for that reason, in any subsequent dispute.

37. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 CFR 1118.20(h). The Agreement may be executed in counterparts.

38. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Vornado agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

Vornado Air, LLC

Dated: 5/24/2022.

By: /s/ _____

Randy Brillhart,

Vornado Air, LLC Chief Executive Officer.

Dated: 5/24/2022.

By: /s/ _____

Michelle Gillice,

Counsel to Vornado Air, LLC.

U.S. Consumer Product Safety Commission

Dated: 5/25/2022.

By: /s/ _____

Caitlin O'Donnell,

Trial Attorney, Office of Compliance and Field Operations.

United States of America Consumer Product Safety Commission, CPSC Docket No.: 22–C0002

In the Matter of: Vornado Air, LLC

Order

Upon consideration of the Settlement Agreement entered into between Vornado Air, LLC (''Vornado''), and the U.S. Consumer Product Safety Commission (''Commission''), and the Commission having jurisdiction over the subject matter and over Vornado, and it appearing that the Settlement Agreement and the Order are in the public interest, it is:

Ordered that the Settlement Agreement be, and is, hereby, accepted; and it is

Further ordered that Vornado shall comply with all terms of the Settlement Agreement including payment of a civil penalty in the amount of seven million five hundred thousand dollars ($7,500,000), within thirty (30) days after service of the Commission's final Order accepting the Settlement Agreement. The payment shall be made by electronic wire transfer to the Commission via: *http://www.pay.gov*. Upon the failure of Vornado to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Vornado at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b). If Vornado fails to make such payment or to comply in full with any other provision of the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order, and the Commission reserves the right to pursue additional enforcement actions against the Firm.

Provisionally accepted and provisional Order issued on the __*5th* day of *July*, 2022.

By Order of the Commission:

/s/

Alberta Mills, *Secretary U.S. Consumer Product Safety Commission.*

[FR Doc. 2022–14822 Filed 7–11–22; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for Grantee Progress Report (GPR) Data Collection

AGENCY: The Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing to renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by September 12, 2022.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: AmeriCorps, Attention Sarah Foster, 250 E Street SW, Washington, DC 20525.

(2) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except federal holidays.

(3) Electronically through *www.regulations.gov*.

Comments submitted in response to this notice may be made available to the public through *regulations.gov*. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Sarah Foster, 202–606–6755, or by email at *sfoster@cns.gov*.

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Progress Report (GPR) Data Collection.

OMB Control Number: 3045–0184.

Type of Review: Renewal.

Respondents/Affected Public: Businesses and Organizations; State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 454 (350 AmeriCorps State and National grantees, 52 Commission Support Grant grantees, and 52 Commission Investment Fund grantees).

Total Estimated Number of Annual Burden Hours: 7,534.

Abstract: AmeriCorps uses information collected via the Grantee Progress Reports to assess grantee progress toward meeting approved objectives, to identify areas of challenge and opportunity, to guide the allocation of training and technical assistance resources, and to compile portfolio-wide data to report to external stakeholders. AmeriCorps seeks to continue using the currently-approved information collection until the revised information collection is approved by OMB. The currently-approved information collection is due to expire on October 31, 2022.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov*.

Dated: June 22, 2022.

Sonali Nijhawan,

Director, AmeriCorps State and National.

[FR Doc. 2022–14730 Filed 7–11–22; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Technical Assistance on State Data Collection—The Rhonda Weiss National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Data in Accessible Formats

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2022 for The Rhonda Weiss National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data in Accessible Formats, Assistance Listing Number 84.373Q. This notice relates to the approved information collection under OMB control number 1820–0028.

DATES:

Applications available: July 12, 2022.

Deadline for transmittal of Applications: August 22, 2022.

Pre-Application webinar information: No later than July 18, 2022, the Office of Special Education and Rehabilitative Services (OSERS) will post pre-recorded informational webinars designed to provide technical assistance (TA) to interested applicants. The webinars may be found at *www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html*.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021–27979*. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf*.

FOR FURTHER INFORMATION CONTACT: Rebecca Smith, U.S. Department of Education, 400 Maryland Avenue SW, Room 5038B, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 258–9436. Email: *rebecca.smith@ed.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet the data collection and reporting requirements under Part B and Part C of the Individuals with Disabilities Education Act (IDEA). Funding for the program is authorized under section 611(c)(1) of IDEA. This section gives the Secretary authority to reserve not more than ½ of 1 percent of the amounts appropriated under Part B for each fiscal year to provide technical assistance (TA) activities authorized under section 616(i) of IDEA to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation. For FY 2022, the inflation adjusted amount is $37,300,000. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the IDEA Part B and Part C data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. In addition, the Consolidated Appropriations Act, 2021, Public Law 116–260, gives the Secretary authority to use funds reserved under section 611(c) of IDEA to provide TA to States to improve their capacity to administer and carry out other services and activities to improve data collection, coordination, quality, and use under Parts B and C of IDEA.

Priority: This competition includes one absolute priority. This priority is from the notice of final priority and requirements published elsewhere in this issue of the **Federal Register** (NFP).

Absolute Priority: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technical Assistance on State Data Collection—The Rhonda Weiss[1] *National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data in Accessible Formats.*

Background:

According to the U.S. Census Bureau's 2019 American Community Survey, 12.7 percent of the U.S. population experiences disability (more than 1 in 8 people). Approximately 2.3 percent, or over 7.4 million, U.S. citizens have a visual disability and 5.2 percent, or close to 16 million U.S. citizens, have a cognitive disability. Disability impacts people of all ages, races, ethnicities, geographies, and socioeconomic groups.

The purpose of the Rhonda Weiss National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data in Accessible Formats (Accessible Data Center) is to improve State capacity to accurately collect, report, analyze, and use the IDEA Part B and Part C data reported under IDEA sections 616 and 618 in accessible formats for persons with disabilities, particularly those with blindness, visual impairments, motor impairments, and intellectual disabilities.

Under the authority of IDEA sections 616 and 618, States are required to collect and analyze data on infants, toddlers, and children with disabilities and report on the data to the Department and the public. Section 504 of the Rehabilitation Act of 1973, as amended (Rehabilitation Act), requires States to publish data in a manner that provides the same access and usability to persons with and without disabilities. Currently, States struggle to report data in accessible formats that also are dynamic and usable by data consumers with limited statistical knowledge. To meet the demands of both statutes, States generally rely on static data portrayals rather than dynamic visualizations. The lack of available software to develop accessible, dynamic, and manipulatable data products creates inequitable access for persons with disabilities, particularly those with blindness, visual impairments, motor impairments, and intellectual disabilities.

[1] The Center is named in remembrance of Rhonda Weiss, who was a senior attorney with the U.S. Department of Education, a staunch advocate for disability rights, and a champion for ensuring equity and accessibility for persons with disabilities. For more information on Rhonda and her work to ensure equity and accessibility for persons with disabilities please see *www.washingtonpost.com/dc-md-va/2021/12/13/blind-government-lawyer-disabilities-rights/*.

The Accessible Data Center will increase the capacity of States to collect, report, analyze, and use the IDEA Part B and Part C data reported under IDEA sections 616 and 618 in accessible formats by: (1) developing an openly licensed software program that allows States to report and publish data products that are accessible, usable, and manipulatable by persons with disabilities, particularly those with blindness, visual impairments, motor impairments, and intellectual disabilities, as well as by those persons without disabilities; and (2) providing TA on accessible data reporting and publication. By developing an accessible and usable data reporting platform and supporting States as they revise their data collection tools and publish accessible data, both internal and external users will be better positioned to analyze and use the data. Hazen et al. (2017) note that both data analysis and data use by both internal and external users can be integrated into the data quality process and used as a tool for improving data quality. By increasing the capacity of States to report their data in formats that are both accessible and useable, the Accessible Data Center will aid in the improvement of data quality across the States and ensure equitable access to IDEA data for all stakeholders.

Federal agencies have increasingly used open licensing to expand the impact and reach of materials developed with Federal funds, enable innovative use of those materials, and ensure that those materials and resources are available to the public (U.S Department of State, 2017). Open licensing gives permission to the public to use materials created under the terms of the license and attribute to the creator under copyright law. Pfenninger et al. (2017) note that open licensing allows the burden of the work to be distributed more broadly, avoids unnecessary duplication, supports learning from one another to get to solutions more quickly, and allows for research to be seen and used. Additionally, open licensing helps to improve educational research opportunities and systems, given the rapid pace of technological change and ongoing advances.

Data visualizations can be difficult to access for persons with disabilities. This difficulty is not limited to persons who are blind and/or visually impaired, but also impacts those with cognitive and learning disabilities, and those with visual or motor disabilities who do not access their computers with a mouse or touchscreen. These barriers have been amplified by the growing interest in, and use of, infographics and interactive data displays and dashboards on websites and in social media. In addition to difficulty with use, persons with disabilities are often excluded as potential authors and designers of data visualizations due to the inaccessibility of the computer-based tools used to create and publish data displays. Despite legislation, including sections 504 and 508 of the Rehabilitation Act, and Title III of the Americans with Disabilities Act, potential data authors and consumers with disabilities continue to be excluded from the data sharing necessary for equal access and participation in civic conversations, education, advocacy, and employment.

To extend the benefits and opportunities of data visualization equitably and inclusively to all people, new tools must be developed that prioritize access and usability for everyone. Developers and designers should engage with people with disabilities (including developers and designers with disabilities) to identify and integrate accessibility solutions. Accessibly designed software and data visualizations will increase access for those who have traditionally been excluded and increase opportunities for all consumers and authors to interact with data in new and preferred ways. Following the principles of universal design, everyone benefits when we expand the ability of people with disabilities to use and access information, products, programs, and spaces with greater convenience and enjoyment.

In addition to equitable access and data availability, data reporters face a growing problem of how to meaningfully publish large datasets. Consumers need easy tools for conducting simple analyses, comparing variables, and searching for data-based answers to unique and changing questions. Interactive data visualizations increase confidence in data reliability and provide stakeholders with opportunities to look at data in new ways (Kirk, 2016).

Modern, web-based data visualizations include the ability to select, link, filter, and reorganize data, as well as the delivery of 3–D/multidimensional data representations that can be accessed from multiple perspectives (Cota et al., 2017). Challenges to producing interactive data visualizations include managing visual noise, fitting large amounts of data onto limited screen sizes, and satisfying the high-performance computation requirements behind dynamic visualizations (Hajirahimova & Ismayilova, 2018). Innovative data interactivity and manipulation solutions can also solve accessibility challenges. Accessibility solutions for static images (which usually involve written descriptions embedded in alt-tags in computer code) should become standard practice, while simultaneously being reimagined to accommodate responsive and animated representations of data.

Priority:

Under this priority, the Department provides funding for a cooperative agreement to establish and operate the Rhonda Weiss National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Data in Accessible Formats (Accessible Data Center).

The Accessible Data Center will provide TA to help States better meet current and future IDEA Part B and Part C data collection and reporting requirements, improve data quality, and analyze and use the data reported to provide equitable access and visualizations to persons with disabilities. The Accessible Data Center's work will comply with the privacy and confidentiality protections in the IDEA Part B and C regulations, which incorporate provisions in the Family Educational Rights and Privacy Act (FERPA) and include IDEA-specific provisions and will not provide the Department with access to child-level data. The Accessible Data Center must achieve, at a minimum, the following expected outcomes:

(a) Improved accessibility of the IDEA Part B and Part C data reported and published under IDEA sections 616 and 618;

(b) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B and Part C data in accessible formats;

(c) Development of an open license, accessible software program, for the publication of dynamic data products (consistent with the open licensing requirement in 2 CFR 3474.20); and

(d) Development and documentation of a knowledge base related to the accessible reporting and dynamic presentation of data.

In addition, the Accessible Data Center must provide a range of targeted and general TA products and services for improving States' capacity to accurately collect, report, analyze, and use IDEA section 616 and section 618 data in accessible formats for persons with disabilities, particularly those with blindness, visual impairments, motor impairments, and intellectual disabilities. Such TA must include, at a minimum—

(a) Working with the Department to develop open-source electronic tools to

assist States in reporting their IDEA data in accessible formats that allow for dynamic visualizations that can be manipulated for persons with and without disabilities. The tools must utilize accessibility best practices, exceed all Federal accessibility requirements, and be designed to accommodate continued enhancements to meet States' changing needs and updates in accessibility best practice;

(b) Developing a plan to maintain appropriate functionality of the open-source electronic tools described in paragraph (a) as changes are made to data collections, reporting requirements, accessibility best practices, and accessibility requirements;

(c) Developing universal TA products, including a user manual and instructions, and conducting training with State staff on use of the open-source electronic tools; and

(d) Developing white papers and presentations that include tools and solutions to challenges in the collection, reporting, analysis, and use of IDEA data in accessible formats.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance of the Project,'' how the proposed project will—

(1) Address State challenges in collecting, analyzing, reporting, and using the IDEA Part B and Part C data reported under IDEA sections 616 and 618 in formats that are both accessible to persons with visual impairments and/or other disabilities and also dynamic, to promote enhanced data use that will improve data quality and identify programmatic strengths and areas for improvement. To meet this requirement the applicant must—

(i) Demonstrate knowledge of IDEA data collections, including data required under IDEA sections 616 and 618;

(ii) Demonstrate knowledge of accessible reporting and dynamic visualization, and document areas for further knowledge development;

(iii) Present information about the difficulties State educational agencies (SEAs), State lead agencies (LAs), local educational agencies (LEAs), early intervention service (EIS) providers, and schools have encountered in meeting the requirements of section 504 of the Rehabilitation Act when reporting IDEA data; and

(iv) Present information about the difficulties SEAs, State LAs, LEAs, EIS providers, and schools have in developing dynamic data visualizations for public use; and

(2) Improve outcomes in collecting, analyzing, reporting, and using the IDEA Part B and Part C data in formats that are accessible to persons with visual impairments and/or other disabilities.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients and end users for TA and information; and

(ii) Ensure that products and services meet the needs of the intended TA recipients and end users;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *https://osepideasthatwork.org/sites/default/files/2021-12/ConceptualFramework_Updated.pdf* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and use evidence-based practices (EBPs).[2] To meet this requirement, the applicant must describe—

(i) The current research on the capacity of SEAs, State LAs, LEAs, and EIS providers to report and use data, specifically section 616 and section 618 data, in a manner that allows persons with vision and/or other disabilities, as well as those without, to access and dynamically manipulate data, as both a means of improving data quality and identifying strengths and areas for improvement;

(ii) How it will analyze and incorporate the views of end users regarding the accessibility of tools currently available for data collection, reporting, analysis, and use. Specifically, how it will assess the overall accessibility, data manipulability, and the accessibility of dynamic data visualizations for persons with and without disabilities; and

(iii) How the proposed project will incorporate current research, EBPs, and the needs of end users in the development and delivery of its products and services;

(5) How it will develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on the capacity needs of SEAs, State LAs, LEAs, and EIS programs/EIS providers to meet IDEA data collection and reporting requirements, data analysis, and use of the IDEA Part B and Part C data reported under IDEA sections 616 and 618 in a manner that allows individuals with vision and/or other disabilities, as well as those without, to access and dynamically manipulate data;

(ii) Its proposed approach to universal, general TA,[3] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[4] which must identify—

[2] For purposes of these requirements, ''evidence-based practices'' (EBPs) means, at a minimum, demonstrating a rationale (as defined in 34 CFR 77.1) based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

[3] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with Accessible Data Center staff and including one-time, invited or offered conference presentations by Accessible Data Center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the Accessible Data Center's website by independent users. Brief communications by Accessible Data Center staff with recipients, either by telephone or email, are also considered universal, general TA.

[4] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more Accessible Data Center staff. This category of TA includes one-time, labor-intensive events, such

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,[5] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of SEA, State LAs, LEA, and EIS program/provider personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA, State LA, LEA, and EIS program/provider levels;

(C) Its proposed plan for assisting SEAs and State LAs (and LEAs, in conjunction with SEAs and EIS programs/providers, in conjunction with State LAs) to build or enhance training systems to meet IDEA Part B and Part C data collection and reporting requirements in a manner that allows individuals with vision and/or other disabilities, as well as those without, to access and dynamically manipulate data. This includes professional development based on adult learning principles and coaching;

(D) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, State LAs, regional TA providers, LEAs, EIS providers, schools, and families) to ensure there is communication between each level and there are systems in place to support the capacity needs of SEAs, State LAs, LEAs, and EIS providers to meet IDEA data collection and reporting requirements, as well as support data analysis and the use of IDEA Part B and Part C data, in a manner that allows individuals with vision and/or other disabilities, as well as those without, to access and dynamically manipulate data; and

(E) Its proposed plan for collaborating and coordinating with Department-funded projects, including those providing data-related support to States, where appropriate, to align complementary work and jointly develop and implement products and services to meet the purposes of this priority. Such Department-funded projects include the IDEA Data Center (IDC), the Center for IDEA Early Childhood Data Systems (DaSy), the Center for IDEA Fiscal Reporting (CIFR), the Center for the Integration of IDEA Data (CIID), EdFacts, and the research and development investments of the Institute of Education Sciences/National Center for Education Statistics; and

(6) Its proposed plan to develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[6] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the annual performance report and at the end of Year 2 for the review process; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[5] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between Accessible Data Center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

[6] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, or have any financial interest in the outcome of the evaluation.

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements:

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one- and one-half day kick-off meeting in Washington, DC, or virtually, after receipt of the award, and an annual planning meeting in Washington, DC, or virtually, with the Office of Special Education Programs (OSEP) project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two- and one-half day project directors' conference in Washington, DC, or virtually, during each year of the project period; and

(iii) Three annual two-day trips, or virtually, to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility; and

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate.

Fourth and Fifth Years of the Project:

In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), including—

(a) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(b) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

Under 34 CFR 75.253, the Secretary may reduce continuation awards or discontinue awards in any year of the project period for excessive carryover balances or a failure to make substantial progress. The Department intends to closely monitor unobligated balances and substantial progress under this program and may reduce or discontinue funding accordingly.

References:

Cota, M.P., Rodríguez, M.D., González-Castro, M.R. & Gonçalves, R.M.M. (2017). Analysis of current visualization techniques and main challenges for the future. *Journal of Information Systems Engineering & Management, 2*(3), 19. *https://doi.org/10.20897/jisem.201719*.

Hajirahimova, M.S., & Ismayilova, M.I. (2018). Big data visualization: Existing approaches and problems. *Problems of Information Technology, 1,* 65–74.

Hazen, B.T., Weigel, F.K., Ezell, J.D., Boehmke, B.C., & Bradley, R.V. (2017). Toward understanding outcomes associated with data quality improvement. *International Journal of Production Economics, 193,* 737–747.

Kirk, A. (2016). *Data visualization: A handbook for data driven design.* Sage Publications.

Pfenninger, S., DeCarolis, J., Hirth, L. Quoilin, S., & Staffell, I. (2017). The importance of open data and software: Is energy research lagging behind? *Energy Policy, 101,* 211–215. *https://doi.org/10.1016/j.enpol.2016.11.046*.

U.S. Census Bureau. (2019). *2019 American Community Survey. https://data.census.gov/cedsci/table?t=Disability&tid=ACSST1Y2019.S1810&hidePreview=true.*

U.S. Department of State. (2017). *Federal Open Licensing Playbook. https://eca.state.gov/files/bureau/open_licensing_playbook_final.pdf.*

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), 1442; and the Consolidated Appropriations Act, 2021, Pub. L. 116–260, 134 Stat. 1182, 1601.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The NFP.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $3,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2023 from the list of unfunded applications from this competition.

Maximum Award: We will not make an award exceeding $3,000,000 for a single budget period of 12 months.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; State LAs under Part C of the IDEA; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR

part 200, subpart E, of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200.

4. *Other General Requirements:*

(a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264), and available at *www.federalregister.gov/d/2021–27979,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to timely make an award.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 70 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed below:

(a) *Significance and need for project (10 points).*

(1) The Secretary considers the significance of and need for the proposed project.

(2) In determining the significance of and need for the proposed project, the Secretary considers the following factors:

(i) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(b) *Quality of project services and design (35 points).*

(1) The Secretary considers the quality of the services to be provided by, and the quality of the design of, the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iv) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(v) The extent to which the TA services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(c) *Quality of the project evaluation (15 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(iv) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(d) *Adequacy of resources and quality of project personnel (15 points).*

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are

members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iv) The qualifications, including relevant training, experience, and independence, of the evaluator.

(v) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(vi) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(vii) The extent to which the budget is adequate to support the proposed project.

(viii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the management plan (25 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives is brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions, and under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

6. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S.

Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* For the purposes of Department reporting under 34 CFR 75.110, we have established a set of performance measures that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance on State Data Collection program. These measures are:

- *Program Performance Measure #1:* The percentage of TA and dissemination products and services deemed to be of high quality by an independent review panel of experts qualified or individuals with appropriate expertise to review the substantive content of the products and services.
- *Program Performance Measure #2:* The percentage of TA and dissemination products and services deemed by an independent review panel of qualified experts or members of the target audiences to be of high relevance to educational and early intervention policy or practice.
- *Program Performance Measure #3:* The percentage of all TA and dissemination products and services deemed by an independent review panel of qualified experts or members of the target audiences to be useful in improving educational or early intervention policy or practice.
- *Program Performance Measure #4:* The cost efficiency of the Technical Assistance on State Data Collection Program includes the percentage of milestones achieved in the current annual performance report period and the percentage of funds spent during the current fiscal year.

The measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

The Department will also closely monitor the extent to which the products and services provided by the Accessible Data Center meet needs identified by stakeholders and may require the Accessible Data Center to report on such alignment in its annual and final performance reports.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, Braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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

Katherine Neas,

Deputy Assistant Secretary, delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2022–14853 Filed 7–8–22; 4:15 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2420–059]

PacifiCorp; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2420–059.

c. *Date filed:* March 28, 2022.

d. *Applicant:* PacifiCorp (the licensee).

e. *Name of Project:* Cutler Hydroelectric Project (Cutler Project).

f. *Location:* The Cutler Project is located on the Bear River in Box Elder and Cache Counties, Utah. The project does not occupy any federal land or tribal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Eve Davies, Cutler Relicensing Project Manager, PacifiCorp, 1407 West North Temple, Suite 210, Salt Lake City, UT 84116; (801) 220–2245 *Eve.Davies@pacificorp.com.*

i. *FERC Contact:* Khatoon Melick at (202) 502–8433 or email at *khatoon.melick@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper request. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2420–059.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

The Council on Environmental Quality (CEQ) issued a final rule on April 20, 2022, revising the regulations under 40 CFR parts 1502, 1507, and 1508 that federal agencies use to implement the National Environmental Policy Act (NEPA) (see *National Environmental Policy Act Implementing Regulations Revisions,* 87 FR 23,453–70). The final rule became effective on May 20, 2022. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

l. *The Cutler Project consists of:* (1) a 126-foot-high, 545-foot-long concrete gravity arch dam with an approximately 30-foot-long gated-overflow spillway with crest elevation at 4,394.5 feet above mean sea level (msl); (2) a 2,476-acre reservoir with a gross storage volume of 8,563 acre-feet and a normal maximum operating elevation of 4,407.5 feet msl; (3) a 1,157-foot-long, 18-foot-diameter steel flowline; (4) an 81-foot-high, 45-foot-diameter Johnson Differential surge tank; (5) two 118-foot-long, 14-foot-diameter steel penstocks that bifurcate from the surge tank into the powerhouse; (6) a 74-foot by 130-foot brick powerhouse; (7) two 15,000-kilowatt generators with a total installed capacity of 30 megawatts; (8) two 300-foot-long, 7.2- and 6.9-kilovolt transmission lines that extend from the powerhouse's bus bar to step-up transformers located in the Cutler substation; and (9) appurtenant facilities. The estimated normal gross head of the project is 127.5 feet. The estimate average annual generation of the project from 1991 to 2020 is 75,052 megawatt-hours.

The Cutler Project is the furthest downstream of the five PacifiCorp hydroelectric developments on the Bear River system. The Bear River system is collectively operated by PacifiCorp and is a coordinated operation of storage reservoirs, diversion dams, canals, and hydroelectric plants located within a 3,500-square-mile area of the lower Bear River Basin in Idaho and Utah. Water is diverted from the Bear River into Bear Lake, which is a natural lake via the Rainbow Canal. Outside of the irrigation season, Bear Lake flood control releases, along with winter and spring Bear River drainage natural water flows, create the base for generation at the Cutler Project. In southern Cache Valley, there are local drainage basins that also contribute significant inflows to the project. From mid-June to mid-October, nearly all the natural flow from the Bear River is diverted for irrigation. Supplemental flow comes from water stored in Bear Lake. Given that during the irrigation season most of the inflow into the project is sent to the irrigation canals and the reservoir must maintain certain elevations, generation at the powerhouse is virtually nonexistent from approximately mid-May to the end of September, unless water is available in higher flow years.

PacifiCorp proposes to continue to operate the project in a run-of-river mode and maintain the current upper operating limit elevation on the reservoir, with a modest expansion to the tolerance. PacifiCorp also proposes to expand the range of the lower operating limit outside the irrigation season, both to increase operational flexibility. Increasing the operating range is to support variable (*e.g.,* wind and solar) energy generation needs and would not increase the volume of water available for energy generation.

m. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's

Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *The license applicant must file no later than 60 days following the date of issuance of this notice:* (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please note that the certification request must be sent to the certifying authority and to the Commission concurrently.

p. *Procedural schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for Filing Protest, Motion to Intervene, Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions.	September 2022.
Deadline for Filing Reply Comments.	October 2022.

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: July 6, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–14803 Filed 7–11–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: RP21–1042–004.
Applicants: Rover Pipeline LLC.
Description: Compliance filing: RP21–1042 Settlement Compliance Filing to be effective 8/1/2022.
Filed Date: 7/6/22.
Accession Number: 20220706–5043.
Comment Date: 5 p.m. ET 7/18/22.

Docket Numbers: RP21–441–007.
Applicants: Florida Gas Transmission Company, LLC.
Description: Compliance filing: RP21–441 Settlement Compliance Filing to be effective 8/1/2022.
Filed Date: 7/6/22.
Accession Number: 20220706–5039.
Comment Date: 5 p.m. ET 7/18/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

Filings Instituting Proceedings

Docket Numbers: RP22–1043–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Remove Terminated Agreement—7/31/2022 to be effective 8/5/2022.
Filed Date: 7/5/22.
Accession Number: 20220705–5045.
Comment Date: 5 p.m. ET 7/18/22.

Docket Numbers: RP22–1044–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—UGI to DTE eff 7–2–22 to be effective 7/2/2022.
Filed Date: 7/5/22.
Accession Number: 20220705–5110.
Comment Date: 5 p.m. ET 7/18/22.

Docket Numbers: RP22–1045–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Amended DTE 860002 eff 07–01–22 to be effective 7/1/2022.
Filed Date: 7/6/22.
Accession Number: 20220706–5000.
Comment Date: 5 p.m. ET 7/18/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 6, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–14787 Filed 7–11–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1489–002; ER13–1101–027; ER13–1541–026; ER14–661–017; ER14–787–020; ER15–54–011; ER15–55–011; ER15–1475–012; ER15–2593–011; ER16–452–010; ER16–705–008; ER16–706–008; ER16–1154–009; ER16–1882–004; ER17–252–005; ER17–2508–003; ER21–1988–003; ER21–2867–001.
Applicants: Tri-State Generation and Transmission Association, Inc., SP

Garland Solar Storage, LLC, RE Gaskell West 1 LLC, 2016 ESA Project Company, LLC, Boulder Solar Power, LLC, Parrey, LLC, RE Garland A LLC, RE Garland LLC, RE Tranquillity LLC, Desert Stateline LLC, North Star Solar, LLC, Blackwell Solar, LLC, Lost Hills Solar, LLC, Macho Springs Solar, LLC, SG2 Imperial Valley LLC, Campo Verde Solar, LLC, Spectrum Nevada Solar, LLC, SP Cimarron I, LLC.

Description: Triennial Market Power Analysis for Southwest Region of SP Cimarron I, LLC, et al.

Filed Date: 6/30/22.

Accession Number: 20220630–5372.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: ER18–2370–005.

Applicants: Lackawanna Energy Center LLC.

Description: Compliance filing: Supplement to Informational Filing Regarding Upstream Change in Ownership to be effective N/A.

Filed Date: 7/6/22.

Accession Number: 20220706–5055.

Comment Date: 5 p.m. ET 7/27/22.

Docket Numbers: ER22–1884–000.

Applicants: Sanford ESS, LLC.

Description: Report Filing: Sanford ESS Supplemental MBR Filing to be effective N/A.

Filed Date: 7/5/22.

Accession Number: 20220705–5099.

Comment Date: 5 p.m. ET 7/15/22.

Docket Numbers: ER22–1885–000.

Applicants: South Portland ESS, LLC.

Description: Report Filing: South Portland ESS Supplemental MBR Filing to be effective N/A.

Filed Date: 7/5/22.

Accession Number: 20220705–5104.

Comment Date: 5 p.m. ET 7/15/22.

Docket Numbers: ER22–1888–000.

Applicants: AE–ESS NWS 1, LLC.

Description: Report Filing: AE–ESS NWS 1 Supplemental MBR Filing to be effective N/A.

Filed Date: 7/5/22.

Accession Number: 20220705–5103.

Comment Date: 5 p.m. ET 7/15/22.

Docket Numbers: ER22–2287–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: 2nd Revised WAPA NITSA/NOA to be effective 7/1/2022.

Filed Date: 7/5/22.

Accession Number: 20220705–5173.

Comment Date: 5 p.m. ET 7/26/22.

Docket Numbers: ER22–2288–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: Parent Record ID Reassignment to be effective 7/7/2022.

Filed Date: 7/6/22.

Accession Number: 20220706–5071.

Comment Date: 5 p.m. ET 7/27/22.

Docket Numbers: ER22–2289–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Initial Filing of Service Agreement No. 907 to be effective 6/23/2022.

Filed Date: 7/6/22.

Accession Number: 20220706–5072.

Comment Date: 5 p.m. ET 7/27/22.

Docket Numbers: ER22–2290–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 5619; Queue No. AC1–221/AD1–058 to be effective 4/2/2020.

Filed Date: 7/6/22.

Accession Number: 20220706–5085.

Comment Date: 5 p.m. ET 7/27/22.

Docket Numbers: ER22–2291–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3977 Salt Branch Solar GIA to be effective 6/10/2022.

Filed Date: 7/6/22.

Accession Number: 20220706–5094.

Comment Date: 5 p.m. ET 7/27/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 6, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–14788 Filed 7–11–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–8209–001]

Ancell, Dale; Notice of Filing

Take notice that on July 6, 2022, Dale Ancell submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b) and Part 45.1 and 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 45.8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to

Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on July 27, 2022.

Dated: July 6, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–14801 Filed 7–11–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–21–000; Docket No. CP22–22–000]

Venture Global CP2 LNG, LLC; Venture Global CP Express, LLC; Notice Suspending Environmental Review Schedule of the Proposed CP2 LNG and CP EXPRESS PROJECTS

The staff of the Federal Energy Regulatory Commission (FERC or Commission) is suspending the environmental review schedule of the CP2 LNG and CP Express Projects (Projects) involving construction and operation of facilities by Venture Global CP2 LNG, LLC (CP2 LNG) and Venture Global CP Express, LLC (CP Express) in Jasper and Newton Counties, Texas, and Calcasieu and Cameron Parishes, Louisiana. The notice of schedule, issued on February 9, 2022, identified a July 2022 draft Environmental Impact Statement (EIS) issuance date and a February 10, 2023 final EIS date. This schedule was based upon CP2 LNG and CP Express providing complete and timely responses to any data requests. Environmental or engineering data requests were issued on February 11, April 11, April 14, and May 11, 2022. CP2 LNG and CP Express responded partially to these data requests on March 3, March 11, March 31, April 22, May 2, May 4, May 20, May 31, June 10, and June 30, 2022. A number of responses to data requests remain outstanding and/or are deficient, including the following, which are integral to the development of the draft EIS:

Examples of necessary information for draft EIS	Date to be provided according to CP2 LNG and CP express
Process Hazard Analysis	August 1, 2022.
Hazard Analysis Report	August 1, 2022.
Building Siting Analysis	August 1, 2022.
Carbon Capture and Sequestration	September 1, 2022.
Details on LNG Sendout Lines (pipe-in-pipe, including under a waterway)	September 1, 2022.
Noise Impact Analyses	(no date provided).
Cumulative Impacts using the recommended appropriate geographic scope	(no date provided).
Non-Jurisdictional Facilities	(no date provided).
Draft Beneficial Use Dredged Material Plan	(no date provided).
Draft Biological Assessment	(no date provided).
Air Dispersion Modeling	(no date provided).

As stated in our data requests, complete responses to these information requests within the time frame requested was necessary to maintain the published schedule for issuance of the EIS. CP2 LNG and CP Express have indicated in its responses to staff data requests that certain information would not be provided in time for staff to evaluate the responses and complete the analysis required for the draft EIS. Because there are still a number of outstanding responses to staff's environmental and engineering data requests, FERC staff are no longer able to complete the draft EIS as scheduled.

Therefore, the Commission will suspend the environmental review schedule for the Projects. Once CP2 LNG and CP Express provide the outstanding information or a schedule for when all substantive responses would be provided, the Commission will issue a revised schedule for the draft and final EIS. This is not a suspension of the Commission staff's review of the CP2 LNG and CP Express' Projects. Staff will continue to process CP2 LNG and CP Express' proposal to the extent possible based upon the information filed to date while awaiting the remaining data responses.

Additional Information

Additional information about the Projects are available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP22–21 and CP22–22). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: July 6, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–14802 Filed 7–11–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10006–01–OA]

Notification of Public Meetings of the Clean Air Scientific Advisory Committee Ozone Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces two public meetings of the Clean Air Scientific Advisory Committee (CASAC) Ozone Review Panel. A public meeting will be held for the CASAC Ozone Review Panel to receive a briefing from EPA on the 2020 Ozone Integrated Science Assessment (ISA) and to hear public comments. A second public meeting will be held for the panel to

discuss scientific issues related to the 2020 Ozone ISA.

DATES: The public meeting for the panel to receive the briefing from EPA and public comments will be held on August 29, 2022, from 11:00 a.m. to 3:00 p.m. The public meeting for the panel to discuss scientific issues related to the 2020 Ozone ISA will be held on Monday, September 12, 2022, from 11:00 a.m. to 5:00 p.m.; Wednesday, September 14, 2022, from 11:00 a.m. to 5:00 p.m.; Friday, September 16, 2022, from 11:00 a.m. to 5:00 p.m. All times listed are in Eastern Time.

ADDRESSES: The meetings will be conducted virtually. Please refer to the CASAC website at *https://casac.epa.gov* for details on how to access the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this notice may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), SAB Staff Office, by telephone at (202) 564–2050 or via email at *yeow.aaron@epa.gov.* General information concerning the CASAC, as well as any updates concerning the meetings announced in this notice, can be found on the CASAC website: *https://casac.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409(d)(2), to review air quality criteria and NAAQS and recommend to the EPA Administrator any new NAAQS and revisions of existing criteria and NAAQS as may be appropriate. The CASAC shall also: advise the EPA Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised NAAQS; describe the research efforts necessary to provide the required information; advise the EPA Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity; and advise the EPA Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such NAAQS. As amended, 5 U.S.C., App. Section 109(d)(1) of the Clean Air Act (CAA) requires that EPA carry out a periodic review and revision, as appropriate, of the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including ozone.

The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., app. 2, and conducts business in accordance with FACA and related regulations. The CASAC and the CASAC Ozone Review Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the CASAC Ozone Review Panel will hold public meetings to receive a briefing from EPA on the 2020 Ozone Integrated Science Assessment (ISA), to hear public comments, and for the panel to discuss scientific issues related to the 2020 Ozone ISA.

Technical Contacts: Any technical questions concerning EPA's 2020 Ozone ISA should be directed to Dr. Steven Dutton (*dutton.steven@epa.gov*).

Availability of Meeting Materials: Prior to the meeting, the review documents, agenda and other materials will be accessible on the CASAC website: *https://casac.epa.gov.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments on the topic of this advisory activity, including the charge to the CASAC and the EPA review documents, and/or the group conducting the activity, for the CASAC to consider as it develops advice for EPA. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instructions below to submit comments.

Oral Statements: Individuals or groups requesting an oral presentation during the public meeting will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via email) at the contact information noted above by August 22, 2022, to be placed on the list of public speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by CASAC members, statements should be supplied to the DFO (preferably via email) at the contact information noted above by August 22, 2022. It is the SAB Staff Office general policy to post written comments on the web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 564–2050 or *yeow.aaron@epa.gov.* To request accommodation of a disability, please contact the DFO, at the contact information noted above, preferably at least ten days prior to each meeting, to give EPA as much time as possible to process your request.

V. Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2022–14812 Filed 7–11–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0490; FRL–9966–01–OCSPP]

Petition To Revoke Tolerances and Cancel Registrations for Certain Organophosphate Uses; Notice of Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is seeking public comment on a November 18, 2021 petition filed by the United Farm Workers, United Farm Workers Foundation, Earthjustice, California Rural Legal Assistance Foundation, Farmworker Association of Florida, Farmworker Justice, GreenLatinos, Labor Council for Latin American Advancement, League of United Latin American Citizens, Learning Disabilities Association of America, Pesticide Action Network North America, and Pineros y Campesinos Unidos del Noroeste (the Earthjustice Petition). The petitioners request that the Agency revoke all tolerances and cancel all associated registrations for food uses of

the following organophosphate pesticides (OPs): Acephate, Densulide, Chlorethoxyfos, Chlorpyrifos-methyl, Diazinon, Dichlorvos, Dicrotophos, Dimethoate, Ethoprop, Malathion, Naled, Phorate, Phosmet, Terbufos, and Tribufos. In addition, the petitioners request that the Agency take actions to protect workers from potential risks of exposure to OPs, update its risk assessments to include a protective regulatory endpoint for children, and complete registration review on the OP class of chemicals by October 1, 2022. The petition was submitted pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA), the Administrative Procedure Act (APA), and the First Amendment.

DATES: Comments must be received on or before August 11, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2022–0490, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Anna Romanovsky, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2271; email address: *romanovsky.anna@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets#tips.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

B. How can I get copies of this document and other related information?

A copy of the Earthjustice Petition, *Petition to Revoke Food Tolerances and Cancel Registrations for Harmful Organophosphate Uses,* is available in the docket under Docket ID No. EPA–HQ–OPP–2022–0490.

II. What action is the Agency taking?

EPA seeks public comment during the next 30 days on a petition dated November 18, 2021 (available in docket number EPA–HQ–OPP–2022–0490 at *https://www.regulations.gov*) from the United Farm Workers, United Farm Workers Foundation, Earthjustice, California Rural Legal Assistance Foundation, Farmworker Association of Florida, Farmworker Justice, GreenLatinos, Labor Council for Latin American Advancement, League of United Latin American Citizens, Learning Disabilities Association of America, Pesticide Action Network North America, and Pineros y Campesinos Unidos del Noroeste. The petitioners request that the Agency revoke all tolerances and cancel all associated registrations for food uses of OPs that its risk assessments determine to be unsafe, update its risk assessments to use neurodevelopmental toxicity instead of 10% red blood cell acetylcholinesterase inhibition as a regulatory endpoint that is protective for children, and cancel registrations for uses that have unreasonable adverse effects on workers. The petitioners further request that the Agency accomplish the foregoing no later than October 1, 2022. The petition was submitted pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* and the First Amendment.

The OPs are a group of pesticides with a broad range of uses and are one of the most widely used class of pesticides in U.S. agriculture. The OPs are a class of chemicals with a common mechanism of toxicity: inhibition of the acetylcholinesterase (AChE) enzyme. There are currently 20 OPs going through registration review. EPA's risk assessments and other registration review materials for the OPs included in the Earthjustice Petition are contained in the dockets for each of the respective registration review cases, as listed here:

- Acephate (EPA–HQ–OPP–2008–0915).
- Bensulide (EPA–HQ–OPP–2008–0022).
- Chlorethoxyfos (EPA–HQ–OPP–2008–0843).
- Chlorpyrifos-methyl (EPA–HQ–OPP–2010–0119).
- Diazinon (EPA–HQ–OPP–2008–0351).
- Dichlorvos (EPA–HQ–OPP–2009–0209).
- Dicrotophos (EPA–HQ–OPP–2008–0440).
- Dimethoate (EPA–HQ–OPP–2009–0059).
- Ethoprop (EPA–HQ–OPP–2008–0560).
- Malathion (EPA–HQ–OPP–2009–0317).
- Naled (EPA–HQ–OPP–2009–0053).
- Phorate (EPA–HQ–OPP–2007–0674).
- Phosmet (EPA–HQ–OPP–2009–0316).

- Terbufos (EPA–HQ–OPP–2008–0119).
- Tribufos (EPA–HQ–OPP–2008–0883).

On December 2, 2021, the Agency released an updated schedule for registration review for the cases for which interim registration review decisions will be issued after October 2022. The schedule can be found on the EPA website at *https://www.epa.gov/pesticide-reevaluation/upcoming-registration-review-actions.*

Authority: 21 U.S.C. 346a.

Dated: July 6, 2022.

Mary Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2022–14795 Filed 7–11–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0720; FRL–9967–01–OCSPP]

Pesticide Registration Review; Pesticide Dockets Opened for Review and Comment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the EPA's preliminary work plans for the following chemicals: Ametoctradin, Fenpyrazamine, Picoxystrobin, and *Trichoderma* species. With this document, the EPA is opening the public comment period for registration review for these chemicals.

DATES: Comments must be received on or before September 12, 2022.

ADDRESSES: Submit your comments, to the docket identification (ID) number for the specific pesticide of interest provided in the Table in Unit IV., through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact:* The Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

For general questions on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in Table 1 in Unit IV.

B. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Background

Registration review is the EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. As part of the registration review process, the Agency has completed preliminary workplans for all pesticides listed in Table 1 in Unit IV. Through this program, the EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

The EPA is conducting its registration review of the chemicals listed in Table 1 in Unit IV. pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. FIFRA section 3(g) provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. Registration Reviews

A. What action is the Agency taking?

A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. Pursuant to 40 CFR 155.50, this notice announces the availability of the EPA's preliminary work plans for the pesticides shown in

Table 1 and opens a 60-day public comment period on the work plans.

TABLE 1—PRELIMINARY WORK PLANS BEING MADE AVAILABLE FOR PUBLIC COMMENT

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Ametoctradin Case Number 7066	EPA–HQ–OPP–2021–0647	Quinn Gavin, *gavin.quinn@epa.gov*, (202) 566–2284.
Fenpyrazamine Case Number 7459	EPA–HQ–OPP–2022–0454	Michelle Nolan, *nolan.michelle@epa.gov*, (202) 566–2237.
Picoxystrobin Case Number 7283	EPA–HQ–OPP–2022–0489	Samantha Thomas, *thomas.samantha@epa.gov*, (202) 566–2368.
Trichoderma species Case Number 6050	EPA–HQ–OPP–2021–0765	Susanne Cerrelli, *cerrelli.susanne@epa.gov*, (202) 566–1516.

B. What is in the docket?

The registration review docket contains information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

The registration review procedural rule at 40 CFR 155.50(b) provides for a minimum 60-day public comment period on all preliminary registration review work plans. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary changes to a pesticide's workplan. All comments should be submitted using the methods in **ADDRESSES** and must be received by the EPA on or before the closing date. These comments will become part of the docket for the pesticides included in Table 1 in Unit IV. Comments received after the close of the comment period will be marked ''late.'' The EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and may provide a ''Response to Comments Memorandum'' in the docket. The final registration review work plan will explain the effect that any comments had on the final work plan and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *https://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 6, 2022.

Mary Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2022–14826 Filed 7–11–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9926–01–OMS]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, Maine Department of Environmental Protection (ME DEP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA) approval of the Maine Department of Environmental Protection (ME DEP) request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA approves the authorized program revisions/modifications as of July 12, 2022.

FOR FURTHER INFORMATION CONTACT: Shirley M. Miller, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–2908, *miller.shirley@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On May 19, 2022, the Maine Department of Environmental Protection (ME DEP) submitted an application titled National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Tool (NeT) for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed

ME DEP's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve ME DEP's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR is being published in the **Federal Register**:

Part 123: EPA-Administered Permit Programs: the National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR parts 122 and 125

Part 403: General Pretreatment Regulations for Existing and New Sources of Pollution Reporting under 40 CFR part 403

ME DEP was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: July 6, 2022.

Jennifer Campbell,

Director, Office of Information Management.

[FR Doc. 2022–14754 Filed 7–11–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than August 11, 2022.

A. Federal Reserve Bank of Cleveland (Bryan S. Huddleston, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566, or electronically to *Comments.applications@clev.frb.org*:

1. *F.N.B. Corporation, Pittsburgh, Pennsylvania;* to acquire UB Bancorp, and thereby indirectly acquire Union Bank, both of Greenville, North Carolina.

B. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Global One Bancshares, Inc., Carrollton, Texas;* to become a bank holding company by acquiring Chappell Hill Bank, Chappell Hill, Texas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–14837 Filed 7–11–22; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

Notice–ID–2022–0X; Docket No. 2022–000X; Sequence No. XX]

Privacy Act of 1974; System of Records

AGENCY: General Services Administration, (GSA).

ACTION: Notice of a Modified System of Records.

SUMMARY: GSA proposes to revise a system of records subject to the Privacy Act of 1974, as amended. The system will provide for the collection of information to track and manage the Art in Architecture program, the National Artist Registry, and the fine arts collection.

DATES: Applicable: August 11, 2022.

ADDRESSES: Submit comments identified by ''Notice-ID–2022–0X, Modify System of Records'' via *http://www.regulations.gov.* Search *regulations.gov* for Notice–ID–2022–0X, Modified System of Records Notice. Select the link ''Comment'' that corresponds with ''Notice-ID–2022–0X, Modified System of Records Notice.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Notice–ID–2022–0X, Modified System of Records Notice'' on your attached document. If your comment cannot be submitted using *regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Call or email the GSA Chief Privacy Officer: telephone 202–322–8246; email *gsa.privacyact@gsa.gov.*

SUPPLEMENTARY INFORMATION: GSA proposes to modify a system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. The modified system will continue to provide for the collection of information to track and manage the Art in Architecture program and now includes optional data elements within the ''categories of records'', clarifies one routine use and updates the records retention description to enhance collection management.

SYSTEM NAME AND NUMBER:

The Museum System (TMS) GSA/PBS–7.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The system is maintained for GSA under contract, and the records are maintained in electronic form. The system and records are located at the vendor location in RTP Data Center (GSA Building Code NC9999), 109 T.W. Alexander Drive, Research Triangle Park, NC 27711.

SYSTEM MANAGER:

General Services Administration, Attn: Jennifer Gibson, Director, Center for Fine Arts, 1800 F Street NW, Washington, DC 20405; email *jennifer.gibson@gsa.gov.*

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information needed for managing the Art in Architecture, Fine Arts, and the Design Excellence Peer programs, which includes access to information on artists represented in the fine arts collection, artists in the National Registry, and participants in the Design Excellence Peer program. Records may include but are not limited to: (1) Biographical data such as name, birth date, and educational level; and (2) contact information such as telephone number, street address and email address; and (3) optional demographic information including gender, race and ethnicity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

h. In consultation with the artist or the artist's representatives and consistent with professional practices in other arts institutions, nationality, city, state, country and year of birth may be disclosed to the public when relevant to an artist's work.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

121.1/040 Significant Art Inventory Records.

This series contains records used in identifying items within the building that are removable or replaceable, or have a significant historical and/or architectural value. For art associated with a building (such as statuary, paintings, and architectural features), records such as inventories, case files, art maintenance records, art appraisals and art restoration documents and related materials are included.

Retention: Permanent. Cut off at the end of the fiscal year when the case file is closed, the artifact is destroyed, transferred, or otherwise de-accessioned. Transfer to NARA 15 years after cutoff.

Legal Authority: DAA–0121–2015–0001–0007 (121.1/040). 121.1/041 Routine Equipment and Art Inventory Records. This series contains records used in identifying equipment and items within the building that are removable or replaceable. Included are inventories of heating, electrical, plumbing, and air handling equipment, vertical transportation equipment and records related to recording the condition, maintenance, and associated schedules, documentation, and schematics for that equipment. For managing statuary, paintings, and architectural features associated with a building, records include routine correspondence and maintenance reports, exhibition and curated collections management documents, proposal submissions, and other records not filed under 121.1/040—Significant Art Inventory Records.

Retention: Temporary. Cut off at the end of the fiscal year when art or equipment has been deaccessioned, obsolete, or superseded, a case file is closed, or when related documents expire. Destroy 5 fiscal years after cutoff.

Legal Authority: DAA–0121–2015–0001–0008 (121.1/041).

* * * * *

HISTORY:

86 FR 46849.

Dated: June 29, 2022.

Richard Speidel,

Chief Privacy Officer, Office of the Deputy Chief Information Officer, General Services Administration.

[FR Doc. 2022–14827 Filed 7–11–22; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Radiation Therapy for Bone Metastases

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Supplemental Evidence and Data Submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Radiation Therapy for Bone Metastases,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before August 11, 2022.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Jenae Benns, Telephone: 301–427–1496 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Center (EPC) Program to complete a review of the evidence for *Radiation Therapy for Bone Metastases.* AHRQ is conducting this systematic review pursuant to Section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on Radiation Therapy for Bone Metastases, including those that describe adverse events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/radiation-therapy-bone-metastases/protocol.*

This is to notify the public that the EPC Program would find the following information on Radiation Therapy for Bone Metastases helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and

available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQ)

KQ 1: What is the effectiveness and what are the harms of external beam radiation therapy (EBRT) in the palliative treatment of bone metastases in symptomatic adults when combined with additional therapies (*e.g.,* surgery, radionuclide therapy, bisphosphonate therapy, ablation kyphoplasty/vertebroplasty) compared with EBRT alone?

KQ 2: For symptomatic adults with bone metastases who will receive initial radiation for palliation, what is the comparative effectiveness and what are the comparative harms of dose-fractionation schemes and techniques for delivery (*e.g.,* three-dimensional conformal radiation therapy, stereotactic body radiation)?

KQ 3: For symptomatic adults with bone metastases who will receive re-irradiation for palliation, what is the comparative effectiveness and what are the comparative harms of dose-fractionation schemes and techniques for delivery (*e.g.,* three-dimensional conformal radiation therapy, stereotactic body radiation)?

Contextual Questions (CQ)

CQ 1: What are common barriers and facilitators to implementing guidance in radiation oncology, specifically related to palliative radiation for metastatic bone disease (MBD)?

CQ 2: What strategies could be used to promote the use and implementation of guidance in radiation oncology, specifically related to palliative radiation for MBD?

CQ 3: In symptomatic patients considered for palliative radiation therapy for MBD, to what extent does patient financial distress/hardship differ between EBRT dose/fraction schemes or technique?

PICOTS (Populations, Interventions, Comparators, Outcomes, Timing, and Setting)

	Inclusion	Exclusion
Population	*KQ 1:* Symptomatic adults with cancer that has metastasized to the bone. *KQ 2:* Symptomatic adults with bone metastases who will receive initial palliative radiation. *KQ 3:* Symptomatic adults with bone metastases who will receive re-radiation for palliation. *For all KQ:* Consider patient and clinical characteristics (*e.g.,* age, sex, social determinants of health, primary tumor histology, site of metastases).	• Patients <18 years old. • Asymptomatic patients. • Patients with primary bone tumors.
Interventions	*KQ 1:* External beam radiation therapy for the palliative management of bone metastasis *with co-interventions,* additional therapies (*e.g.,* surgery, radionuclide therapy, bisphosphonate therapy, ablation, kyphoplasty/vertebroplasty). *KQ 2 and KQ 3:* Comparisons of dose-fractionation schemes for EBRT, comparisons of EBRT techniques (*e.g.,* conventional RT vs. SBRT, SBRT vs. IMRT).	*KQ 1, 2, 3:* Proton beam therapy. *KQ1:* Brachytherapy.
Comparators	*KQ 1:* No cointervention (*i.e.,* EBRT alone). *KQ 2 and KQ 3:* Comparisons of dose-fractionation schemes, comparisons of EBRT modalities/techniques.	
Outcomes	*Effectiveness:* Primary outcomes: • Pain (level and duration) • Skeletal function • Relief of spinal cord compression • Quality of life Additional (secondary) outcomes: • Local recurrence • Fracture prevention • Overall survival • Need for re-radiation • Use of pain medication, need for other interventions for pain relief *Harms and adverse events:* Harms (*e.g.,* rate of radiation/treatment toxicity, radiation-induced fracture rates, reduced mobility, reduced independence), adverse events (pain flare, radiation recall, fatigue, skin changes, etc.).	• Non-validated measurement instruments for clinician or patient rated outcomes (*e.g.,* pain, function, HRQOL).
Timing	Any (timing may depend on treatments provided and outcomes assessed).	None.
Setting	Any	None.

PICOTS (POPULATIONS, INTERVENTIONS, COMPARATORS, OUTCOMES, TIMING, AND SETTING)—Continued

	Inclusion	Exclusion
Study design and publication dates.	*All KQ:* Focus will be on the best evidence available that permits direct comparisons to answer key questions. RCTs will be initially sought; in the absence of RCTs, prospective comparative studies that control for confounding will be considered; if no comparative prospective studies are available, retrospective comparative studies that control for confounding will be considered. In the absence of comparative studies, single arm (*e.g.,* case series, pre-post studies) may be considered. For evaluation of harms, comparative cohort and case-control studies will be included; we will focus on studies specifically designed to evaluate harms. Studies of at least 10 patients per treatment arm.	*General:* • Dosimetry modeling studies. • Non-human studies. • NRSI for effectiveness if RCTs are available. • Studies with <10 patients per arm. • Single arm studies (unless no comparative studies); if used, exclude studies of <10 patients. • Case reports. *Publication dates:* Prior to 1985. *Publication types:* Conference abstracts or proceedings, editorials, letters, white papers, citations that have not been peer-reviewed, single site reports of multi-site studies.

EBRT = external beam radiation therapy; HRQOL = health-related quality of life; IMRT = intensity modulated radiation therapy; KQ = key question; NRSI = nonrandomized studies of intervention; RCT = randomized controlled trial; RT = radiation therapy; SBRT = stereotactic radiation therapy.

Dated: July 6, 2022.

Mamatha Pancholi,

Acting Chief of Staff, Chief Data Officer.

[FR Doc. 2022–14735 Filed 7–11–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-22–22GR; Docket No. CDC–2022–0081]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Milestone Tracker In-App survey to understand the outcome of the Milestone Tracker app on developmental surveillance. This project is designed to evaluate the Milestone Tracker mobile application (app) developed by CDC's ''Learn the Signs. Act Early.'' program and will be used to understand how the app is being used, if users find it helpful, and if the app helped them to identify a possible developmental concern(s).

DATES: CDC must receive written comments on or before September 12, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0081 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Milestone Tracker In-App Survey to Understand the Outcome of the Milestone Tracker App on Developmental Surveillance—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

The Centers for Disease Control and Prevention's ''Learn the Signs. Act Early.'' program (LTSAE) promotes efforts to increase developmental monitoring across all 50 states, the District of Columbia, and other U.S. territories through its Act Early Initiatives and Act Early Ambassador program, which heavily promote use of *CDC's Milestone Tracker* app. The app is a tool to help parents and others track and monitor their children's developmental milestones and guide them on next steps for when a child is missing milestones or there are other concerns.

Since the app release in 2017, the program has had limited capability to evaluate target outcomes and impact of use of the app. Without directly asking the app users, the program has no way to know if use of this app is helpful, has made a difference in terms of identifying developmental delays among children, or if it is helping children get the services and support they may need as a result. This web-based survey evaluation will allow LTSAE to collect this information and assess the outcomes and impact of this tool to determine if the app is having the intended impact and should be continued to be made available as is or with improvements.

The goal of the LTSAE program is to improve early identification of developmental delays and disabilities by developing high-quality, evidence informed and parent-friendly tools and resources to facilitate ongoing family-engaged developmental monitoring. The *Milestone Tracker* app is one of these tools to help parents and other caregivers track early development and link parents and guardians to the appropriate care and resources.

The goal of this project is to evaluate the *Milestone Tracker* app developed by CDC's ''Learn the Signs. Act Early.'' program. The evaluation will consist of two brief web surveys at two distinct times during the app user experience. The objectives of these two short surveys is to understand how the app is being used, if users like the app/find it helpful, if the app helped them to identify a possible developmental concern, if they plan to use it again, and what happens as a result of using the app. The resulting survey data will be used to assess user satisfaction with the app as well as to evaluate short term and medium-term outcomes associated with its use.

CDC requests OMB approval for an estimated 8,000 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Individuals using the Milestone Tracker app.	Milestone Tracker In app Baseline Survey.	200,000	1	2/60	6,667
Individuals using the Milestone Tracker App that have indicated a developmental concern.	Milestone Tracker App Follow-up Survey.	40,000	1	2/60	1,333
Total					8,000

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–14759 Filed 7–11–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–22CA]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Fire Fighter Fatality Investigation and Prevention Program Survey'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on January 31, 2022 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Fire Fighter Fatality Investigation and Prevention Program (FFFIPP) Survey—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Fire Fighter Fatality Investigation and Prevention Program (FFFIPP) conducts independent investigations of fire fighter (FF) line-of-duty deaths (LODD) and recommends ways to prevent deaths and injuries. In 2003, an evaluation was conducted to determine the extent to which recommendations from NIOSH investigations of FF fatalities are being implemented by fire departments (FDs).

Since then, there have been changes to the Program recommendations and methods of disseminating FFFIPP reports. For example, there have been changes to: (1) the details and types of recommendations for preventing FF fatalities, and (2) the method to disseminate the FFFIPP reports to FDs (driven in large part by cost). Dissemination methods have evolved from hardcopy mailings to FDs, to internet-based, with notifications of new FFFIPP reports by the fire service media, and if FDs sign-up, at the NIOSH website for notifications of new reports.

Understanding how, or if NIOSH recommendations are used by various types of FDs will allow a better understanding of barriers to the use of proven prevention recommendations and help identify approaches to improve the delivery of services to FDs. Additionally, we will gain insight into whether changes to the communication and dissemination has impacted the reach of these recommendations. Knowing if different types of FDs are aware of and willing to access FFFIPP reports and recommendations in non-print formats is critical, as these recommendations cannot have the intended impact of saving fire fighter lives if large numbers of FDs do not know where to find NIOSH reports or have the resources to access them.

The purpose of this data collection is to assess FD implementation of the NIOSH FFFIPP recommendations and identify barriers to implementation of recommendations. Results will provide an understanding of current FD operational procedures, insight into motor vehicle (MV)-related activities and related policies, and identify whether FFFIPP recommendations are being utilized by FDs. Findings will inform strategies for communication of future recommendations and identify areas for potential intervention projects in order to improve the delivery of services and help ensure an effective and efficient stakeholder experience with the Program.

The estimate for burden hours is based on a pilot test of the survey instrument by eight FD personnel. In the pilot test, the average time to complete the survey including time for reviewing instructions, gathering needed information, and completing the survey was 10–25 minutes. There are screening questions at the beginning of the survey so all respondents may not actually participate. The respondent universe is based on: (1) 4,500 FDs, (2) eight strata (region, department type), and (3) positions (firefighter, chief, company officer). An estimated 13,500 respondents are anticipated to participate in the survey. The annual respondent burden is estimated to be 4,050 hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Fire Fighters	Survey	4,500	1	18/60
Fire Chiefs	Survey	4,500	1	18/60
Company Officers	Survey	4,500	1	18/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–14756 Filed 7–11–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–0457]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled, ''Aggregate Reports for Tuberculosis Program Evaluation'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on March 14, 2022, to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written

comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Aggregate Reports for Tuberculosis Program Evaluation (OMB Control No. 0920–0457, Exp. 12/31/2022)—Extension—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Centers for Disease Control and Prevention, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, Division of Tuberculosis Elimination (CDC/NCHHSTP/DTBE) requests an Extension of the Aggregate Reports for Tuberculosis Program Evaluation information collection, previously approved under OMB Control No. 0920–0457. This request is for a three-year period.

The requested Extension allows awardees to address the change in the national strategies for TB control and prevention emphasizing treatment of individuals with latent TB infection (LTBI) and at high risks of progression to TB disease. This data collection will help programs to assess high-risk populations served and to evaluate the adaptation and effectiveness of new diagnostic tests and drug regimens in treating LTBI.

DTBE is the lead agency for tuberculosis elimination in the United States. To ensure the elimination of tuberculosis in the United States, CDC monitors indicators for key program activities, such as finding tuberculosis infections in recent contacts of cases, and in other persons likely to be infected, and providing therapy for latent tuberculosis infection. In 2000, CDC implemented two program evaluation reports for annual submission: (1) Aggregate report of follow-up and treatment for contacts to tuberculosis cases, and (2) Aggregate report of targeted testing and treatment for latent tuberculosis infection. The respondents for these reports are the 67 state and local tuberculosis control programs receiving federal cooperative agreement funding through DTBE. These reports emphasize treatment outcomes, high-priority target populations vulnerable to tuberculosis, and electronic report entry and submission to CDC through the National Tuberculosis Indicators Project (NTIP), a secure web-based system for program evaluation data. No other federal agency collects this type of national tuberculosis data. The Aggregate report of follow-up for contacts of tuberculosis and Aggregate report of targeted testing and treatment for latent tuberculosis infection are the only data source about latent tuberculosis infection for monitoring national progress toward tuberculosis elimination with these activities. CDC provides ongoing assistance in the preparation and utilization of these reports at the local and state levels of public health jurisdiction. CDC also provides respondents with technical support for NTIP access.

CDC requests OMB approval for an estimated 268 annual burden hours. Participation by respondents is voluntary, and there is no cost to participants other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Health Department Awardee (State, Local, City, or other jurisdiction).	Follow-up and Treatment of Contacts to Tuberculosis Cases Form (3a).	67	1	2
	Targeted Testing and Treatment for Latent Tuberculosis Infection (3b).	67	1	2

Jeffrey M. Zirger,
Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–14757 Filed 7–11–22; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–0765]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request ''Fellowship Management System (FMS)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on March 14, 2022 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of

this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Fellowship Management System (FMS) (OMB Control No. 0920–0765, Exp. 3/31/2023)—Revision—Center for Surveillance, Epidemiology, and Laboratory Services (CSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC's Division of Scientific Education and Professional Development (DSEPD), in the Center for Surveillance, Epidemiology, and Laboratory Services (CSELS), requests OMB approval to continue use of the CDC Fellowship Management System (FMS) (OMB Control No. 0920–0765), with changes. The mission of DSEPD is to improve health outcomes through a competent, sustainable, and empowered public health workforce. Professionals in public health, epidemiology, medicine, economics, information science, veterinary medicine, nursing, public policy, and other related professionals seek opportunities, through CDC fellowships, to broaden their knowledge, and skills to improve the science and practice of public health. CDC fellows are assigned to state, tribal, local, and territorial public health agencies; federal government agencies, including CDC and Department of Health and Human Services' (HHS) operational divisions, such as Centers for Medicare & Medicaid Services; and to nongovernmental organizations, including academic institutions, tribal organizations, and private public health organizations.

CDC uses FMS to collect, process, and manage data from nonfederal applicants seeking training or public health support services through CDC fellowships. FMS is used to electronically submit fellowship applications, submit fellowship host site proposals, track completion of fellowship activities, and maintain fellowship alumni directories online. FMS is a flexible and robust electronic information system standardized and tailored for each CDC fellowship, collecting only the minimum amount of information needed. The system is critical to streamlining data management for CDC and reducing burden for respondents. FMS is key to CDC's ability to protect the public's health by supporting training opportunities that strengthen the public health workforce.

The proposed revision has two purposes: (1) increase the number of likely respondents, and (2) change the software platform on which FMS operates. The increase in the estimated number of respondents is a result of increased funding that will allow DSEPD to expand many of the fellowships managed through FMS. The change in software platform will provide CDC with an even more efficient, effective, and secure electronic mechanism for collecting, processing, and monitoring fellowship information. The proposed software platform is the Microsoft® Power Platform® (Microsoft Corporation, Cary, Washington). Integration of the suite of Microsoft tools for data management, analysis, and visualization will allow CDC to access fellowship data in real time; moreover, data cleaning and manipulation do not need to be done outside the system, which will increase the security of these data. These increased functionalities will facilitate the enhanced use of administrative data collections for program improvement and evidence building activities across CDC and other federal agencies. The update to the software platform will also make it easier for additional fellowships to opt to use FMS, expanding the benefits of the system to a broader set of CDC programs. Finally, the platform change also should enhance user experience. This revision does not propose substantive changes to the nature or extent of information collected from respondents.

OMB approval is requested for three years. The revision will allow all respondents—fellowship applicants, public health agencies hosting fellowship participants, and fellowship alumni—the continued use of FMS for submission of electronic data with increased efficiency and reduced burdens.

The annualized burden table reflects OMB-approved changes since 2020 and anticipated growth in fellowships from 2022 onward. There is no cost to respondents other than their time. The total estimated annualized burden hours are 13,186.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Fellowship Applicants	FMS Application Module	5,146	1	87/60
Reference Letter Writers	FMS Application Module	6,842	1	15/60
Subset of FMS Fellowship Applicants	FMS Application Module (13.6)	220	1	30/60
Public Health Agency or Organization Staff	FMS Host Site Module	960	1	75/60
Public Health Agency or Organization Staff	FMS Activity Tracking Module	555	2	30/60
Fellowship alumni	FMS Alumni Directory	3,484	1	37/60

Jeffrey M. Zirger,
Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–14758 Filed 7–11–22; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1349]

Mikart, LLC, et al.; Withdrawal of Approval of 31 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of 31 abbreviated new drug applications (ANDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of August 11, 2022.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 240–402–6980, *Martha.Nguyen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process described in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Application No.	Drug	Applicant
ANDA 040846	Hydrocodone Bitartrate and Acetaminophen Tablets, 325 milligrams (mg); 2.5 mg.	Mikart, LLC, 1750 Chattahoochee Ave. NW, Atlanta, GA 30318.
ANDA 040851	Benzonatate Capsules, 100 mg, 150 mg, and 200 mg	Do.
ANDA 072903	Ibuprofen Tablets, 200 mg	ANI Pharmaceuticals, Inc., 210 Main St. West, Baudette, MN 56623.
ANDA 073519	Tolmetin Sodium Capsules, Equivalent to (EQ) 400 mg base	Do.
ANDA 074267	Guanabenz Acetate Tablets, EQ 4 mg base and EQ 8 mg base	Do.
ANDA 074498	Indapamide Tablets, 1.25 mg and 2.5 mg	Do.
ANDA 074840	Etodolac Capsules, 200 mg and 300 mg	Do.
ANDA 074844	Etodolac Capsules, 200 mg and 300 mg	Do.
ANDA 075212	Ranitidine Hydrochloride (HCl) Tablets, EQ 75 mg base	Do.
ANDA 076030	Flecainide Acetate Tablets, 50 mg, 100 mg, and 150 mg	Do.
ANDA 076086	Fluconazole Tablets, 50 mg, 100 mg, 150 mg, and 200 mg	Do.
ANDA 077426	Ranitidine HCl Tablets, EQ 150 mg base and EQ 300 mg base	Do.
ANDA 077641	Zonisamide Capsules, 25 mg, 50 mg, and 100 mg	Do.
ANDA 077979	Alprazolam Extended Release Tablets, 0.5 mg, 1 mg, 2 mg, and 3 mg.	Do.
ANDA 085269	Meclizine HCl Tablets, 12.5 mg	Do.
ANDA 085740	Meclizine HCl Tablets, 25 mg	Do.
ANDA 087296	Chlorthalidone Tablets, 25 mg	Do.
ANDA 088164	Chlorthalidone Tablets, 25 mg	Do.
ANDA 088641	Glucamide Tablets, 250 mg	Do.
ANDA 088732	Meclizine HCl Tablets, 12.5 mg	Do.
ANDA 088768	Chlorpropamide Tablets, 100 mg	Do.
ANDA 088826	Chlorpropamide Tablets, 250 mg	Do.
ANDA 090572	Cetirizine HCl, Syrup 5 mg/5 milliliters (mL)	Tris Pharma, Inc., 2031 U.S. Hwy. 130, Suite D, Monmouth Junction, NJ 08852.
ANDA 090906	Levetiracetam Tablets, 250 mg, 500 mg, 750 mg, and 1 gram (gm)	Alvogen PB Research and Development, U.S. Agency for Lotus Pharmaceutical Co., Ltd., Nantou Plant, 44 Whippany Rd., Suite 300, Morristown, NJ 07960.
ANDA 201944	Potassium Chloride Extended Release Capsules, 8 milliequivalent (mEq) and 10 mEq.	Tris Pharma, Inc.
ANDA 202095	Levetiracetam Extended Release Tablets, 500 mg and 750 mg	Alvogen PB Research and Development, U.S. Agency for Lotus Pharmaceutical Co., Ltd.
ANDA 202246	Levonorgestrel Tablets, 1.5 mg	Alvogen, Inc., 44 Whippany Rd., Suite 300, Morristown, NJ 07960.
ANDA 203298	Calcium Acetate Capsules, 667 mg	Alvogen PB Research and Development, U.S. Agency for Lotus Pharmaceutical Co., Ltd.
ANDA 204180	Amiloride HCl Tablets, 5 mg	USpharma Windlas, LLC, 115 Blue Jay Dr., Suite 101, Liberty, MO 64068.
ANDA 205442	Linezolid Injection, 600 mg/300 mL (2 mg/mL)	Hospira, Inc., 275 North Field Dr., Bldg. H1, Lake Forest, IL 60045.
ANDA 205790	Prasugrel Tablets, EQ 5 mg base and EQ 10 mg base	USpharma Windlas, LLC.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of August 11, 2022. Approval of each entire application is withdrawn, including any strengths and dosage forms inadvertently missing from the table.

Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and

(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on August 11, 2022 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: July 1, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–14798 Filed 7–11–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1729]

Revocation of Emergency Use of a Drug During the COVID–19 Pandemic; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorization (EUA) (the Authorization) issued to Fresenius Kabi USA, LLC (Fresenius Kabi), for Fresenius Propoven 2% Emulsion. FDA revoked the Authorization on May 10, 2022, under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The revocation, which includes an explanation of the reasons for the revocation, is reprinted in this document.

DATES: The Authorization is revoked as of May 10, 2022.

ADDRESSES: Submit written requests for single copies of the revocation to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the Authorizations may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorizations.

FOR FURTHER INFORMATION CONTACT: Michael Mair, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On May 8, 2020, FDA issued an Authorization (EUA 050) to Fresenius Kabi for Fresenius Propoven 2% Emulsion, subject to the terms of the Authorization. Notice of the issuance of the Authorization was published in the **Federal Register** on September 11, 2020 (85 FR 56231), as required by section 564(h)(1) of the FD&C Act. The authorization of a drug for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

II. EUA Revocation Request

In a request received by FDA on April 8, 2022, Fresenius Kabi requested revocation of, and on May 10, 2022, FDA revoked, the Authorization for the Fresenius Propoven 2% Emulsion. Because Fresenius Kabi notified FDA that it does not intend to offer the Fresenius Propoven 2% Emulsion in the United States anymore and requested FDA revoke the EUA for the Fresenius Propoven 2% Emulsion, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

III. Electronic Access

An electronic version of this document and the full text of the revocation is available on the internet at *https://www.regulations.gov/.*

IV. The Revocation

Having concluded that the criteria for revocation of the Authorization under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUA for Fresenius Kabi's Fresenius Propoven 2% Emulsion. The revocation in its entirety follows and provides an explanation of the reasons for revocation, as required by section 564(h)(1) of the FD&C Act.

May 10, 2022

Nicole Chutipisalkul
Sr. Regulatory Affairs Specialist
Fresenius Kabi USA, LLC
Three Corporate Drive
Lake Zurich, IL 60047

Re: Revocation of EUA 050 – Propoven 2% Emulsion

Dear Ms. Chutipisalkul:

This letter is in response to the request from Fresenius Kabi USA, LLC ("Fresenius Kabi"), received on April 8, 2022, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the Fresenius Propoven 2% Emulsion issued on May 8, 2020. Fresenius Kabi has informed the FDA that the inventory of the Fresenius Propoven 2% emulsion within the United States has been depleted and that Fresenius Kabi does not intend to offer this product in the United States anymore. FDA understands Fresenius Kabi has notified healthcare facilities and providers that have received the Fresenius Propoven 2% Emulsion under the EUA to also stop using this product.

The authorization of a drug for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Fresenius Kabi has notified FDA that it does not intend to offer the Fresenius Propoven 2% Emulsion in the United States anymore and requested FDA revoke the EUA for the Fresenius Propoven 2% Emulsion, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization.

Accordingly, FDA hereby revokes EUA 050 for the Fresenius Propoven 2% Emulsion, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Fresenius Propoven 2% Emulsion is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

Dated: July 5, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–14800 Filed 7–11–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0277]

Risk Management Plans To Mitigate the Potential for Drug Shortages; Draft Guidance for Industry; Availability; Agency Information Collection Activities; Proposed Collection; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is extending the comment period for the notice of availability entitled ''Risk Management Plans to Mitigate the Potential for Drug Shortages; Draft Guidance for Industry; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request'' that appeared in the **Federal Register** on May 20, 2022. The Agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the ''Risk Management Plans to Mitigate the Potential for Drug Shortages; Draft Guidance for Industry; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request'' published May 20, 2022 (87 FR 30963). Submit either electronic or written comments by August 31, 2022, to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–0277 for ''Risk Management Plans to Mitigate the Potential for Drug Shortages.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the draft guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: *With regard to the draft guidance:* Karen Takahashi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 6686, Silver Spring, MD 20993–0002, 301–796–3191; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

With regard to the proposed collection of information: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 20, 2022, FDA published a notice of availability with a 60-day comment period to provide comments on the draft guidance entitled ''Risk Management Plans to Mitigate the Potential for Drug Shortages.'' FDA has received requests to extend the comment period to allow sufficient time to develop and submit meaningful comments. FDA has considered the requests and is extending the comment period until August 31, 2022. The Agency believes that this extension allows adequate time for interested persons to submit comments.

II. Electronic Access

Persons with access to the internet may obtain an electronic version of the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: July 6, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–14809 Filed 7–11–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID 2022 DMID Omnibus BAA (HHS–NIH–NIAID–BAA2022–1) Research Area 001: Development of Vaccine Candidates for Biodefense, Antimicrobial Resistant (AMR) Infections and Emerging Infectious Diseases (N01)–1.

Date: August 3–4, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E72A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Frank S. De Silva, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E72A, Rockville, MD 20852, (240) 669–5023, *fdesilva@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 6, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–14793 Filed 7–11–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Opportunities for Collaborative Research at the NIH Clinical Center.

Date: July 25, 2022.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2127D, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Luis E. Dettin, Ph.D., MS, MA, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Rm. 2127D, Bethesda, MD 20892, (301) 827–8231, *luis_dettin@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: July 6, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–14791 Filed 7–11–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0206]

Recertification of Cook Inlet Regional Citizens' Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of recertification.

SUMMARY: The Coast Guard announces the recertification of the Cook Inlet Regional Citizens' Advisory Council (CIRCAC) as an alternative voluntary advisory group for Cook Inlet, Alaska. This certification allows the CIRCAC to monitor the activities of terminal facilities and crude oil tankers under the Cook Inlet Program established by the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990.

DATES: This recertification is effective for the period from September 1, 2022 through August 31, 2023.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email LT Lauren Bloch, Seventeenth Coast Guard District (dpi), by phone at (907) 463–2812 or email at *Lauren.E.Bloch@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard published guidelines on December 31, 1992 (57 FR 62600), to assist groups seeking recertification under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732) (the Act). The Coast Guard issued a policy statement on July 7, 1993 (58 FR 36504), to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act, and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act.

Most recently, on September 16, 2002 (67 FR 58440), the Coast Guard changed its policy on recertification procedures for regional citizen's advisory council by requiring applicants to provide comprehensive information every three years. For each of the two years between the triennial application procedures, applicants submit a letter requesting recertification that includes a description of any substantive changes to the information provided at the previous triennial recertification. Further, public comment is only solicited during the triennial comprehensive review.

Recertification

By letter dated June 29, 2022, the Commander, Seventeenth Coast Guard District, certified that the CIRCAC qualifies as an alternative voluntary advisory group under 33 U.S.C. 2732(o). This recertification terminates on August 31, 2023.

Dated: July 1, 2022.

Nathan A. Moore,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 2022–14828 Filed 7–11–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0398]

Great Lakes Pilotage Advisory Committee Meeting

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Great Lakes Pilotage Advisory Committee (Committee) will meet at the Port of Monroe, Michigan, to discuss matters relating to Great Lakes Pilotage, including review of proposed Great Lakes Pilotage regulations and policies. The meeting will be open to the public.

DATES:

Meeting: The Committee will meet on Tuesday, September 13, 2022 from 8 a.m. to 5:30 p.m. Eastern Daylight Time. Please note that this meeting may adjourn early if the Committee has completed its business.

Comments and supporting documentations: To ensure your comments are received by Committee members before the meeting, submit your written comments no later than September 6, 2022.

ADDRESSES: The meeting will be held at Great Lakes Port Authorities and Marine Terminals, 10 Port Avenue, Monroe, MI 48161. *https://portofmonroe.com.*

Pre-registration Information: Pre-registration is not required for access. Attendees will be required to follow COVID–19 safety guidelines promulgated by the Centers for Disease Control and Prevention (CDC), which includes vaccinated persons not needing to wear masks. Masks will be provided for non-vaccinated attendees. CDC guidance on COVID protocols can be found here: *https://www.cdc.gov/coronavirus/2019-ncov/communication/guidance.html.*

The Great Lakes Pilotage Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please call or email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this documents as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meeting, but if you want Committee members to review your comment before the meeting, please submit your comments no later than September 6, 2022. We are particularly interested in comments in the ''Agenda'' section below. We encourage you to submit comments through the Federal eRulemaking Portal at: *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov* call or email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number USCG–2022–0398. Comments received will be posted without alteration at *https://www.regulations.gov* including any personal information you provided. You may wish to view the Privacy and Security Notice found via link *https://www.regulations.gov.* For more about the privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comment, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Levesque, Alternate Designated Federal Officer of the Great Lakes Pilotage Advisory Committee, telephone (571) 308–4941 or email *Francis.R.Levesque@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act* (5 U.S.C. appendix). The Committee is established under the authority of 46 U.S.C. 9307, and makes recommendations to the Secretary of Homeland Security and the Coast Guard on matters relating to Great Lakes pilotage, including review of proposed Great Lakes pilotage regulations and policies.

Agenda: The Great Lakes Pilotage Advisory Committee will meet on Tuesday, September 13, 2022 to review, discuss, deliberate and formulate recommendations, as appropriate on the following topics:

1. Pilot Staffing.
2. Soo Locks Operations.
3. Pilotage Assessment.
4. Necessary and Reasonable Expenses for Ratemaking.
5. Rulemaking Process and Ex Parte Communications.
6. Role of the Pilot.
7. Importance of System Reliability.
8. Fees for weather disruption.
9. United States Registered Pilot Credential.
10. Cruise Ships.
11. Great Lake Pilotage Initiatives and Projects.
12. Winter Navigation.
13. Public comments.

A copy of all meeting documentation will be available at *https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Marine-Transportation-Systems-CG-5PW/Office-of-Waterways-and-Ocean-Policy/Great-Lakes-Pilotage-Advisory-Committee/* by September 25,

2022. Alternatively, you may contact Mr. Frank Levesque as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Public comments or questions will be taken throughout the meeting as the Committee discusses the issues and prior to deliberations and voting. There will also be a public comment period at the end of the meeting. Speakers are requested to limit their comments to 5 minutes. Please note that the public comment period will end following the last call for comments. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above, to register as a speaker.

Dated: July 7, 2022.

Michael D. Emerson,

Director, Marine Transportation Systems.

[FR Doc. 2022–14813 Filed 7–11–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2250]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	*Online location of letter of map revision*	Date of modification	Community No.
Arizona: Maricopa	City of Avondale (21–09–1874P).	The Honorable Kenneth N. Weise, Mayor, City of Avondale, 11465 West Civic Center Drive, Avondale, AZ 85323.	Development & Engineering Services, Department, 11465 West Civic Center Drive, Avondale, AZ 85323.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 14, 2022	040038
California:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	*Online location of letter of map revision*	Date of modification	Community No.
Placer	Unincorporated Areas of Placer County (21–09–1181P).	The Honorable Cindy Gustafson, Chair, Board of Supervisors, Placer County, 175 Fulweller Avenue, Auburn, CA 95603.	Placer County Public Works, 3091 County Center Drive, Suite 220, Auburn, CA 95603.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 17, 2022	060239
Riverside	Unincorporated Areas of Riverside County (22–09–0293P).	The Honorable Jeff Hewitt, Chair, Board of Supervisors, Riverside County, 4080 Lemon Street, 5th Floor, Riverside, CA 92501.	Riverside County, Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501.	https://msc.fema.gov/portal/advanceSearch.	Oct. 11, 2022	060245
San Bernardino.	City of Fontana (21–09–1351P).	The Honorable Acquanetta Warren, Mayor, City of Fontana, 8353 Sierra Avenue, Fontana, CA 92335.	Engineering Department, 17001 Upland Avenue, Fontana, CA 92335.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 3, 2022	060274
San Bernardino.	Unincorporated Areas of San Bernardino County (21–09–1351P).	The Honorable Curt Hagman, Chair, Board of Supervisors, San Bernardino County, 385 North Arrowhead Avenue, 5th Floor, San Bernardino, CA 92415.	San Bernardino County Public Works Water Resources Department, 825 East 3rd Street, San Bernardino, CA 92415.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 3, 2022	060270
Florida: St. Johns ..	Unincorporated Areas of St. Johns County (22–04–0054P).	Chair Henry Dean, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Permit Center, 4040 Lewis Speedway, St. Augustine, FL 32084.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 30, 2022	125147
Idaho: Kootenai	Unincorporated Areas of Kootenai County (21–10–1307P).	Commissioner Chris Fillios, District 2, Kootenai County, 451 Government Way, Coeur d'Alene, ID 83814.	Assessors Department, Kootenai County Court House, 451 Government Way, Coeur d'Alene, ID 83816.	https://msc.fema.gov/portal/advanceSearch.	Oct. 7, 2022	160076
Indiana:						
Steuben	Town of Hamilton (21–05–2799P).	President Mary Vail, Town of Hamilton, 900 South Wayne Street, Hamilton, IN 46742.	Town Hall, 7750 South Wayne Street, Hamilton, IN 46742.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 14, 2022	180248
Steuben	Unincorporated Areas of Steuben County (21–05–2799P).	President Wil Howard, Steuben County Board of Commissioners, 317 South Wayne Street, Angola, IN 46703.	Steuben County, Plan Commission Courthouse, 317 South Wayne Street, Angola, IN 46703.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 14, 2022	180243
Michigan: Shiawassee.	City of Owosso (21–05–4550P).	The Honorable Christopher Eveleth, Mayor, City of Owosso, 301 West Main Street, Owosso, MI 48867.	City Hall, 301 West Main Street, Owosso, MI 48867.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 7, 2022	260596
New York:						
Delaware.	Town of Walton (21–02–0345P).	Supervisor Joseph M. Cetta, Town of Walton, 129 North Street, Walton, NY 13856.	Town Hall, 129 North Street, Walton, NY 13856.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 3, 2022	360215
Delaware	Village of Walton (21–02–0345P).	The Honorable Edward Snow, Sr., Mayor, Village of Walton, 21 North Street, Walton, NY 13856.	Village Hall, 21 North Street, Walton, NY 13856.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 3, 2022	360216
Richmond	City of New York (21–02–1113P).	The Honorable Eric Adams, Mayor, City of New York, City Hall, New York, NY 10007.	City Department of City Planning, Waterfront Division, 22 Reade Street, New York, NY 10007.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 17, 2022	360497
Westchester ...	Town of Mamaroneck (22–02–0217P).	Supervisor Jaine Elkind Eney, Town of Mamaroneck, 740 West Boston Post Road, Mamaroneck, NY 10543.	Town Hall, 740 West Boston Post Road, Mamaroneck, NY 10543.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 1, 2022	360917
Oregon:						
Multnomah.	City of Fairview (22–10–0253P).	The Honorable Brian Cooper, Mayor, City of Fairview, 1300 Northeast Village Street, Fairview, OR 97024.	Planning Department, 1300 Northeast Village Street, Fairview, OR 97024.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 6, 2022	410180

State and county	Location and case No.	Chief executive officer of community	Community map repository	*Online location of letter of map revision*	Date of modification	Community No.
Multnomah.	City of Gresham (21–10–1434P).	The Honorable Travis Stovall, Mayor, City of Gresham, 1333 Northwest Eastman Parkway, 3rd Floor, Gresham, OR 97030.	City Hall, 1333 Northwest Eastman Parkway, Gresham, OR 97030.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 26, 2022	410181

[FR Doc. 2022–14764 Filed 7–11–22; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2252]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before October 11, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2252, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Sharkey County, Mississippi and Incorporated Areas Project: 19–04–0008S Preliminary Date: December 8, 2021	
Town of Anguilla	Town Hall, 22 Rolling Fork Road, Anguilla, MS 38924.
Unincorporated Areas of Sharkey County	Sharkey County Courthouse, 120 Locust Street, #5, Rolling Fork, MS 39159.
Washington County, Mississippi and Incorporated Areas Project: 19–04–0008S Preliminary Date: December 8, 2021	
City of Greenville	City Hall, 340 Main Street, Greenville, MS 38701.
Unincorporated Areas of Washington County	Washington County Planning Department, 900 Washington Avenue, Greenville, MS 38701.

[FR Doc. 2022–14769 Filed 7–11–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65. The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Alabama:					
Morgan (FEMA Docket No.: B–2204).	Town of Priceville (22–04–1537X).	The Honorable Sam Heflin, Mayor, Town of Priceville, 242 Marco Drive, Priceville, AL 35603.	Planning Department, 242 Marco Drive, Priceville, AL 35603.	Jul. 5, 2022	010448
Morgan (FEMA Docket No.: B–2204).	Unincorporated areas of Morgan County (22–04–1537X).	The Honorable Ray Long, Chair, Morgan County Commission, 302 Lee Street Northeast, Decatur, AL 35601.	Morgan County Engineering Department, 580 Shull Road, Hartselle, AL 35640.	Jul. 5, 2022	010175
Colorado:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Douglas (FEMA Docket No.: B–2220).	Town of Castle Rock (21–08–1028P).	The Honorable Jason Gray, Mayor, Town of Castle Rock, 100 North Wilcox Street, Castle Rock, CO 80104.	Stormwater Department, 100 North Wilcox Street, Castle Rock, CO 80104.	Jun. 10, 2022	080050
Douglas (FEMA Docket No.: B–2220).	Unincorporated areas of Douglas County (21–08–1028P).	The Honorable Lora Thomas, Chair, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	Douglas County Department of Public Works, Engineering Division, 100 3rd Street, Castle Rock, CO 80104.	Jun. 10, 2022	080049
Jefferson (FEMA Docket No.: B–2220).	Unincorporated areas of Jefferson County (21–08–0517P).	The Honorable Lesley Dahlkemper, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	Jefferson County Planning and Zoning Division, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419.	Jun. 10, 2022	080087
Florida:					
Palm Beach (FEMA Docket No.: B–2226).	City of Westlake (21–04–4443P).	Kenneth Cassel, Manager, City of Westlake, 4001 Seminole Pratt Whitney Road, Westlake, FL 33470.	City Hall, 4001 Seminole Pratt Whitney Road, Westlake, FL 33470.	Jun. 13, 2022	120018
Polk (FEMA Docket No.: B–2220).	Unincorporated areas of Polk County (21–04–4272P).	Bill Beasley, Polk County Manager, 330 West Church Street, Bartow, FL 33831.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33831.	Jun. 9, 2022	120261
Sarasota (FEMA Docket No.: B–2220).	City of Sarasota (21–04–5582P).	The Honorable Erik Arroyo, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	Development Services Department, 1565 1st Street, Sarasota, FL 34236.	Jun. 10, 2022	125150
Volusia (FEMA Docket No.: B–2220).	City of Port Orange (21–04–3762P).	Wayne Clark, Manager, City of Port Orange, 1000 City Center Circle, Port Orange, FL 32129.	Community Development Department, 1000 City Center Circle, Port Orange, FL 32129.	Jun. 10, 2022	120313
Volusia (FEMA Docket No.: B–2220).	Unincorporated areas of Volusia County (21–04–3762P).	George Recktenwald, Manager, Volusia County, 123 West Indiana Avenue, DeLand, FL 32720.	Volusia County Growth and Resource Management Department, 123 West Indiana Avenue, DeLand, FL 32720.	Jun. 10, 2022	125155
Georgia:					
Effingham (FEMA Docket No.: B–2226).	Unincorporated areas of Effingham County (21–04–1542P).	The Honorable Wesley Corbitt, Chair at Large, Effingham County Board of Commissioners, 804 South Laurel Street, Springfield, GA 31329.	Effingham County Administrative Complex South Building, 804 South Laurel Street, Springfield, GA 31329.	Jun. 9, 2022	130076
Richmond (FEMA Docket No.: B–2220).	City of Augusta (20–04–6164P).	The Honorable Hardie Davis, Jr., Mayor, City of Augusta, 535 Telfair Street, Suite 200, Augusta, GA 30901.	Planning and Development Department, 535 Telfair Street, Suite 200, Augusta, GA 30901.	Jun. 6, 2022	130158
Nevada: Clark (FEMA Docket No.: B–2220).	City of Henderson (21–09–1537P).	Richard Derrick, Manager, City of Henderson, 240 South Water Street, Henderson, NV 89015.	City Hall, 240 South Water Street, Henderson, NV 89015.	Jun. 10, 2022	320005
Texas:					
Bexar (FEMA Docket No.: B–2226).	City of San Antonio (21–06–0342P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capitol Improvements Department, Storm Water Division, 114 West Commerce Street, 7th Floor, San Antonio, TX 78205.	Jun. 6, 2022	480045
Bexar (FEMA Docket No.: B–2226).	Unincorporated areas of Bexar County (21–06–1869P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214.	Jun. 13, 2022	480035
Denton (FEMA Docket No.: B–2216).	Town of Northlake (21–06–1777P).	The Honorable David Rettig, Mayor, Town of Northlake, 1500 Commons Circle, Suite 300, Northlake, TX 76226.	Town Hall, 1500 Commons Circle, Suite 300, Northlake, TX 76226.	Jun. 6, 2022	480782
Johnson (FEMA Docket No.: B–2216).	City of Burleson (21–06–2590P).	The Honorable Chris Fletcher, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	City Hall, 141 West Renfro Street, Burleson, TX 76028.	Jun. 2, 2022	485459
Kerr (FEMA Docket No.: B–2220).	City of Kerrville (21–06–1566P).	The Honorable Bill Blackburn, Mayor, City of Kerrville, 701 Main Street, Kerrville, TX 78028.	Engineering Department, 200 Sidney Baker Street, Kerrville, TX 78028.	Jun. 3, 2022	480420
Kerr (FEMA Docket No.: B–2220).	Unincorporated areas of Kerr County (21–06–1566P).	The Honorable Rob Kelly, Kerr County Judge, 700 East Main Street, Kerrville, TX 78028.	Kerr County Engineering Department, 3766 State Highway 27, Kerrville, TX 78028.	Jun. 3, 2022	480419
Parker (FEMA Docket No.: B–2226).	Unincorporated areas of Parker County (21–06–2184P).	The Honorable Patrick Deen, Parker County Judge, 1 Courthouse Square, Weatherford, TX 76086.	Parker County Permitting Department, 1 Courthouse Square, Weatherford, TX 76086.	Jun. 8, 2022	480520

[FR Doc. 2022–14763 Filed 7–11–22; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of November 17, 2022 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Lee County, Florida and Incorporated Areas Docket No.: FEMA–B–2032	
City of Bonita Springs	Community Development, 9220 Bonita Beach Road, Bonita Springs, FL 34135.
City of Cape Coral	Community Development, 1015 Cultural Park Boulevard, Cape Coral, FL 33990.
City of Fort Myers	Building Department, 1825 Hendry Street, Fort Myers, FL 33901.
City of Sanibel	City Hall, 800 Dunlop Road, Sanibel, FL 33957.
Town of Fort Myers Beach	Public Works Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.
Unincorporated Areas of Lee County	Lee County Community Development and Public Works Center, 1500 Monroe Street, Fort Myers, FL 33901.
Village of Estero	Community Development Department, 9401 Corkscrew Palms Circle, 1st Floor, Estero, FL 33928.
Pottawatomie County, Kansas and Incorporated Areas Docket Nos.: FEMA–B–2036 and FEMA–B–2170	
City of Belvue	City Hall, 308 Broadway Street, Belvue, KS 66407.
City of St. Marys	City Hall, 200 South 7th Street, St. Marys, KS 66536.
City of Wamego	City Hall, 430 Lincoln Avenue, Wamego, KS 66547.
Unincorporated Areas of Pottawatomie County	Pottawatomie County Administration Building, 207 North 1st Street, Westmoreland, KS 66549.
Rice County, Kansas and Incorporated Areas Docket Nos.: FEMA–B–2014 and FEMA–B–2173	
City of Bushton	City Hall, 217 South Main Street, Bushton, KS 67427.
City of Chase	City Hall, 507 Main Street, Chase, KS 67524.
City of Frederick	Rice County Planning and Zoning, 718 West 5th Street, Lyons, KS 67554.
City of Geneseo	City Hall, 802 Silver Avenue, Geneseo, KS 67444.
City of Little River	City Hall, 123 Main Street, Little River, KS 67457.

Community	Community map repository address
City of Lyons	City Hall, 201 West Main Street, Lyons, KS 67554.
City of Raymond	City Hall, 105 West 4th Street, Raymond, KS 67573.
City of Sterling	City Hall, 114 North Broadway, Sterling, KS 67579.
Unincorporated Areas of Rice County	Rice County Planning and Zoning, 718 West 5th Street, Lyons, KS 67554.
Koochiching County, Minnesota and Incorporated Areas Docket No.: FEMA–B–2145	
City of Big Falls	City Office, 410 2nd Street Northwest, Big Falls, MN 56627.
City of International Falls	Municipal Building, City Administrator's Office, 600 4th Street, International Falls, MN 56649.
City of Littlefork	City Hall, 901 Main Street, Littlefork, MN 56653.
City of Ranier	Community Building, 2099 Spruce Street, Ranier, MN 56668.
Red Lake Band of Chippewa Tribe	Red Lake Nation Government Center, 15484 Migizi Drive, Red Lake, MN 56671.
Unincorporated Areas of Koochiching County	Koochiching County Courthouse, Environmental Services Department, 715 4th Street, International Falls, MN 56649.

[FR Doc. 2022–14765 Filed 7–11–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of December 1, 2022 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Barrow County, Georgia and Incorporated Areas Docket No.: FEMA–B–2154	
City of Auburn	City Hall, 1369 4th Avenue, Auburn, GA 30011.
City of Statham	Planning and Zoning Department, 327 Jefferson Street, Statham, GA 30666.
City of Winder	City Hall, 25 East Midland Avenue, Winder, GA 30680.
Town of Bethlehem	City Hall, 750 Manger Avenue, Bethlehem, GA 30620.
Town of Braselton	Town Hall, 4982 Highway 53, Braselton, GA 30517.
Town of Carl	Carl City Hall, 1690 Carl-Bethlehem Road, Auburn, GA 30011.

Community	Community map repository address
Unincorporated Areas of Barrow County	Barrow County Historic Courthouse, 30 North Broad Street, Winder, GA 30680.
Hall County, Georgia and Incorporated Areas Docket No.: FEMA–B–2154	
City of Flowery Branch	City Hall, 5410 West Pine Street, Flowery Branch, GA 30542.
City of Gainesville	Department of Water Resources Administration Building, 757 Queen City Parkway, Gainesville, GA 30501.
City of Gillsville	City Hall, 6288 Highway 52, Gillsville, GA 30543.
City of Lula	City Hall, 6055 Main Street, Lula, GA 30554.
Town of Braselton	Town Hall, 4982 Highway 53, Braselton, GA 30517.
Unincorporated Areas of Hall County	Hall County Government Center, Engineering Division, 2875 Browns Bridge Road, Gainesville, GA 30504.
Pennington County, Minnesota and Incorporated Areas Docket No.: FEMA–B–2051	
City of St. Hilaire	City Hall, 302 North Broadway, St. Hilaire, MN 56754.
City of Thief River Falls	City Hall, 405 Third Street East, Thief River Falls, MN 56701.
Red Lake Band of Chippewa Tribe	Red Lake Nation Government Center, 15484 Migizi Drive, Red Lake, MN 56671.
Unincorporated Areas of Pennington County	Pennington County Courthouse, 101 Main Avenue North , Thief River Falls, MN 56701.
Ottawa County, Ohio and Incorporated Areas Docket Nos.: FEMA–B–1806 and FEMA–B–2145	
City of Port Clinton	City Hall, 1868 East Perry Street, Port Clinton, OH 43452.
Unincorporated Areas of Ottawa County	Ottawa County Regional Planning Office, 315 Madison Street, Room 107, Port Clinton, OH 43452.
Village of Marblehead	Village Hall, 513 West Main Street, Marblehead, OH 43440.
Village of Put-in-Bay	Village Hall, 157 Concord Avenue, Put-in-Bay, OH 43456.

[FR Doc. 2022–14768 Filed 7–11–22; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2251]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster

Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive, officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Colorado:.						
Arapahoe	City of Aurora (21–08–1133P).	The Honorable Mike Coffman, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	Public Works Department, 15151 East Alameda Parkway, Aurora, CO 80012.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 9, 2022	080002
Denver	City and County of Denver (22–08–0130P).	The Honorable Michael B. Hancock, Mayor, City and County of Denver, 1437 Bannock Street, Room 350, Denver, CO 80202.	Department of Transportation and Infrastructure, 201 West Colfax Avenue, Department 608, Denver, CO 80202.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 14, 2022	080046
Connecticut: Fairfield.	Town of Greenwich (21–01–1171P).	The Honorable Fred Camillo, First Selectman, Town of Greenwich Board of Selectmen, 101 Field Point Road, 1st Floor, Greenwich, CT 06830.	Town Hall, 101 Field Point Road, Greenwich, CT 06830.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 14, 2022	090008
Florida:.						
Collier	City of Marco Island (22–04–2823P).	Mike McNees, Manager, City of Marco Island, 50 Bald Eagle Drive, Marco Island, FL 34145.	Building Services Department, 50 Bald Eagle Drive, Marco Island, FL 34145.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 11, 2022	120426
Duval	City of Jacksonville Beach (22–04–0750P).	The Honorable Christine Hoffman, Mayor, City of Jacksonville Beach, 11 North 3rd Street, Jacksonville Beach, FL 32250.	Planning and Development Department, 11 North 3rd Street, Jacksonville Beach, FL 32250.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 28, 2022	120078
Lee	City of Bonita Springs (22–04–0173P).	The Honorable Rick Steinmeyer, Mayor, City of Bonita Springs, 9101 Bonita Beach Road, Bonita Springs, FL 34135.	Community Development Department, 9220 Bonita Beach Road, Bonita Springs, FL 34135.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 23, 2022	120680
Manatee	Unincorporated areas of Manatee County (21–04–2233P).	The Honorable Kevin Van Ostenbridge, Chairman, Manatee County Board of Commissioners, 1112 Manatee Avenue West, Bradenton, FL 34205.	Manatee County Building and Development Services Department, 1112 Manatee Avenue West, Bradenton, FL 34205.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 14, 2022	120153
Monroe	Unincorporated areas of Monroe County (22–04–0860P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 1100 Simonton Street, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 22, 2022	125129
Monroe	Unincorporated areas of Monroe County (22–04–2418P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 1100 Simonton Street, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 3, 2022	125129
Osceola	City of St. Cloud (20–04–5566P).	Bill Sturgeon, Manager, City of St. Cloud, 1300 9th Street, St. Cloud, FL 34769.	Building Department, 1300 9th Street, St. Cloud, FL 34769.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 3, 2022	120191

State and county	Location and case No.	Chief executive, officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Pinellas	Unincorporated areas of Pinellas County (22–04–1973P).	The Honorable Charlie Justice, Chairman, Pinellas County Board of Commissioners, 315 Court Street, Clearwater, FL 33756.	Pinellas County Building Services Department, 440 Court Street, Clearwater, FL 33756.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 15, 2022	125139
Polk	Unincorporated areas of Polk County (22–04–0291X).	Bill Beasley, Manager, Polk County, 330 West Church Street, Bartow, FL 33831.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33831.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 13, 2022	120261
Seminole	City of Lake Mary (22–04–0236P).	Kevin Smith, Manager, City of Lake Mary, 100 North Country Club Road, Lake Mary, FL 32795.	Municipal Services Complex, 911 Wallace Court, Lake Mary, FL 32746.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 3, 2022	120416
Georgia: Douglas	Unincorporated areas of Douglas County (21–04–2703P).	The Honorable Romona Jackson Jones, Chair, Douglas County Commission, 8700 Hospital Drive, 3rd Floor, Douglasville, GA 30134.	Douglas County Courthouse, 8700 Hospital Drive, 3rd Floor, Douglasville, GA 30134.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 16, 2022	130306
Kentucky: Jefferson	Louisville-Jefferson County, Metro Government (21–04–5654P).	The Honorable Greg Fischer, Mayor, Louisville-Jefferson County, Metro Government, 527 West Jefferson Street, Louisville, KY 40202.	Louisville-Jefferson County Metropolitan Sewer District, 700 West Liberty Street, Louisville, KY 40203.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 26, 2022	210120
Maryland: Prince George's.	Unincorporated areas of Prince George's County (21–03–1450P).	The Honorable Angela D. Alsobrooks, Executive, Prince George's County, 1301 McCormick Drive, Suite 4000, Largo, MD 20774.	Prince George's County Department of Permitting Inspections and Enforcement, 9400 Peppercorn Place, Suite 230, Largo, MD 20774.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 23, 2022	245208
North Carolina:.						
Cabarrus	Unincorporated areas of Cabarrus County (21–04–2265P).	The Honorable Steve Morris, Chairman, Cabarrus County Board of Commissioners, P.O. Box 707, Concord, NC 28026.	Cabarrus County Planning Services Department, 65 Church Street Southeast, Concord, NC 28025.	*https://msc.fema.gov/port,al/advanceSearch.*	Jul. 11, 2022	370036
Durham	Unincorporated areas of Durham County (21–04–5308P)	The Honorable Brenda Howerton, Chair, Durham County Board of Commissioners, 200 East Main Street, Durham, NC 27701.	Durham County Planning Department, 101 City Hall Plaza, Durham, NC 27701.	*https://msc.fema.gov/port,al/advanceSearch.*	Sept. 21, 2022	370085
Harnett	Unincorporated areas of Harnett County (21–04–4957P).	The Honorable Lewis Weatherspoon, Chairman, Harnett County Board of Commissioners, 455 McKinney Parkway, Lillington, NC 27546.	Harnett County, Planning Services Department, 102 East Front Street, Lillington, NC 27546.	*https://msc.fema.gov/port,al/advanceSearch.*	Jul. 20, 2022	370328
Oklahoma: Tulsa	City of Bixby (21–06–3360P).	Jared Cottle, City of Bixby Manager, P.O. Box 70, Bixby, OK 74008.	Development Services Department, 113 West Dawes Street, Bixby, OK 74008.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 19, 2022	400207
South Dakota:.						
Deuel	Town of Altamont (22–08–0536P).	The Honorable Jennifer Jensen, Mayor, Town of Altamont, 307 Carmen Street, Altamont, SD 57226.	Town Hall, 307 Carmen Street, Altamont, SD 57226.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 2, 2022	460320
Deuel	Town of Brandt (22–08–0536P).	The Honorable Greg Anderson, Mayor-President, Town of Brandt, P.O. Box 218, Brandt, SD 57218.	Town Hall, 112 Main Street, Brandt, SD 57218.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 2, 2022	460319
Texas:.						
Denton	City of Fort Worth (22–06–0847P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 11, 2022	480596
Denton	Town of Prosper (21–06–3249P).	The Honorable Ray Smith, Mayor, Town of Prosper, P.O. Box 307, Prosper, TX 75078.	Engineering Services Department, 250 West 1st Street, Prosper, TX 75078.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2022	480141

State and county	Location and case No.	Chief executive, officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Denton	Unincorporated areas of Denton County (21–06–3249P).	The Honorable Andy Eads, Denton County Judge, 1 Courthouse Drive, Suite 100, Denton, TX 76201.	Denton County Development Services Department, 3900 Morse Street, Denton, TX 76208.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2022	480774
Johnson	City of Burleson (21–06–3092P).	The Honorable Chris Fletcher, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	City Hall, 141 West Renfro Street, Burleson, TX 76028.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 6, 2022	485459
Montgomery ...	City of Conroe (21–06–2197P).	The Honorable Jody Czajkoski, Mayor, City of Conroe, P.O. Box 3066, Conroe, TX 77305.	City Hall, 300 West Davis Street, Conroe, TX 77305.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 9, 2022	480484
Tarrant	City of Fort Worth (21–06–2361P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 29, 2022	480596
Tarrant	Unincorporated areas of Tarrant County (21–06–2361P).	The Honorable B. Glen Whitley, Tarrant County Judge, 100 East Weatherford Street, Room 502A, Fort Worth, TX 76196.	Tarrant County Administration Building, 100 East Weatherford Street, Fort Worth, TX 76196.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 29, 2022	480582
Williamson	City of Leander (21–06–2660P).	Richard B. Beverlin, III, Manager, City of Leander, 105 North Brushy Street, Leander, TX 78641.	Engineering Department, 201 North Brushy Street, Leander, TX 78641.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 14, 2022	481536
Utah: Washington	City of St. George (22–08–0191P).	The Honorable Michele Randall, Mayor, City of St. George, 175 East 200 North, St. George, UT 84770.	City Hall, 175 East 200 North, St. George, UT 84770.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2022	490177

[FR Doc. 2022–14766 Filed 7–11–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2022–USCBP–2022–0007]

Privacy Act of 1974; System of Records

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to modify and reissue a current DHS system of records titled, ''DHS/U.S. Customs and Border Protection (CBP)-009 Electronic System for Travel Authorization System of Records.'' The Electronic System for Travel Authorization (ESTA) system is a web-based system used to determine the eligibility of international travelers to travel to the United States under the Visa Waiver Program (VWP).[1] DHS/CBP is updating this system of records to (1) reflect the expansion of the categories of records to include the collection of photographs, (2) clarify the retention schedule, and (3) remove references to the I–94W, ''Nonimmigrant Visa Waiver Arrival/Departure Record''. The exemptions for the existing system of records notice will continue to be applicable for this updated system of records notice. This modified system of records notice will be included in the DHS's inventory of record systems.

DATES: Submit comments on or before August 11, 2022. This modified system will be effective upon publication. New or modified routine uses will be effective August 11, 2022.

ADDRESSES: You may submit comments, identified by docket number USCBP–2022–0007 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Lynn Parker Dupree, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number USCBP–2022–0007. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Debra L. Danisek, (202) 344–1610, *Privacy.CBP@cbp.dhs.gov,* CBP Privacy Officer, Privacy and Diversity Office, 1300 Pennsylvania Avenue NW, Washington, DC 20229. For privacy questions, please contact: Lynn Parker Dupree, (202) 343–1717, *Privacy@hq.dhs.gov,* Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to update and reissue a current Department of Homeland Security system of records titled, ''DHS/United States Customs and

[1] The Visa Waiver Program (VWP), administered by DHS in consultation with the State Department, permits citizens of 40 countries to travel to the United States for business or tourism for stays of up to 90 days without a visa. In return, those 40 countries must permit U.S. citizens and nationals to travel to their countries for a similar length of time without a visa for business or tourism purposes.

Border Protection (CBP)-009 Electronic System for Travel Authorization (ESTA) System of Records.'' On August 3, 2007, the President signed into law the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act).[2] Section 711 of the 9/11 Act required that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement a fully automated electronic travel authorization system to collect biographical and other information as the Secretary determines necessary to evaluate, in advance of travel, the eligibility of the applicant to travel to the United States under the Visa Waiver Program (VWP), and whether such travel poses a law enforcement or security risk.[3] Prior to implementing the Electronic System for Travel Authorization (ESTA), international travelers from VWP countries were not evaluated, in advance of travel, for eligibility to travel to the United States under the VWP.

DHS/CBP created the ESTA system to collect information from individuals intending to travel under the VWP, as well as representatives who submit information on behalf of the applicant. The ESTA application requests the intended traveler's name, country of birth and citizenship, date of birth, gender, travel document information, contact information (*e.g.,* phone, email address), voluntary submission of social media information, family information, employment information, and destination address, as well as responses to questions related to an applicant's eligibility to travel under the VWP.

Upon submission, DHS/CBP vets the application against selected security and law enforcement databases as well as publicly available sources, such as social media. The results of this vetting help to inform DHS/CBP's assessment of whether the traveler poses a law enforcement or security risk and whether the application should be approved. ESTA authorizations can take up to 72 hours to be complete. However, DHS/CBP is generally able to approve/deny an ESTA authorization within a much shorter time frame. If the ESTA application is denied, the applicant is not eligible to travel to the United States under the VWP.[4] If the application is approved, the approval establishes that the applicant is eligible to travel to the United States under the VWP but does not guarantee that he or she is admissible to the United States. Upon arrival to a United States port of entry, the VWP traveler will be subject to an inspection by a CBP officer who may determine that the traveler is inadmissible under section 212 of the Immigration and Nationality Act (INA) and deny entry under the VWP. ESTA travel authorizations are generally valid for two years from the date of authorization, or until the VWP traveler's passport expires, whichever comes first. An ESTA approval provides authorization for the traveler to travel to the United States for multiple trips over a period of two years, generally eliminating the need for a traveler to reapply during the validity period unless the traveler fails to meet the requirements of the VWP, or the ESTA approval is revoked.

DHS/CBP is publishing this modified system of records to make changes for transparency.

DHS/CBP is expanding the category of records to include photographs. As part of the ESTA application process, DHS/CBP collects applicant photographs, which may include both the passport photograph and/or a ''selfie,'' if submitting the ESTA application via the mobile application. As described above, the ESTA application requires several key pieces of biographic information, which can be found on the passport biographic data page (*e.g.,* name, date and place of birth, country of citizenship). Applicants and representatives capture[5] or upload[6] a picture of the passport biographic data page to include the photograph or retrieve[7] the photograph from the passports eChip into the application. Applicants (or their representative) submit the passport photograph for identity verification and vetting purposes. DHS/CBP stores the image of the passport biographic data page for identity verification and reconciliation purposes. Photographs retrieved using the passport eChip are compared against a separate ''selfie'' that is required for mobile application submissions. The ''selfie'' undergoes a ''liveness'' test to determine that it is a real person—not a picture of a person.[8] Using CBP's Traveler Verification System (TVS) facial matching algorithms, CBP compares the ''selfie'' with the passport photograph to conduct a 1-to-1 match to confirm whether the identities in the two photographs match.[9] Photographs, regardless of submission method, are stored in the ESTA system consistent with the ESTA retention schedule.

DHS/CBP is also updating this notice to clarify the retention schedule for the data. The overall retention does not change, but DHS/CBP is more clearly documenting that these records are retained for 15 years.

Finally, DHS/CBP is also removing references to the I–94W, ''Nonimmigrant Visa Waiver Arrival/Departure Record,'' since the I–94W is not processed in ESTA. The I–94W is separately covered under the DHS/CBP–016 Nonimmigrant Information System, 80 FR 13398 (March 13, 2015).

Consistent with DHS's information sharing mission, information stored in the DHS/CBP–009 ESTA system of records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/CBP may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

This modified system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The

[2] *See* Public Law 110–53.

[3] *See* 8 U.S.C. 1187(h)(3)(A).

[4] Applicants denied a travel authorization to the United States via ESTA may still apply for a nonimmigrant visa from the U.S. Department of State at a U.S. Embassy or Consulate.

[5] To capture a photograph of the passport's biographic data page, the applicant or representative must use a device with a camera, such as an Android or an iOS device.

[6] If a camera is not detected on the device, the applicant or representative has the option to upload a pre-scanned image in .gif, .png, .jpg, or .jpeg file format.

[7] If the applicant submits the application through a mobile device, he or she can place the mobile device near the passport's eChip to enable the Near Field Communication (NFC). NFC is used for contactless exchange of data over short distances. Two NFC-capable devices are connected via a point-to-point contact over a short distance. This connection can be used to exchange data between devices.

[8] Liveness detection relies on algorithms to analyze facial images to determine whether the image is of a live human being or of a reproduction of that person (*e.g.,* a photograph of the person).

[9] CBP's TVS is an accredited information technology system consisting of a group of similar systems and subsystems that support the core functioning and transmission of data between CBP applications and partner interfaces. Since early 2017, CBP has used the TVS as its backend matching service for all biometric entry and exit operations that use facial recognition, regardless of air, land, or sea. See U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, PRIVACY IMPACT ASSESSMENT FOR THE DHS/CBP/PIA–056 TRAVELER VERIFICATION SERVICE, available at *https://www.dhs.gov/privacydocuments-us-customs-and-border-protection.*

Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/CBP–009 Electronic System for Travel Authorization System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)–009 Electronic System for Travel Authorization (ESTA) System of Records.

SECURITY CLASSIFICATION:

Unclassified and classified. The data may be retained on classified networks, but this does not change the nature and character of the data until it is combined with classified information.

SYSTEM LOCATION:

Records are maintained at the DHS/CBP Headquarters in Washington, DC, and field offices. Records are replicated from the operational system and maintained on the DHS unclassified and classified networks to allow for analysis and vetting consistent with the stated uses, purposes, and routine uses published in this notice.

SYSTEM MANAGER(S):

Director, ESTA Program Management Office, *esta@cbp.dhs.gov,* U.S. Customs and Border Protection Headquarters, 1300 Pennsylvania Avenue NW, Washington, DC 20229.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title IV of the Homeland Security Act of 2002, 6 U.S.C. 201 *et seq.,* the Immigration and Naturalization Act, as amended, including 8 U.S.C. 1187(a)(11) and (h)(3), and implementing regulations contained in 8 CFR part 217; the Travel Promotion Act of 2009, Public Law 111–145, 22 U.S.C. 2131.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to collect and maintain a record of applicants who want to travel to the United States under the VWP, and to determine whether applicants are eligible to travel to and enter the United States under the VWP. The information provided through ESTA, including information about other persons included on the ESTA application, is vetted against various security and law enforcement databases to identify those applicants who pose a security risk to the United States and to inform CBP's decision to approve or deny the applicant's ESTA application.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include (1) individuals who wish to travel to the United States under the VWP and apply for an ESTA travel authorization and (2) persons, including U.S. citizens and lawful permanent residents, whose information is provided by the applicant in response to ESTA application questions (*e.g.,* point of contact).

CATEGORIES OF RECORDS IN THE SYSTEM:

An ESTA application includes:

- Full name (first, middle, and last);
- Other names or aliases, if available;
- Date of birth;
- Country of birth;
- Gender;
- Email address;
- Visa numbers, Laissez-Passer numbers, or Identity card numbers;
- Social media identifiers, such as username(s) and platforms used;
- Publicly available information from social media websites or platforms;
- Telephone number (home, mobile, work, other);
- Home address (address, apartment number, city, state/region);
- internet protocol (IP) address;
- ESTA application number;
- Global Entry Program Number;
- Country of residence;
- Passport information;
- Department of Treasury *Pay.gov* payment tracking number information;
- Countries of citizenship and nationality;
- National identification number, if available;
- Address while visiting the United States;
- Emergency point of contact information;
- U.S. Point of Contact information;
- Parents' names;
- Current and previous employer information; and,
- Photograph(s).

The categories of records in ESTA also include responses to questions related to the following:

- History of mental or physical disorders, drug abuse or addiction,[10] and current communicable diseases,[11] fevers, and respiratory illnesses;
- Past arrests, criminal convictions, or illegal drug violations;
- Previous engagement in terrorist activities, espionage, sabotage, or genocide;
- History of fraud or misrepresentation;
- Previous unauthorized employment in the United States;
- Past denial of visa, or refusal or withdrawal of application for admission at a U.S. port of entry;
- Previous overstay of authorized admission period in the United States;
- Travel history and information relating to prior travel to or presence in Iraq or Syria, a country designated as a state sponsor of terrorism, or another country or area of concern; [12] and,
- Citizenship and nationality information, with additional detail required for nationals of certain identified countries of concern.

RECORD SOURCE CATEGORIES:

DHS/CBP obtains records from applicants or representatives (*e.g.,* friend, relative, travel industry professional), through the online ESTA application available at *https://esta.cbp.dhs.gov/esta/*or a mobile application. As part of the vetting

[10] Immigration and Nationality Act (INA) 212(a)(1)(A). Pursuant to INA 212(a), aliens may be inadmissible to the United States if they have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or (ii) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, or are determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict.

[11] Consistent with 42 CFR 34.2, DHS/CBP revised the ESTA application to reflect the current quarantinable, communicable diseases specified by any Presidential Executive Order under Section 361(b) of the Public Health Service (PHS) Act (42 U.S.C. 264). Executive Order 13295 of April 4, 2003, as amended by Executive Order 13375 of April 1, 2005, and Executive Order 13674 of July 31, 2014, contains the most recent list of quarantinable, communicable diseases. COVID–19 is a quarantinable disease as it falls within the scope of ''severe acute respiratory syndromes'' which are designated as quarantinable pursuant to Executive Order 13674. As such, COVID–19 was added to the list of diseases an individual must attest to not having to be eligible to travel to the United States.

[12] INA 212(a)(12); 8 U.S.C. 1187(a)(12).

process, DHS/CBP may also use information obtained from publicly available sources, including social media, and law enforcement and national security records from appropriate federal, state, local, international, tribal, or foreign governmental agencies or multilateral governmental organizations to assist in determining ESTA eligibility. This information is stored separate from information collected as part of the ESTA application.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorneys Offices, or other federal agency conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity, only when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another federal agency or federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where CBP believes the information would assist enforcement of applicable civil or criminal laws and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital health interests of a data subject or other persons (*e.g.,* to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health threat or risk).

J. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations, with the approval of the Chief Privacy Officer, when DHS is aware of a need to use relevant data, that relate to the purpose(s) stated in this SORN, for purposes of testing new technology.

K. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate in the proper performance of the official duties of the officer making the disclosure.

L. To a federal, state, tribal, local, international, or foreign government agency or entity for the purpose of consulting with that agency or entity: (1) to assist in making a determination regarding redress for an individual in connection or program; (2) for the purpose of verifying the identity of an individual seeking redress in connection with the operations of a DHS Component or program; or (3) for the purpose of verifying the accuracy of information submitted by an individual who has requested such redress on behalf of another individual.

M. To a federal, state, tribal, local, international, or foreign government agency or entity in order to provide relevant information related to intelligence, counterintelligence, or counterterrorism activities authorized by U.S. law, Executive Order, or other applicable national security directive.

N. To the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws including treaties and reciprocal agreements.

O. To an organization or individual in either the public or private sector, either foreign or domestic, when there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property.

P. To the carrier transporting an individual to the United States, prior to travel, in response to a request from the carrier, to verify an individual's travel authorization status.

Q. To the Department of Treasury's Pay.gov, for payment processing and payment reconciliation purposes.

R. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings.

S. To the Department of Treasury's Office of Foreign Assets Control (OFAC) for inclusion on the publicly issued List of Specially Designated Nationals and Blocked Persons (SDN List) of

individuals and entities whose property and interests in property are blocked or otherwise affected by one or more OFAC economic sanctions programs, as well as information identifying certain property of individuals and entities subject to OFAC economic sanctions programs.

T. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS/CBP stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

DHS/CBP may retrieve records by any of the data elements supplied by the applicant or representative.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The retention of ESTA records is covered by National Archives and Records Administration DAA–0568–2019–0006. Application information submitted to ESTA, including the photographs, is retained for 15 years. DHS/CBP ingests ESTA application data into other DHS/CBP systems for vetting purposes and is stored in accordance with those system's respective retention periods. For example, ESTA information is ingested into the Automated Targeting System (ATS) and is retained for 15 years and is also ingested into TECS where it is retained for 75 years, consistent with those systems' retention schedules. These retention periods are based on DHS/CBP's historical encounters with suspected terrorists and other criminals, as well as the broader expertise of the law enforcement and intelligence communities. It is well known, for example, that potential terrorists may make multiple visits to the United States in advance of performing an attack. It is over the course of time and multiple visits that a potential risk becomes clear. Travel records, including historical records, are essential in assisting DHS/CBP officers with their risk-based assessment of travel indicators and identifying potential links between known and previously unidentified terrorist facilitators. Analyzing the records for these purposes allows DHS/CBP to continue to effectively identify suspect travel patterns and irregularities. If the record is linked to active law enforcement lookout records, DHS/CBP matches to enforcement activities, and/or investigations or cases (*i.e.,* specific and credible threats; flights, travelers, and routes of concern; or other defined sets of circumstances), the record will remain accessible for the life of the law enforcement matter to support that activity and other enforcement activities that may become related.

Payment information is not stored in ESTA but is forwarded to Pay.gov and stored in DHS/CBP's financial processing system, Credit/Debit Card Data system, pursuant to the DHS/CBP–003 Credit/Debit Card Data System of Records Notice, 76 FR 67755 (November 2, 2011). When a VWP traveler's ESTA data is used for purposes of processing his or her application for admission to the United States, the ESTA data will be used to create a corresponding admission record in the DHS/CBP–016 Non-Immigrant Information System (NIIS), 80 FR 13398 (March 13, 2015). This corresponding admission record will be retained in accordance with the NIIS retention schedule, which is 75 years.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/CBP safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS/CBP has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Applicants may access their ESTA information to view and amend their applications by providing their ESTA number, birth date, and passport number. Once they have provided their ESTA number, birth date, and passport number, applicants may view their ESTA status (authorized to travel, not authorized to travel, pending) and submit limited updates to their travel itinerary information. If an applicant does not know his or her application number, he or she can provide his or her name, passport number, date of birth, and passport issuing country to retrieve his or her application number.

In addition, ESTA applicants and other individuals whose information is included on ESTA applications may submit requests and receive information maintained in this system as it relates to data submitted by or on behalf of a person who travels to the United States and crosses the border, as well as, for ESTA applicants, the resulting determination (authorized to travel, pending, or not authorized to travel). However, the Secretary of Homeland Security has exempted portions of this system from certain provisions of the Privacy Act related to providing the accounting of disclosures to individuals because it is a law enforcement system. DHS/CBP will, however, consider individual requests to determine whether information may be released. In processing requests for access to information in this system, DHS/CBP will review the records in the operational system and coordinate with DHS to ensure that records that were replicated on the unclassified and classified networks, are reviewed, and based on this notice provide appropriate access to the information.

Individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and Headquarters Freedom of Information Act (FOIA) Officer whose contact information can be found at *http://www.dhs.gov/foia* under ''Contact Information.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, DC 20528–0655, or electronically at *https://www.dhs.gov/freedom-information-act-foia.* Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about you may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the

individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. An individual may obtain more information about this process at *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, the individual should:

- Explain why he or she believes the Department would have information being requested;
- Identify which component(s) of the Department he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If the request is seeking records pertaining to another living individual, the request must include an authorization from the individual whose record is being requested, authorizing the release to the requester.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

See ''Record Access Procedures'' above.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 6 CFR part 5, Appendix C, when this system receives a record from another system exempted in that source system under 5 U.S.C. 552a(j) or (k), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here. For instance, as part of the vetting process, this system may incorporate records from CBP's ATS, and all of the exemptions for CBP's Automated Targeting System SORN, described and referenced herein, carry forward and will be claimed by DHS/CBP. As such, law enforcement and other derogatory information covered in this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (e)(5), and (8); (f); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1) and (k)(2): 5 U.S.C. 552a(c)(3); (d)(1), (d)(2), (d)(3), and (d)(4); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f).

DHS/CBP is not taking any exemption from subsection (d) with respect to information maintained in the system as it relates to data submitted by or on behalf of a person, as part of the application process, who travels to visit the United States and crosses the border, nor shall an exemption be asserted with respect to the resulting determination (authorized to travel, pending, or not authorized to travel). However, pursuant to 5 U.S.C. 552a(j)(2), DHS/CBP plans to exempt such information in this system from sections (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as is necessary and appropriate to protect this information. Further, DHS will claim exemption from section (c)(3) of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(k)(2) as is necessary and appropriate to protect this information. CBP will not disclose the fact that a law enforcement or intelligence agency has sought particular records because it may affect ongoing law enforcement activities.

HISTORY:

84 FR 30746 (June 27, 2019); 81 FR 60713 (September 2, 2016); 81 FR 39680 (June 17, 2016); 81 FR 8979 (February 23, 2016); 79 FR 65414 (November 4, 2014); 77 FR 44642 (July 30, 2012); 76 FR 67751 (November 2, 2011); 73 FR 32720 (June 10, 2008).

* * * * *

Lynn P. Dupree,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2022–14789 Filed 7–11–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2022–0040]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, DHS.

ACTION: Committee management; notice of committee charter renewal.

SUMMARY: The Secretary of Homeland Security has determined that the renewal of the Data Privacy and Integrity Advisory Committee is necessary and in the public interest in connection with the Department of Homeland Security's performance of its duties. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

DATES: The committee's charter is effective July 8, 2020 and expires July 8, 2022.

ADDRESSES: Any Comments must be identified by DHS Docket Number (DHS–2022–0040) and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: PrivacyCommittee@dhs.gov.* Include the Docket Number (DHS–2022–0040) in the subject line of the message.
- *Fax:* (202) 343–4010.
- *Mail:* Sandra L. Taylor, Designated Federal Officer, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Privacy Office, Mail Stop 0655, 2707 Martin Luther King Jr. Ave SE, Washington, DC 20598–0655.

Instructions: All submissions must include the words ''Department of Homeland Security'' and DHS–2022–0040, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Sandra L. Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Privacy Office, Mail Stop 0655, 2707 Martin Luther King Jr. Ave SE, Washington, DC 20598–0655, by telephone (202) 343–1717, by fax (202) 343–4010, or by email to *privacycommittee@hq.dhs.gov.*

Responsible DHS Officials: Lynn Parker Dupree, Chief Privacy Officer, and Sandra L. Taylor, Designated Federal Officer, 2707 Martin Luther King, Jr., Avenue SE, Mail Stop 0655, Washington, DC 20598, *PrivacyCommittee@dhs.gov,* (202) 343–1717.

SUPPLEMENTARY INFORMATION:

Purpose and Objective: Under the authority of 6 U.S.C. 451, this charter renewed the Data Privacy and Integrity Advisory Committee as a discretionary

committee, which shall operate in accordance with the provisions of the *Federal Advisory Committee Act* (FACA), 5 U.S.C. appendix. The Committee provides advice at the request of the Secretary and the Chief Privacy Officer of the Department of Homeland Security (DHS) (hereinafter ''the Chief Privacy Officer'') on programmatic, policy, operational, security, administrative, and technological issues within DHS that relate to personally identifiable information (PII), as well as data integrity, transparency, and other privacy-related matters.

Lynn Parker Dupree,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2022–14835 Filed 7–11–22; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6308–N–03]

Announcement of the Housing Counseling Federal Advisory Committee Notice of Public Meeting

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of Housing Counseling federal advisory committee public meeting.

SUMMARY: This gives notice of a Housing Counseling Federal Advisory Committee (HCFAC) meeting and sets forth the proposed agenda. The HCFAC meeting will be held on Monday, August 8, 2022. The meeting is open to the public and is accessible to individuals with disabilities.

DATES: The virtual meeting will be held on Monday, August 8, 2022, starting at 1:00 p.m. Eastern Daylight Time (EDT) via teleconference.

FOR FURTHER INFORMATION CONTACT: Virginia F. Holman, Housing Program Specialist, Office of Housing Counseling, U.S. Department of Housing and Urban Development, 600 East Broad Street, Richmond VA 23219; telephone number 540–894–7790 (this is not a toll-free number); email *virginia.f.holman@hud.gov.* Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 8778339. Individuals may also email *HCFACCommittee@hud.gov.*

SUPPLEMENTARY INFORMATION: HUD is convening the virtual meeting of the HCFAC on Monday, August 8, 2022, from 1:00 p.m. to 4:00 p.m. EDT. The meeting will be held via teleconference. This meeting notice is provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. app. 10(a)(2).

Draft Agenda—Housing Counseling Federal Advisory Committee Meeting—Monday, August 8, 2022

I. Welcome
II. Advisory Committee Discussion
III. Public Comment
IV. Next Steps
V. Adjourn

Registration

The public is invited to attend this one-day virtual meeting. Advance registration is required to attend. To register, please visit: *https://us06web.zoom.us/webinar/register/WN_w8NStmvAQzeLebzAi1ucmA* to complete your registration no later than August 2, 2022. Registration will be closed for the event on August 2, 2022. If you have any questions about registration, please email: *HCFACCommittee@ajantaconsulting.com.*

After submitting the registration form above, you will receive registration confirmation with the meeting link and passcode needed to attend. Individuals with speech or hearing impairments may follow the discussion by first calling the toll-free Federal Relay Service (FRS): (800) 977–8339 and providing the FRS operator with the conference call number that will be provided in the registration confirmation.

Public Comments

With advance registration, members of the public will have an opportunity to provide oral and written comments relative to agenda topics for the HCFAC's consideration. To provide oral comments, please indicate your desire to do so in your registration form no later than August 2, 2022. Your registration confirmation will also confirm that you are approved to speak. The available time for public comments will be limited to ensure pertinent HCFAC business is completed. Further, the amount of time allotted to each person will be limited to two minutes and will be allocated on a first-come first-served basis by HUD. Written comments can be provided on the registration form no later than August 2, 2022. Please note, written comments submitted will not be read during the meeting. The HCFAC will not respond to individual written or oral statements; but it will take all public comments into account in its deliberations.

Meeting Records

Records and documents discussed during the meeting as well as other information about the work of the HCFAC, will be available for public viewing as they become available at: *https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t0000001gzvQAAQ.*

Information on the Committee is also available on *hud.gov* at: *https://www.hud.gov/program_offices/housing/sfh/hcc* and on HUD Exchange at: *https://www.hudexchange.info/programs/housing-counseling/federal-advisory-committee/.*

Julia R. Gordon,

Assistant Secretary for Housing—FHA Commissioner.

[FR Doc. 2022–14804 Filed 7–11–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7061–N–08]

60-Day Notice of Proposed Information Collection: Operating Fund Energy Incentives: Energy Performance Contracting Program, Rate Reduction Incentive

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 12, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

FOR FURTHER INFORMATION CONTACT: Dawn Smith, Office of Policy, Programs and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; telephone 202–708–3000, extension 3374 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number). Copies of available documents submitted to OMB may be obtained from Ms. Smith.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Operating Fund Energy Incentives: Energy Performance Contracting Program, Rate Reduction Incentive.

OMB Approval Number: Pending.

Type of Request: New Collection.

Form Number: HUD–52722, HUD–52723, EPC Savings Calculator, Resident Paid Utility Worksheet.

Description of the need for the information and proposed use: Section 9(e)(2)(C) of the United States Housing Act of 1937 (1937 Act) authorizes Public Housing Agencies (PHAs) to ''receive the full financial benefit from any reduction in the cost of utilities or waste management resulting from any contract with a third party to undertake energy conservation improvements in one or more of its public housing projects.'' Energy Conservation Improvements or often referred to as Energy Conservation Measures (ECMs) include improvements to other utilities such as water and gas. Under 24 CFR 990.185, PHAs may qualify for conservation incentives when undertaking ECMs that are financed by an entity other than HUD.

This third-party financing of energy consumption measures is termed an Energy Performance Contract (EPC). A PHA uses a loan from a third-party to finance initial improvements in PHA infrastructure that will reduce a PHA's energy and/or water consumption through implementation of ECMs and/or renewable energy. HUD will continue to provide the PHA operating subsidy based on a PHA's energy consumption before the improvements were made. The PHA will then use the energy savings to pay for the debt service on the loan.

There are three energy consumption incentives that are available to a PHA:

1. The Frozen Rolling Base (24 CFR 990.185(a)(1))—where HUD freezes the PHA's pre-EPC Rolling Base Consumption Level (RBCL) following the installation of ECMs so that the PHA can retain the savings from the decreased energy and/or water consumption for the term of the contract.

2. The Add-on Subsidy—an Additional Operating Subsidy (or ''add-on'') is an increase in total operating subsidy eligibility provided by HUD as a conservation incentive, as described in 24 CFR 990.185(a)(3). The additional subsidy is for amortization of the loan of the EPC and other direct costs related to the conservation project during the term of the contract.

3. The Resident-Paid Utility incentive (24 CFR 990.185(a)(2)). PHAs undertaking energy and/or water conservation measures that are financed by an entity other than HUD may include resident-paid utilities under the consumption reduction incentive. This incentive provides for PHAs to review and update all utility allowances to ascertain that residents are receiving the proper allowances before energy savings measures are begun; the PHA makes future calculations of rental income for purposes of the calculation of operating subsidy eligibility based on these baseline allowances. In effect, HUD will freeze the baseline allowances for the duration of the contract. This approach allows a PHA to exclude from its Operating Fund rental income calculations any rents received that are a result of decreased utility allowances resulting from decreased consumption.

In addition to consumption incentives, PHAs are also eligible for a Rate Reduction Incentive. 24 CFR 990.185(b) also allows PHAs to retain 50% of any savings attributable to taking specific actions to reduce the cost of their energy consumption, such as well-head purchase of natural gas, administrative appeals, or contract negotiation with a utility company. RRIs executed at the same time as an EPC are eligible to retain up to 100 percent of the savings (rather than 50 percent of the savings with the RRI alone) during the EPC repayment period when the EPC and RRI impact the same AMP and utility.

The lower rate cannot be a result of factors that do not require the PHA to take an action and/or are beyond a PHA's control including, but not limited to, market changes, legislative changes, rate changes for all customers, or consuming energy at a different time of day. Applicants for an EPC program submit the following documents at the time of submission:

- A letter applying for an EPC incentive, identifying the project location, any PHA units that would fall under the EPC contract, the type of incentive that a PHA is applying for and whether the project will be managed by the PHA, or using an Energy Services Company (ESCO) to manage the EPC on their behalf;
- Completed Investment Grade Energy Audit to the ASHRAE (American Society of Heating, Refrigerating and Air-Conditioning Engineers) standard that supports the proposal;
- The Request for Proposals (RFP) used to solicit proposals from third-party lenders or ESCOs;
- A Cost Summary Sheet showing ECMs by project, funding type and Measurement and Verification (M&V) type;
- Detailed Utility Baseline Data summary sheet showing the RBCL and any adjustments to the data;
- Copies of the HUD 52722 and 52723 forms [1] by Asset Management Project (AMP) for each year of the required rolling base years;
- Copy of the most recent HUD 52722 and 52723 forms by AMP; and
- A detailed Cash Flow Summary, showing:
  - That the energy savings are sufficient to cover the project costs including replacement costs;
  - That 75% of the annual energy savings are utilized for payment of the debt for the contract; and
  - Any Bureau of Labor and Statistics historical documentation supporting any utility rate escalations.

Applicants for Resident Paid Utility Allowances submit the following:

- Copies of existing utility allowances with supportive documentation;
- Copies of the Pre-EPC utility allowances with supportive documentation;
- Copies of projected post-EPC utility allowances will be with supportive documentation;
- A copy of the Energy Services Agreement contract between the PHA and their third-party lender/ESCO Energy Services Agreement (ESA);
- A certification that the PHA has performed a cost analysis per 2 CFR part 200, and that the costs associated with the EPC are reasonable;
- A repayment certification that the PHA will pay for any debt using cost savings from implementing ECMs; and
- A letter from the PHA's legal counsel that states that the ESA complies with State and Local laws and that the legal interests of the Authority are fairly represented in the ESA.

[1] The burden for these forms has been approved under OMB Control No. 2577–0029. As a result, the burden from these forms is not included in the current collection.

Applications for the Rate Reduction Incentive (RRI) must include the following information:

- PHA Name and PHA code;
- Asset Management Project (AMP) number for each AMP included in the proposed RRI;
- A brief description of the action the PHA undertook to reduce the utility rate and supporting documentation;
- An explanation of how the PHA will calculate savings and anticipated savings; and
- Identification of the incentive the PHA will claim, whether it is 50 percent or 100 percent of the actual savings.

HUD uses collected information to determine whether applications meet eligibility requirements and application submission requirements. Applicants provide information about the proposed contract to enable HUD to evaluate the applicant's response to the criteria for rating the application and approving or disproving the contract.

Annual EPC Measurement and Verification and savings calculation information collected allows HUD to audit program performance accurately. The quality of reported data is critical for ensuring an accurate distribution of the Operating Fund subsidy appropriation. The information collected will allow HUD to accurately audit the program. For the EPC program, Measurement and Verification data will be submitted by the PHA annually in a format of their choice. The report must contain the actual usage amount of each utility under the EPC, the actual unit of measure, the consumption savings, and the cost savings. The PHAs will also be required to submit their consumption data using a standardized Excel Spreadsheet through the Operating Fund Web Portal, the Energy Savings Calculator. This Calculator is used to ensure the accuracy of the EPC incentives being claimed by the PHA in their annual Operating Subsidy submission.

For the RRI program, PHAs must annually submit documentation on energy cost savings attributed to the reduction in the rate. This data is submitted on an Asset Management Project (AMP basis). For the RRI program, PHAs will submit their data via email using the format of their choice.

Respondents: Public Housing Agencies (PHAs).

Type of submission/information collection	Number of respondents	Frequency of submissions	Total responses	Estimate average time (hours)	Estimate annual burden (hours)	Hourly cost	Total annual cost
EPC Application and supporting documentation	10	1	10	560	5,600	$125	$700,000
EPC Measurement and Verification Report and Energy Savings Calculator	200	1	200	20	4,000	125	500,000
RRI Application and supporting documentation	30	1	30	2	60	125	7,500
RRI savings calculation	60	1	60	10	600	125	75,000
Totals	300		300		10,260		1,282,500

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A regarding the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Laura Miller-Pittman,

Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2022–14821 Filed 7–11–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7056–N–18; OMB Control No.: 2502–0118]

60-Day Notice of Proposed Information Collection: Previous Participation Certification

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 12, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, Office of Policy Development and Research (PD&R), Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, PD&R, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the

information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Previous Participation Certification.

OMB Approval Number: 2502–0118.

OMB Expiration Date: 11–30–2022.

Type of Request: Extension of a currently approved collection.

Form Number: HUD Form 2530.

Description of the need for the information and proposed use: The HUD–2530 process provides review and clearance for participants in HUD's multifamily insured and non-insured projects. The information collected (participants' previous participation record) is reviewed to determine if they have carried out their past financial, legal, and administrative obligations in a satisfactory and timely manner. The HUD–2530 process requires a principal to certify to their prior participation in multifamily projects, and to disclose other information which could affect the approval for the proposed participation.

Respondents: Multifamily project participants such as owners, managers, developers, consultants, general contractors, and nursing home owners and operators.

Estimated Number of Respondents: 9,000.

Estimated Number of Responses: 9,000.

Frequency of Response: 1.

Average Hours per Response: Three hours for paper 2530 and 1 hour for electronic 2530.

Total Estimated Burden: 12,000.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Janet M. Golrick,

Acting, Chief of Staff for the Office of Housing—Federal Housing Administration.

[FR Doc. 2022–14825 Filed 7–11–22; 8:45 am]

BILLING CODE 4210–67–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings

TIME AND DATE: August 2, 2022, ET.

PLACE: Via Zoom.

STATUS: Meeting of the Advisory Council, open to the public.

MATTERS TO BE CONSIDERED:

- Call to Order
- Overview of Meeting Rules by Associate General Counsel
- President/CEO update
- Management Team Updates
- Adjournment

CONTACT PERSON FOR MORE INFORMATION: Nicole Stinson, Associate General Counsel, (202) 683–7117.

For Dial-in Information Contact: Nicole Stinson, Associate General Counsel, (202) 683–7117.

The Inter-American Foundation is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b).

Nicole Stinson,

Associate General Counsel.

[FR Doc. 2022–14945 Filed 7–8–22; 4:15 pm]

BILLING CODE 7025–01–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings

TIME AND DATE: July 26, 2022, 9 a.m.–12:30 p.m. ET.

PLACE: Inter-American Foundation Office, 1331 Pennsylvania Ave. NW, Suite 1200 North, Washington, DC 20004.

STATUS: Meeting of the IAF Board of Directors, open to the public, portion closed to the public.

MATTERS TO BE CONSIDERED:

- Call to Order from the Board Chair
- Overview of Meeting Rules by Associate General Counsel
- Approval of April 6, 2022 Meeting Minutes
- President/CEO update
- Management Team Updates
- Adjournment

Portion to be Closed to the Public: Executive session closed to the public as provided for by 22 CFR 1004.4(b).

CONTACT PERSON FOR MORE INFORMATION: Nicole Stinson, Associate General Counsel, (202) 683–7117.

For Dial-in Information Contact: Nicole Stinson, Associate General Counsel, (202) 683–7117.

The Inter-American Foundation is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b).

Nicole Stinson,

Associate General Counsel.

[FR Doc. 2022–14944 Filed 7–8–22; 4:15 pm]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX22DK40GUK0100; OMB Control Number 1028–0097]

Agency Information Collection Activities; Water Resources Research Act Program—State Water Resources Research Institute Annual Base Grant, National Competitive Grants, and Reporting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the U.S. Geological Survey (USGS) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before September 12, 2022.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0097 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact the Water Resources Research Act Program Manager by email at *gs-w_opp_wrra_team@usgs.gov* or by telephone at 502–413–7699. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may

also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The USGS Water Resources Research Act (WRRA) program issues an annual announcement to solicit applications for noncompetitive State Water Resources Research Program annual base grants authorized by section 104(c) and for the national competitive grant program authorized by section 104(g) of the Water Resources Research Act of 1984 (Pub. L. 98–242), as amended [42 U.S.C. 10303(c)].

Annual base grants may support research and information transfer projects as well as administration projects that advance the institutes' overall administration and objectives; these research projects are generally selected in a competitive statewide solicitation, peer review, and selection process designed and conducted by each institute. National competitive grants (104g) focus on water problems and issues of a regional or interstate nature beyond those of concern only to a single state and which relate to specific program priorities identified jointly by the Secretary (of the Interior, as delegated to the USGS) and the institutes.

The State Water Resources Research Institutes were established under Section 104(a) of the Act [42 U.S.C. 10303(a)]. There are 54 Water Resources Research Institutes, one in each state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam. The Institutes cooperate with the USGS in establishing total programmatic direction, reporting on the activities of the institutes and associated researchers, as well as coordinating and facilitating regional research and information and technology transfer.

Title of Collection: Water Resources Research Act Program—State Water Resources Research Institute Annual Base Grant, National Competitive Grants, and Reporting.

OMB Control Number: 1028–0097.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Universities.

Total Estimated Number of Annual Respondents: 54.

Total Estimated Number of Annual Responses: 54.

Estimated Completion Time per Response: 80 hours.

Total Estimated Number of Annual Burden Hours: 4,320 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Tanja Williamson,

WRRA Acting Program Manager, U.S. Geological Survey.

[FR Doc. 2022–14824 Filed 7–11–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2231A2100DD/AAKC001030/A0A501010.999900; OMB Control Number 1076–0197]

Agency Information Collection Activities; Tribal Enrollment Count

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA), are proposing to reinstate a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before September 12, 2022.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Steven Mullen, Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1001 Indian School Road NW, Suite 229, Albuquerque, New Mexico 87104; or by email to *comments@bia.gov.* Please reference Office of Management and Budget (OMB) Control Number 1076–0197 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Jeanette Hanna, Deputy Bureau Director, Indian Services, BIA by email at *jeanette.hanna@bia.gov* or by telephone at 202–513–7640. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Enrollment data is an important source of information which allows the Indian Affairs and other Federal agencies to equitably distribute resources because it is a quantifiable representation of a Tribe's population. Different population sizes generally require different levels of services and resources. BIA must collect this information to ensure effective, accurate, and timely distribution of assistance to respond to funds specifically appropriated for Indian Country, where applicable. This data may assist Federal agencies in developing distribution formulas for funds provided under the Infrastructure Investment and Jobs Act as well as for use in distribution of resources for such programs as the Department of Energy's Energy Efficient and Conservation Block Grant or the Department of Treasury's Emergency Rental Assistance Program. Specifically, enrollment data will be a data source to assist Indian Affairs' allocation of supplemental appropriations by the Congress such as the Infrastructure Investment and Jobs Act. The authority for this information collection is 25 U.S.C. 2.

Title of Collection: Tribal Enrollment Count.

OMB Control Number: 1076–0197.

Form Number: None.

Type of Review: Reinstatement of a previously approved collection.

Respondents/Affected Public: Federally recognized Indian Tribes.

Total Estimated Number of Annual Respondents: 574 per year.

Total Estimated Number of Annual Responses: 574 per year.

Estimated Completion Time per Response: 1 hour.

Total Estimated Number of Annual Burden Hours: 574 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Steven Mullen,

Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2022–14739 Filed 7–11–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–IMR–VALL–33293; PPIMVALL10; PPMPSPD1Z.YM0000; 222P103601]

Assessment of Eligible and Ineligible Lands for Consideration as Wilderness Areas, Valles Caldera National Preserve

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to assess Valles Caldera National Preserve lands for wilderness eligibility.

SUMMARY: Pursuant to the Wilderness Act of 1964, and in accordance with National Park Service (NPS) Management Policies (2006), Section 6.2.1, the NPS has initiated an assessment of lands within the authorized boundary of Valles Caldera National Preserve for their eligibility for inclusion in the national wilderness preservation system.

DATES: The eligibility assessment will be formally initiated on July 12, 2022.

ADDRESSES: A map of lands to be assessed is on file at Valles Caldera National Preserve Headquarters, 90 Villa Louis Martin, Jemez Springs, NM 87025.

FOR FURTHER INFORMATION CONTACT: Information about the wilderness character of these lands, and requests for information about the eligibility assessment process, should be directed to: Brian Smith, Valles Caldera National Preserve, Environmental Protection Specialist, 575–829–4100, *vall_compliance@nps.gov,* or by mail at Valles Caldera National Preserve, PO Box 359, Jemez Springs, New Mexico 87025.

SUPPLEMENTARY INFORMATION: NPS Management Policies (2006) Section 6.2.1 requires that ''All lands administered by the National Park Service, including new units or additions to existing units since 1964, will be evaluated for their eligibility for inclusion in the national wilderness preservation system.'' The lands to be assessed at Valles Caldera National Preserve include approximately 88,900 acres designated to be managed by the National Park Service since 2014 by Section 3043 of Public Law 113–291 (December 19, 2014).

Section 6.2.1.1 and 6.2.1.2 of NPS Management Policies (2006) describe the primary eligibility criteria and additional considerations in determining eligibility that will be used during the assessment process. Pursuant to Section 6.2.1.3 of NPS Management Policies (2006), the determination of an area's eligibility, or ineligibility, for further study will be approved by the Director before publication of the final eligibility determination in the **Federal Register**.

For areas determined to be ineligible for wilderness designation, the wilderness preservation provisions in the NPS Management Policies (2006) would not apply (NPS Management Policies (2006) Section 6.2.1.3). However, ineligible lands will continue to be managed in accordance with the NPS Organic Act and all other laws, executive orders, regulations, and policies applicable to units of the national park system.

Lands and waters found to possess the characteristics and values of wilderness, as defined in the Wilderness Act and determined eligible pursuant to the wilderness eligibility assessment, will be formally studied to develop the recommendation to Congress for wilderness designation (NPS Management Policies (2006), Section 6.2.2). The wilderness study will be supported by appropriate documentation of compliance with the

National Environmental Policy Act and the National Historic Preservation Act.

Michael Reynolds,

Regional Director, Interior Regions 6, 7, & 8.

[FR Doc. 2022–14833 Filed 7–11–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034164; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Natural History, Yale University, New Haven, CT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Natural History (hereafter the Yale Peabody Museum), has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice who wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Yale Peabody Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice who wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Yale Peabody Museum at the address in this notice by August 11, 2022.

FOR FURTHER INFORMATION CONTACT: Professor David Skelly, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Peabody Museum of Natural History, Yale University, New Haven, CT. The human remains and associated funerary objects were removed from Warren County, MS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Yale Peabody Museum professional staff in consultation with representatives of the Alabama-Coushatta Tribe of Texas (*previously* listed as Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Jena Band of Choctaw Indians; Miami Tribe of Oklahoma; Mississippi Band of Choctaw Indians; Quapaw Nation (*previously* listed as The Quapaw Tribe of Indians); The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Osage Nation (*previously* listed as Osage Tribe); and the Tunica-Biloxi Indian Tribe (hereafter referred to as ''The Tribes'').

History and Description of the Remains

Sometime prior to 1869, human remains representing, at minimum, one individual were removed by George W. Gould from a mound near Warrenton in Warren County, MS. They were donated to the Yale Peabody Museum in 1869. The human remains belong to an adult of undetermined sex. No known individual was identified. The 81 associated funerary objects are 10 celts and chisels, two adzes, three chunkey stones, one hammerstone, 30 projectile points, five potsherds, 18 shark teeth, four pebbles, two ornamental disk fragments, and six ceramic vessels.

Historical, geographical, and archeological documentation demonstrate that the area of Warrenton was home to the Plaquemine cultures who were indigenous to the Natchez Bluffs region of Mississippi circa. A.D. 1000–1600. Excavation records and catalog documentation demonstrate that the human remains and cultural items were known to be Native American at the time of their removal and subsequent donation; archeological evidence demonstrates a likely connection between these items and those found at various recorded Plaquemine cultural period sites; and the associated funerary objects—specifically the whole vessels—are consistent with the stylistic features of Late Plaquemine vessels found at the Glass Site (22Wr502), a neighboring mound complex located approximately five miles east of Warrenton. Based on parameters previously determined by the Mississippi Department of Archives and History and The Tribes, a relationship of shared group identity can be established between The Tribes and the earlier group to which the human remains and associated objects belong.

Determinations Made by the Peabody Museum of Natural History, Yale University

Officials of the Peabody Museum of Natural History, Yale University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 81 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice who wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Professor David Skelly, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752, by August 11, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Peabody Museum of Natural History, Yale University is responsible for notifying The Tribes that this notice has been published.

Dated: June 29, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–14780 Filed 7–11–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034165; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Michigan State Police, Lansing, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Michigan State Police (MSP) have completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is no cultural affiliation between the human and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Michigan State Police. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Michigan State Police at the address in this notice by August 11, 2022.

FOR FURTHER INFORMATION CONTACT: Hanna Friedlander, Human Remains Analyst, Michigan State Police, Intelligence Operations Division—Missing Persons Coordinator Unit, 7150 Harris Drive, Lansing, MI 48821, telephone (517) 242–5731, email *friedlanderh@michigan.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Michigan State Police, Lansing, MI. The human remains were removed from the City of Caro in Tuscola County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Michigan State Police (MSP) professional staff in consultation with representatives of the Saginaw Chippewa Indian Tribe of Michigan.

History and Description of the Remains

On April 9, 2021, human remains representing, at minimum, one individual were removed from the City of Caro, Tuscola County, MI. As the human remains were extremely fragmentary, osteobiographical information for this individual was indeterminate. The human remains (known as MPC–7–21) were sent for radiocarbon dating to DirectAMS, who provided a date ranging between A.D. 993 and 1031. On November 1, 2021, the human remains were returned to the MSP. No known individual was identified. No associated funerary objects are present.

Determinations Made by the Michigan State Police

Officials of the Michigan State Police have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on radiocarbon dating.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Veux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (*previously* listed as Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and the Sault Ste. Marie Tribe of Chippewa Indians, Michigan (hereafter referred to as ''The Tribes'').
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of The Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Hanna Friedlander, Human Remains Analyst, Michigan State Police, Intelligence Operations Division—Missing Persons Coordinator Unit, 7150 Harris Drive, Lansing, MI 48821, telephone (517) 242–5731, email *friedlanderh@michigan.gov,* by August 11, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed. If joined to a request from one or more of The Tribes, the following non-federally recognized Indian groups also may receive transfer of control of the human remains: the Burt Lake Band of Ottawa and Chippewa Indians and the Grand River Band of Ottawa Indians.

The Michigan State Police are responsible for notifying The Tribes; Burt Lake Band of Ottawa and Chippewa Indians; and the Grand River Band of Ottawa Indians that this notice has been published.

Dated: June 29, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–14781 Filed 7–11–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1240]

Certain UMTS and LTE Cellular Communications Modules and Products Containing the Same; Notice of a Commission Determination To Review in Part and, on Review, Affirm a Final Initial Determination Finding No Violation of Section 337; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the ''Commission'') has determined to review in part the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on April 1, 2022. On review, the Commission has determined to take no position on certain non-dispositive issues. The Commission has determined not to review, and thereby adopts, the remaining findings in the ID. The Commission further determines to affirm the ID's finding of no violation with respect to each of the subject patents. This investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket system (''EDIS'') at *https://edis.usitc.gov*. For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the present investigation on January 27, 2021, based on a complaint, as supplemented, filed by Koninklijke Philips N.V. of Eindhoven, Netherlands and Philips RS North America LLC (f/k/a Respironics, Inc.) of Pittsburgh, Pennsylvania. 86 FR 7305–06 (Jan. 27, 2021). The complaint alleges a violation of section 337 of the Tariff Act, as amended, 19 U.S.C. 1337, based on the importation, sale for importation, or sale in the United States after importation of certain UMTS and LTE cellular communication modules and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 7,831,271; 8,199,711; 7,554,943; and 7,944,935. *Id.* The complaint further alleges a domestic industry exists or is in the process of being established. *Id.*

The Commission's notice of investigation names the following respondents: Thales DIS AIS USA, LLC of Bellevue, Washington; Thales DIS AIS Deutschland GmbH, Bayern, Germany (collectively, ''Thales''); Thales USA, Inc., Arlington, Virginia; Thales S.A., Paris, France; Telit Wireless Solutions, Inc. of Durham, North Carolina; Telit Communications PLC, London, United Kingdom; Quectel Wireless Solutions Co., Ltd., Shanghai, China; CalAmp Corp. of Irvine, California; Xirgo Technologies, LLC of Camarillo, California; Laird Connectivity, Inc. of Akron, Ohio (all collectively, ''Respondents''). *Id.* at 7306. The Office of Unfair Import Investigations (''OUII'') is also named as a party to this investigation. *Id.*

The presiding ALJ held an evidentiary hearing from October 8–13, 2021. The parties filed their opening post-hearing briefs on October 29, 2021, and their post-hearing reply briefs on November 15, 2021.

On April 1, 2022, the presiding ALJ issued the final ID at issue finding no violation of Section 337 with respect to each of the four asserted patents. In summary, the final ID finds that Philips failed to prove that any of the asserted claims of the four asserted patents is infringed, directly or indirectly, by any of the Respondents. The ID further finds that Philips failed to prove that it satisfied the technical prong of the domestic industry requirement with respect to any of the four asserted patents. The ID further finds that asserted claim 9 of the '711 patent is invalid as indefinite and asserted claims 9 and 12 are invalid as obvious. The ID further finds that asserted claims 1–8 of the '271 patent are invalid as indefinite and for lack of sufficient written description. The ID finds that claim 12 of the '943 patent is invalid as indefinite. The ID further finds that all four patents are unenforceable under a doctrine of implied waiver, but it rejects Respondents' proposed defenses of express and implied licenses and equitable estoppel.

On April 13, 2022, Philips filed a petition for review of certain no-violation findings in the final ID. On April 15, 2022, Thales filed a contingent petition to review certain findings in the final ID.

On April 15, 2022, the presiding ALJ issued a recommended determination on remedy and bonding.

On April 21, 2022, OUII filed a combined response opposing both parties' petitions for review. On April 21, 2022, Respondents filed their opposition to Philips' petition for review. On April 25, 2022, Philips filed its opposition to Thales' contingent petition for review.

On May 16, 2022, Philips and Thales filed public interest statements pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). The Commission also received public interest statements from a number of third parties as well as from interested individuals in response to the post-RD **Federal Register** notice, including: ResMed Corp. (May 13, 2022); the American Sleep Apnea Association (May 16, 2022); App Association (May 16, 2022); Continental Automotive Systems, Inc., Denso Corporation, Bury S.p.z.o.o, the Alliance for Automotive Innovation, and the European Association of Auto Suppliers (May 16, 2022); Congressmen Scott H. Peters and Congressman Bryan G. Steil (May 16, 2022); Federal Trade Commission Chair Lina M. Khan and Commissioner Rebecca Kelly Slaughter (May 16, 2022); Professor Michael A. Carrier (May 16, 2022); Dr. Kathleen Sarmiento, M.D (May 16, 2022); Dr. Patrick J. Strollo, Jr., MD (May 8, 2022), Dr. Sanjay R. Patel, MD (May 5, 2022), and Dr. Sunil Sharma, M.D., Dr. Robert Stansbury, M.D., and Chris Pham, D.O. of the West Virginia University Sleep Evaluation Center (May 3, 2022). 87 FR 23884 (April 21, 2022).

Upon review of the subject ID, the parties' petitions, and responses thereto, the Commission has determined to review and, on review, take no position on the following issues: (1) the ID's construction and application of the claim terms ''queue,'' ''queue store,'' and ''means for transmitting the group'' in the '935 patent: (2) the ID's finding that claims 9 and 12 of the '711 patent are invalid as obvious; (3) the ID's finding on domestic industry for the '271 patent, to the extent it might be interpreted to suggest that ''each and every'' asserted domestic industry product must be shown to practice a claim of an asserted patent to satisfy the technical prong of the domestic industry requirement (*see* ID at 221); (4) the ID's finding that the accused products do not directly infringe method claims 1–4 of the '271 patent on the basis that Philips did not prove that they are used with an antenna, which conflicts with the ID's construction of ''transmitting'' to not require an antenna (*cf.* ID at 210 *with* ID at 234); (5) the ID's finding that Philips

satisfied the economic prong of the domestic industry requirement with respect to the four asserted patents; (6) the ID's finding that Philips has impliedly waived its rights to assert the four asserted patents; and (7) the ID's finding that Respondents failed to prove either their express/implied license defense or their equitable estoppel defense with respect to any of the four asserted patents. *See Beloit Corp.* v. *Valmet Oy,* 742 F.2d 1421, 1422–23 (Fed. Cir. 1984). Chair Johanson and Commissioner Karpel base their decision to review and take no position on the economic prong on the finding that the technical prong is not met. Commissioner Kearns would affirm the ID's finding that the '271 patent is unenforceable under the doctrine of implied waiver (but takes no position on implied waiver for the other three asserted patents), and its findings that Respondents failed to prove both their express/implied license defense and their equitable estoppel defense with respect to the four asserted patents. Commissioner Kearns also notes that his determination to review and take no position regarding satisfaction of the economic prong is independent of his determination regarding the technical prong.

The Commission has determined not to review, and thus adopts, the remaining findings in the ID, including that: (1) the asserted claims of the '935 patent, the '711 patent, the '943 patent, and the '271 patent are not infringed; (2) Philips did not satisfy the technical prong of the domestic industry requirement with respect to any of the four asserted patents; (3) claim 9 of the '711 patent and claim 12 of the '943 patent are invalid as indefinite; and (4) the asserted claims of the '271 patent are invalid as indefinite and for lack of written description. Recognizing the Commission has determined not to review the ID's finding that Philips did not satisfy the technical prong of the domestic industry requirement with respect to any of the four asserted patents, Commissioner Schmidtlein would otherwise affirm the ID's analysis concerning whether the asserted economic prong investments were significant under 19 U.S.C. 1337(a)(3)(A) and (B).

The Commission thus affirms the final ID's finding of no violation of Section 337 with respect to each of the four asserted patents. This investigation is hereby terminated.

The Commission voted to approve this determination on July 6, 2022.

The authority for the Commission's determinations is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 6, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–14761 Filed 7–11–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Donald J. Murphy, M.D.; Decision and Order

On April 15, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Donald J. Murphy, M.D. (hereinafter, Registrant). OSC, at 1 and 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. AM2605561 at the registered address of 5920 McIntyre St., Golden, Colorado, 80403. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is ''without authority to handle controlled substances in the State of Colorado, the state in which [he is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its Request for Final Agency Action (RFAA) submitted June 23, 2022.[1]

Findings of Fact

On September 23, 2021, the Colorado Medical Board issued an Order suspending Registrant's license to practice medicine in the State of Colorado. RFAAX C (Order of Summary Suspension), at 3. According to Colorado's online records, of which the Agency takes official notice, Registrant's license is still suspended. [2] Colorado Professional or Business License Lookup, *https://apps.colorado.gov/dora/licensing/Lookup/LicenseLookup.aspx* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not currently licensed to engage in the practice of medicine in Colorado, the state in which he is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71,371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27,616, 27,617 (1978). [3]

[1] Based on the Declaration from a DEA Diversion Investigator that the Government submitted with its RFAA, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAA, Exhibit (hereinafter, RFAAX) B, at 1–2. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a written statement or corrective action plan and therefore has waived any such rights. RFAA, at 1–2; *see also* 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C).

[2] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.usdoj.gov.*

[3] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71,371–72; *Sheran Arden*

Continued

According to Colorado statute, ''[e]very person who manufactures, distributes, or dispenses any controlled substance within this state . . . shall obtain . . . a registration, issued by the respective licensing board . . . . For purposes of this section and this article [ ], 'registration' or 'registered' means . . . the licensing of physicians by the Colorado medical board . . . .'' Colo. Rev. Stat. § 18–18–302(1) (2022). Here, the undisputed evidence in the record is that Registrant's Colorado medical license was suspended by the Colorado Medical Board. As such, Registrant is not authorized to dispense controlled substances in Colorado and thus is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. AM2605561 issued to Donald J. Murphy, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending applications of Donald J. Murphy, M.D. to renew or modify this registration, as well as any other pending application of Donald J. Murphy, M.D. for additional registration in Colorado. This Order is effective August 11, 2022.

Signing Authority

This document of the Drug Enforcement Administration was signed on July 6, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2022–14839 Filed 7–11–22; 8:45 am]

BILLING CODE 4410–09–P

Yeates, M.D., 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.,* 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton,* 43 FR at 27,617.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Alphonsus Okoli, M.D.; Decision and Order

On June 7, 2021, the Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Alphonsus Okoli, M.D. (hereinafter, Registrant). OSC, at 1 and 4. The OSC proposed the revocation of Registrant's Certificate of Registration No. BO4917780 at the registered address of 7525 Greenway Center Drive, Suite 110, Greenbelt, Maryland 20770. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is ''without authority to handle controlled substances in Maryland, the state in which [he is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).[1]

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its Request for Final Agency Action (RFAA).[2]

Findings of Fact

On March 23, 2021,[3] Registrant and the Maryland State Board of Physicians (hereinafter, the Board) entered into a Consent Order suspending Registrant's Maryland medical license and permanently prohibiting him from prescribing and dispensing Controlled Dangerous Substances (hereinafter, CDS). *See* RFAAX C–4 (Consent Order), at 12–18. On September 29, 2021, the Board issued an Order Terminating Suspension and Imposing Probation that ended the suspension of Registrant's Maryland medical license, but maintained that, as had been ordered in Registrant's Consent Order with the Board, Registrant was permanently prohibited from prescribing and dispensing all controlled dangerous substances. RFAAX C–5, at 1–4.

According to Maryland's online records, of which the Agency takes official notice, Registrant's Maryland CDS license is still revoked.[4] Maryland Department of Health CDS Search, *https://health.maryland.gov/ocsa/pages/cdssearch.aspx* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not currently licensed to dispense controlled dangerous substances in Maryland, the state in which he is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71,371 (2011), *pet. for rev. denied,* 481 F. App'x

[1] The OSC also alleged that Registrant's registration should be revoked because Registrant has ''committed such acts as would render [his] registration inconsistent with the public interest, as that term is defined under the Controlled Substances Act,'' based on Registrant's lack of compliance with a DEA Memorandum of Agreement (MOA). OSC, at 2 (citing 21 U.S.C. 823(f) and 824(a)(4)). However, in its Request for Final Agency Action (RFAA) submitted to this Office on June 22, 2022, the Government noted that while it does not concede that Registrant complied with the MOA, Registrant's lack of state authority to handle controlled substances is ''case dispositive and the Government does not seek a Final Order on the public interest allegations.'' RFAA, at n.2.

[2] By letter dated July 12, 2021, Registrant submitted a written statement in response to the OSC in which he waived his right to a hearing. RFAA, Exhibit (hereinafter, RFAAX) B, at 1–2. As the Government seeks Final Agency Action solely on the ground that Registrant lacks state authority to handle controlled substances, the Agency will not consider Registrant's explanation in response to the public interest allegations at this time. *See id.* Registrant also argues that his DEA registration should not be revoked for lack of state authority because he still has a North Carolina medical license in ''inactive status.'' *Id.* at 2.

[3] On April 13, 2020, an Administrative Law Judge of the Maryland Office of Administrative Hearings issued a Proposed Decision recommending that Registrant's Maryland Controlled Dangerous Substances (CDS) license be revoked. RFAAX C–2, at 1, 21. On June 25, 2020, the Designee of the Maryland Secretary of Health issued a Final Decision and Order adopting the Proposed Decision in full and revoking Registrant's Maryland CDS license. RFAAX C–3, at 1–4.

[4] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.usdoj.gov.*

826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27,616, 27,617 (1978).[5]

According to Maryland statute, ''a person shall be registered by the Department before the person manufactures, distributes, or dispenses a controlled dangerous substance in the State or transports a controlled dangerous substance into the State.'' Md. Code. Ann., Crim. Law § 5–301(a)(1) (West 2022). Maryland law further defines ''dispense'' to mean ''to deliver to the ultimate user or the human research subject by or in accordance with the lawful order of an authorized provider'' and states that the term includes ''to prescribe, administer, package, label, or compound a substance for delivery.'' *Id.* at § 5–101(I)(1)–(2).

Here, the undisputed evidence in the record is that Registrant's CDS license was revoked. As already discussed, a practitioner must hold a valid controlled substance license to dispense a controlled substance in Maryland.[6] Thus, Registrant is not eligible to maintain a DEA registration in Maryland and the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. BO4917780 issued to Alphonsus Okoli, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending applications of Alphonsus Okoli, M.D. to renew or modify this registration, as well as any other pending application of Alphonsus Okoli, M.D. for additional registration in Maryland. This Order is effective August 11, 2022.

Signing Authority

This document of the Drug Enforcement Administration was signed on July 6, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2022–14832 Filed 7–11–22; 8:45 am]

BILLING CODE 4410–09–P

[5] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.,* 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton,* 43 FR at 27,617.

[6] The Agency finds that Registrant's inactive North Carolina medical license has no bearing on the issue in this case, which is whether Registrant has authority to handle controlled substances in the Maryland, the state of his DEA registration.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 22–23]

Bhanoo Sharma, M.D.; Decision and Order

On April 4, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Bhanoo Sharma, M.D. (hereinafter, Respondent). OSC, at 1 and 3. The OSC proposed the revocation of Respondent's Certificate of Registration No. FS3031034 at the registered address of 17577 Kedzie Avenue, Suite 108, Hazel Crest, Illinois 60429. *Id.* at 1. The OSC alleged that Respondent's registration should be revoked because Respondent is ''without authority to handle controlled substances in the State of Illinois, the state in which [he is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

By letter dated May 4, 2022, Respondent requested a hearing. On May 4, 2022, Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, the Chief ALJ) issued an Order Directing the Filing of Government Evidence Regarding Its Lack of State Authority Allegation and Briefing Schedule. On May 11, 2022, the Government filed its Submission of Evidence and Motion for Summary Disposition (hereinafter, Motion for Summary Disposition). On May 20, 2022, Respondent filed his Reply in Opposition to the Government's Motion for Summary Disposition (hereinafter, Respondent's Reply).[1]

On June 1, 2022, the Chief ALJ granted the Government's Motion for Summary Disposition and recommended the revocation of Respondent's DEA registration, finding that because Respondent lacks state authority to handle controlled substances, ''there is no other fact of consequence for [the] tribunal to decide in order to determine whether or not [Respondent] is entitled to hold a [DEA registration].'' Order Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (hereinafter, Recommended Decision or RD), at 6.[2]

The Agency issues this Decision and Order based on the entire record before it, 21 CFR 1301.43(e), and makes the following findings of fact.

Findings of Fact

On February 19, 2021, the Illinois Department of Financial and Professional Regulation issued an Order suspending Respondent's Illinois medical license. Government Exhibit 3, at 1–2. According to Illinois online records, of which the Agency takes official notice, Respondent's state medical license is still suspended.[3]

[1] In his Reply, Respondent argued that his DEA registration should not be revoked because, although his Illinois medical license was suspended, no specific action had been taken against his Illinois controlled substance license and there have been no allegations against him regarding his controlled substance prescribing. Respondent's Reply, at 2. Further, Respondent argued that his DEA registration should not be revoked because he is appealing the underlying action that resulted in the suspension of his Illinois medical license. *Id.* at 2–4. Finally, Respondent argued that the plain language of 21 U.S.C. 824(a)(3) does not mandate revocation of a DEA registration upon suspension of a practitioner's state medical license, but rather, implies that revocation is discretionary. *Id.* at 4–5. In support of his final argument, Respondent asserts that the Government has not put forth any argument indicating why his DEA registration *must* be revoked. *Id.*

[2] By letter dated June 28, 2022, the Chief ALJ certified and transmitted the record to the Agency for final agency action, advising that neither party filed exceptions.

[3] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a

Continued

Illinois Department of Financial and Professional Regulation, License Lookup, *https://online-dfpr.micropact.com/lookup/licenselookup.aspx* (last visited date of signature of this Order). Further, Illinois online records list the status of Respondent's state controlled substance license as ''inoperative.'' *Id.* Accordingly, the Agency finds that Respondent is not currently licensed to engage in the practice of medicine and his controlled substances license is inoperative in Illinois, the state in which he is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition [4] for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71,371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27,616, 27,617 (1978).[5]

Pursuant to the Illinois Controlled Substances Act, a ''practitioner'' means ''a physician licensed to practice medicine in all its branches . . . or other person licensed, registered, or otherwise lawfully permitted by the United States or this State to distribute, dispense, conduct research with respect to, administer or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.'' 720 Ill. Comp. Stat. Ann. 570/102(kk) (West 2022). Further, the Illinois Controlled Substances Act requires that ''[e]very person who manufactures, distributes, or dispenses any controlled substances . . . must obtain a registration issued by the Department of Financial and Professional Regulation in accordance with its rules.'' *Id.* at 570/302(a).[6]

Here, the undisputed evidence in the record is that Respondent currently lacks authority to handle controlled substances in Illinois as his Illinois medical license is suspended and his Illinois controlled substance license is inoperative. As already discussed, a practitioner must hold a valid controlled substance license to dispense a controlled substance in Illinois. Thus, Respondent is not eligible to maintain a DEA registration in Illinois. Accordingly, the Agency will order that Respondent's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FS3031034 issued to Bhanoo Sharma, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending applications of Bhanoo Sharma, M.D. to renew or modify this registration, as well as any other pending application of Bhanoo Sharma, M.D. for additional registration in Illinois. This Order is effective August 11, 2022.

Signing Authority

This document of the Drug Enforcement Administration was signed on July 6, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2022–14841 Filed 7–11–22; 8:45 am]

BILLING CODE 4410–09–P

party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Respondent may dispute the Agency's finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.usdoj.gov.*

[4] As such, the Agency finds Respondent's arguments regarding the permissive nature of 21 U.S.C. 824(a)(3) to be unavailing. *See also John B. Freitas, D.O.,* 74 FR 17,524, 17,525 (2009) (''the CSA requires the revocation of a registration issued to a practitioner who lacks [such] authority.'').

[5] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.,* 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton,* 43 FR at 27,617.

Moreover, because ''the controlling question'' in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a practitioner's registration ''is currently authorized to handle controlled substances in the [S]tate,'' *Hooper,* 76 FR at 71,371 (quoting *Anne Lazar Thorn,* 62 FR 12,847, 12,848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner is still challenging the underlying action. *Bourne Pharmacy,* 72 FR 18,273, 18,274 (2007); *Wingfield Drugs,* 52 FR 27,070, 27,071 (1987). Thus, it is of no consequence that the underlying action in this case is being appealed. What is consequential is the Agency's finding that Respondent is no longer currently authorized to dispense controlled substances in Illinois, the state in which he is registered with the DEA.

Further, it is of no consequence the specific manner in which Respondent's state authority was lost. *See, e.g., Alex E. Torres, M.D.,* 87 FR 3,352 (2022) (voluntary surrender of medical license); *Humberto A. Florian, M.D.,* 86 FR 52,203 (2021) (state medical license revoked); *Javaid A. Perwaiz, M.D.,* 86 FR 20,732 (2021) (state medical license expired). Thus, Respondent's argument that his DEA registration should not be revoked because no specific action was taken against his Illinois controlled substance license is without merit. Additionally, it is of no consequence that there have been no allegations against Respondent regarding his controlled substance prescribing. *See, e.g., Kirk A. Hopkins, M.D.,* 87 FR 21,154 (2022) (allegations of wire fraud); *Florian,* 86 FR 52,203 (allegations of negligence in medical practice). Once again, what is consequential is the Agency's finding that Respondent is no longer currently authorized to dispense controlled substances in Illinois, the state in which he is registered with the DEA.

[6] The Illinois Controlled Substances Act also authorizes the Department of Financial and Professional Regulation to discipline a practitioner holding a controlled substance license, stating that ''[a] registration under Section 303 to manufacture, distribute, or dispense a controlled substance . . . may be denied, refused renewal, suspended, or revoked by the Department of Financial and Professional Regulation.'' *Id.* at 570/304(a).

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0069]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Revision of a Currently Approved Collection

AGENCY: Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division.

ACTION: 30 Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until August 11, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerry Lynn Brovey, Supervisory Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C–2, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306; phone: 304–625–4320 or email *glbrovey@fbi.gov.* Written comments and/or recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

➢ Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the [Component or Office name], including whether the information will have practical utility;

➢ Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

➢ Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

➢ Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection:

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Flash/Cancellation/Transfer Notice.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Agency form number I–12. The applicable component within the Department of Justice is the Federal Bureau of Investigation, Criminal Justice Information Services Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal and tribal law enforcement agencies. This collection is needed to indicate on an individual's identity history that the individual is being supervised to ensure the supervisory agency is notified of any additional criminal activity. Acceptable data is stored as part of the Next Generation Identification (NGI) system of the FBI.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,057 respondents will complete each form within approximately 8 minutes. The total number of respondents is reoccurring with an annual response of 174,337.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 23,245 total annual burden hours associated with this collection.

If additional information is required contact: Robert Houser, Assistant Director, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: July 6, 2022.

Robert Houser,

Assistant Director, Policy and Planning Staff, U.S. Department of Justice.

[FR Doc. 2022–14742 Filed 7–11–22; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Trager Limestone LLC,* Case No. 20–cv–6060, was lodged with the United States District Court for the Western District of Missouri on July 5, 2022.

This proposed Consent Decree concerns a complaint filed by the United States against Defendant Trager Limestone LLC, pursuant to Sections 309(b), (d), and 311(b) of the Clean Water Act, 33 U.S.C. 1319(b), (d), and 1321(b), to obtain injunctive relief from and impose civil penalties against the Defendant for violating Sections 301(a) and 311(j) of the Clean Water Act, 33 U.S.C. 1311(a) and 1321(j), by discharging pollutants without a permit into waters of the United States, and for failing to meet the requirements of the Environmental Protection Agency's ''Spill Prevention, Control, and Countermeasures Plan'' regulations. The proposed Consent Decree resolves these allegations by requiring the Defendant to restore the impacted areas, record a conservation easement, and pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Phillip R. Dupré, Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, Post Office Box 7611, Washington, DC 20044, *pubcomment_eds.enrd@usdoj.gov,* and refer to *United States* v. *Trager Limestone LLC,* DJ No. 90–5–1–1–21606.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Western District of Missouri, Charles Evans Whittaker United States Courthouse, 400 E 9th Street, Kansas City, MO 64106. In addition, the proposed Consent Decree may be examined

electronically at *https://www.justice.gov/enrd/consent-decrees.*

Cherie Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2022–14762 Filed 7–11–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Occupational Safety and Health State Plans

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before August 11, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: States choosing to operate OSHA-approved State plans must provide information to document that their programs are ''at least as effective'' as the Federal OSHA program. In order to obtain and maintain State Plan approval, a State must submit various documents to OSHA describing its program structure and operation, including any modifications thereto as they occur, in accordance with the identified regulations. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 31, 2022 (87 FR 32464).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Occupational Safety and Health State Plans.

OMB Control Number: 1218–0247.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 28.

Total Estimated Number of Responses: 1,255.

Total Estimated Annual Time Burden: 11,055 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2022–14797 Filed 7–11–22; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 22–053]

Name of Information Collection: Astronaut's System for Tracking and Requesting Appearances (ASTRA)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by August 11, 2022.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email *claire.a.little@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information supports the National Aeronautics and Space Act of 1958, as amended, to enable NASA astronaut appearances before a variety of groups to inform the general public about the U.S. space program. Typically, presentations are made to high schools and universities, community organizations, businesses and associations, or military organizations. In order to reach as many people as possible, NASA offers three options to choose from in requesting an astronaut appearance:

(1) An in person astronaut appearance whereby the astronaut travels to the appearance location.

(2) A virtual appearance utilizing virtual telecommunications tools to connect an astronaut via video conference with your organization.

(3) A recorded greeting arranged in advance to be used during a specified event.

The NASA Astronaut Appearance Office (AAO) located at the Lyndon B. Johnson Space Center (JSC) in Houston, Texas is responsible for vetting, processing, and coordinating logistics for Astronaut appearances. This information will be used by the NASA AAO and Legal and HR personnel in the vetting, coordinating, scheduling and authorization processes to work with requestors to facilitate the appearance logistics. Records of appearances,

including the information associated with the requestor and points of contact are maintained by the AAO for a minimum of five (5) years.

II. Methods of Collection

Electronic.

III. Data

Title: ASTRA Official Appearance Request.
OMB Number:
Type of review: New.
Affected Public: Individuals.
Estimated Annual Number of Activities: 1,000.
Estimated Number of Respondents per Activity: 1.
Annual Responses: 1,000.
Estimated Time per Response: 10 minutes.
Estimated Total Annual Burden Hours: 167 hours.
Estimated Total Annual Cost: $1,450.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2022–14818 Filed 7–11–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (22–052)]

NASA Advisory Council; STEM Engagement Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration announces a meeting of the Science, Technology, Engineering and Mathematics (STEM) Engagement Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Monday, August 1 2022, 2:00 p.m.–6:00 p.m., Eastern Time.

ADDRESSES: Virtual meeting by dial-in teleconference and WebEx only.

FOR FURTHER INFORMATION CONTACT: Dr. Tara Strang, NAC STEM Engagement Committee, NASA Headquarters, Washington, DC 20546, (216) 410–4335, or *tara.m.strang@nasa.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be held virtually and will be available telephonically and by WebEx only. You must use a touch tone phone to participate in this meeting. Any interested person may dial the toll free access number 415–527–5035, and then the access code: 2761 487 1481 followed by the # sign. To join via WebEx, use link: *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=m5eecf7216da57c61988d745c5b5ce1c1* and the meeting number and access code is 2761 487 1481 and the password is 3R9Mrnfnh@2 (case sensitive).

Note: If dialing in, please ''mute'' your telephone. The agenda for the meeting will include the following:

—Opening Remarks by Chair
—STEM Engagement Updates on Topics of Interest
—STEM Engagement Partnerships
—Formulation of New Findings and Recommendations
—Other Related Topics

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Carol J. Hamilton,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2022–14773 Filed 7–11–22; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0001]

Sunshine Act Meetings

TIME AND DATE: Week of July 11, 2022. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Betty.Thweatt@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of July 11, 2022

Friday, July 15, 2022

1:00 p.m. Affirmation Session (Public Meeting) (Tentative)

Entergy Nuclear Operations, Inc., Entergy Nuclear Palisades, LLC, Holtec International, and Holtec Decommissioning International, LLC (Palisades Nuclear Plant and Big Rock Point) (Tentative); (Contact: Wesley Held: 301–287–3591)

Additional Information: The public is invited to attend the Commission's meeting live; via teleconference. Details for joining the teleconference in listen only mode can be found at *https://www.nrc.gov/pmns/mtg.*

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meeting under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: July 8, 2022.
For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator Office of the Secretary.

[FR Doc. 2022–14953 Filed 7–8–22; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0129]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of two amendment requests. The amendment requests are for Quad Cities Nuclear Power Station, Units 1 and 2; and Edwin I. Hatch Nuclear Plant, Units 1 and 2. For each amendment request, the NRC proposes to determine that they involve no significant hazards consideration (NSHC). Because each amendment request contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation by persons who file a hearing request or petition for leave to intervene.

DATES: Comments must be filed by August 11, 2022. A request for a hearing or petitions for leave to intervene must be filed by September 12, 2022. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to SUNSI is necessary to respond to this notice must request document access by July 22, 2022.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0129. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the ''For Further Information Contact'' section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Rhonda Butler, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–8025, email: *Rhonda.Butler@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0129, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0129.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0129, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(1)–(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves NSHC, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this

proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioners) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/cfr.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition must specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) the name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order that may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions that the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact—this information must include references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Contentions must be limited to matters within the scope of the proceeding and must be material to the findings the NRC must make to support the action that is involved in the proceeding. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of NSHC, the Commission will make a final determination on the issue of NSHC. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition must be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and must meet the requirements for petitions set forth in 10 CFR 2.309, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a petition is submitted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by

the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9:00 a.m. and 6:00 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, publicly available portions of which are available for public inspection in ADAMS. For additional direction on accessing information related to these documents, see the ''Obtaining Information and Submitting Comments'' section of this document.

Constellation Energy Generation, LLC; Quad Cities Nuclear Power Station, Units 1 and 2; Rock Island County, IL

Docket No(s)	50–254, 50–265.
Application Date	January 20, 2022, as supplemented by letter(s) dated March 16, 2022.
ADAMS Accession No	ML22020A399, ML22075A212.
Location in Application of NSHC	Attachment 1, Pages 4 and 5.
Brief Description of Amendment(s)	The proposed amendment would modify Quad Cities Nuclear Power Station, Units 1 and 2, Technical Specification 5.6.5, ''Core Operating Limits Report (COLR),'' paragraph b, to add a report, 006N8642–P, ''Justification of PRIME Methodologies for Evaluating TOP [Thermal Overpower] and MOP [Mechanical Overpower] Compliance for non-GNF [Global Nuclear Fuel] Fuels'' to the list of approved methods used in determining the core operating limits in the COLR.
Proposed Determination	NSHC.

Name of Attorney for Licensee, Mailing Address	Jason Zorn, Associate General Counsel, Constellation Energy Generation, 101 Constitution Ave NW, Washington, DC 20001.
NRC Project Manager, Telephone Number	Robert Kuntz, 301–415–3733.

Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Appling County, GA

Docket No(s)	50–321, 50–366.
Application Date	March 31, 2022.
ADAMS Accession No	ML22090A279.
Location in Application of NSHC	Pages E–8 to E–10 of Enclosure.
Brief Description of Amendment(s)	Southern Nuclear Operating Company requests an amendment that proposes to revise Renewed Facility Operating License (RFOL) No. NPF–5 for Edwin I. Hatch Nuclear Plant (HNP) Unit 1 and RFOL No. DPR–57 for HNP Unit 2 to reference an updated Table S–2 that reflects additional plant modifications necessary to comply with the National Fire Protection Association Standard (NFPA) 805 program.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P. O. Box 1295, Birmingham, AL 35201–1295.
NRC Project Manager, Telephone Number	John Lamb, 301–415–3100.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Constellation Energy Generation, LLC; Quad Cities Nuclear Power Station, Units 1 and 2; Rock Island County, IL

Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Appling County, GA

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing or opportunity for hearing, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email addresses for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in

J. 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated: June 15, 2022.

For the Nuclear Regulatory Commission.

Brooke P. Clark,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing or opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) 06–1If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Agreement or Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement or Affidavit for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Agreements or Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or notice of opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

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BILLING CODE 7590–01–P

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012, 78 FR 34247, June 7, 2013) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34643; File No. 812–15327]

Morgan Stanley Direct Lending Fund, et al.

July 6, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order (''Order'') under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to amend a previous order granted by the Commission that permits certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

Applicants: Morgan Stanley Direct Lending Fund, MS Capital Partners Adviser Inc., NH Credit Partners III Holdings L.P., NH Expansion Credit Fund Holdings LP, North Haven Credit Partners II L.P., North Haven Credit Partners III L.P., North Haven Senior Loan Fund (ALMA) Designated Activity Company, North Haven Senior Loan Fund L.P., North Haven Senior Loan Fund Offshore L.P., North Haven Senior Loan Fund Unleveraged Offshore L.P., North Haven Tactical Value Fund (AIV) LP, North Haven Tactical Value Fund LP, North Haven Unleveraged Senior Loan Fund (Yen) L.P., NH Senior Loan Fund Offshore Holdings L.P., NH Senior Loan Fund Onshore Holdings LLC, DLF CA SPV LLC, DLF Equity Holdings LLC, DLF SPV LLC, DLF Financing SPV LLC, SL Investment Corp., SLIC CA SPV LLC, SLIC Equity Holdings LLC, SLIC Financing SPV LLC, T Series Middle Market Loan Fund LLC, T Series CA SPV LLC, T Series Equity Holdings LLC, T Series Financing SPV LLC, North Haven Private Income Fund LLC, PIF CA SPV LLC, NHPIF Equity Holdings SPV LLC, Credit Opportunities (Series M) LP, NH–G 2022 SCSp, North Haven Senior Loan Fund (ALMA) II Designated Activity Company, North Haven Expansion Credit II L.P.

Filing Dates: The application was filed on April 25, 2022, and amended on June 9, 2022, and June 30, 2022.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on August 1, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Thomas J. Friedmann at *Thomas.Friedmann@dechert.com* or Matthew J. Carter at *Matthew.Carter@dechert.com.*

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' second amended and restated application, dated June 30, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, at *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14748 Filed 7–11–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–464, OMB Control No. 3235–0527]

Submission for OMB Review; Comment Request; Extension: Rule 7d–2

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

In Canada, as in the United States, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts (''Canadian retirement accounts''). These accounts, which operate in a manner similar to individual retirement accounts in the United States, encourage retirement savings by permitting savings on a tax-deferred basis. Individuals who establish Canadian retirement accounts while living and working in Canada and who later move to the United States (''Canadian-U.S. Participants'' or ''participants'') often continue to hold their retirement assets in their Canadian retirement accounts rather than prematurely withdrawing (or ''cashing out'') those assets, which would result in immediate taxation in Canada.

Once in the United States, however, these participants historically have been unable to manage their Canadian retirement account investments. Most investment companies (''funds'') that are ''qualified companies'' for Canadian retirement accounts are not registered under the U.S. securities laws. Securities of those unregistered funds, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirement of the Investment Company Act of 1940 (''Investment Company Act'').[1] As a result of this registration requirement, Canadian-U.S. Participants previously were not able to purchase or exchange securities for their Canadian

[1] 15 U.S.C. 80a. In addition, the offering and selling of securities that are not registered pursuant to the Securities Act of 1933 (''Securities Act'') is generally prohibited by U.S. securities laws. 15 U.S.C. 77.

retirement accounts as needed to meet their changing investment goals or income needs.

The Commission issued a rulemaking in 2000 that enabled Canadian-U.S. Participants to manage the assets in their Canadian retirement accounts by providing relief from the U.S. registration requirements for offers of securities of foreign issuers to Canadian-U.S. Participants and sales to Canadian retirement accounts.[2] Rule 7d–2 under the Investment Company Act [3] permits foreign funds to offer securities to Canadian-U.S. Participants and sell securities to Canadian retirement accounts without registering as investment companies under the Investment Company Act.

Rule 7d–2 contains a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995.[4] Rule 7d–2 requires written offering materials for securities offered or sold in reliance on that rule to disclose prominently that those securities and the fund issuing those securities are not registered with the Commission, and that those securities and the fund issuing those securities are exempt from registration under U.S. securities laws. Rule 7d–2 does not require any documents to be filed with the Commission.

Rule 7d–2 requires written offering documents for securities offered or sold in reliance on the rule to disclose prominently that the securities are not registered with the Commission and may not be offered or sold in the United States unless registered or exempt from registration under the U.S. securities laws, and also to disclose prominently that the fund that issued the securities is not registered with the Commission. The burden under the rule associated with adding this disclosure to written offering documents is minimal and is non-recurring. The foreign issuer, underwriter, or broker-dealer can redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement.

The staff estimates that there are 4,312 publicly offered Canadian funds that potentially would rely on the rule to offer securities to participants and sell securities to their Canadian retirement accounts without registering under the Investment Company Act.[5] The staff estimates that all of these funds have previously relied upon the rule and have already made the one-time change to their offering documents required to rely on the rule. The staff estimates that 216 (5 percent) additional Canadian funds would newly rely on the rule each year to offer securities to Canadian-U.S. Participants and sell securities to their Canadian retirement accounts, thus incurring the paperwork burden required under the rule. The staff estimates that each of those funds, on average, distributes 3 different written offering documents concerning those securities, for a total of 648 offering documents. The staff therefore estimates that 216 respondents would make 648 responses by adding the new disclosure statement to 648 written offering documents. The staff therefore estimates that the annual burden associated with the rule 7d–2 disclosure requirement would be 108 hours (648 offering documents × 10 minutes per document). The total annual cost of these burden hours is estimated to be $49,140 (108 hours × $455 per hour of attorney time).[6]

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by September 12, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: July 6, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14746 Filed 7–11–22; 8:45 am]

BILLING CODE 8011–01–P

[2] *See* Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Release Nos. 33–7860, 34–42905, IC–24491 (June 7, 2000) [65 FR 37672 (June 15, 2000)]. This rulemaking also included new rule 237 under the Securities Act, permitting securities of foreign issuers to be offered to Canadian-U.S. Participants and sold to Canadian retirement accounts without being registered under the Securities Act. 17 CFR 230.237.

[3] 17 CFR 270.7d–2.

[4] 44 U.S.C. 3501–3502.

[5] Investment Company Institute, 2021 Investment Company Fact Book (2021) at 276, tbl. 66, *available at https://www.ici.org/system/files/2021-05/2021_factbook.pdf*. Since the last renewal, we understand that the Investment Company Institute has changed its methodology to enhance the accuracy of how it estimates the number of Canadian funds. The estimate used for this renewal reflects this change in methodology and the number of estimated Canadian funds has increased from the last renewal.

[6] The Commission's estimate concerning the wage rate for attorney time is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (''SIFMA''). The $455 per hour figure for an Attorney is based on SIFMA's Management & Professional Earnings in the Securities Industry 2013, updated for 2022, modified by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. As discussed in footnote 5, since the last renewal, we understand that the Investment Company Institute has changed its methodology to enhance the accuracy of how it estimates the number of Canadian funds. The estimate used for this renewal reflects this change in methodology and the hourly burden has increased from the last renewal.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95201; File No. SR–NYSEArca-2022–37]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Options Proprietary Market Data Fee Schedule

July 6, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

notice is hereby given that, on June 23, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Proprietary Market Data Fee Schedule (''Fee Schedule'') to adopt fees for the NYSE Options Open-Close Volume Summary market data product, effective July 11, 2022. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to adopt fees for the NYSE Options Open-Close Volume Summary,[4] which will be available for purchase by any market participant, *i.e.,* members [5] and non-members. The Exchange proposes to implement fees for the NYSE Options Open-Close Volume Summary market data product on July 11, 2022.[6] The proposed fees would be applied equally to all market participants and all market participants would receive the same information in the data feed.

Background

By way of background, pursuant to the Product Filing, the Exchange adopted two versions of the NYSE Options Open-Close Volume Summary: an End of Day Volume Summary market data product and an Intra-Day Volume Summary market data product. The Exchange initially introduced the End of Day Volume Summary market data product on March 1, 2022 and adopted fees for the End of Day Volume Summary market data product.[7] The purpose of this filing is to adopt fees for the Intra-Day Volume Summary market data product.

The Intra-Day Volume Summary provides a volume summary of trading activity on the Exchange at the option level by origin (Customer, Professional Customer, Firm, Broker-Dealer, and Market Maker [8]), side of the market (buy or sell), contract volume, and transaction type (opening or closing). The Customer, Professional Customer, Firm, Broker-Dealer, and Market Maker volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Intra-Day Volume Summary provides similar information to that of the End of Day Volume Summary but is produced and updated every 10 minutes during the trading day. The data is captured in ''snapshots'' taken every 10 minutes throughout the trading day and will be available to subscribers within five minutes of the conclusion of each 10-minute period. Each update would represent combined data captured from the current ''snapshot'' and all previous ''snapshots'' and thus would provide open-close data on an aggregate basis.

The NYSE Options Open-Close Volume Summary is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed.

The Exchange anticipates a wide variety of market participants to purchase the Intra-Day Volume Summary data product, including, but not limited to, individual customers, buy-side investors, and investment banks. The Exchange believes the Intra-Day Volume Summary would provide subscribers data that should enhance their ability to analyze options trade and volume data, and to create and test trading models and analytical strategies. The Exchange believes the Intra-Day Volume Summary will be a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular options series. The Intra-Day Volume Summary is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so. The Exchange notes that other exchanges offer a similar product.[9]

The Intra-Day Volume Summary is subject to direct competition from similar end of day options trading summaries offered by other options exchanges.[10] All of these exchanges offer essentially the same intra day options trading summary information. The options trading summary files offered by the Exchange's competitors are substitutes, not complements. The Intra-Day Volume Summary provides data on options market activity which can be used to infer longer-term trends. The information provided by one exchange is generally similar to that provided by other exchanges because order flow can move from one exchange to another, and market sentiment trends that appear on one exchange are likely to be similar to the sentiment trends on other exchanges. The key differentiator in the quality of the data depends on the volume of transactions on a given exchange. The greater the volume of

[4] *See* Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR–NYSEArca–2021–82) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a New Historical Market Data Product to Be Known as the NYSE Options Open-Close Volume Summary) (''Product Filing'').

[5] Members of the Exchange are OTP Firms, OTP Holders and ETP Holders.

[6] The Exchange has announced that it will begin migrating Exchange-listed options to the Pillar technology platform on July 11, 2022, *available here: https://www.nyse.com/trader-update/history#110000421498.*

[7] *See* Securities Exchange Act Release No. 94336 (March 1, 2022), 87 FR 12752 (March 7, 2022) (SR–NYSEArca–2022–09) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Proprietary Market Data Fee Schedule).

[8] The terms Customer, Professional Customer, Firm and Market Maker are defined in Rule 1.1, Definitions.

[9] *See* Securities Exchange Act Release Nos. 89497 (August 6, 2020), 85 FR 48747 (August 12, 2020) (SR–CboeBZX–2020–059); 89498 (August 6, 2020), 85 FR 48735 (August 12, 2020) (SR–Cboe–EDGX–2020–36); 89496 (August 6, 2020), 85 FR 48743 (August 12, 2020) (SR–C2–2020–010); 89586 (August 17, 2020), 85 FR 51833 (August 21, 2020) (SR–C2–2020–012); 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR–Phlx–2010–121); 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR–NASDAQ–2011–144); 61317 (January 8, 2010), 75 FR 2915 (January 19, 2010) (SR–ISE–2009–103); 81632 (September 15, 2017), 82 FR 44235 (September 21, 2017) (SR–GEMX–2017–42); 91963 (May 21, 2021), 86 FR 28662 (May 27, 2021) (SR–EMERALD–2021–18); 91964 (May 21, 2012), 86 FR 28667 (May 27, 2021) (SR–PEARL–2021–24); and 91965 (May 21, 2021), 86 FR 28665 (May 27, 2021) (SR–MIAX–2021–18).

[10] *See supra* note 9.

transactions, the greater the value of the data.

Proposed Rule Change

The Exchange proposes to adopt subscription fees for the purchase of the Intra-Day Volume Summary on a monthly basis. The Exchange proposes to assess a fee of $2,000 per month for subscribing to the Intra-Day Volume Summary. As noted on the Fee Schedule, for mid-month subscriptions, new subscribers will be charged for the full calendar month for which they subscribe and will be provided NYSE Options Open-Close Volume Summary data for each trading day of the calendar month in which they subscribed. The proposed monthly fees will apply to all market participants. The Exchange notes that other exchanges provide similar data products that may be purchased on a monthly basis and are comparably priced.[11]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the Intra-Day Volume Summary market data product is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Section 6(b)(4) of the Act[15] in particular, in that it is an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. Particularly, the Intra-Day Volume Summary further broadens the availability of U.S. options market data to investors consistent with the principles of Regulation NMS. Subscribers to the data may also be able to enhance their ability to analyze options trade and volume data and create and test trading models and analytical strategies. The Exchange believes the Intra-Day Volume Summary would provide a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer a similar data product.[16]

The Exchange operates in a highly competitive market. Indeed, there are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[17] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in March 2022, the Exchange had less than 14% market share of executed volume of multiply-listed equity and ETF options trades.[18]

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[19]

With respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC* upheld the Commission's reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system ''evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed'' and that the SEC wield its regulatory power ''in those situations where competition may not be sufficient,'' such as in the creation of a ''consolidated transactional reporting system.''[20]

The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' ''[21]

More recently, the Commission confirmed that it applies a ''market-based'' test in its assessment of market data fees, and that under that test:

> the Commission considers whether the exchange was subject to significant competitive forces in setting the terms of its proposal for [market data], including the level of any fees. If an exchange meets this burden, the Commission will find that its fee rule is consistent with the Act unless there is a substantial countervailing basis to find that the terms of the rule violate the Act or the rules thereunder.[22]

[11] *See* Price List—U.S. Derivatives Data for Nasdaq PHLX, LLC (''PHLX''), The Nasdaq Stock Market, LLC (''Nasdaq''), Nasdaq ISE, LLC (''ISE''), and Nasdaq GEMX, LLC (''GEMX''), *available at http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web.* Particularly, PHLX offers ''Nasdaq PHLX Options Trade Outline (PHOTO)'' and assesses $2,500 per month for an intra-day subscription; Nasdaq offers the ''Nasdaq Options Trade Outline (NOTO)'' and assesses $750 per month for an intra-day subscription; ISE offers the ''Nasdaq ISE Open/Close Trade Profile'' and assesses $2,000 per month for an intra-day subscription; and GEMX offers the ''Nasdaq GEMX Open/Close Trade Profile'' and assesses $1,000 per month for an intra-day subscription. Cboe EDGX Exchange, Inc. (''EDGX'') assesses $1,000 per month for an intraday subscription and Cboe BZX Exchange, Inc. (''BZX'') assesses $1,500 per month for an intraday subscription. *See* EDGX fee schedule *available at http://markets.cboe.com/us/options/membership/fee_schedule/edgx/*; and BZX fee schedule *available at http://markets.cboe.com/us/options/membership/fee_schedule/bzx/.* Miami International Securities Exchange, LLC (''MIAX''), MIAX Emerald, LLC (''Emerald'') and MIAX PEARL, LLC (''PEARL'') each assesses $2,000 per month for an intra-day subscription. *See* MIAX Fee Schedule, *available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_09282021.pdf*; Emerald Fee Schedule, *available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_09282021.pdf*; and PEARL Fee Schedule, *available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Options_Fee_Schedule_092821.pdf.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] *See supra* note 9.

[17] The Options Clearing Corporation (''OCC'') publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[18] Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in multiply-listed equity and ETF options was 10.16% for the month of March 2021 and 13.57% for the month of March 2022.

[19] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[20] *NetCoalition* v. *SEC,* 615 F.3d 525, 535 (D.C. Cir. 2010) (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323).

[21] *Id.* at 535.

[22] *See* Securities Exchange Act Release No. 34–90217 (October 16, 2020), 85 FR 67392 (October 22, 2020) (SR–NYSENAT–2020–05) (internal quotation marks omitted), quoting Securities Exchange Act

Making similar historic data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of the Intra-Day Volume Summary data product.

The Exchange believes the proposed fees are reasonable as they are comparable to the fees assessed by other exchanges that provide similar data products.[23] Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Like the Intra-Day Volume Summary, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different option series based on open and closing interest on any one exchange. Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical strategies using only the Intra-Day Volume Summary data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another exchange's data as more attractive than the Exchange's data product, then such market participant can merely choose not to purchase the Exchange's data product and instead purchase another exchange's product, which offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new historic market data product that is designed to aid investors by providing insight into trading on the Exchange. Once the Intra-Day Volume Summary is made available, it would provide options market participants with valuable information about opening and closing transactions executed on the Exchange throughout the trading day, similar to other trade data products offered by competing options exchanges. In turn, this data would assist market participants in gauging investor sentiment and trading activity, resulting in potentially better-informed trading decisions. As noted above, subscribers may also use such data to create and test trading models and analytical strategies.

Selling historic market data is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers to the Exchange's historic data product, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, subscribers can diminish or discontinue their use of the historic data and/or avail themselves of similar products offered by other exchanges.[24] The Exchange therefore believes that the proposed fees reflect the competitive environment and would be properly and equally assessed to all subscribers. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all subscribers who choose to purchase such data. Nothing in this proposal treats any category of market participant any differently from any other category of market participant. The Intra-Day Volume Summary is available to all market participants, *i.e.,* members and non-members, and all market participants would receive the same information in the data feed.

As noted above, the Exchange anticipates a wide variety of market participants to purchase the Exchange's data product, including but not limited to individual customers, buy-side investors and investment banks. The Exchange reiterates that the decision as to whether or not to purchase the Intra-Day Volume Summary is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the data product, and the Exchange is not required to make the data product available to market participants. Rather, the Exchange is voluntarily making the Intra-Day Volume Summary data product available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential subscribers may request the data at any time if they believe it to be valuable or may decline to purchase such data.

In sum, the fierce competition for order flow constrains any exchange from pricing its historic market data at a supra-competitive price, and constrains the Exchange here in setting its fees for the Intra-Day Volume Summary data product. As described above, the Exchange's data product competes head-to-head with numerous products currently available in the marketplace. These products each serve as reasonable substitutes for one another as they are each designed to provide data on options market activity which can be used to infer longer-term trends. The information provided by one exchange is generally similar to that provided by other exchanges because order flow can move from one exchange to another, and market sentiment trends that appear on one exchange are likely to be similar to the sentiment trends on other exchanges. The key differentiator in the quality of the data depends on the volume of transactions on a given exchange. The greater the volume of transactions, the greater the value of the historic data. The proposed fees are therefore reasonable because in setting them, the Exchange is constrained by the availability of numerous substitute venues offering historic market data products and trading. Such substitutes need not be identical, but only substantially similar to the product at hand.

More specifically, in setting fees for the Intra-Day Volume Summary, the Exchange is constrained by the fact that, if its pricing is unattractive to subscribers, subscribers have their pick of an increasing number of alternative venues to use instead of the Exchange. The existence of numerous alternatives to the Exchange ensures that the Exchange cannot set unreasonable fees for historic market data without suffering the negative effects of that decision in the fiercely competitive market in which it operates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable historic data product and adopt fees to better compete with the Exchange's offering. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to sell a data product similar

Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (ArcaBook Approval Order).

[23] *See supra* note 11.

[24] *See supra* note 9.

to those offered by other competitor options exchanges.[25] The Exchange is offering the Intra-Day Volume Summary in order to keep pace with changes in the industry and evolving customer needs, and believes the data product will contribute to robust competition among national securities exchanges. At least eight other U.S. options exchanges offer a market data product that is substantially similar to the Exchange's offering. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price Intra-Day Volume Summary is constrained by competition among exchanges that offer similar data products to their customers. As discussed above, there are currently a number of similar products available to market participants and investors. At least eight other U.S. options exchanges offer a market data product that is substantially similar to the Exchange's offering, which the Exchange must consider in its pricing discipline in order to compete effectively.[26] For example, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize or purchase. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed fees would apply uniformly to any subscriber, in that the Exchange would not differentiate between subscribers that purchase the Intra-Day Volume Summary and all subscribers would receive the same information in the data feed. The Exchange believes the proposed fees are set at a modest level that would allow interested subscribers to purchase such data based on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[27] of the Act and subparagraph (f)(2) of Rule 19b–4[28] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[29] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2022–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2022–37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2022–37 and should be submitted on or before August 2, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14755 Filed 7–11–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–815, OMB Control No. 3235–0769]

Proposed Collection; Comment Request; Extension: Rule 139b

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that the Securities and Exchange Commission (the ''Commission'') has, in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3501 *et seq.*) (''PRA''), is soliciting comments on the collection of information associated with the Rule 139b (17 CFR 230.139b) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act'') that was adopted by the Commission on

[25] *Id.*

[26] *See supra* note 11.

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(2).

[29] 15 U.S.C. 78s(b)(2)(B).

[30] 17 CFR 200.30–3(a)(12).

November 30, 2018.[1] The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

As directed by the Fair Access to Investment Research Act of 2017 (Pub. L. 115–66, 131 Stat. 1196 (2017) (the ''FAIR Act''), the Commission adopted rule 139b under the Securities Act to extend the safe harbor under rule 139 to a ''covered investment fund research report.'' Specifically, rule 139b provides a safe harbor to a broker-dealer who publishes or distributes in the regular course of its business research reports concerning one or more ''covered investment fund(s)'' while participating in the distribution of a covered investment fund's securities.

In the Adopting Release, the Commission adopted the provision that rule 139b include a standardized performance disclosure requirement. The Commission believes that standardized performance presentation is an appropriate requirement because investors tend to consider fund performance a significant factor in evaluating or comparing investment companies, and the requirement addresses potential investor confusion if a communication were not easily recognizable as research as opposed to an advertising prospectus or supplemental sales literature. Rule 139b requires that research reports about open-end funds that include performance information must present it in accordance with paragraphs (d), (e), and (g) of rule 482. Rule 139b also requires that research reports about closed-end funds that include performance information must present it in accordance with instructions to item 4.1(g) of Form N–2. Performance measures calculated by broker-dealers are not required to be kept confidential and there is no mandatory retention period. The Commission anticipates that compliance with these performance measures for each fund discussed in a research report, and for which the performance measures apply, would increase compliance costs for broker-dealers seeking to publish or distribute a covered investment fund research report.

It is difficult to provide estimates of the burdens and costs for those broker-dealers that will include performance information in a rule 139b research report. As discussed in the Adopting Release, this is difficult to estimate because current data collected does not reflect the affiliate exclusion, does not include the entire universe of covered investment funds, and it is uncertain what percentage of communications currently filed as rule 482 advertising prospectuses (or rule 34b-1 supplemental sales materials) will instead be published in reliance of rule 139b, as covered investment fund research reports.[2] For purposes of the PRA, we estimate that 10% of the rule 482 and rule 34b–1 communications currently filed by broker-dealers with FINRA (approximately 48,341) could be considered as rule 139b covered investment fund research reports. We estimate that broker-dealers will publish annually 4,834 (10% of 48,341) covered investment fund research reports. Moreover, we assume for purposes of the PRA that all estimated rule 139b research reports will include fund performance information. We further estimate that 1,169 broker-dealers would likely be respondents to the collection of information with a frequency of 4.1 responses per year.[3] Additionally, we estimate that each research report will require 3 hours of ongoing internal burden hours by a broker-dealers' personnel to comply with the rule 139b collection of information requirements, which for each broker-dealer is estimated to be 12.3 internal burden hours.[4] Accordingly, we estimate that the standardized performance presentation requirements will result in an average 12.3 annual hour burden per broker-dealer.

In sum, we estimate that rule 139b's requirements will impose a total annual internal hour burden of 14,379 hours on broker-dealers.[5] We do not think there is an external cost burden associated with this collection of information.

This information collection is subject to the PRA and responses to this collection of information requirement would not be mandatory for broker-dealers seeking to rely upon rule 139b, but would be necessary for those broker-dealers that would like to provide performance information in their covered investment fund research reports. Responses to the information collections will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by September 12, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: July 6, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14745 Filed 7–11–22; 8:45 am]

BILLING CODE 8011–01–P

[1] See Release No. 33–10580 (Nov. 30, 2018) [83 FR 64180 (Dec. 13, 2018)] (''Adopting Release''). Rule 139b became effective on January 14, 2019.

[2] See Adopting Release, supra note 1, n. 413 and accompanying paragraph.

[3] From information provided by FINRA, for the period January 1, 2021 through December 31, 2021, there were an aggregate of 48,341 filings that were coded either as Rule 482 or Rule 34b1 filings. Furthermore, for the period January 1, 2021 through December 31, 2021, the Commission estimates that there were 4,834 covered investment fund research reports/1,169 broker-dealers = 4.1 annual responses per broker-dealer.

[4] 4.1 annual responses per broker-dealer × 3 internal burden hours = 12.3 annual internal burden hours per broker-dealer.

[5] 12.3 annual internal burden hours * 1,169 broker-dealers.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95203; File No. SR–CboeEDGX–2022–030]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

July 6, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2022, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*) [sic], at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (''EDGX Equity'') to modify the criteria of Add Volume Tier 2. The Exchange proposes to implement these changes effective July 1, 2022.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,[3] no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Maker-Taker'' model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above $1.00, the Exchange provides a standard rebate of $0.00160 per share for orders that add liquidity and assesses a fee of $0.0030 per share for orders that remove liquidity. For orders in securities priced below $1.00, the Exchange provides a standard rebate of $0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Add Volume Tier 2

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers four [sic] Add Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes B,[4] V,[5] Y,[6] 3 [7] or 4,[8] where a Member reaches certain add volume-based criteria. Specifically, Add Volume Tier 2 offers an enhanced rebate of $0.0027 per share for qualifying orders (*i.e.,* yielding fee codes B, V, Y, 3 or 4) where a Member (i) adds an ADV [9] greater than or equal to 0.28% of the TCV; [10] or (ii) a Member adds and ADV greater than or equal to 30,000,000 shares. The Exchange proposes to amend the criteria of Add Volume Tier 2 to offer an enhanced rebate of $0.0027 per share for qualifying orders (*i.e.,* yielding fee codes B, V, Y, 3 or 4) where a Member (i) adds an ADV greater than or equal to 0.22% (instead of 0.28%) of the TCV; or (ii) a Member adds an ADV greater than or equal to 25,000,000 shares (instead of 30,000,000 shares).

The Exchange believes that the proposed lower thresholds in Add Volume Tier 2 will incentivize market participants to provide additional displayed liquidity on the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange. The Exchange is not proposing any changes to Add Volume Tier 1 or Add Volume Tier 3.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[11] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [12] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[3] See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (June 27, 2022), available at *https://www.cboe.com/us/equities/market_statistics/.*

[4] Orders yielding Fee Code ''B'' are orders adding liquidity to EDGX (Tape B).

[5] Orders yielding Fee Code ''V'' are orders adding liquidity to EDGX (Tape A).

[6] Orders yielding Fee Code ''Y'' are orders adding liquidity to EDGX (Tape C).

[7] Orders yielding Fee Code ''3'' are orders adding liquidity to EXGX [sic] in the pre and post market (Tapes A or C).

[8] Orders yielding Fee Code ''4'' are orders adding liquidity to EDGX in the pre and post market (Tape B).

[9] ''ADV'' means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

[10] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes that the proposed changes to Add Volume Tier 2 are reasonable, equitable and not unfairly discriminatory because the tier, as modified, continues to be available to all Members and provide Members an opportunity to receive an enhanced rebate. As noted above, the Exchange operates in a highly competitive market. The Exchange is only one of 16 equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several maker-taker exchanges. Competing equity exchanges offer similar rates and tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds. Specifically, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,[14] including the Exchange,[15] and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels or liquidity provision and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

Specifically, the Exchange believes the proposed criteria changes for Add Volume Tier 2 are reasonable because the tier will continue to provide Members with an opportunity to receive an enhanced rebate or reduced fee by encouraging Members to increase their order flow to the Exchange. In particular, the Exchange believes that the changes to Add Volume Tier 2 will provide reasonable means for Members to receive an enhanced rebate for adding liquidity on the Exchange. The Exchange also believes that the current enhanced rebate for Add Volume Tier 2 continues to be commensurate with the proposed criteria. That is, the rebate reasonably reflects the difficulty in achieving the applicable criteria as amended. Furthermore, the Exchange believes that the proposed lower thresholds in Add Volume Tier 2 will incentivize market participants to provide additional displayed liquidity on the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

The Exchange believes the proposed changes to Add Volume Tier 2 represent an equitable allocation of rebates and fees and are not unfairly discriminatory because all Members are eligible for those tiers and would have the opportunity to meet a tier's criteria and would receive the proposed enhanced rebate or reduced fee if such criteria is met. Without having a view of activity on other market and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for the proposed tiers. While the Exchange has no way of predicting with certainty how the proposed tiers will impact Member activity, the Exchange anticipates that two Members will be able to satisfy the criteria proposed for Add Volume Tier 2. The Exchange also notes that the proposed changes will not adversely impact any Member's ability to qualify for other reduced fee or enhanced rebated tiers. Should a Member not meet the proposed criteria under the modified tier, the Member will merely not receive that corresponding enhanced rebate or reduced fee. The Exchange believes that the proposed changes to Add Volume Tier 2 will benefit all market participants by incentivizing continuous liquidity and, thus, deeper more liquid markets as well as increased execution opportunities. Particularly, the proposal is designed to incentivize liquidity, which further contributes to a deeper, more liquid market and provide even more execution opportunities for active market participants at improved prices. This overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality, for all investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed tier changes will apply to all Members equally in that all Members will continue to be eligible for Add Volume Tier 2, have a reasonable opportunity to meet the tier's criteria and will receive the enhanced rebate on their qualifying orders if such criteria are met.

The Exchange does not believe the proposed changes burden competition, but rather, enhance competition as they are intended to increase the competitiveness of EDGX by amending existing pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefit all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more

[14] *See* BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

[15] *See* EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

than 16% of the market share.[16] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.'. . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . .''.[18]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and paragraph (f) of Rule 19b–4 [20] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2022–030 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2022–030. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2022–030, and should be submitted on or before August 2, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14750 Filed 7–11–22; 8:45 am]

BILLING CODE 8011–01–P

[16] *Supra* note 3.

[17] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[18] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95202; File No. SR–MEMX–2022–13]

Self-Regulatory Organizations; MEMX LLC; Notice of Withdrawal of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Connectivity Fees

July 6, 2022.

On May 6, 2022, MEMX LLC (''MEMX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Fee Schedule to adopt Connectivity Fees. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on May 20, 2022.[4] On July 1, 2022, MEMX withdrew the proposed rule change (SR–MEMX–2022–13).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14749 Filed 7–11–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m. on Thursday, July 14, 2022.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 94924 (May 16, 2022), 87 FR 31026

[5] 17 CFR 200.30–3(a)(12).

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: July 7, 2022.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–14859 Filed 7–8–22; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–363, OMB Control No. 3235–0413]

Submission for OMB Review; Comment Request: Extension: Rule 17Ad–16

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ('PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in Rule 17Ad–16 (17 CFR 240.17Ad–16) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad–16 requires a registered transfer agent to provide written notice to the appropriate qualified registered securities depository when assuming or terminating transfer agent services on behalf of an issuer or when changing its name or address. In addition, transfer agents that provide such notice shall maintain such notice for a period of at least two years in an easily accessible place. This rule addresses the problem of certificate transfer delays caused by transfer requests that are directed to the wrong transfer agent or the wrong address.

We estimate that the transfer agent industry submits approximately 15,917 Rule 17Ad–16 notices to appropriate qualified registered securities depositories. The staff estimates that the average amount of time necessary to create and submit each notice is approximately 15 minutes per notice. Accordingly, the estimated total industry burden is 3,979.25 hours per year (15 minutes multiplied by 15,917 notices filed annually).

Because the information needed by transfer agents to properly notify the appropriate registered securities depository is readily available to them and the report is simple and straightforward, the cost is relatively minimal. The average internal compliance cost to prepare and send a notice is approximately $86 (15 minutes at $344 per hour).[1] This yields an industry-wide internal compliance cost estimate of $1,368,862 (15,917 notices multiplied by $86 per notice).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

[1] The estimated hourly wages used in this analysis were derived from reports prepared by the Securities Industry and Financial Markets Association. *See* Securities Industry and Financial Markets Association, Office Salaries in the Securities Industry—2022 (2022), modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

The public may view background documentation for this information collection at the following website: >*www.reginfo.gov*<. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by August 11, 2022 to (i) >*MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov*< and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: July 6, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14747 Filed 7–11–22; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 11760]

60-Day Notice of Proposed Information Collection: Nonimmigrant Treaty Trader/Investor Application

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to September 12, 2022.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2022–0014'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PRA_BurdenComments@state.gov.*

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional

information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Tonya Whigham who may be reached at *PRA_BurdenComments@state.gov* or at 202–485–7586.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Nonimmigrant Treaty Trader/Investor Application.
- *OMB Control Number:* 1405–0101.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* CA/VO.
- *Form Number:* DS–156E.
- *Respondents:* Applicants for E nonimmigrant treaty trader/investor visas.
- *Estimated Number of Respondents:* 50,000.
- *Estimated Number of Responses:* 50,000.
- *Average Time per Response:* 4 hours.
- *Total Estimated Burden Time:* 200,000.
- *Frequency:* Once per application.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Section 101(a)(15)(E) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(E), provides for the nonimmigrant classification of a national of a country with which the United States maintains an appropriate treaty of commerce and navigation who is coming to the United States to: (i) carry on substantial trade, including trade in services or technology, principally between the United States and the treaty country; or (ii) develop and direct the operations of an enterprise in which the national has invested, or is actively in the process of investing a substantial amount of capital. The Department requires all E–1 treaty trader visa applicants and E–2 treaty investor applicants, if the applicant is an Executive, Manager, or Essential Employee, to submit Form DS–156E, which collects information necessary to determine an applicant's qualifications and eligibility for such a visa.

Methodology

After completing Form DS–160, Online Nonimmigrant Visa Application, applicants will complete the DS–156E online, print the form, and submit it in person or via mail.

Julie M. Stufft,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2022–14772 Filed 7–11–22; 8:45 am]

BILLING CODE 4710–06–P

SUSQUEHANNA RIVER BASIN COMMISSION

Grandfathering (GF) Registration Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in DATES.

DATES: June 1–30, 2022.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects, described below, pursuant to 18 CFR part 806, subpart E, for the time period specified above:

1. Lebanon Valley College, GF Certificate No. GF–202206217, Annville and North Annville Townships, Lebanon County, Pa.; Football Well, Baseball Well, and West (Soccer) Well; Issue Date: June 16, 2022.

2. Beavertown Municipal Authority—Public Water Supply System, GF Certificate No. GF–202206218, Beaver Township, Snyder County, Pa.; Well 3; Issue Date: June 30, 2022.

3. Cooper Township Municipal Authority—Public Water Supply System, GF Certificate No. GF–202206219, Rush Township, Centre County, Pa.; Black Bear Run; Issue Date: June 30, 2022.

4. Municipal Authority of the Borough of Shenandoah—Public Water Supply System, GF Certificate No. GF–202206220, Union and West Mahanoy Townships, Schuylkill County, Pa.; Raven Run Reservoir No. 2; Issue Date: June 30, 2022.

5. Standard Steel, LLC—Standard Steel, GF Certificate No. GF–202206221, Burnham Borough, Mifflin County, Pa.; Creighton Run, Kishacoquillas Creek, and consumptive use; Issue Date: June 30, 2022.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: July 7, 2022.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2022–14807 Filed 7–11–22; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on August 11, 2022. The Commission will hold this hearing in-person and telephonically. At this public hearing, the Commission will hear testimony on the projects listed in the **SUPPLEMENTARY INFORMATION** section of this notice. The Commission will also hear testimony on two proposed policies, SRBC Civil Penalty Matrix and Policy and Guidance Statement for the Settlement of Civil Penalties/Enforcement Actions. Such projects and proposals are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for September 15, 2022, which will be noticed separately. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects and proposals. The deadline for the submission of written comments is August 22, 2022.

DATES: The public hearing will convene on August 11, 2022, at 6:30 p.m. The public hearing will end at 9:00 p.m. or at the conclusion of public testimony,

whichever is earlier. The deadline for the submission of written comments is Monday, August 22, 2022.

ADDRESSES: This public hearing will be conducted in-person and telephonically. You may attend in person at Susquehanna River Basin Commission, 4423 N Front St., Harrisburg, Pennsylvania or join by Conference Call #: 1–888–387–8686, Conference Room #: 917 968 6050.

FOR FURTHER INFORMATION CONTACT: Jason Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423 or *joyler@srbc.net.*

Information concerning the applications for the projects is available at the Commission's Water Application and Approval Viewer at *https://www.srbc.net/waav.* Information concerning the proposals can be found at *https://www.srbc.net/about/meetings-events/.* Additional supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at *www.srbc.net/regulatory/policies-guidance/docs/access-to-records-policy-2009-02.pdf.*

SUPPLEMENTARY INFORMATION: The Commission is proposing a revised SRBC Civil Penalty Matrix. This would replace the current Policy No. 96–01. The Commission is also proposing a revised Policy and Guidance Statement for the Settlement of Civil Penalties/Enforcement Actions. This would replace Policy No. 2000–01. In addition, the public hearing will cover the following projects:

Projects Scheduled for Action

1. *Project Sponsor:* Aqua Pennsylvania, Inc. Project Facility: Monroe Manor System, Monroe Township, Snyder County, Pa. Application for groundwater withdrawal of up to 0.482 mgd (30-day average) from Well 8.

2. *Project Sponsor:* Brunner Island, LLC. Project Facility: Brunner Island Steam Electric Station (Susquehanna River), East Manchester Township, York County, Pa. Applications for renewal of surface water withdrawal of up to 835.000 mgd (peak day) and consumptive use of up to 23.100 mgd (peak day) (Docket No. 20070908).

3. *Project Sponsor and Facility:* Chesapeake Appalachia, L.L.C. (Chemung River), Athens Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20170902).

4. *Project Sponsor and Facility:* Chesapeake Appalachia, L.L.C. (Sugar Creek), Burlington Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 0.499 mgd (peak day) (Docket No. 20170903).

5. *Project Sponsor and Facility:* Chesapeake Appalachia, L.L.C. (Towanda Creek), Leroy Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20170905).

6. *Project Sponsor and Facility:* Coterra Energy Inc. (Meshoppen Creek), Springville Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 0.750 mgd (peak day) (Docket No. 20170901).

7. *Project Sponsor and Facility:* Dover Township, York County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.360 mgd from Well 8 and up to 0.088 mgd from Well 10 (Docket No. 19911104).

8. *Project Sponsor and Facility:* Edgewood by Sand Springs, LLC, Butler Township, Luzerne County, Pa. Modification to extend the approval term of the surface water withdrawal and consumptive use approval (Docket No. 19980102) by 2 years to allow the project to complete planning and permitting to redevelop the property and cease golf course operations.

9. *Project Sponsor:* Lancaster County Solid Waste Management Authority. Project Facility: Frey Farm and Creswell Landfills, Manor Township, Lancaster County, Pa. Modification to increase consumptive use (peak day) by an additional 0.030 mgd, for a total consumptive use of up to 0.095 mgd, addition of approved sources of water for consumptive use, and General Permit GP–01 Notice of Intent for groundwater remediation (Docket No. 20061208).

10. *Project Sponsor:* Maplemoor, Inc. Project Facility: Huntsville Golf Club, Lehman Township, Luzerne County, Pa. Application for renewal of consumptive use of up to 0.499 mgd (30-day average) (Docket No. 19920909).

11. *Project Sponsor and Facility:* Pennsylvania Grain Processing LLC (West Branch Susquehanna River), Clearfield Borough, Clearfield County, Pa. Applications for renewal of surface water withdrawal of up to 2.505 mgd (peak day) and for consumptive use of up to 2.000 mgd (peak day) (Docket No. 20070904).

12. *Project Sponsor:* Pine Grove Borough. Project Facility: Pine Grove Borough Water System, Tremont Township, Schuylkill County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.499 mgd from Well 16 and up to 0.097 mgd from Well 17.

13. *Project Sponsor and Facility:* Seneca Resources Company, LLC (Elk Run), Sullivan Township, Tioga County, Pa. Application for renewal of surface water withdrawal of up to 0.646 mgd (peak day) (Docket No. 20170909).

14. *Project Sponsor and Facility:* Shrewsbury Borough, Shrewsbury Township and Shrewsbury Borough, York County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.099 mgd from the Meadow Well and 0.180 mgd from the Village Well (Docket Nos. 19890501 and 19900105).

15. *Project Sponsor and Facility:* South Middleton Township Municipal Authority, Monroe Township, Cumberland County, Pa. Application for renewal of groundwater withdrawal with increase from 0.624 mgd to up to 0.936 mgd (30-day average) from Well 3 (Docket No. 19880404).

16. *Project Sponsor and Facility:* Susquehanna Gas Field Services, LLC (Meshoppen Creek), Meshoppen Borough, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 0.145 mgd (peak day) (Docket No. 20170908).

17. *Project Sponsor and Facility:* SWN Production Company, LLC (Wyalusing Creek), Wyalusing Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 2.000 mgd (peak day) (Docket No. 20170910).

18. *Project Sponsor and Facility:* Town of Conklin, Broome County, N.Y. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.350 mgd from Well 5 and up to 0.350 mgd from Well 6 (Docket Nos. 20070601 and 20031001, respectively).

19. *Project Sponsor:* Town of Oneonta. Project Facility: Southside Water System, Town of Oneonta, Otsego County, N.Y. Applications for groundwater withdrawals (30-day averages) of up to 0.720 mgd from Well PW–1 and up to 0.720 mgd from Well PW–2.

20. *Project Sponsor and Facility:* Village of Horseheads, Town of Horseheads, Chemung County, N.Y. Application for renewal of groundwater withdrawal of up to 1.440 mgd (30-day average) from Well 5 (Docket No. 19870302).

Opportunity To Appear and Comment

Interested parties may call into the hearing to offer comments to the Commission on any business listed above required to be the subject of a public hearing. Given the nature of the meeting, the Commission strongly encourages those members of the public wishing to provide oral comments to

pre-register with the Commission by emailing Jason Oyler at *joyler@srbc.net* prior to the hearing date. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Access to the hearing via telephone will begin at 6:15 p.m. Guidelines for the public hearing are posted on the Commission's website, *www.srbc.net,* prior to the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any business listed above required to be the subject of a public hearing may also be mailed to Mr. Jason Oyler, Secretary to the Commission, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110–1788, or submitted electronically through *https://www.srbc.net/regulatory/public-comment/.* Comments mailed or electronically submitted must be received by the Commission on or before August 22, 2021, to be considered.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: July 7, 2022.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2022–14805 Filed 7–11–22; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Minor Modifications

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the minor modifications approved for a previously approved project by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: June 1–30, 2022

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists previously approved projects, receiving approval of minor modifications, described below, pursuant to 18 CFR 806.18 or to Commission Resolution Nos. 2013–11 and 2015–06 for the time period specified above.

1. Helix Ironwood, LLC, Docket No. 19980502–2, South Lebanon Township, Lebanon County, Pa.; modification approval to change the consumptive use mitigation method; Approval Date: June 29, 2022.

2. Ri-Corp. Development, Inc.—Gilberton Power Company, Docket Nos. 20161220 and 20220622, Gilberton Borough and West Mahanoy Township, Schuylkill County, Pa.; modification approval to change the consumptive use mitigation method and correction to include registered legal company name; Approval Date: June 30, 2022.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: July 7, 2022.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2022–14808 Filed 7–11–22; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: June 1–30, 2022.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22 (e) and 18 CFR 806.22 (f) for the time period specified above:

Water Source Approval—Issued Under 18 CFR 806.22(f)

1. Chesapeake Appalachia, L.L.C.; Pad ID: Dunham; ABR–20100418.R2; Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: June 6, 2022.

2. Chesapeake Appalachia, L.L.C.; Pad ID: Hayward New; ABR–20100535.R2; Rome Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: June 6, 2022.

3. Chesapeake Appalachia, L.L.C.; Pad ID: Matt Will Farms; ABR–20100544.R2; Troy Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: June 6, 2022.

Seneca Resources Company, LLC; Pad ID: Breon 492; ABR–20100553.R2; Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.00000 mgd; Approval Date: June 20, 2022.

4. SWN Production Company, LLC; Pad ID: Marcucci_Jones Pad; ABR–201205017.R2; Stevens Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: June 20, 2022.

5. SWN Production Company, LLC; Pad ID: Humbert III Pad (RU–9); ABR–201205018.R2; New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: June 20, 2022.

6. SWN Production Company, LLC; Pad ID: Scarlet Oaks Pad (RU–38); ABR–201205020.R2; New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: June 20, 2022.

7. SWN Production Company, LLC; Pad ID: Moore Well Pad; ABR–201205021.R2; New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: June 20, 2022.

8. SWN Production Company, LLC; Pad ID: Wheeler Well Pad; ABR–201205022.R2; Silver Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: June 20, 2022.

9. SWN Production Company, LLC; Pad ID: O'Reilly Well Pad; ABR–201205023.R2; Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: June 20, 2022.

10. Repsol Oil & Gas USA, LLC; Pad ID: FERGUSON (01 023) R; ABR–20100453.R2; Granville Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: June 20, 2022.

11. Coterra Energy Inc.; Pad ID: WarrinerS P1; ABR–201505003.R1; Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: June 20, 2022.

12. Coterra Energy Inc.; Pad ID: Petty P1; ABR–20100550.R2; Dimock Township, Susquehanna County, Pa.;

Consumptive Use of Up to 5.0000 mgd; Approval Date: June 20, 2022

13. EXCO Resources (PA), LLC; Pad ID: Taylor (Pad 33); ABR–20100611.R2; Burnside Township, Centre County, Pa.; Consumptive Use of Up to 8.0000 mgd; Approval Date: June 20, 2022.

14. Coterra Energy Inc.; Pad ID: Lauffler P1; ABR–20100608.R2; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: June 20, 2022.

15. Coterra Energy Inc.; Pad ID: OakleyJ P1; ABR–20100603.R2; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: June 20, 2022.

16. Coterra Energy Inc.; Pad ID: Post P1; ABR–20100605.R2; Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: June 20, 2022.

17. Coterra Energy Inc.; Pad ID: StockholmK P3; ABR–20100609.R2; Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: June 20, 2022.

18. Seneca Resources Company, LLC; Pad ID: Clark 486; ABR–20100429.R2; Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: June 20, 2022.

19. Seneca Resources Company, LLC; Pad ID: Young 431; ABR–20100561.R2; Shippen Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: June 20, 2022.

20. Chesapeake Appalachia, L.L.C.; Pad ID: Duane; ABR–20100601.R2; Leroy Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: June 20, 2022.

21. Seneca Resources Company, LLC; Pad ID: Mitchell 456; ABR–20100615.R2; Jackson Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: June 28, 2022.

22. Seneca Resources Company, LLC; Pad ID: Hege 436; ABR–20100622.R2; Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: June 28, 2022.

23. Range Resources—Appalachia, LLC; Pad ID: Mohawk Lodge Unit; ABR–20100619.R2; Gallagher Township, Clinton County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: June 28, 2022.

24. Chesapeake Appalachia, L.L.C.; Pad ID: Cannella; ABR–20100637.R2; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: June 28, 2022.

25. Seneca Resources Company, LLC; Pad ID: Valldes Pad C; ABR–20100620.R2; Covington Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: June 28, 2022.

26. Seneca Resources Company, LLC; Pad ID: Wivell Pad I; ABR–20100607.R2; Covington Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: June 28, 2022.

27. Seneca Resources Company, LLC.; Pad ID: COP Pad B; ABR–20100645.R2; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: June 28, 2022.

28. Repsol Oil & Gas USA, LLC; Pad ID: HARNISH (01 032) G; ABR–20100647.R2; Canton Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: June 28, 2022.

29. Coterra Energy Inc.; Pad ID: FergusonA P1; ABR–201506003.R1; Harford Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: June 28, 2022.

30. Seneca Resources Company, LLC; Pad ID: Erickson 423; ABR–20100618.R2; Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: June 29, 2022.

31. Chesapeake Appalachia, L.L.C.; Pad ID: Them; ABR–20100642.R2; Wysox Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: June 29, 2022.

32. Chesapeake Appalachia, L.L.C.; Pad ID: Linski; ABR–20100662.R2; Tuscarora Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: June 30, 2022.

33. Seneca Resources Company, LLC; Pad ID: Shelman 291; ABR–20100659.R2; Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: June 29, 2022.

34. Inflection Energy (PA), LLC; Pad ID: Eichenlaub B Pad; ABR–201206013.R2; Upper Fairfield Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: June 30, 2022.

35. Campbell Oil & Gas, Inc.; Pad ID: Mid Penn Unit B Well Pad; ABR–201206017.R2; Bigler Township, Clearfield County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: June 30, 2022.

36. Range Resources—Appalachia, LLC; Pad ID: Ogontz Fishing Club Unit #12H–#17H; ABR–20100648.R2; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: June 30, 2022.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: July 7, 2022.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2022–14806 Filed 7–11–22; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Youth Access to American Jobs in Aviation Task Force; Notice of Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Youth Access to American Jobs in Aviation Task Force (YIATF or Task Force).

DATES: The meeting will be held on September 22, 2022, from 9:00 a.m. to 12:00 p.m. Eastern Time.

Requests for accommodations to a disability must be received by September 8, 2022. Requests to submit written materials to be reviewed during the meeting must be received no later than September 8, 2022.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue SW, Washington, DC 20591, as well as virtually. In-person attendance is limited to Task Force members and staff; members of the public may attend virtually.

Members of the public who wish to observe the virtual meeting may access the event live on the FAA's Twitter, Facebook and YouTube channels. Information on the committee and copies of the meeting minutes will be available on the FAA Committee website at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/index.cfm/committee/browse/committeeID/797.*

FOR FURTHER INFORMATION CONTACT: Ms. Aliah Duckett, Federal Aviation Administration, by email at *S602YouthTaskForce@faa.gov* or phone at 202–267–8361. Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The FAA established the Task Force by charter on October 3, 2019, under Public Law 115–254. The Task Force is required by statute to develop and

provide independent recommendations and strategies to the FAA Administrator to (1) facilitate and encourage high school students in the United States to enroll in and complete career and technical education courses, including science, technology, engineering, and mathematics (STEM), that will prepare them to pursue a course of study related to an aviation career at an institution of higher education, a community college, or trade school; (2) facilitate and encourage these students to enroll in a course of study related to an aviation career, including aviation manufacturing, engineering and maintenance, at an institution of higher education, including a community college or trade school; and (3) identify and develop pathways for students to secure registered apprenticeships, workforce development programs, or careers in the aviation industry of the United States.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Welcome/Opening Remarks
- Approval of Previous Meeting Minutes
- Recommendations Report Discussion
- Closing Remarks

A detailed agenda will be posted on the FAA Committee website address listed in the **ADDRESSES** section at least 15 days in advance of the meeting. Copies of the meeting minutes will also be available on the FAA Committee website.

III. Public Participation

Members of the public who wish to attend the meeting can access the livestream on the FAA social media platforms listed in the **ADDRESSES** section on the day of the event.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The FAA is not accepting oral presentations at this meeting due to time constraints. However, the public may present written statements to the Task Force by providing a copy to the Designated Federal Officer via the email listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC.

Angela O. Anderson,

Director, Regulatory Support Division, Office of Rulemaking Federal Aviation Administration.

[FR Doc. 2022–14846 Filed 7–11–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0040; Notice 1]

Michelin North America Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Michelin North America, Inc., (MNA), has determined that certain Michelin X Multi D+ replacement tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds), Specialty Tires, and Tires for Motorcycles.* MNA filed an original noncompliance report dated March 25, 2022. MNA subsequently petitioned NHTSA on April 19, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of MNA's petition.

DATES: Send comments on or before August 11, 2022.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, Office of Vehicle Safety Compliance, NHTSA, (325) 655–0547.

SUPPLEMENTARY INFORMATION:

I. *Overview:* MNA determined that certain Michelin X Multi D+ replacement tires do not fully comply with paragraph S6.5(j) of FMVSS No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds), Specialty Tires, and Tires for Motorcycles.* (49 CFR 571.119).

MNA filed an original noncompliance report dated March 25, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* MNA subsequently petitioned NHTSA on April 19, 2022, for an

exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of MNA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. *Tires Involved:* Approximately 160 Michelin X Multi D+, size11R22.5, replacement tires, manufactured between May 26, 2019, and June 29, 2019, are potentially involved.

III. *Noncompliance:* MNA explains that the noncompliance was due to a mold error in which the subject tires are missing the letter designating the tire load range as required by paragraph S6.5(j) of FMVSS No. 119. Specifically, the sidewalls of the subject tires omit the designated load range letter ''H.''

IV. *Rule Requirements:* Paragraph S6.5(j) of FMVSS No. 119 includes the requirements relevant to this petition. The subject tires are required to be marked on each sidewall with the tire load range letter.

V. Summary of MNA's Petition: The following views and arguments presented in this section, ''V. Summary of MNA's Petition,'' are the views and arguments provided by MNA. They have not been evaluated by the Agency and do not reflect the views of the Agency. MNA describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

MNA explains that the noncompliance was found when a Michelin Field Engineer was notified that some of the subject tires ''had a different tread pattern than the customer was accustomed to.'' MNA explains that the subject tires were intended for the Asia and India tire markets, yet were certified to the applicable U.S. FMVSS, and properly labeled with the certification symbol ''DOT.'' MNA states that the tires ''entered the U.S. through channels outside of Michelin's control.'' MNA says that the subject tires have not been sold through MNA's sales or distribution channels. MNA also states that it has taken corrective measures to prevent the shipping or sale of the tires by blocking the SKUs in its internal databases.

MNA claims that the subject tires were manufactured as a load index 148 single/145 dual tire with a maximum single load rating of 3150 kilograms or 6940 pounds at 830 kPa or 120 psi cold inflation pressure and a maximum dual load rating of 2900 kilograms or 6395 pounds at 830 kPa or 120 psi cold inflation pressure. In regard to operational safety, MNA asserts that it tested the subject tires and found that they comply with the necessary performance requirements required by FMVSS No. 119. Except for the subject noncompliance, MNA also claims that the subject tires meet all marking requirements and ''are also marked with load indices for single and dual applications,'' which MNA contends will ''provide both dealers and consumers with the necessary information to enable proper selection and application of the tires.''

MNA states that it has blocked the SKU for the subject tires in its systems to prevent shipment to the U.S. and sale through MNA. MNA also states that the molds will be updated to include the required load range letter designation and until then, the SKU will remain blocked in its systems.

MNA says that NHTSA has previously granted petitions which it believes are similar to the subject petition. MNA refers to the granting of the petition submitted by China Manufacturers Alliance, LLC, for 1,753,089 truck & bus radial replacement tires that were missing the letter marking that designates the tire load range on the tire sidewall.

MNA concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that MNA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after MNA notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–14767 Filed 7–11–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before August 11, 2022.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 6, 2022.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
SPECIAL PERMITS DATA			
21382–N	CU Aerospace LLC	173.232(g)(3)	To authorize the transportation in commerce of compressed gases in a non-DOT specification package. (modes 1, 4).
21383–N	Emergency Environmental Services, LLC.	173.185(f)	To authorize the transportation in commerce of damaged lithium batteries in non-spec packaging. (mode 1).
21385–N	Williams Advanced Engineering Limited.	173.185(a)(1), 173.185(b)(6)	To authorize the transportation in commerce of prototype and low production lithium ion batteries exceeding 35 kg net weight aboard cargo-only aircraft. (mode 4)
21387–N	Cobham Mission Systems Orchard Park Inc.	173.302a	To authorize the manufacture, mark, sale, and use of full wrapped fiber reinforced aluminum 6061–T6 lined cylinder meeting the ISO Standard 11119–2 except as specified herein. (modes 1, 2, 3, 4, 5).
21390–N	Bollore Logistics Germany Gmbh.	173.220(d), 173.185(a)(1), 173.185(e)(7).	To authorize the transportation in commerce of lithium ion batteries and cells in non-specification packaging (spacecraft). (mode 4)
21393–N	Bollore Logistics Germany Gmbh.	173.185(a)(1)	To authorize the transportation in commerce of prototype lithium batteries contained in equipment via cargo-only aircraft. (mode 4)
21394–N	Alucan Entec SA	173.306(a)(3)(ii), 173.306(a)(3)(ii).	To authorize the manufacture, mark, sale and use of a certain non-DOT specification inside metal containers conforming to all regulations applicable to a DOT Specification 2Q inner non-refillable metal receptacle, except as specified herein. (mode 3)
21396–N	Porsche Cars North America, Inc.	173.185(f)(3)	To authorize the transportation in commerce of damaged, defective, and recalled lithium batteries with more than one lithium battery per outer packaging. (modes 1, 2, 3)
21397–N	Strategic Edge Imports, LLC	172.204(a)(1), 172.301(a)(1), 172.301(c), 172.404(a), 172.404(b), 172.704(a)(1), 172.704(a)(3), 172.704(a)(3)(i), 172.704(a)(3)(ii), 172.704(a)(3)(iii), 172.704(a)(4).	To authorize the transportation in commerce of certain DOT 3AL, TC/3ALM and UN ISO 7866 cylinders that contain carbon dioxide, with alternative hazard communication. (modes 1, 2, 3)
21402–N	Daniels Sharpsmart, Inc	173.196(a)	To authorize the transportation in commerce of infectious substances affecting humans in alternative packaging. (mode 1)

[FR Doc. 2022–14774 Filed 7–11–22; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before August 11, 2022.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 6, 2022.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
SPECIAL PERMITS DATA—Granted			
9221–M	Applied Pressure Vessels, Inc	173.302a(a)	To modify the special permit to authorize an additional cylinder.
10814–M	Spellman High Voltage Electronics Corporation.	173.302a	To modify the special permit to update the reference drawings in the special permit.
13220–M	Entegris, Inc	173.302, 173.302c, 180.205(d)	To modify the special permit to authorize disposal of cylinders.
14163–M	Linde Gas & Equipment Inc	173.301(g)(1)(ii)	To modify the special permit to authorize DOT specification 3AL cylinders.
15097–M	Consumer Product Safety Commission, United States.	172.320, 173.56	To modify the special permit to authorize an additional destination.
16165–M	HRD Aero Systems, Inc	173.302(a), 173.56(b)	To modify the special permit to increase the maximum aluminum content to 6.75%.
20356–M	Tesla, Inc.	172.101(j)	To modify the special permit to authorize additional lithium ion batteries.
20493–M	Tesla, Inc	172.101(j)	To modify the special permit to include an additional cell type within the authorized lithium ion batteries.
20602–M	The Boeing Company	173.56(b), 173.62, 173.185(a), 173.185(b), 173.201, 173.302(a), 173.304(a), 177.848(d), 173.203.	To modify the special permit to authorize additional hazardous materials.
20881–M	Arkema Inc	172.102(c)(7), 173.201(c)	To modify the special permit to authorize additional tanks.
20976–M	The National Reconnaissance Office.	173.185(a)(1)	To modify the special permit to authorize two spacecraft to be transported together.
21306–N	Collins Aerospace	173.302(f)(3), 173.302(f)(4), 173.302(f)(5), 173.309(c)(5).	To authorize the transportation in commerce of certain Division 2.2 gases in alternative packaging by aircraft.
21318–N	Mercedes-Benz AG	172.101(j), 173.185(b)(1)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft.
21334–N	Pactec, Inc	173.12(b)(2)(i)	To authorize the manufacture, mark, sale, and use of certain UN13H4 woven plastic, coated, and with liner Flexible Intermediate Bulk Containers (IBC) for use as the outer packaging in a combination packaging for liquids or solids lab packs in accordance with 49 CFR 173.12(b)(2)(i).
21342–N	Ultium Cells LLC	173.185(b)(3)(ii), 173.185(b)(6).	To authorize the transportation in commerce of multiple lithium ion cells packaged within a rigid Large UN packaging by highway and rail.
21350–N	The National Reconnaissance Office.	173.185(a)(1)	To authorize the transportation in commerce of a low production lithium battery contained in equipment (spacecraft).
21351–N	Bolloré Logistics Germany Gmbh.	172.101(j), 172.300, 172.400, 173.301(f)(1), 173.302a(a)(1), 173.185(a)(1).	To authorize the transportation in commerce of specially designed non-DOT specification in which prototype and low production lithium ion batteries contained in equipment (spacecraft) that have not completed all UN tests and exceed 35 kg net weight by cargo-only aircraft and articles containing non-flammable, toxic gas, n.o.s. (contains ammonia, anhydrous) within the equipment are being shipped for use in specialty applications.
21358–N	Hornady Manufacturing Company.	172.300, 172.400, 173.24(f)(1), 173.62(c).	To authorize the transportation in commerce of ''Cartridges, small arms'' and ''Cartridges, small arms, blank'' in non-DOT specification packagings, with and without closures, and without being required to be marked and labeled.
21368–N	Linde Gmbh	178.338–2(a)	To authorize the manufacture, mark, sale, and use of DOT MC–338 specification cargo tanks fabricated using stainless steel not authorized in § 178.338–2(a) as a material of construction.
21371–N	Korean Air Lines Co., Ltd	172.101(j), 173.27(b)(2), 173.27(b)(3), 175.30(a)(1).	To authorize the transportation in commerce of explosives by cargo aircraft which is forbidden in the regulations.
21375–N	PTSI Managed Services Inc	172.101(j)	To authorize the transportation in commerce of lithium batteries by cargo only aircraft which exceed the 35 kg limit.
21386–N	Sun Chemical Corporation	172.301(c), 173.24(d)(1)	To authorize the transportation in commerce of the hazardous materials in paragraph 6. in 5M2 multi-wall water-resistant paper bags that are marked 5M2W.
SPECIAL PERMITS DATA—Denied			
SPECIAL PERMITS DATA—Withdrawn			
21388–N	Department of Defense US Army Military Surface Deployment & Distribution Command.	173.185(e)	To authorize the transportation in commerce of prototype and low production lithium cells and batteries in alternative packaging
21398–N	Sonnen Inc	173.185(b)(5)	To authorize the transportation commerce of lithium batteries aboard cargo-only aircraft.

[FR Doc. 2022–14776 Filed 7–11–22; 8:45 am]
BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Modification to Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before July 27, 2022.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 1, 2022.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
8228–M	Bureau of Alcohol Tobacco, Firearms & Explosives.	172.101(c), 172.102(c)(1), 172.203(k), 173.56(b).	To modify the special permit to remove paragraph 7.b. from the special permit. (modes 1, 2, 4)
8723–M	Dyno Nobel Inc	173.242(c)	To modify the special permit to authorize UN Portable Tanks as authorized packagings. (modes 1, 2, 3)
16365–M	RDS Manufacturing, Inc	177.834(h), 178.700(c)(1)	To modify the special permit to authorize two additional packagings. (mode 1)

[FR Doc. 2022–14775 Filed 7–11–22; 8:45 am]
BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.''

DATES: Comments must be submitted on or before September 12, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0248, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0248'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' drop down menu. Click on ''Information Collection Review.'' From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by

searching by OMB control number ''1557–0248'' or ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires Federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing this notice of the renewal of the following information collection:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control No.: 1557–0248.

Type of Review: Regular.

Affected Public: Businesses or individuals.

Frequency of Response: On occasion.

Burden Estimate:

Number of Respondents: 9,025.

Total Annual Burden: 3,850.

Abstract: This generic information collection request (ICR) provides the OCC with a means to solicit qualitative stakeholder feedback in an efficient, timely manner, in accordance with the Federal government's commitment to improving service delivery. Qualitative feedback is information that provides useful insights on perceptions and opinions but does not include statistical survey or quantitative results that can be attributed to the surveyed population. This qualitative feedback provides insights into stakeholder perceptions, experiences, and expectations; provides an early warning of issues with service; and/or focuses attention on areas where communication, training, or changes in operations might improve delivery of products or services. It also enables ongoing, collaborative, and actionable communications between the OCC and its stakeholders, while also utilizing feedback to improve program management.

The OCC's solicitations for feedback target areas such as timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues related to service delivery. The OCC uses the responses to inform and plan efforts to improve or maintain the quality of service offered to the public. If the OCC does not collect this information, it will not have access to vital feedback from stakeholders.

Under this generic ICR, the OCC will submit a specific information collection for approval only if the collection meets the following conditions:

• It is voluntary;

• It imposes a low burden on respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and a low cost on both respondents and the Federal government;

• It is non-controversial and does not raise issues of concern to other Federal agencies;

• It is targeted to solicit opinions from respondents who have experience with the program or will have experience with the program in the near future;

• It includes personally identifiable information (PII) only to the extent necessary, and the OCC does not retain the PII; [1]

• It gathers information intended to be used internally only for general service improvement and program management purposes and is not intended for release outside of the OCC;

• It does not gather information to be used for the purpose of substantially informing influential policy decisions;

• It gathers information that will yield qualitative information and will not be designed or expected to yield statistically reliable results or used to reach general conclusions about the surveyed population; and

• Feedback collected provides useful information but does not yield data that can be attributed to the overall population.

If these conditions are not met, the OCC will submit an information collection request to OMB for approval through the normal PRA process.

The OCC will not use this type of generic clearance for the collection of qualitative feedback for any quantitative information collection.

As a general matter, these information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the information collection;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and/or purchase of services expended to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2022–14744 Filed 7–11–22; 8:45 am]

BILLING CODE 4810–33–P

[1] The OCC may retain PII only in limited circumstances and, if it does so, the OCC must comply with applicable requirements, restrictions, and prohibitions of the Privacy Act of 1974 and other privacy and confidentiality laws that govern the collection, retention, use, and/or disclosure of such PII.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List

(SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or Assistant Director for Regulatory Affairs, tel. 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action

On March 10, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authority listed below.

Entity

1. CENTRAL RESERVE POLICE (a.k.a. ABU TIRA; a.k.a. CENTRAL POLICE RESERVE; a.k.a. CENTRAL RESERVE FORCES; a.k.a. EL ITTIHAD EL MARKAZI), Sudan; Organization Type: Public order and safety activities [GLOMAG].

Designated pursuant to section 1(a)(ii)(A) of Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,'' 82 FR 60839, 3 CFR, 2018 Comp., p. 399, for being a foreign person that is responsible for or complicit in, or has directly or indirectly engaged in, serious human rights abuse.

Dated: March 10, 2022.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–14811 Filed 7–11–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing updates to the identifying information of one person on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List), whose property and interests in property are blocked pursuant to Executive Order 13405 of June 16, 2006, ''Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus,'' 71 FR 35485 (June 20, 2016) (E.O. 13405).

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action

On July 06, 2022, OFAC updated the entry on the SDN List for the following person, whose property and interests in property are blocked pursuant to E.O. 13405.

The amended identification information is as follows:

BELARUSIAN OIL TRADE HOUSE (a.k.a. BELARUSIAN OIL TRADING HOUSE; a.k.a. BELARUSIAN OIL TRADING HOUSE REPUBLICAN SUBSIDIARY UNITARY ENTERPRISE; a.k.a. BELARUSIAN OIL TRADING HOUSE REPUBLICAN UNITARY SUBSIDIARY; a.k.a. UE BELARUSIAN OIL TRADE HOUSE; a.k.a. ''B.O.T.H.''; a.k.a. ''UNITED TRADING SITE''), Prospect Dzerzhinskogo, 73, Minsk 220116, Belarus; 73 Derzhinskiy Ave., Minsk 220116, Belarus; Dzerzhinsky Avenue, 73, Minsk 220116, Belarus; website *WWW.BNTDTORG.BY*; alt. website *WWW.BNTD.BY*; Business Registration Document # UNP 101119568 (Belarus) [BELARUS].

Dated: July 6, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–14737 Filed 7–11–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Geriatric and Gerontology Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that a meeting of the Geriatric and Gerontology Advisory Committee will be held in person or virtually on Tuesday, September 20, 2022, from 8:00 a.m. to 4:00 p.m. and Wednesday, September 21, 2022, from 8:00 a.m. to 12:00 noon (Eastern Daylight Time). This meeting will be held at the U.S. Department of Veteran Affairs at 810 Vermont Avenue NW, Washington, DC 20420, as well as virtually via WebEx and is open to the public.

The purpose of the Committee is to provide advice to the Secretary of VA and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology. The Committee assesses the capability of VA health care facilities and programs to meet the medical, psychological, and social needs of older Veterans, and evaluates VA programs designated as Geriatric Research, Education, and Clinical Centers.

Although no time will be allocated for receiving oral presentations from the public, members of the public may submit written statements for review by the Committee to: Marianne Shaughnessy, CRNP, Ph.D., Designated Federal Officer, Veterans Health Administration by email at *Marianne.Shaughnessy@va.gov*. Comments will be accepted until close of business on September 2, 2022. In the communication, the writers must identify themselves and state the organization, association of person(s) they represent.

Any member of the public wishing to attend either in person or virtually or seeking additional information should email *Marianne.Shaughnessy@va.gov* or call 202–407–6798, no later than close of business on September 2, 2022, to provide their name, professional affiliation, email address and phone number. For anyone wishing to attend virtually, they may use the WebEx link for September 20, 2022: *https://veteransaffairs.webex.com/wbxmjs/joinservice/sites/veteransaffairs/meeting/download/0809bfe67ab94b58a52e6e88f7090825?siteurl=veteransaffairs&MTID=m215eec9d9226abff7c9b49f01513e401,* meeting number (access code): 2763 460 1525, meeting password: qkQjfYC@644 or September 21, 2022: *https://veteransaffairs.webex.com/wbxmjs/*

joinservice/sites/veteransaffairs/meeting/download/1c570c32e4734d5cac7bb5b78cbba707?siteurl=veteransaffairs&MTID=m7745ea10f32dc9ffda0e0f0b13d354a0, meeting number (access code): 2760 138 5062, meeting password: BDbnSCC*363, or to join by phone either day: 1–404–397–1596.

Dated: July 6, 2022.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–14732 Filed 7–11–22; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 87 Tuesday,
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Part II

Department of Education

34 CFR Part 106
Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 106

[Docket ID ED–2021–OCR–0166]

RIN 1870–AA16

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Education (Department) proposes to amend the regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The purpose of the proposed regulations is to better align the Title IX regulatory requirements with Title IX's nondiscrimination mandate, and to clarify the scope and application of Title IX and the obligation of all schools, including elementary schools, secondary schools, postsecondary institutions, and other recipients that receive Federal financial assistance from the Department (referred to below as recipients or schools) to provide an educational environment free from discrimination on the basis of sex, including through responding to incidents of sex discrimination. The Department recognizes that schools vary in size, student populations, and administrative structure. The proposed regulations would enable all schools to meet their obligations to comply fully with Title IX while providing them appropriate discretion and flexibility to account for these variations.

DATES: Comments must be received on or before September 12, 2022.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *http://www.regulations.gov*, please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments by fax or by email, or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

The Department strongly encourages you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), the Department strongly encourages you to convert the PDF to ''print-to-PDF'' format, or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions to assist in the rulemaking process.

- *Federal eRulemaking Portal:* Please go to *http://www.regulations.gov* to submit your comments electronically. Information on using *http://www.regulations.gov*, including instructions for finding a rule on the site and submitting comments, is available on the site under ''FAQ.''

Note: The Department's policy is to generally make comments received from members of the public available for public viewing on the Federal eRulemaking Portal at *http://www.regulations.gov*. Therefore, commenters should include in their comments only information about themselves that they wish to make publicly available. Commenters should not include in their comments any information that identifies other individuals or that permits readers to identify other individuals. If, for example, your comment describes an experience of someone other than yourself, please do not identify that individual or include information that would allow readers to identify that individual. The Department will not make comments that contain personally identifiable information (PII) about someone other than the commenter publicly available on *http://www.regulations.gov* for privacy reasons. This may include comments where the commenter refers to a third-party individual without using their name if the Department determines that the comment provides enough detail that could allow one or more readers to link the information to the third party. If your comment refers to a third-party individual, to help ensure that your comment is posted, please consider submitting your comment anonymously to reduce the chance that information in your comment about a third party could be linked to the third party. The Department will also not make comments that contain threats of harm to another person or to oneself available on *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Alejandro Reyes, U.S. Department of Education, 400 Maryland Ave. SW, PCP–6125, Washington, DC 20202. Telephone: 202–245–7705. You may also email your questions to *T9NPRM@ed.gov*, but as described above, comments must be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action

The Department's review of the current regulations and of information received during and pursuant to a week-long public hearing as well as stakeholder listening sessions and meetings suggest that the current regulations do not best fulfill the requirement of Title IX of the Education Amendments of 1972 (Title IX) that schools and institutions that receive Federal financial assistance eliminate discrimination on the basis of sex in their education programs or activities. The Department therefore proposes that the current regulations should be amended to provide greater clarity regarding the scope of sex discrimination, including recipients' obligations not to discriminate based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Further, the Department proposes that the current regulations could better account for the variety of education programs or activities covered by Title IX, which include recipients' education programs or activities serving students in elementary schools, secondary schools, and postsecondary institutions.

The Department makes these proposals based on an extensive review of its regulations implementing Title IX, as well as the live and written comments received during a nationwide virtual public hearing on Title IX held in June 2021. In addition, in 2021, the Office for Civil Rights held numerous listening sessions with a wide array of stakeholders on various issues related to Title IX and considered input from stakeholders during meetings held in 2022 under Executive Order 12866, after the NPRM was submitted to OMB. *Executive Order on Regulatory Planning and Review,* E.O. 12866, 58 FR 51735 (Oct. 4, 1993), *https://www.govinfo.gov/content/pkg/FR-1993-10-04/pdf/FR-1993-10-04.pdf*. To address these concerns, the Department proposes amending the Title IX regulations to:

- Require recipients to adopt grievance procedures that provide for the prompt and equitable resolution of complaints of sex discrimination and take other necessary steps to provide an educational environment free from sex discrimination; [1]
- Clarify the Department's view of the scope of Title IX's prohibition on sex discrimination, including related to a

[1] Throughout this preamble, the term ''sex discrimination'' means ''discrimination on the basis of sex'' as that language is used in the statutory text of Title IX.

hostile environment under the recipient's education program or activity, as well as discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; and

- Clarify a recipient's obligations to students and employees who are pregnant or experiencing pregnancy-related conditions.

Summary of the Major Provisions of This Regulatory Action

With regard to sex-based harassment (as defined in proposed § 106.2), the proposed regulations would:

- Define sex-based harassment to include but not be limited to sexual harassment;
- Provide and clarify, as appropriate, definitions of various terms related to a recipient's obligations to address sex discrimination, including sex-based harassment;
- Clarify how a recipient is required to take action to end any sex discrimination that has occurred in its education program or activity, prevent its recurrence, and remedy its effects; and
- Clarify a recipient's obligations related to the grievance procedures and other necessary steps when it receives a complaint of sex discrimination.

With regard to discrimination against individuals who are pregnant or parenting, the proposed regulations would:

- Define the term ''pregnancy or related conditions'' and the term ''parental status,'' and prohibit discrimination against students and applicants for admission or employment on the basis of current, potential, or past pregnancy or related conditions; and
- Clarify a recipient's obligations to students and employees who are pregnant or experiencing related conditions.

In addition, the proposed regulations would:

- Articulate the Department's understanding that sex discrimination includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity;
- Clarify and streamline administrative requirements with respect to designating a Title IX Coordinator, disseminating a nondiscrimination notice, adopting grievance procedures, and recordkeeping;
- Specify that a recipient must train a range of relevant persons on the recipient's obligations under Title IX;
- Clarify that, unless otherwise provided by Title IX or the regulations, a recipient must not carry out any otherwise permissible different treatment or separation on the basis of sex in a way that would cause more than de minimis harm, including by adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with their gender identity; and
- Clarify a recipient's obligation to address retaliation.

Costs and Benefits

As further detailed in the *Regulatory Impact Analysis,* the Department estimates that the total monetary cost savings to recipients of the proposed regulations over ten years would be in the range of $9.8 million to $28.2 million. Although the Department cannot quantify, in monetary terms, the benefits of the proposed regulations to those who have been subjected to sex discrimination, the Department recognizes that sex discrimination, including sex-based harassment, can have profound and long-lasting economic costs for students, employees, and other members of a recipient's surrounding community. *See, e.g.,* Centers for Disease Control and Prevention, *Fast Facts: Preventing Sexual Violence, https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html* (last visited June 16, 2022) (describing the economic impact of sexual violence involving physical contact on male and female victims within their lifetimes); Cora Peterson et al., *Lifetime Economic Burden of Intimate Partner Violence Among U.S. Adults,* 55 a.m. J. Preventative Med. 433 (2018) (estimating the economic impact of intimate partner violence on male and female victims within their lifetimes). The Department now believes that these proposed regulations more effectively fulfill Title IX's guarantee that a recipient's education program or activity is free from sex discrimination. As proposed, the Department's preliminary view is that these amendments would lower the costs associated with sex discrimination, thereby producing a demonstrable benefit for students, employees, and others participating in a recipient's education program or activity. In the *Regulatory Impact Analysis,* the Department estimates the likely monetary costs of this regulatory action for recipients. The clarification of grievance procedures required for all forms of sex discrimination and adoption of new reporting and notification framework for employees will carry some costs. The Department notes that although it cannot fully quantify the economic impact of the proposed regulations, the Department believes that these benefits are substantial and would significantly outweigh the estimated costs of the proposed regulations.

The Department also acknowledges that the proposed regulations deviate from some past agency statements on Title IX's coverage of discrimination based on sexual orientation and gender identity. As explained in the *Regulatory Impact Analysis,* the Department believes that any costs associated with the shift away from its most recent prior interpretation would be minimal. For example, the proposed requirement to permit students to participate in a recipient's education program or activity consistent with their gender identity may require updating of policies or training materials, but would not require significant expenditures, such as construction of new facilities. The Department proposes that the benefits associated with this change—increased protection of students from sex discrimination and better alignment of the regulations with Title IX's nondiscrimination mandate—far outweigh any costs.

Invitation to Comment: The Department invites you to submit comments regarding the proposed regulations. To ensure that your comments have the maximum effect on developing the final regulations, you should identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and arrange your comments in the same order as the proposed regulations.

The Department invites you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 (explained further below) and their overall goal of reducing the regulatory burden that might result from the proposed regulations. Please let the Department know of any further ways that it may reduce potential costs or increase potential benefits, while preserving the effective and efficient administration of the Department's programs and activities. The Department also welcomes comments on any alternative approaches to the subjects addressed by the proposed regulations.

During and after the comment period, you may inspect public comments about the proposed regulations by accessing *Regulations.gov.* You may also inspect the comments in person. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT** to make

arrangements to inspect the comments in person.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: Upon request, the Department will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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Background

The mission of the Department's Office for Civil Rights (OCR) is to ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights in our nation's schools. One of the Federal civil rights laws that OCR enforces is Title IX, which prohibits discrimination on the basis of sex under education programs or activities that receive Federal financial assistance. 20 U.S.C. 1681–1688. Unfortunately, sex discrimination—sometimes overlapping with other forms of discrimination, such as race discrimination and disability discrimination—remains a serious problem, keeping affected students from benefiting fully from their school's education programs and activities.

In March 2021, President Joseph R. Biden, Jr. issued the Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity, and directed the Secretary of Education, in consultation with the Attorney General, to review all existing regulations, orders, guidance documents, policies and any other similar agency actions for consistency with Title IX and other governing laws. The goal of the Executive Order was to ensure ''that all students [are] guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity.'' *Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity,* E.O. 14021, 86 FR 13803 (Mar. 11, 2021), *https://www.govinfo.gov/content/pkg/FR-2021-03-11/pdf/2021-05200.pdf.*

Also, as set out in the Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, issued in January 2021, this Administration's policy is ''to prevent and combat discrimination on the basis of gender identity or sexual orientation, and to fully enforce Title VII [of the Civil Rights Act of 1964] and other laws that prohibit discrimination on the basis of gender identity or sexual orientation.'' *Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation,* E.O. 13988, 86 FR 7023 (Jan. 25, 2021), *https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01761.pdf.* That Executive Order further noted that under the reasoning of *Bostock* v. *Clayton County,* 140 S. Ct. 1731 (2020), ''[l]aws that prohibit sex discrimination—including Title IX of the Education Amendments Act of 1972, as amended (20 U.S.C. 1681 *et seq.*) . . . along with their respective implementing regulations—prohibit discrimination on the basis of gender identity or sexual orientation, so long as the laws do not contain sufficient indications to the contrary.'' *Id.* Like Executive Order 14021, Executive Order 13988 directed the Secretary of Education, in consultation with the Attorney General, to ''review all existing orders, regulations, guidance documents, policies, programs, or other agency actions'' promulgated under any statute or regulation that prohibits sex discrimination for their consistency with the stated policy. *Id.*

As these Executive Orders directed, the Department conducted an extensive review of its Title IX regulations and policy documents for consistency with Title IX's statutory prohibition on sex discrimination in federally funded education programs or activities. This review included careful consideration of the comments and feedback received during a nationwide virtual public hearing on Title IX that OCR held in June 2021, OCR's numerous listening sessions in 2021 with a wide array of individuals and organizations on various Title IX issues, and meetings with stakeholders held in 2022 under Executive Order 12866, after the NPRM was submitted to the Office of Management and Budget (OMB). Office of Management and Budget, Office of Information and Regulatory Affairs, Reginfo.gov, *http://reginfo.gov/public* (last visited June 2, 2022). Based on that review and input, the Department proposes that the current regulations should be amended to support full implementation of Title IX's prohibition on sex discrimination under a recipient's education program or activity.

In its review, the Department heard two overarching concerns from students, parents, recipients, advocates, and other concerned stakeholders, namely that: (1) there is a need for greater clarity on how to ensure that complaints of sex-based harassment are resolved in a prompt and equitable manner; and (2) the current regulations do not adequately clarify or specify the scope of sex discrimination prohibited by Title IX, including discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity. The Department has determined that more clarity and greater specificity would better equip recipients of Federal funding [2] to create and maintain school environments free from sex discrimination. This, in turn, will help recipients ensure that all persons have equal access to educational opportunities in accordance with Title IX's nondiscrimination mandate.

The goal of the Department's proposed regulations is thus to fully effectuate Title IX by clarifying and specifying the scope and application of Title IX protections and recipients' obligation not to discriminate on the basis of sex. Specifically, this proposed regulatory action focuses on ensuring that recipients prevent and address sex discrimination, including but not limited to sex-based harassment, in their education programs or activities;

[2] The text of Title IX states that the statute applies to ''any education program or activity receiving Federal financial assistance.'' 20 U.S.C. 1681(a). The definition of the term ''Federal financial assistance'' under the Title IX regulations is not limited to monetary assistance, but encompasses various types of in-kind assistance, such as a grant or loan of real or personal property, or provision of the services of Federal personnel. *See* 34 CFR 106.2(g)(2) and (3). Throughout this preamble, terms such as ''Federal funding,'' ''Federal funds,'' and ''federally funded'' are used to refer to ''Federal financial assistance,'' and are not meant to limit application of the statute or its implementing regulations to recipients of certain types of Federal financial assistance.

clarifying the scope of Title IX's protection for students and others who are participating or attempting to participate in a recipient's education program or activity; defining important terms related to a recipient's obligations under Title IX; ensuring the provision of supportive measures, as appropriate to restore or preserve a complainant's or respondent's access to the recipient's education program or activity; clarifying a recipient's responsibilities toward students who are pregnant or experiencing pregnancy-related conditions; and clarifying that Title IX's prohibition on sex discrimination encompasses discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. In addressing confusion about coverage of sex-based harassment in the current regulations, the Department's proposed regulations also set out requirements that enable recipients to meet their obligations in settings that vary in size, student populations, and administrative structure. The proposed regulatory action would strengthen the current framework, clarify the scope and application of Title IX, and fully align the Title IX regulations with the nondiscrimination mandate of Title IX.

I. History of Title IX's Nondiscrimination Mandate and Related Regulations

Enacted in 1972, Title IX provides that ''[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.'' 20 U.S.C. 1681(a).

Title IX is cast in broad terms. It imposes, as a condition on receipt of Federal funds for education programs or activities, a blanket prohibition on sex-based discrimination, with a small number of ''specific, narrow exceptions to that broad prohibition.'' *Jackson* v. *Birmingham Bd. of Educ.,* 544 U.S. 167, 175 (2005). Congress did not limit Title IX's nondiscrimination condition to conduct engaged in ''by'' the recipient or its agents, but rather extended it to any ''exclu[sion] from participation in,'' ''deni[al of] the benefits of,'' or ''subject[ion] to discrimination under,'' any recipient's education program or activity. Congress drafted Title IX ''with an unmistakable focus on the benefited class,'' and did not ''writ[e] it simply as a ban on discriminatory conduct by recipients of federal funds or as a prohibition against the disbursement of public funds to educational institutions engaged in discriminatory practices.'' *Cannon* v. *Univ. of Chi.,* 441 U.S. 677, 691–93 (1979).

Eliminating sex discrimination rooted in stereotypical perceptions of women's abilities, competence, and worthiness to participate in educational programs—as both student and employee—was also fundamental to Title IX. *See generally* 118 Cong. Rec. 5803–12 (1972) (statement of Sen. Birch Bayh). According to Senator Birch Bayh, Title IX's sponsor in the U.S. Senate, discrimination in postsecondary education was driven by the widespread, but false, perception that the duty or desire of women to get married and bear children made them disinterested in pursuing education or professional achievement. *Id.* at 5804. Because of this stereotype, many American schools did not wish to ''waste a 'man's place' on a woman.'' *Id.* Thus, Senator Bayh said sex discrimination in ''admissions, scholarship programs, faculty, hiring and promotion, professional staffing, and pay scales,'' was ''one of the great failings of the American educational system.'' *Id.* at 5803.

Title IX authorizes and directs the Department, as well as other agencies ''to effectuate the provisions of section 1681 of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken.'' 20 U.S.C. 1682.

In 1979, the Supreme Court explained in *Cannon* v. *University of Chicago* that the objectives of Title IX are two-fold: first, to ''avoid the use of federal resources to support discriminatory practices'' and second, to ''provide individual citizens effective protection against those practices.'' 441 U.S. at 704. In 1982, the Court clarified the broad scope of Title IX in *North Haven Board of Education* v. *Bell,* stating: ''[I]f we are to give Title IX the scope that its origins dictate, we must accord it a sweep as broad as its language.'' 456 U.S. 512, 521 (1982) (citations and internal alterations omitted). Throughout this preamble, when the Department refers to Title IX's nondiscrimination mandate or requirement, it means the directive of the statutory text, including Title IX's purposes and prohibition on sex discrimination as set out in *Cannon* and *North Haven Board of Education.*

* * * * *

In 1975, the Department's predecessor, the Department of Health, Education, and Welfare (HEW), first promulgated regulations under Title IX [3] after multiple Congressional hearings. 121 Cong. Rec. 20467 (1975) (statement of Sen. Birch Bayh). They were also subject to a statutory ''laying before'' provision, designed to afford Congress an opportunity to examine the proposed regulations and disapprove them by resolution within 45 days if deemed inconsistent with Title IX. *N. Haven Bd. of Educ.,* 456 U.S. at 531–32. The Supreme Court has held that the fact that no such resolution succeeded ''strongly implies'' Congress' agreement with the Title IX regulations. *Grove City Coll.* v. *Bell,* 465 U.S. 555, 568 (1984); *N. Haven Bd. of Educ.,* 456 U.S. at 533–35.

The regulations were promulgated to effectuate the purposes of Title IX, specifically to ''eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.'' 34 CFR 106.1. The regulations implemented Title IX's nondiscrimination mandate through provisions that addressed sex discrimination in hiring, admissions, athletics, and other aspects of a recipient's education program or activity. *See generally* 34 CFR part 106. Since 1975, the Department's Title IX regulations have required a recipient to take actions important for the prevention and elimination of sex discrimination, including by designating an employee to coordinate the recipient's efforts to comply with Title IX (34 CFR 106.8(a)), adopting a nondiscrimination policy (34 CFR 106.8(b)), adopting and publishing grievance procedures providing for prompt and equitable resolution of sex discrimination complaints (34 CFR 106.8(c)), and prohibiting discrimination against students and employees based on pregnancy and childbirth (34 CFR 106.40(b); 34 CFR 106.57). At that time, Federal courts had not yet addressed a recipient's Title IX obligations with respect to sex-based harassment (including sexual harassment), sex stereotyping, or discrimination based on sexual orientation and gender identity.

Since then, the understanding of Title IX has evolved through judicial

[3] 45 CFR part 86 (1975). In 1980, Congress created the United States Department of Education. Public Law 96–88, sec. 201, 93 Stat. 669, 671 (1979); Exec. Order No. 12212, 45 FR 29557 (May 5, 1980). By operation of law, all of HEW's determinations, rules, and regulations continued in effect and all functions of HEW's Office for Civil Rights, with respect to educational programs, were transferred to the Secretary of Education. 20 U.S.C. 3441(a)(3). The regulations implementing Title IX were recodified without substantive change in 34 CFR part 106. *See* 45 FR 30802, 30955–65 (May 9, 1980).

interpretation, with relevant case law supporting the broad reach of its nondiscrimination mandate, and OCR guidance and subsequent regulations evolving accordingly. In 1992, the Supreme Court held that, in some circumstances, a school district could be liable for monetary damages under Title IX if a teacher sexually harasses a student. *Franklin* v. *Gwinnett Cnty. Pub. Sch.,* 503 U.S. 60 (1992); *see also Gebser* v. *Lago Vista Indep. Sch. Dist.,* 524 U.S. 274 (1998). In *Gebser,* the Court specifically recognized the authority of Federal agencies, such as the Department, to ''promulgate and enforce requirements that effectuate [Title IX's nondiscrimination mandate],'' even in circumstances that would not give rise to a claim for monetary damages. 524 U.S. at 292. The Court later held that schools also may be liable for monetary damages under certain conditions if a student sexually harasses another student in the school's program. *Davis* v. *Monroe Cnty. Bd. of Educ.,* 526 U.S. 629 (1999). OCR interpreted Title IX as prohibiting sexual harassment as early as 1981, *see* U.S. Dep't of Educ., Office for Civil Rights, Sexual Harassment: It's Not Academic, Office for Civil Rights at 2 (1988) (1988 Sexual Harassment Pamphlet) (quoting OCR Policy Memorandum, Aug. 31, 1981, from Antonio J. Califa, Director for Litigation, Enforcement and Policy Service, OCR to Regional Civil Rights Directors), *https://files.eric.ed.gov/fulltext/ED330265.pdf,* and issued a series of documents to provide guidance to recipients on how to meet their obligations as well as information about students' Title IX rights. In 2018, the Department issued a Notice of Proposed Rulemaking (2018 NPRM) to clarify and modify the Title IX regulations, 83 FR 61462 (Nov. 29, 2018), and in 2020 the Department amended the Title IX regulations (the 2020 amendments) specifying how recipients must respond to allegations of sexual harassment in their education programs or activities. 85 FR 30026 (May 19, 2020).

Title IX has also long been understood to prohibit discrimination related to pregnancy, consistent with its legislative history and the broad sweep of its sex-discrimination prohibition. *Conley* v. *Nw. Fla. State Coll.,* 145 F. Supp. 3d 1073, 1077–78 (N.D. Fla. 2015); *see also Wort* v. *Vierling,* Case No. 82–3169, slip op. (C.D. Ill. Sept. 4, 1984), *aff'd on other grounds,* 778 F.2d 1233 (7th Cir. 1985); *Muro* v. *Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll.,* No. CV 19–10812, 2019 WL 5810308, at *3 (E.D. La. Nov. 7, 2019) (''Courts have held that discrimination on the basis of pregnancy, childbirth, or related medical conditions is a form of sex discrimination prohibited by Title IX.''); *Varlesi* v. *Wayne State Univ.,* 909 F. Supp. 2d 827, 854 (E.D. Mich. 2012) (''[P]regnancy discrimination . . . is unquestionably covered as a subset of sex discrimination under Title IX . . . .'').

Title IX regulations regarding pregnancy, which were part of the 1975 HEW regulations, prohibit recipients from discriminating against students or employees based on ''pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom,'' 34 CFR 106.40(b)(1), 106.57(b), and prohibit sex-based distinctions on the basis of ''parental, family, or marital status,'' 34 CFR 106.40(a), 106.57(a). In guidance documents from 1991 and 2013, OCR emphasized that discrimination against pregnant students is a form of sex discrimination that may have significant adverse consequences for educational attainment and long-term economic stability, but the Department's regulations regarding pregnancy have remained unchanged since 1975. The Department proposes updated regulations to ensure full implementation of Title IX with respect to pregnancy and related conditions. Although the proposed regulations are based exclusively on Title IX, the Department notes that later-enacted statutes provide additional context and considerations related to discrimination based on pregnancy and or related conditions. In 1978, for example, Congress enacted the Pregnancy Discrimination Act (PDA), which amended the prohibition on sex discrimination in Title VII of the Civil Rights Act of 1964 (Title VII) to prohibit employers from discriminating against employees ''on the basis of pregnancy, childbirth, or related medical conditions.'' 42 U.S.C. 2000e. The PDA requires that ''women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work.'' *Id.* In 2015, the Equal Employment Opportunity Commission (EEOC) issued enforcement guidance on pregnancy discrimination and related issues clarifying that Title VII, as amended by the PDA, prohibits discrimination based on current pregnancy, past pregnancy, potential or intended pregnancy, and medical conditions related to pregnancy or childbirth, including lactation. U.S. Equal Emp. Opportunity Comm'n, Enforcement Guidance on Pregnancy Discrimination and Related Issues (June 25, 2015) (2015 EEOC Pregnancy Guidance), *https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues.* Breastfeeding employees also have protections under the Affordable Care Act (ACA), which amended the Fair Labor Standards Act to require employers to provide reasonable break times and a private place, other than a bathroom, for covered employees who are breastfeeding to express milk for one year after the child's birth, 29 U.S.C. 207(r)(1). In addition, Section 188 of the Workforce Innovation and Opportunity Act (WIOA), enforced by the Department of Labor (DOL), prohibits WIOA Title I-financially assisted programs, activities, training, and services from discriminating based on pregnancy, childbirth, or related medical conditions, including lactation and pregnancy-related disorders, as a form of sex discrimination. U.S. Dep't of Labor, Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act, 29 CFR 38.7(a), 38.8 (2017). Because both Title VII and Title IX prohibit sex discrimination, the Supreme Court and lower Federal courts often rely on interpretations of Title VII to inform interpretations of Title IX, and both laws apply to employees in the educational context. *See, e.g., Franklin,* 503 U.S. at 75; *Jennings* v. *Univ. of N.C.,* 482 F.3d 686, 695 (4th Cir. 2007); *Frazier* v. *Fairhaven Sch. Comm.,* 276 F.3d 52, 65–66 (1st Cir. 2002); *Gossett* v. *Oklahoma ex rel. Bd. of Regents for Langston Univ.,* 245 F.3d 1172, 1176 (10th Cir. 2001). Consequently, the treatment of pregnancy-related discrimination under the PDA, the ACA, and other statutes enacted since 1975 informs, though does not dictate, the Department's understanding of discrimination on the basis of sex under Title IX.

The Department's Title IX regulations have never directly addressed the application of Title IX to discrimination based on sexual orientation or gender identity. OCR first issued guidance on the rights of gay and lesbian students in its 1997 Sexual Harassment Guidance, recognizing that harassment of a sexual nature directed at gay or lesbian students may constitute sexual harassment prohibited by Title IX. U.S. Dep't of Educ., Office for Civil Rights, Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third

Parties, 62 FR 12034, 12039 (Mar. 13, 1997) (1997 Sexual Harassment Guidance) (revised in 2001), *https://www.govinfo.gov/content/pkg/FR-1997-03-13/pdf/97-6373.pdf*. OCR reinforced Title IX's coverage of this form of harassment in 2001. U.S. Dep't of Educ., Office for Civil Rights, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties at 3, noticed at 66 FR 5512 (Jan. 19, 2001) (rescinded upon effective date of 2020 amendments, Aug. 14, 2020) (2001 Revised Sexual Harassment Guidance), *www.ed.gov/ocr/docs/shguide.pdf*. Since then, OCR has recognized that Title IX prohibits discrimination based on gender identity. *See, e.g.,* U.S. Dep't of Educ., Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence at 5 (Apr. 29, 2014) (rescinded in 2017) (2014 Q&A on Sexual Violence), *www.ed.gov/ocr/docs/qa-201404-title-ix.pdf*; U.S. Dep't of Justice and U.S. Dep't of Educ., Office for Civil Rights, Dear Colleague Letter on Title IX and Transgender Students (May 13, 2016) (rescinded in 2017) (2016 Dear Colleague Letter on Title IX and Transgender Students), *https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf*. Most recently, in 2021, OCR published a Notice of Interpretation in the **Federal Register** to state explicitly that Title IX's prohibition on sex discrimination encompasses discrimination on the basis of sexual orientation and gender identity, consistent with the Supreme Court's reasoning in *Bostock*. 140 S. Ct. 1731; U.S. Dep't of Educ., Office for Civil Rights, Notice of Interpretation—Enforcement of Title IX with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County, 86 FR 32637 (June 22, 2021) (2021 Bostock Notice of Interpretation), *https://www.govinfo.gov/content/pkg/FR-2021-06-22/pdf/2021-13058.pdf*.

Against this backdrop and for reasons described in this preamble, the Secretary proposes to amend the Title IX regulations at 34 CFR 106.1, 106.2, 106.6, 106.8, 106.11, 106.21, 106.30, 106.31, 106.40, 106.41, 106.44, 106.45, 106.46, 106.51, 106.57, 106.60, 106.71, and 106.81, as well as add new 106.10 and 106.47 and redesignate current 106.16 as 106.18 in subpart B and current 106.46 to 106.48 within subpart D. The Secretary also proposes to delete 34 CFR 106.3(c) and (d), 106.16, 106.17, 106.30, and 106.41(d) in their entirety, and delete portions of 34 CFR 106.15 and 106.21 to the extent they refer to 34 CFR 106.16 and 106.17.

II. The Department's Review of the Title IX Regulations

On April 6, 2021, OCR issued a letter to students, educators, and other stakeholders that provided information about the steps the Department was taking to review its regulations, orders, guidance, policies, and other similar agency actions under Title IX. U.S. Dep't of Educ., Office for Civil Rights, Letter from Acting Assistant Secretary Suzanne B. Goldberg to Students, Educators, and other Stakeholders re Exec. Order 14021 (Apr. 6, 2021), *http://www.ed.gov/ocr/correspondence/stakeholders/20210406-titleix-eo-14021.pdf*. This comprehensive review, as directed by Executive Order 14021, includes OCR's review of all agency actions, including the 2020 amendments, to determine whether changes to the Department's Title IX regulations are necessary to fulfill Title IX and OCR's commitment to ensuring equal and nondiscriminatory access to education for students at all educational levels. *Id.* at 2. OCR explained that its review would be guided by ''our responsibility to ensure that schools are providing students with a nondiscriminatory educational environment, including appropriate supports for students who have experienced sexual harassment, including sexual violence, and other forms of sex discrimination.'' *Id.* OCR also explained that ''[t]his responsibility includes ensuring that schools have grievance procedures that provide for the fair, prompt, and equitable resolution of reports of sexual harassment and other sex discrimination, cognizant of the sensitive issues that are often involved.'' *Id.*

On May 20, 2021, OCR published a notice in the **Federal Register** announcing a nationwide virtual public hearing to gather information for the purpose of improving enforcement of Title IX. U.S. Dep't of Educ., Office for Civil Rights, Announcement of Public Hearing; Title IX of the Education Amendments of 1972, 86 FR 27429 (May 20, 2021), *https://www.govinfo.gov/content/pkg/FR-2021-05-20/pdf/2021-10629.pdf*. OCR expressed a particular interest in comments on the Title IX regulations related to sexual harassment, including the 2020 amendments, and comments on discrimination based on sexual orientation and gender identity in educational environments. *Id.* OCR requested live comments through the virtual hearing platform and written comments via email. The virtual hearing was held from June 7, 2021, to June 11, 2021. Over 280 students, parents, teachers, faculty members, school staff, administrators, and other members of the public provided live comments during the virtual public hearing. The transcript from the June 2021 Title IX Public Hearing is available at *https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-publichearing-complete.pdf*. OCR received over 30,000 written comments via email. The written comments may be viewed at *https://www2.ed.gov/about/offices/list/ocr/public-hearing.html*.

In addition to soliciting live and written comments as part of the June 2021 Title IX Public Hearing, OCR also conducted listening sessions with stakeholders expressing a variety of views on the 2020 amendments and other aspects of Title IX, including advocates for survivors of sexual violence, students accused of sexual misconduct, and LGBTQI+[4] students; organizations focused on Title IX and athletics; organizations focused on free speech and due process; organizations representing elementary schools, secondary schools, and postsecondary institutions, teachers, administrators, and parents; attorneys representing survivors, accused students, and schools; State attorneys general offices; Title IX Coordinators and other school administrators; individuals who provide training on Title IX to schools; individuals who work in campus law enforcement; and individuals who have participated in school-level Title IX proceedings.

Responses to OCR's request for comments for the June 2021 Title IX Public Hearing and listening sessions with stakeholders revealed to OCR areas of concern and confusion following the implementation of the 2020 amendments. OCR heard from stakeholders that aspects of the new requirements were not well-suited to some or all educational environments or to effectively advancing Title IX's nondiscrimination mandate. More specifically, at the June 2021 Title IX Public Hearing and in listening sessions, elementary school and secondary school recipients expressed concern that certain requirements impeded their successful management of the day-to-

[4] The Department generally uses the term ''LGBTQI+'' to refer to students who are lesbian, gay, bisexual, transgender, queer, questioning, asexual, intersex, nonbinary, or describe their sex characteristics, sexual orientation, or gender identity in another similar way. When referring to some outside resources or past OCR guidance documents, this preamble also uses variations of this acronym to track the content of those documents, as appropriate.

day school environment. At the postsecondary level, recipients expressed concern regarding the new requirement to provide a live hearing with advisor-conducted cross-examination (current § 106.45(b)(6)), both because of the increased administrative burden and because of the requirement's effect on students' willingness to bring forward complaints and participate in the grievance process. Other stakeholders also expressed that this requirement is unnecessarily adversarial, retraumatizing, chilling to students' willingness to report incidents, and not more effective than other means of determining whether a violation of the school's prohibition on sexual harassment occurred. Still other stakeholders urged the Department to preserve the live hearing and adversarial cross-examination requirements. These stakeholders stated that the hearing and cross-examination requirements ensured fundamental fairness in a high-stakes process in a way that is consistent with the tenets of the American justice system.

Some postsecondary recipients expressed concern that the requirements in the 2020 amendments intruded on their professional judgment and expertise about how best to respond to allegations of student misconduct in their educational environment. A variety of stakeholders, including some recipients, also expressed concerns about the limitations on a recipient's obligation to respond to notice of sexual harassment and the narrowing of the definition of ''sexual harassment'' from the Department's previous position (current §§ 106.30, 106.44). They suggested the limitations in the 2020 amendments allowed recipients to ignore conduct that could or would limit or deny access to their learning environment based on sex. Similarly, stakeholders expressed concerns that recipients refused to respond to complaints of a hostile environment based on sex in a program or activity because the initial sexually harassing conduct occurred off-campus or outside the United States (current § 106.44). OCR also heard from stakeholders who were concerned that the deliberate indifference standard was an inappropriately narrow standard of responsibility for the administrative enforcement context in light of Title IX's nondiscrimination mandate.

Stakeholders also requested that the Department clarify Title IX's application to issues not currently addressed, or not viewed by the stakeholders as addressed adequately, by the current regulations. In particular, stakeholders requested that the Department specify protections related to discrimination based on sexual orientation and gender identity. These requests noted the historical and ongoing discrimination experienced by LGBTQI+ students, the recent enactment of State laws restricting transgender students from participating in school consistent with their gender identity, and the void created by OCR's withdrawal of its 2016 Dear Colleague Letter on Title IX and Transgender Students. Other stakeholders urged that transgender students must not be permitted to participate in school consistent with their gender identity, either in all or certain circumstances. Stakeholders also requested that the Department clarify that discrimination based on sex characteristics is a form of sex discrimination and, in particular, that Title IX protects intersex students from discrimination. OCR also heard from stakeholders requesting clarification on Title IX's protections against pregnancy discrimination and its prohibition on rules that treat parents differently based on sex. The Department heard more from stakeholders in 2022 in meetings held under Executive Order 12866, after the NPRM was submitted to OMB.

Having considered the comments and other information received in connection with the June 2021 Title IX Public Hearing, 2021 listening sessions, and the 2022 meetings held under Executive Order 12866, the Department's proposed regulations aim to strengthen the current framework, improve clarity for recipients to facilitate their compliance, and better align the Title IX regulations with the nondiscrimination mandate of Title IX, particularly its goal of ''provid[ing] individual citizens effective protection against [discriminatory] practices.'' *Cannon,* 441 U.S. at 704. The Department's goals are to clarify the scope of Title IX's protection from sex discrimination for students participating or attempting to participate in an education program or activity; to state in greater detail and with greater clarity than in the current regulations a recipient's responsibilities toward pregnant students; to ensure the provision of supportive measures, as available and appropriate, to those who experience any form of sex discrimination, including but not limited to sex-based harassment; and to ensure that recipients understand their obligation to address sex discrimination in their education programs or activities. The overarching goal is to ensure that no person experiences sex discrimination in education. To that end, the Department aims to ensure that all recipients can implement Title IX's nondiscrimination mandate fully and fairly in their educational environments, including with procedures for responding to complaints of sex discrimination that are prompt and equitable for all participants.

In reviewing the 2020 amendments, the Department also considered its regulations implementing other laws with requirements that parallel or overlap with a recipient's obligations under Title IX. For example, the Department considered the requirements for postsecondary institutions under the 2013 reauthorization of the Violence Against Women Act (VAWA 2013), Public Law 113–4, 304, 127 Stat. 54, 89–92, which amended the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), 20 U.S.C. 1092(f) (2018). The Clery Act requires institutions of higher education participating in Federal financial aid programs under the Higher Education Act of 1965, 20 U.S.C. 1001 *et seq.* (1965), to comply with certain campus safety- and security-related requirements. The 2013 VAWA amended the Clery Act to require higher education institutions to compile statistics for incidents of dating violence, domestic violence, sexual assault, and stalking and disclose that information in their annual security reports. 20 U.S.C. 1092(f)(1)(F)(iii). The Clery Act also requires disclosure of certain policies, procedures, and programs, including programs to prevent domestic violence, dating violence, sexual assault, and stalking and programs to promote the awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking among students and employees. 20 U.S.C. 1092(f)(8)(A), (B). The Department issued regulations in 2014 to implement those changes to the statute. Final Rule, Violence Against Women Act: Institutional security policies and crime statistics, 79 FR 62752 (Oct. 20, 2014). *https://www.govinfo.gov/content/pkg/FR-2014-10-20/pdf/2014-24284.pdf.* The Violence Against Women Act Reauthorization Act of 2022 did not amend the Clery Act, but it did update the definitions of ''dating violence,'' ''domestic violence,'' and ''stalking'' in VAWA, which are incorporated into the Clery Act and the current and proposed Title IX regulations. Public Law 117–103, Division W, Consolidated Appropriations Act, 2022. The Department proposes updates to the 2020 amendments as necessary to account for these changes.

The Department acknowledges that recipients and other stakeholders may have made changes to their policies or procedures to align with the 2020 amendments. For example, schools have been required to revise existing policies and procedures, or adopt new policies and procedures, for the 2020–2021 school year and the current 2021–2022 school year in reliance on the 2020 amendments. Recipients' changes may include—among others—policies and procedures based on the 2020 amendments' adoption of a new definition of ''sexual harassment'' and ''notice'' as well as the deliberate indifference standard, mandatory dismissals, the requirement for postsecondary recipients to hold live hearings with cross-examination, and the training of Title IX Coordinators, investigators, decisionmakers, and other staff regarding the new requirements. However, stakeholder feedback from the June 2021 Public Hearing, the 2021 listening sessions, and the 2022 meetings held under Executive Order 12866 indicated that many recipients did not agree with the 2020 definition of ''sexual harassment'' and had found that some of the procedural requirements issued in 2020 made compliance more difficult for them. Recipients expressed concern that the mandatory dismissal requirements and live hearing and cross-examination requirements were having a chilling effect on students who might otherwise report sex-based harassment. The Department therefore has good reason to believe that many recipients would appreciate the flexibility the proposed regulations would afford them to better fulfill their obligation not to discriminate based on sex in their education programs or activities. For example, the proposed regulations would enable recipients to tailor procedures to be effective at addressing sex discrimination in their educational environment by providing an option to conduct live hearings with cross-examination or have the parties meet separately with the decisionmaker and answer questions submitted by the other party when a credibility assessment is necessary; an option to provide the parties an opportunity to review all relevant evidence instead of being obligated to produce a written investigative report; an option to offer informal resolution when appropriate without having to wait for a complaint to be filed; and an option to dismiss complaints when appropriate rather than an obligation to dismiss in specific circumstances. In addition, some stakeholders indicated that because the current regulations do not cover many forms of conduct that may cause a hostile environment based on sex in their program or activity, they created or repurposed alternative disciplinary policies to address such conduct. Such stakeholders would have discretion under the proposed regulations to keep in place policies and procedures they adopted in reliance on the 2020 amendments or to change course so long as they meet their obligations.

In addition, while the Department recognizes that there may be reliance interests related to the current regulations, the Department's tentative view is that the value of better aligning the regulations with the objectives of Title IX, as reflected in proposed revisions to the regulations, substantially outweighs those interests. The proposed changes would strengthen implementation of Title IX and reduce the occurrence of sex discrimination within federally funded education programs or activities. Sex discrimination remains a serious problem that can derail students from participating and thriving in school. The Department's proposed changes would clarify Title IX's coverage of all forms of sex discrimination, strengthen existing protections, and better position schools to meet their obligation not to discriminate based on sex. The proposed changes would better ensure that schools take prompt and effective action to end sex discrimination, including sex-based harassment, with support for affected students and fair procedures for all. In short, the proposed regulations would reflect the statute's text and case law establishing that Title IX protects students from all forms of sex discrimination, including discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Moreover, as discussed in the *Regulatory Impact Analysis,* compliance with the proposed regulations would result in cost savings to recipients.

The Department has considered the interests that stakeholders may have in avoiding further changes to recipient policies and procedures or additional costs that may be required to comply with the proposed regulations. At the same time, the Department has also considered stakeholders' interests in having Title IX regulations that are sufficiently clear to allow for effective implementation and that provide recipients with flexibility and discretion to meet their Title IX obligations and to maintain any policies and procedures that do not conflict with Title IX or the proposed regulations. Based on the information OCR received during the June 2021 Title IX Public Hearing and additional listening sessions, as well as the 2022 meetings held under Executive Order 12866, the Department believes that substantial interests support each change reflected in the proposed regulations, that these changes are designed to ensure full implementation of Title IX's nondiscrimination mandate, and that the benefits of the proposed changes in facilitating that implementation far outweigh the potential interests in maintaining the existing regulations. In each instance in which the Department is proposing to change an existing regulatory requirement, the preamble acknowledges that change when discussing the regulation and explains the Department's reasons for proposing the change. The most significant proposed revisions to the Title IX regulations are summarized below.

Significant Proposed Regulations

The Department is proposing significant revisions to several subcategories of the Title IX regulations. The Department discusses these significant revisions by topic rather than in numerical order. Generally, the Department does not address proposed regulatory changes that are technical or otherwise minor in effect.

First, the Department discusses its proposed changes to existing definitions and its proposed new definitions of terms of general applicability in the regulations (proposed § 106.2), and its proposed provisions regarding the effect of other requirements and preservation of rights (proposed § 106.6). The Department then clarifies that Title IX obligates a recipient to respond to sex discrimination within the recipient's education program or activity in the United States, even if it occurs off-campus, including but not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by a postsecondary institution and conduct that is subject to the recipient's disciplinary authority. It also requires a recipient to respond to a hostile environment based on sex within its education program or activity in the United States, even if sex-based conduct contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States (proposed § 106.11).

Second, the Department discusses a recipient's obligation to operate its education program or activity free from sex discrimination, and administrative requirements such as the responsibilities of a recipient to

designate a Title IX Coordinator, disseminate a policy of nondiscrimination on the basis of sex, adopt prompt and equitable grievance procedures, and keep records to document its Title IX compliance (proposed § 106.8). The Department also discusses its proposed notification requirement, which would instruct recipients to require certain employees to notify the Title IX Coordinator when they have information about conduct that may constitute sex discrimination under Title IX, and would require other employees who have information about conduct that may constitute sex discrimination under Title IX to either (1) notify the Title IX Coordinator or (2) provide any person who gives them information about such conduct with the contact information for the Title IX Coordinator and information about how to report sex discrimination (proposed § 106.44(c)). The Department also addresses a recipient's obligation to offer supportive measures, as appropriate, to a complainant and respondent upon being notified of conduct that may constitute sex discrimination under Title IX, to the extent necessary to restore or preserve that party's access to the recipient's education program or activity (proposed § 106.44(g)).

The Department also discusses its proposed definition of ''sex-based harassment'' (proposed § 106.2) and explains in more detail its proposed changes to the regulations regarding grievance procedures for complaints of sex discrimination (proposed § 106.45), including its proposals to include the basic requirements for grievance procedures such as treating the complainant and respondent equitably (proposed § 106.45(b)(1)); the requirement to objectively evaluate all relevant evidence that is not otherwise impermissible (proposed § 106.45(b)(6) and (7)); the standard of proof for all complaints of sex discrimination (proposed § 106.45(h)(1)); and the requirement that grievance procedures be followed before the imposition of any disciplinary sanctions (proposed § 106.45(h)(4)). The Department also explains proposed bases for discretionary dismissal of a complaint (proposed § 106.45(d)) and the proposed requirement that the recipient have a process for the decisionmaker to adequately assess the credibility of the parties and witnesses to the extent that credibility is in dispute and relevant to evaluating one or more of the allegations of sex discrimination (proposed § 106.45(g)). The Department also describes the additional proposed requirements for postsecondary institutions in cases of sex-based harassment involving a student complainant or student respondent (proposed § 106.46), including the role of an advisor (proposed § 106.46(e)(2)) and revised hearing procedures (proposed § 106.46(g)). The Department states that a recipient will not be deemed to have violated the Title IX regulations solely because the Assistant Secretary would have reached a different determination than the recipient reached based on an independent weighing of the evidence in sex-based harassment complaints (proposed § 106.47).

Third, the Department describes its proposed revisions to the Title IX regulations related to pregnancy or related conditions as well as sex discrimination related to marital, parental, and family status, to provide clarity to recipients about their obligation not to discriminate against students or employees who are pregnant or experiencing pregnancy-related conditions. These proposed revisions aim to ensure that students and employees who are pregnant or experiencing pregnancy-related conditions are not subject to discrimination based on sex in education programs or activities and include revisions to the definitions of ''pregnancy or related conditions'' and ''parental status'' (proposed § 106.2) as well as revisions to the regulations on admissions (proposed § 106.21(c)); parental, family, or marital status of students (proposed § 106.40(a)); pregnancy or related conditions of students (proposed § 106.40(b)); employment (proposed § 106.51(b)(6)); parental, family, or marital status of employees (proposed § 106.57(a)); pregnancy or related conditions of employees (proposed § 106.57(b) and (e)); and pre-employment inquiries (proposed § 106.60).

Fourth, the Department proposes to clarify Title IX's scope of application, including nondiscrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity (proposed § 106.10). The Department also proposes clarifying Title IX's general prohibition on sex discrimination in education programs or activities receiving Federal financial assistance (proposed § 106.31(a)). The preamble explains that unless otherwise provided by Title IX or the regulations, in contexts in which a recipient may provide sex-separate programs or rules, such different treatment must not be applied to individuals in a way that would cause more than de minimis harm, which includes adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with their gender identity (proposed § 106.31(a)(2)).

Fifth, the Department discusses proposed revisions to the prohibition on retaliation (proposed § 106.71) that would build on the current regulations and further clarify what types of conduct would constitute prohibited retaliation, including peer retaliation.

Finally, the Department explains its proposal to delete outdated regulatory provisions (§ 106.2(s) Definition of Transition Plan; § 106.3(c) and (d) Self-evaluation; § 106.15(b) Admissions; §§ 106.16–106.17 Transition Plans; § 106.21(a) Admission; and § 106.41(d) Adjustment period).

It is the Department's intent that the severability clauses set out in §§ 106.9, 106.18 (proposed to be redesignated at § 106.16), 106.24, 106.46 (proposed to be redesignated as § 106.48), 106.62, and 106.72 of the 2020 amendments remain applicable to the proposed changes set out below. As discussed in the 2020 amendments, it is the Department's position that each of the proposed regulations discussed in this preamble would serve an important, related, but distinct purpose. 85 FR 30538. Each provision provides a distinct value to recipients, elementary schools, secondary schools, postsecondary institutions, students, employees, the public, taxpayers, the Federal government, and other recipients of Federal financial assistance separate from, and in addition to, the value provided by the other provisions. To best serve these purposes, the continued application of the severability clauses in the 2020 amendments clarifies that the proposed regulations operate independently of each other and that the potential invalidity of one provision should not affect the other provisions. In addition, the Department intends that any final regulations following these proposed regulations be enforced prospectively and not retroactively.

I. Provisions of General Applicability

Statute: Title IX states that ''[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance,'' 20 U.S.C. 1681(a), but does not specify how recipients can meet their Title IX obligations. The Department has the authority to ''effectuate the provisions'' of the Title IX prohibition on discrimination on the basis of sex in

education programs or activities receiving Federal financial assistance, specifically under 20 U.S.C. 1682 and generally under 20 U.S.C. 1221e–3 and 3474. Title IX also provides that the Department may secure compliance by ''the termination of or refusal to grant or to continue assistance,'' or ''by any other means authorized by law.'' 20 U.S.C. 1682. The Department may take such action only after providing a recipient with notice of the failure to comply with the statute and the Department's regulatory requirements under Title IX and after determining that ''compliance cannot be secured by voluntary means.'' *Id.*

A. Purpose

Section 106.1 Purpose and Effective Date

Current regulations: Section 106.1 has the heading of ''Purpose and effective date.'' Current § 106.1 states that the purpose of the regulations is ''to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93–568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part.'' Current § 106.1 further states that the regulations are ''intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93–380, 88 Stat. 484.'' Finally, current § 106.1 provides that the effective date of the regulations is July 21, 1975.

Proposed regulations: The Department proposes consolidating the reference to Title IX in the first sentence by removing ''of the Education Amendments of 1972, as amended by Pub. L. 93–568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments).'' The Department also proposes removing the sentence that identifies the effective date of the regulations.

Reasons: Current § 106.2 defines ''Title IX'' and proposed § 106.2 would retain this definition of Title IX with minor revisions for completeness, accuracy, and readability. Because proposed § 106.2 would define ''Title IX,'' the Department proposes removing the legislative history of Title IX from § 106.1. In addition, it is the Department's view that it is unnecessary to retain a reference to the original effective date of the Title IX regulations in light of the passage of time since the enactment of Title IX and the several amendments that have followed. Because proposed § 106.1 would no longer include the effective date, the Department also proposes revising the section heading to ''Purpose.''

B. Definitions

The Department proposes including all definitions in § 106.2, the original regulatory section containing definitions for all of the Department's Title IX implementing regulations. As part of the 2020 amendments, the Department added a separate definitions section, § 106.30, that included definitions related to a recipient's obligation to address sexual harassment. Because the definitions in that section pertain to a recipient's general obligations to take action to end sex discrimination, the Department proposes moving these definitions to § 106.2.

The Department also proposes to reorganize the definitions at § 106.2. The existing definitions section does not present the definitions alphabetically, which may create confusion for recipients and others. Proposed § 106.2 would reorder the definitions to present them in alphabetical order. The Department also proposes technical edits to accommodate the consolidation of the definitions into § 106.2 and associated numbering changes.

Because the Department proposes consolidating all definitions into § 106.2, the proposed regulatory text would include existing definitions in current § 106.2, as well as definitions that are new to that section. The Department limits its discussion in this preamble to the definitions that the Department proposes adding and the definitions for which the Department is proposing changes that are not exclusively technical in nature.

Immediately below, the Department discusses proposed revisions to definitions and new definitions that apply throughout the Title IX regulations. In later topical sections of this preamble, the Department discusses proposed definitions relevant to those topics.

Section 106.2 Definition of ''Administrative Law Judge''

Current regulations: Section 106.2(f) defines ''administrative law judge'' as ''a person appointed by the reviewing authority to preside over a hearing held under this part.''

Proposed regulations: The Department proposes changing the reference to a hearing held ''under this part'' to refer to a hearing held ''under § 106.81.''

Reasons: The proposed definition would replace the general reference to ''a hearing held under this part'' with a specific reference to a hearing held under § 106.81. This clarification is necessary to distinguish a hearing conducted as part of a postsecondary institution's sex-based harassment grievance procedures in proposed § 106.46 from a hearing conducted by an administrative law judge to secure a recipient's compliance with Title IX. Current and proposed § 106.81 adopt and incorporate into the Title IX regulations the procedural provisions applicable to Title VI of the Civil Rights Act of 1964, specifically 34 CFR 100.6–100.11 and part 101. Proposed §§ 106.2 (definition of ''retaliation'') and 106.46 discuss hearings conducted as part of a recipient's sex-based harassment grievance procedures.

Section 106.2 Definition of ''Applicant''

Current regulations: Section 106.2(j) defines ''applicant'' as ''one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.''

Proposed regulations: The Department proposes adding language to clarify that this definition refers to the use of the term ''applicant'' in the definition of ''educational institution'' in § 106.2 and to the use of the term ''applicant'' in § 106.4.

Reasons: The proposed regulations would clarify that the definition of ''applicant'' in proposed § 106.2, which refers to one who seeks to become a recipient, applies only to the use of the term ''applicant'' in the definition of ''educational institution'' in current § 106.2 and to the use of the term ''applicant'' in § 106.4. In other provisions in the current and proposed regulations, applicant refers to one who is applying for admission as a student or other participant in a recipient's education program or activity (*e.g.,* § 106.21) or applying for employment (*e.g.,* § 106.51). Because the definition of ''applicant'' in current § 106.2 does not apply throughout the regulations, the Department proposes revising the definition to identify the specific provisions to which this definition applies.

Section 106.2 Definitions of ''Elementary School'' and ''Secondary School''

Current regulations: Section 106.30(b) defines an ''elementary and secondary school'' for purposes of §§ 106.44 and 106.45 as a ''local educational agency (LEA), as defined in the Elementary and

Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA); a preschool; or a private elementary or secondary school.''

Proposed regulations: The Department proposes removing the definition of ''elementary and secondary school'' and, in its place providing separate definitions of ''elementary school'' and ''secondary school'' in § 106.2. Proposed § 106.2 would define an ''elementary school'' as that term is defined by section 8101 of the ESEA (20 U.S.C. 7801(19)), and a ''public or private preschool.'' Proposed § 106.2 would define a ''secondary school'' as that term is defined by section 8101 of the ESEA (20 U.S.C. 7801(45)), and an ''institution of vocational education'' as defined in § 106.2 that serves secondary school students.

Reasons: The proposed definitions of both ''elementary school'' and ''secondary school'' would remove the references to current §§ 106.44 and 106.45 that are in the current definition of ''elementary and secondary school,'' because those sections are limited to sexual harassment, whereas the proposed definitions would apply to all provisions within part 106. The proposed definitions also would remove explicit references to private schools because these schools are already included in the ESEA definitions of ''elementary school'' and ''secondary school,'' making these references unnecessary.

The proposed revisions would separately define ''elementary school'' and ''secondary school'' because there is a provision in the proposed regulations that distinguishes between elementary schools and secondary schools. For consistency with the Title IX statute at 20 U.S.C. 1681(c), which states that Title IX applies to public and private preschools, the proposed definition of ''elementary school'' also would cover a public or private preschool. The ESEA does not separately define ''preschool'' and the Department has not previously done so in its Title IX regulations. The Department's position remains that a separate definition of ''preschool'' is not necessary and that public and private preschools fall within the proposed definition of ''elementary school.''

The proposed definition of ''secondary school'' would also cover an institution of vocational education that serves secondary school students. This addition is necessary to ensure coverage of secondary school students who attend vocational institutions and to align with the definition of ''postsecondary institution'' in both the current and proposed regulations, which includes institutions of vocational education that serve postsecondary school students. As defined in current § 106.2(o) and proposed § 106.2, an ''institution of vocational education'' could serve both secondary and postsecondary school students but secondary school students attending institutions of vocational education are unaccounted for in the current definition of ''elementary and secondary school.''

Section 106.2 Definition of ''Postsecondary Institution''

Current regulations: Section 106.30(b) defines ''postsecondary institution'' for purposes of §§ 106.44 and 106.45 as an institution of graduate higher education as defined in § 106.2(*l*), an ''institution of undergraduate higher education'' as defined in § 106.2(m), an ''institution of professional education'' as defined in § 106.2(n), or an ''institution of vocational education'' as defined in § 106.2(o).

Proposed regulations: The Department proposes moving the definition of ''postsecondary institution'' from § 106.30(b) to § 106.2 with minor revisions. Proposed § 106.2 would define a ''postsecondary institution'' as an ''institution of graduate higher education'' as defined in § 106.2, an ''institution of undergraduate higher education'' as defined in § 106.2, an ''institution of professional education'' as defined in § 106.2, or an ''institution of vocational education'' as defined in § 106.2 that serves postsecondary school students.

Reasons: The proposed definition would remove specific references to §§ 106.44 and 106.45 in the current definition of ''postsecondary institution'' because those sections are limited to sexual harassment, whereas the proposed definition of ''postsecondary institution'' in § 106.2 would apply to all of part 106. The proposed revisions also would clarify that the definition of ''postsecondary institution'' applies to an ''institution of vocational education'' as defined in § 106.2 that serves postsecondary students. It is the Department's current view that this clarification is necessary because an ''institution of vocational education,'' as defined in § 106.2, could serve secondary school students or postsecondary institution students.

Section 106.2 Definition of ''Student With a Disability''

Current regulations: None.

Proposed regulations: The Department proposes adding a definition of ''student with a disability'' to mean a student who is an individual with a disability who would be covered by Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 705(9)(B), (20)(B), or a child with a disability as defined in the Individuals with Disabilities Education Act, 20 U.S.C. 1401(3).

Reasons: It is the Department's view that it is important to clarify how a recipient's Title IX obligations intersect with its obligation to ensure the rights of students with disabilities. The proposed regulations include provisions in §§ 106.8(e) and 106.44(g)(7) that would require a recipient to consider the requirements of Federal disability laws when implementing the Title IX regulations. A definition of a ''student with a disability'' is necessary for recipients to understand the scope of these two sets of obligations and how they intersect, and thus would strengthen overall enforcement of Title IX.

Section 106.2 Definition of ''Title IX''

Current regulations: Section 106.2(a) defines ''Title IX'' as ''title IX of the Education Amendments of 1972, Pub. L. 92–318, as amended by section 3 of Pub. L. 93–568, 88 Stat. 1855, except sections 904 and 906 thereof; 20 U.S.C. 1681, 1682, 1683, 1685, 1686.''

Proposed regulations: The Department proposes updating this definition to incorporate statutory additions of sections 1687 and 1688 and to simplify its language.

Reasons: The current definition omits two sections of Title IX that were added in 1988 and relies on unnecessarily legalistic language. The proposed definition would be a more complete and accurate description of Title IX and it is presented in more accessible language.

C. Application

Section 106.11 Application

Current regulations: Section 106.11 states that, except as provided in this subpart, the Department's Title IX regulations apply to every recipient and its education program or activity that receives Federal financial assistance. The Civil Rights Restoration Act of 1987 amended Title IX to add a definition of ''program or activity.'' 20 U.S.C. 1687. In 2000, the Department amended the Title IX regulations to incorporate the statutory definition of ''program or activity'' at 34 CFR 106.2(h), which provides that a recipient's education program or activity encompasses all of its operations. 65 FR 68050 (Nov. 13, 2000). Current § 106.44(a) defines an ''education program or activity'' for purposes of §§ 106.30, 106.44, and 106.45 to include locations, events, or circumstances over which the recipient

exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. Current §§ 106.8(d) and 106.44(a) limit the geographic scope of a recipient's obligation to address sexual harassment to incidents that occurred against a person while that person was in the United States. In addition, current § 106.45(b)(3)(i) requires a recipient to dismiss a formal complaint of sexual harassment if the alleged conduct did not occur against a person while that person was in the United States.

Proposed regulations: The Department proposes amending § 106.11, to clarify that Title IX's prohibition on sex discrimination applies to all sex discrimination occurring both under a recipient's education program or activity and in the United States. The proposed regulations would make clear that conduct that occurs under a recipient's education program or activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by a postsecondary institution, which is consistent with current § 106.44(a), and conduct that is subject to the recipient's disciplinary authority. It would also specify that a recipient has an obligation to address a sex-based hostile environment under its education program or activity, even if sex-based harassment contributing to that hostile environment occurred outside the recipient's education program or activity or outside the United States. Finally, the Department proposes eliminating the language in current § 106.44(a) that defines ''education program or activity'' for purposes of sexual harassment to ensure that the term is applied uniformly throughout the regulations for all forms of sex discrimination, including sex-based harassment.

Reasons: Title IX states that ''[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.'' 20 U.S.C. 1681(a). This statutory prohibition limits Title IX's application in two ways: the sex discrimination must occur (1) under the recipient's program or activity, and (2) against a person in the United States.

The current regulations require a recipient to dismiss a formal complaint of sexual harassment and not use its Title IX grievance process if the conduct did not occur against a person in the United States, even if that conduct contributes to a hostile environment in the recipient's education program or activity in the United States.

After receiving input from stakeholders, the Department has reconsidered its prior interpretation of Title IX's statutory language from the 2020 amendments and proposes revising the current regulations to more clearly and completely describe the circumstances in which Title IX applies. In proposed § 106.11, consistent with 20 U.S.C. 1687, the Department would clarify that an education program or activity includes all of the recipient's operations and that conduct occurring under a recipient's education program or activity would include but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by a postsecondary institution and conduct that is ''under the school's disciplinary authority.'' *See Davis,* 526 U.S. at 646–47 (concluding ''that recipients of federal funding may be liable for 'subject[ing]' their students to discrimination . . . [for] acts of student-on-student sexual harassment [when] the harasser is under the school's disciplinary authority''). Proposed § 106.11 would also recognize that even when an act of sex-based harassment occurs outside the recipient's education program or activity, or outside the United States, that conduct could contribute to a hostile environment based on sex under the recipient's education program or activity, or otherwise exclude a person from participation in, deny them the benefits of, or subject them to sex discrimination under the recipient's education program or activity in the United States. If such sex discrimination occurs, the recipient must address it.

Obligation to address conduct occurring within the school's operations. Under the proposed regulations, consistent with the current regulations, a recipient's education program or activity would include buildings or locations that are part of the school's operations, including online learning platforms. 34 CFR 106.44(a). A recipient's education program or activity would also include all of its academic and other classes, extracurricular activities, athletics programs, and other aspects of the recipient's education program or activity, whether those programs or activities take place in the facilities of the recipient, via computer and internet networks, on digital platforms, with computer hardware or software owned, operated by, or used in the operations of the recipient, on a school bus, at a class or training program sponsored by the recipient at another location, or elsewhere.

The Department's discussion in the preamble to the 2020 amendments regarding Title IX and online platforms used by a recipient would thus remain relevant under the proposed regulations. Specifically, in the preamble to the 2020 amendments the Department explained that the operations of a recipient ''may certainly include computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of, the recipient.'' 85 FR 30202. The Department further explained that ''the factual circumstances of online harassment must be analyzed to determine if it occurred in an education program or activity.'' *Id.* The Department would maintain the same position in the proposed regulations as stated in the preamble to the current regulations: The definition of ''program or activity'' in the Title IX regulations does not create a distinction between sex discrimination occurring in person and that occurring online. *Id.* at 30203.

Under the proposed regulations, consistent with the current regulations, conduct occurring under a recipient's education program or activity would extend to conduct in off-campus settings that are operated or overseen by the school (*e.g.,* a school field trip) and off-campus buildings owned or controlled by a student organization officially recognized by a postsecondary institution. *Id.;* 85 FR 30196–98; *see, e.g., Farmer* v. *Kan. State Univ.,* 16–cv–2256–JAR–GEB, 2017 WL 980460, at *7–10 (D. Kan. Mar. 14, 2017) (finding plaintiff sufficiently alleged that Kansas State University exercised substantial control over off-campus assault at a fraternity because the fraternity was subject to oversight by University and University had the authority to discipline fraternity), *aff'd on other grounds,* 918 F.3d 1094 (10th Cir. 2019); *Weckhorst* v. *Kan. State Univ.,* 241 F. Supp. 3d 1154, 1166–70 (D. Kan. 2017), *aff'd sub nom. Farmer* v. *Kan. State Univ.,* 918 F.3d 1094 (10th Cir. 2019) (holding plaintiff sufficiently alleged that Kansas State University exercised substantial control over off-campus assault that occurred during a fraternity event at a local park because the University subjected the fraternity to oversight and had the authority to discipline fraternity); *S.C.* v. *Metro. Gov't of Nashville,* No. 17–1098, 2022 WL 127978, *25 (M.D. Tenn. Jan. 12, 2022), *appeal pending* (noting that the Court's ''formulation of potential

liability for peer harassment notably shied away from drawing a hard line based on geography, focusing instead on whether the harassment was taking place 'under' an 'operation' of the funding recipient'' (citing *Davis,* 526 U.S. at 646)).

Obligation to address conduct that occurs under the school's disciplinary authority. Conduct occurring under a recipient's education program or activity would also include other settings in the United States but off campus or off school grounds when the conduct ''is under the school's disciplinary authority.'' *Davis,* 526 U.S. at 647; *cf. Mahanoy Area Sch. Dist.* v. *B.L.,* 141 S. Ct. 2038, 2045 (2021) (noting a school's ''regulatory interests remain significant in some off-campus circumstances'' and ''several types of off-campus behavior . . . may call for school regulation,'' including ''serious or severe bullying or harassment targeting particular individuals [and] threats aimed at teachers or other students''). Thus, the proposed regulations would adopt the Department's recognition in the preamble to the 2020 amendments that a teacher's sexual harassment of a student is ''likely'' to constitute sexual harassment ''in the program'' of the school even if the harassment occurs off campus or off school grounds and outside a school-sponsored activity. 85 FR 30200.

In addition, some schools have codes of conduct that address interactions, separate from discrimination, between students that occur off campus. If a school has such a code of conduct, then it may not disclaim responsibility for addressing sex discrimination that occurs in a similar context. If the school responds when, for instance, one student steals from another at an off-campus location, or when a student engages in a nonsexual assault of another student at an off-campus location, it must likewise respond when a student engages in sexual assault or sex-based harassment of another student off campus. Thus, the proposed rule would make clear, as in the 2020 amendments, that whether conduct falls under a recipient's education program or activity for purposes of Title IX is not contingent on the geographic location of the underlying conduct, but rather on whether the recipient exercises disciplinary authority over the respondent's conduct in that context. *See, e.g., DeGroote* v. *Ariz. Bd. of Regents,* No. CV–18–00310–PHX–SRB, 2020 WL 10357074, at *8 (D. Ariz. Feb. 7, 2020) (finding a school exercised control over harasser and context of harassment, in part, because the school's code of conduct addressed off-campus behavior and because the location of the initial harassment ''is not dispositive'').

Obligation to address hostile environment created by conduct outside of the education program or activity. Proposed § 106.11 would also clarify that Title IX obligates a recipient to address a hostile environment occurring within the recipient's education program or activity, even if the underlying sex-based harassment contributing to the hostile environment does not occur in the recipient's education program or activity or occurs outside the United States.

During OCR's numerous listening sessions and in the June 2021 Title IX Public Hearing, many stakeholders indicated that the current regulations could be interpreted to exclude conduct that occurs off campus or off school grounds outside of a recipient's education program or activity, or that occurs in a program or activity but outside the United States, even when that conduct creates a hostile environment based on sex in an education program or activity within the United States. They further asserted that Title IX requires a recipient to address a hostile environment based on sex in the recipient's education program or activity, regardless of whether the sex-based harassment contributing to that hostile environment occurred elsewhere. The Department takes seriously these comments and agrees that clarification is needed. After considering this issue and reweighing the facts and circumstances, including this feedback, the Department proposes regulatory language to enforce the full scope of Title IX's nondiscrimination mandate and ensure that recipients provide a nondiscriminatory environment for all students within their programs and activities in the United States. Proposed § 106.11 would clarify that Title IX's prohibition on sex discrimination would apply to a hostile environment under a recipient's education program or activity, even if sex-based harassment contributing to such a hostile environment occurred outside of the recipient's education program or activity or occurred within an education program or activity but outside of the United States.

In the preamble to the 2020 amendments, the Department explained that in the context of a private lawsuit for monetary damages, the Supreme Court applied Title IX's program or activity language to '' 'limit a recipient's damages liability to circumstances wherein the recipient exercises substantial control over both the harasser and the context in which the known harassment occurs.' '' 85 FR 30196 (quoting *Davis,* 526 U.S. at 645). The Department acknowledged that the Court's decision was in the context of a lawsuit for monetary damages and not in the administrative enforcement context, but stated that because the Department, like the Court, is constrained by the text of the statute, including the definition of ''program or activity,'' a similar analysis is appropriate in the administrative enforcement context. *Id.* at 30196 n.863. The Department recognizes that some Federal courts in private suits for monetary damages have held a school not liable under Title IX for harassment that occurred outside of the recipient's control. *See, e.g., Roe* v. *St. Louis Univ.,* 746 F.3d 874, 883–84 (8th Cir. 2014) (holding that there was insufficient evidence alleged to demonstrate that university was deliberately indifferent to plaintiff's allegations of rape by a fellow student in a private residence over which the University exercised no control); *Samuelson* v. *Or. State Univ.,* 162 F. Supp. 3d 1123, 1132–34 (D. Or. 2016) (finding that plaintiff did not allege facts to demonstrate university had any control over a rape by a non-student at a private apartment for purposes of ''pre-assault liability'' and dismissing as time-barred plaintiff's allegations of deliberate indifference following her report of the rape to the university). In those cases, however, there were no actionable allegations that the schools were deliberately indifferent to a hostile environment based on sex *within* the recipient's education program or activity.

Indeed, several Federal courts have held that, even for purposes of monetary damages under *Davis,* Title IX requires recipients to evaluate and address allegations of a hostile environment within a recipient's education program or activity, even when an initial incident of sex-based harassment may have occurred outside of the recipient's education program or activity. *See, e.g., Rost* v. *Steamboat Springs RE–2 Sch. Dist.,* 511 F.3d 1114, 1121 n.1 (10th Cir. 2008) (citing *Davis,* 526 U.S. at 645) (recognizing that sexual assault occurring in settings outside of the school can create Title IX liability, as long as there is ''some nexus between the out-of-school conduct and the school,'' but finding that in this case, the district's response to such conduct was not deliberately indifferent); *Spencer* v. *Univ. of N.M. Bd. of Regents,* 15–cv–141–MCA–SCY, 2016 WL 10592223, at *6 (D.N.M. Jan. 11, 2016) (concluding that a reasonable jury could

find the recipient deliberately indifferent for its failure to address the risk created by the possibility of future encounters between the plaintiff and the men who raped her off campus); *L.E.* v. *Lakeland Joint Sch. Dist. #272,* 403 F. Supp. 3d 888, 900–01 (D. Idaho 2019) (finding that the district was responsible for responding to a hostile environment in its education program or activity even where the initial sexual assault occurred outside the school's education program or activity).

The Department's current view is that these decisions are correct in reading *Davis* to require a recipient to address a hostile environment based on sex that exists within its education program or activity, whether or not the initial sex-based harassment or other contributing acts of sex-based harassment may have occurred elsewhere. This is because when the hostile environment exists within a recipient's education program or activity, the recipient exercises substantial control over both the harasser and the context. *See Davis,* 526 U.S. at 645. A recipient cannot, therefore, sever incidents that happened outside of its education program or activity from any subsequent harassment or resulting hostile environment within the recipient's control. *L.E.,* 403 F. Supp. 3d at 900. To do so would allow ''a person'' to be ''subjected to discrimination under an[ ] education program or activity receiving Federal financial assistance'' in violation of Title IX's explicit text. 20 U.S.C. 1681(a).

For example, Student A reports that Student B sexually assaulted her while participating in the recipient's study abroad program and both students have now returned to campus in the United States. Student A reports that Student B has been taunting her with sexually suggestive comments about the prior assault since their return to campus. Because of the sexual assault and Student B's continuing conduct, Student A is unable to concentrate or participate fully in her classes and activities where Student B is present. In this scenario, because Student A has alleged a hostile environment based on sex within the recipient's education program or activity within the United States, the recipient would have an obligation to take action to address those allegations. The proposed regulations would require the recipient to provide Student A with appropriate supportive measures and, if the recipient's investigation finds that a hostile environment exists within its education program or activity, take action against Student B after following all applicable grievance procedures.

Evaluating whether a hostile environment exists as a result of conduct that is otherwise not covered by Title IX is a fact-specific inquiry. Consistent with Federal case law, when sex-based harassment occurs outside of the United States or outside of a recipient's education program or activity, it will not always result in a hostile environment that is within a recipient's control. The definition of ''sex-based harassment'' in proposed § 106.2 would set out the minimum factors that must be considered in determining whether a hostile environment has been created in a recipient's education program or activity. These factors would also apply when determining whether sex-based harassment that occurred outside of a recipient's education program or activity has created a sex-based hostile environment in a recipient's education program or activity. A recipient should also consider in its fact-specific inquiry whether a complainant's encounters with an alleged respondent in the recipient's education program or activity give rise to a hostile environment, even when the incidents of harassment occurred outside of the recipient's education program or activity. *See Williams* v. *Bd. of Regents of Univ. Sys. of Ga.,* 477 F.3d 1282, 1296–98 (11th Cir. 2007) (reasoning that Title IX claim could arise when a student withdrew from university rather than risk encountering her alleged perpetrators on campus when school waited months before taking action in response to her complaint); *Kinsman* v. *Fla. State Univ. Bd. of Trustees,* No. 4:15cv235–MW/CAS, 2015 WL 11110848, at *4 (N.D. Fla. Aug. 12, 2015) (holding that the effect of sex-based harassment does not end with the cessation of the harassing conduct, particularly when the complainant and respondent both remain at the institution and agreeing ''that the possibility of further encounters 'between a rape victim and her attacker could create an environment sufficiently hostile to deprive the victim of access to educational opportunities provided by a university.' '' (citation omitted)); *Spencer,* 2016 WL 10592223, at *6 (''[A] reasonable jury [may] conclude that further encounters, of any sort, between a rape victim and her attacker could create an environment sufficiently hostile to deprive the victim of access to educational opportunities provided by a university.' '' (quoting *Kelly* v. *Yale Univ.,* No. 3:01–CV–1591, 2003 WL 1563424, at *3 (D. Conn. Mar. 26, 2003))); *Doe* v. *Derby Bd. of Educ.,* 451 F. Supp. 2d 438, 444 (D. Conn. 2006) (holding that the ''constant potential for interactions'' between a harasser and rape victim due to the harasser's presence on campus could constitute sex-based harassment); *Crandell* v. *N.Y. Coll. of Osteopathic Med.,* 87 F. Supp. 2d 304, 316 (S.D.N.Y. 2000) (harassment by former professor at off-campus internship required Title IX response by school when ''the presence of the perpetrator at the institution would be expected to create a hostile environment''). In evaluating whether there is a hostile environment, courts have reiterated that recipients must adopt a '' 'totality of the circumstances' approach that rejects the disaggregation of the allegations and requires only that the alleged incidents cumulatively have resulted in the creation of a hostile environment.'' *Crandell,* 87 F. Supp. 2d at 319.

In the circumstances in which sex-based harassment occurs outside a recipient's education program or activity or outside the United States, and the harassment does not contribute to a hostile environment within the recipient's education program or activity, proposed § 106.11 would clarify that Title IX does not apply. For example, Student C reports she was sexually assaulted in a nightclub off campus by a third party who does not live in the area. Student C is now experiencing emotional distress and is unable to attend classes. Because the assault occurred off campus, and the respondent is not a representative of the recipient or otherwise a person over whom the recipient exercises disciplinary authority, the assault did not occur within the recipient's education program or activity. And because Student C is not alleging a hostile environment within the education program or activity due to the respondent's presence or additional harassment she is experiencing, proposed § 106.11 clarifies that a recipient's Title IX obligations would not be implicated. The recipient would still be encouraged to provide supportive measures to Student C and refer Student C to local law enforcement.

Finally, the proposed regulations would also recognize that when sex discrimination other than sex-based harassment occurs outside of a recipient's education program or activity, or outside of the United States, but causes sex discrimination within the recipient's education program or activity, Title IX would require the recipient to address this sex discrimination as well. For example, a student in a recipient's study abroad program complains that he was

subjected to different treatment in grading based on sex by a professor and, as a result, the student lost his scholarship. Under proposed § 106.11, the recipient would be required to address the complaint because, although the different treatment in grading occurred outside of the United States, that conduct caused discrimination based on sex in the recipient's education program in the United States. This response would include compliance with applicable grievance procedures, including investigating the complaint, and, if discrimination is found, taking steps to remedy the resulting discrimination. For instance, the recipient may remove the discriminatory grade from the student's transcript and reinstate the scholarship. In addition, there may be circumstances in which the recipient itself is alleged to have engaged in sex discrimination in its program outside the United States. When such conduct causes sex discrimination in its education program or activity within the United States, the recipient must address it.

D. The Effect of Other Requirements and Preservation of Rights

Section 106.6(e) Effect of Section 444 of General Education Provisions Act (GEPA)/Family Educational Rights and Privacy Act (FERPA)

Current regulations: Current § 106.6(e) states that the obligation to comply with the regulations in part 106 is not obviated or alleviated by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99.

Proposed regulations: No proposed change.

Reasons: The Family Educational Rights and Privacy Act (FERPA) protects the privacy of students' education records and personally identifiable information contained therein. Privacy is an important factor that the Department carefully considered in promulgating the proposed regulations and recipients will need to consider this factor in implementing them.

To the extent that there may be circumstances in which a conflict exists between a recipient's obligations under Title IX and under FERPA, the Department would maintain the provision in § 106.6(e) that expressly states that the obligation to comply with the Title IX regulations is not obviated or alleviated by the FERPA statute or regulations. 85 FR 30424. As the General Education Provisions Act (GEPA) provides, nothing in that statute shall be construed to ''affect the applicability of title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d *et seq.*], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 *et seq.*], title V of the Rehabilitation Act of 1973 [29 U.S.C. 791 *et seq.*], the Age Discrimination Act [42 U.S.C. 6101 *et seq.*], or other statutes prohibiting discrimination, to any applicable program.'' 20 U.S.C. 1221(d). The Department has long interpreted this provision to mean that ''FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between the requirements of FERPA and the requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions.'' 85 FR 30424.

Some aspects of the proposed regulations address areas in which recipients may also have obligations under FERPA or its implementing regulations, 34 CFR part 99, for example, provisions regarding the exercise of rights by parents, guardians, or other authorized legal representatives at proposed § 106.6(g); disclosure of supportive measures at proposed § 106.44(g)(5); consolidation of complaints at proposed § 106.45(e); a description of the relevant evidence at proposed § 106.45(f)(4); access to an investigative report or relevant and not otherwise impermissible evidence at proposed § 106.46(e)(6); and notification of the determination of a sex discrimination complaint at proposed §§ 106.45(h)(2) and 106.46(h)(1). The Department is seeking comments on the intersection between the proposed Title IX regulations and FERPA, any challenges that recipients may face as a result of the intersection between the two laws, and any steps the Department might take to address those challenges in the Title IX regulations.

Section 106.6(g) Exercise of Rights by Parents, Guardians, or Other Authorized Legal Representatives

Current regulations: Section 106.6(g) states that the Department's Title IX regulations must not be read in derogation of any legal right of a parent or guardian to act on behalf of a complainant, respondent, party, or other individual, subject to the obligation to comply with the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g. This right to act on behalf of another includes but is not limited to, filing a formal complaint.

Proposed regulations: The Department proposes clarifying in this section that an authorized legal representative has the right to act on behalf of a complainant, respondent, or other person, subject to proposed § 106.6(e), including but not limited to making a complaint through the recipient's grievance procedures for complaints of sex discrimination, as would a parent or guardian.

Reasons: Upon reexamining this provision, the Department proposes adding to the current regulations the term ''authorized legal representative'' to fill a gap in the existing regulations that was brought to the Department's attention in listening sessions with a wide array of stakeholders, including students, parents, educators, school officials, and advocacy organizations. Throughout the United States, an individual in the role of an educational representative or another similar role is legally authorized to act on behalf of certain youth in out-of-home care but is not necessarily deemed a parent or guardian. The Department proposes adding the term ''authorized legal representative'' to § 106.6(g), recognizing that although terminology may differ across States and contexts, there is a critical need to empower these individuals to act on behalf of another person, consistent with their legal authority, in matters addressed by the proposed regulations.

Section 106.6(h) and 106.6(b) Preemptive Effect

Current regulations: Section 106.6(h) states that, to the extent there is any conflict between State or local law and the Title IX regulations at §§ 106.30, 106.44, and 106.45, the obligation to comply with those sections is not obviated or alleviated by any State or local law. Current § 106.6(b) states that the obligation to comply with part 106 is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

Proposed regulations: The Department proposes eliminating § 106.6(h) entirely and simplifying § 106.6(b) to make clear that all of the Title IX regulations would preempt State or local law. Proposed § 106.6(b) states that a recipient's obligation to comply with part 106 is not obviated or alleviated by any State or local law or other requirement, and that nothing in the Department's regulations would preempt a State or local law that does not conflict with these regulations and that provides greater protections against sex discrimination.

Reasons: The Department wants to ensure recipients understand that their

obligations to comply with the Department's Title IX regulations are not dependent or conditioned on other obligations recipients may be subject to in their respective States or localities. Current § 106.6(b) states that this preemptive effect applies only with respect to ''any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.'' The Department wants to ensure that recipients are aware that the preemptive effect of these regulations are not just limited to the circumstances listed in § 106.6(b), nor the provisions specifically excerpted in § 106.6(h). The proposed regulations would delete the language limiting the provision to eligibility to practice any occupation or profession, making clear in a simple comprehensive statement that the Title IX regulations preempt *any* State or local law with which there is a conflict. The proposed change would also avoid the duplication that may exist under separate but overlapping provisions.

In addition, proposed § 106.6(b) would clarify that nothing in the Department's proposed regulations would preempt a State or local law that provides greater protections to students and does not conflict with these regulations. This clarification would ensure that the proposed regulations appropriately cover the full scope of Title IX while not extending further than the Department's authority to promulgate regulations to effectuate Title IX.

E. Procedures

Section 106.81 Procedures

Current regulations: Section 106.81 provides that the procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are adopted and incorporated into the Title IX regulations. Current § 106.81 states that these procedures may be found at 34 CFR 100.6 through 100.11 and 34 CFR part 101. Finally, current § 106.81 states that the definitions in current § 106.30 do not apply to 34 CFR 100.6 through 100.11 and 34 CFR part 101.

Proposed regulations: The Department proposes removing the final sentence of current § 106.81, which states that the definitions in current § 106.30 do not apply to 34 CFR 100.6 through 100.11 and 34 CFR part 101.

Reasons: As explained in greater detail in the discussion of Definitions in the Provisions of General Applicability (Section I.B), the Department proposes removing current § 106.30 in its entirety. Accordingly, the Department also proposes removing the statement that the definitions in current § 106.30 do not apply to the Title VI regulations.

II. Recipient's Obligation to Operate Its Education Program or Activity Free From Sex Discrimination

Statute: Title IX states that ''[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.'' 20 U.S.C. 1681(a). The Department has the authority to regulate with regard to discrimination on the basis of sex in education programs or activities receiving Federal financial assistance, specifically under 20 U.S.C. 1682 and generally under 20 U.S.C. 1221e-3 and 3474.

A. Sex Discrimination Generally

As discussed in the Background section, the Supreme Court explained in *Cannon* that the objectives of Title IX are two-fold: first, to ''avoid the use of federal resources to support discriminatory practices,'' and second, to ''provide individual citizens effective protection against those practices.'' 441 U.S. at 704. The Court also clarified the broad scope of Title IX in *North Haven Board of Education,* stating: ''[I]f we are to give Title IX the scope that its origins dictate, we must accord it a sweep as broad as its language.'' 456 U.S. at 521 (citations and internal alterations omitted).

These cases, together with the text of Title IX, make clear that Title IX's prohibition on sex discrimination imposes a legal duty on every covered recipient of Federal funds to operate its education program or activity free from sex discrimination. This legal duty accordingly requires a recipient to respond promptly and equitably when sex discrimination may be taking place within its education program or activity.

B. Sex-Based Harassment

1. OCR's Guidance and Supreme Court Precedent on Title IX's Application to Sexual Harassment

The Supreme Court and the Department have long interpreted Title IX to prohibit sexual harassment. In 1981, OCR Director for Litigation, Enforcement and Policy Service Antonio J. Califa issued a policy memorandum to all OCR regional directors advising them that ''[s]exual harassment consists of verbal or physical conduct of a sexual nature, imposed on the basis of sex, by an employee or agent of a recipient that denies, limits, provides different, or conditions the provision of aid, benefits, services or treatment protected under Title IX.'' *See* 1988 Sexual Harassment Pamphlet at 2 (quoting OCR Policy Memorandum, Aug. 31, 1981, from Antonio J. Califa, Director for Litigation, Enforcement and Policy Service, OCR to Regional Civil Rights Directors), *https://files.eric.ed.gov/fulltext/ED330265.pdf.* Then in 1988, OCR issued a pamphlet titled Sexual Harassment: It's Not Academic, which characterized the 1981 memorandum as having ''reaffirmed'' OCR's jurisdiction: ''In an August 1981 policy memorandum, the Office for Civil Rights (OCR) of the U.S. Department of Education reaffirmed its jurisdiction over sexual harassment complaints under Title IX . . . .'' *Id.*

The Supreme Court addressed Title IX's coverage of sexual harassment for the first time in 1992, when it confirmed that a school district could be held liable for monetary damages in cases involving a teacher sexually harassing a student. *Franklin,* 503 U.S. 60. The Court noted that prior to filing her lawsuit, the plaintiff filed a complaint with OCR in August 1988 in which OCR concluded that the school district violated Franklin's Title IX rights by subjecting her to sexual harassment and by interfering with her right to complain. *Id.* at 64 n.3. By allowing monetary damages as a remedy, the Court signaled approval for more robust enforcement of Title IX to cover sexual harassment. *See id.* at 76 (''[I]n this case the equitable remedies suggested by respondent and the Federal Government are clearly inadequate.'').

Following *Franklin* and beginning in 1997, OCR issued a series of documents to provide additional guidance to recipients, students, and others regarding Title IX's prohibition on sexual harassment. *See, e.g.,* 1997 Sexual Harassment Guidance; 2001 Revised Sexual Harassment Guidance; U.S. Dep't of Educ., Office for Civil Rights, Dear Colleague Letter from Assistant Secretary Stephanie Monroe on Sexual Harassment (Jan. 25, 2006) (rescinded upon effective date of 2020 amendments, Aug. 14, 2020) *https://www2.ed.gov/about/offices/list/ocr/letters/sexhar-2006.html*; U.S. Dep't of Educ., Office for Civil Rights, Dear Colleague Letter: Sexual Violence (Apr. 4, 2011) (rescinded in 2017) (2011 Dear Colleague Letter on Sexual Violence), *https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf*; 2014 Q&A on Sexual Violence; U.S. Dep't of Educ., Office for Civil Rights, Q&A on Campus Sexual Misconduct (Sept. 22, 2017) (rescinded in 2020) (2017 Q&A on

Campus Sexual Misconduct), *https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf*.

OCR published the 1997 Sexual Harassment Guidance in the **Federal Register** for public comment after ''extensive consultation with interested parties,'' including ''students, teachers, school administrators, and researchers.'' 1997 Sexual Harassment Guidance, 62 FR 12035. OCR set out the circumstances under which sexual harassment of students is a form of prohibited discrimination under Title IX, explaining that sexual harassment occurs when ''a school employee explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual [conduct].'' *Id.* at 12038. OCR further explained that under Title IX, hostile environment harassment requires that the sexually harassing conduct be ''sufficiently severe, persistent or pervasive to limit a student's ability to participate in or benefit from an education program or activity, or to create a hostile or abusive educational environment.'' *Id.* OCR also discussed what constitutes notice of sexual harassment of students by its employees, students, or third parties and how a school should respond upon receiving notice of sexual harassment. *Id.* at 12039, 12042–43. OCR rooted this interpretation in Supreme Court precedent and well-established legal principles under Title IX, as well as the related nondiscrimination provisions of Titles VI and VII of the Civil Rights Act of 1964. *Id.* at 12034.

In 1998, the Supreme Court held in *Gebser* that a school district may be liable for monetary damages if a teacher sexually harasses a student, an official who has the authority to address the harassment has actual knowledge of the harassment, and that official is deliberately indifferent in responding to the harassment. 524 U.S. at 277. The following year, the Court held in *Davis* that a school district also may be liable for monetary damages if the school has actual knowledge of student-on-student harassment in its programs or activities, it responds with deliberate indifference, and the harassment is sufficiently severe, pervasive, and objectively offensive that it effectively bars the student's access to an educational opportunity or benefit. 526 U.S. at 650.

The Court specifically and repeatedly stated that the liability standards for sexual harassment established in *Gebser* and *Davis* were required in *private* actions for monetary damages. *Gebser,* 524 U.S. at 283 (''In this case, moreover, petitioners seek not just to establish a Title IX violation but to recover *damages* based on theories of *respondeat superior* and constructive notice. It is that aspect of their action, in our view, that is most critical to resolving the case.'' (emphasis in original)); *Davis,* 526 U.S. at 639 (affirming that Title IX's coverage of student-on-student harassment was not in dispute and instead that ''at issue here is the question whether a recipient of federal education funding may be liable for damages under Title IX under any circumstances for discrimination in the form of student-on-student sexual harassment''); *see also Davis,* 526 U.S. at 633, 641–44, 649–53; *Gebser,* 524 U.S. at 287–88.

In particular, in setting the damages liability standards for recipients, the Court was concerned about the possibility of requiring a school to pay money damages for harassment of which it was not aware and in amounts that exceeded the recipient's level of Federal funding. *Gebser,* 524 U.S. 289–90. At the same time, the Court acknowledged the authority of Federal agencies, such as the Department, to ''promulgate and enforce requirements that effectuate [Title IX's] nondiscrimination mandate,'' even in circumstances that would not give rise to a claim for monetary damages. *Id.* at 292. The Court noted that ''the Department of Education could enforce the requirement administratively'' that a school ''promulgate a grievance procedure'' even though the failure to do so ''does not itself constitute 'discrimination' under Title IX.'' *Id.* Similarly, the Court has explained that the Department may require schools to sign assurances of compliance under Title IX, even though the failure to sign such assurances would not itself constitute sex discrimination by the recipient. *See Grove City Coll.,* 465 U.S. at 574.

Following the *Gebser* decision, the Department informed school superintendents and college and university presidents that the Court's decision did not change a school's obligation to take reasonable steps to prevent and eliminate sexual harassment as a condition of their receipt of Federal funding. *See* U.S. Dep't of Educ., Letter from Secretary Richard W. Riley to Superintendents of Schools (Aug. 31, 1998), *https://www2.ed.gov/offices/OCR/archives/pdf/AppC.pdf*; U.S. Dep't of Educ., Letter from Secretary Richard W. Riley to College and University Presidents (Jan. 28, 1999), *https://www2.ed.gov/News/Letters/990128.html*. In 2000, OCR explained in its notice and request for comments on the proposed Revised Sexual Harassment Guidance that although ''[i]n most important respects, the substance of the 1997 Guidance was reaffirmed in the Court's opinions in *Gebser* and *Davis,* [the Department] determined that in certain areas the 1997 Guidance could be strengthened by further clarification and explanation of the regulatory basis for the guidance.'' U.S. Dep't of Educ., Office for Civil Rights, Request for Comments, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties 65 FR 66092 (Nov. 2, 2000) (Request for Comments on the 2001 Revised Sexual Harassment Guidance), *https://www.govinfo.gov/content/pkg/FR-2000-11-02/pdf/00-27910.pdf*. *See also* U.S. Dep't of Educ., Office for Civil Rights, Notice of Availability, Revised Sexual Harassment Guidance, 66 FR 5512 (Jan. 19, 2001), *https://www.govinfo.gov/content/pkg/FR-2001-01-19/pdf/01-1606.pdf*.

The 2001 Revised Sexual Harassment Guidance did not change the standards that OCR used to determine when prohibited sexual harassment has occurred. Request for Comments on the 2001 Revised Sexual Harassment Guidance, 65 FR 66093. Rather, OCR clarified that ''these standards apply to our ability to find a violation and seek corrective action in administrative enforcement of Title IX.'' *Id.* OCR explained that ''the focus of the guidance is on a school's administrative responsibilities under the nondiscrimination requirements of the Title IX statute and regulations'' to take effective action to prevent, eliminate, and remedy sexual harassment occurring in its programs or activities, rather than its liability for money damages in private lawsuits. *Id.* When the revised guidance was issued, it noted that ''commenters uniformly agreed with OCR that the Court limited the liability standards established in *Gebser* and *Davis* to private actions for monetary damages'' and ''that the administrative enforcement standards reflected in the 1997 Guidance remain valid in OCR enforcement actions.'' 2001 Revised Sexual Harassment Guidance at iv, vi (''[B]oth *Davis* and the Department tell schools to look at the 'constellation of the surrounding circumstances, expectations, and relationships' (526 U.S. at 651 (citing *Oncale* v. *Sundowner Offshore Services, Inc.,* 523 U.S. 75, 82 (1998)), and the *Davis* Court cited approvingly to the underlying core factors described in the 1997 Guidance for evaluating the context of the harassment.''). Finally,

OCR explained that ''[w]hile *Gebser* and *Davis* made clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the *Davis* court also indicated, through its specific references to Title VII caselaw, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX.'' *Id.* at vi.

As noted above, OCR issued subsequent guidance documents on harassment on the basis of sex, including sexual harassment, that built on the concepts from the 1997 Sexual Harassment Guidance and the 2001 Revised Sexual Harassment Guidance. *See* U.S. Dep't of Educ., Office for Civil Rights, Dear Colleague Letter: Harassment and Bullying (Oct. 26, 2010) (2010 Dear Colleague Letter on Harassment and Bullying), *https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf*; 2011 Dear Colleague Letter on Sexual Violence; 2014 Q&A on Sexual Violence; 2017 Q&A on Campus Sexual Misconduct. OCR issued these guidance documents to assist recipients in meeting their obligations and to provide the public with information about their rights under the Title IX statute and regulations. These guidance documents provided information and examples to inform recipients about how OCR evaluates compliance with Title IX.

2. The 2020 Amendments' Framework for Addressing Sexual Harassment Under Title IX

On November 29, 2018, the Department published a notice of proposed rulemaking to clarify and modify the Title IX regulations. 2018 NPRM. In response to the 2018 NPRM, the Department received more than 124,000 comments expressing a wide variety of views on the proposed regulations. On May 19, 2020, the Department published the 2020 amendments to the Title IX regulations, which went into effect on August 14, 2020. 85 FR 30026.

In the preamble to the 2020 amendments, the Department explained that ''[n]either *Gebser* nor *Davis* opined as to what the appropriate conditions (*e.g.,* definition of sexual harassment, actual knowledge) and liability standard (*e.g.,* deliberate indifference) must or should be for the Department's administrative enforcement.'' *Id.* at 30033. The Department recognized its flexibility to depart from the standards and conditions articulated in *Gebser* and *Davis,* explaining that the ''Department has regulatory authority to select conditions and a liability standard different from those used in the *Gebser/Davis* framework, because the Department has authority to issue rules that require recipients to take administrative actions to effectuate Title IX's non-discrimination mandate.'' *Id.*

Notwithstanding this recognition of its distinct administrative authority to enforce Title IX, in the 2020 amendments the Department chose to use the *Gebser/Davis* framework as the starting point for describing a recipient's legal obligation to address sexual harassment under Title IX, departing in many respects from OCR's prior longstanding guidance that had been developed to ensure a recipient's implementation of Title IX's protections. The Department also stated that it was using Title IX's ''statutory authority to issue rules to effectuate the purpose of Title IX,'' to ''reasonably expand[ ]'' aspects of that ''framework to further the purposes of Title IX in the context of administrative enforcement, holding schools responsible for taking more actions than what the *Gebser/Davis* framework requires.'' *Id.* at 30033, 30035.

After extensive review, the Department's current view is that the 2020 amendments do not adequately promote full implementation of Title IX's prohibition on sex discrimination, including sex-based harassment, by a recipient in its education program or activity. For example, the 2020 amendments do not require a postsecondary institution to investigate sexual harassment in its education program or activity, even if its leadership has persuasive evidence that harassment is taking place, unless the person who experienced the harassment (*i.e.,* the complainant) reported the harassment in writing to a specifically designated employee. As a result, a complainant who does not report the harassment to the correct individual may be denied access to an educational environment free from sex discrimination, and the recipient may be discriminating based on sex in operating its program or activity. Also, stakeholders reported that certain requirements of the 2020 amendments have resulted in decreased reporting of sexual harassment and may have impeded recipients from responding promptly and equitably to allegations of sexual harassment in its educational environment. The Department's current view is that it is necessary to amend its Title IX regulations to clarify a recipient's obligation to take prompt and effective action to end all sex-based harassment, to help ensure that Title IX's protections are fully enforced, and to avoid recipients' use of Federal funds to support discriminatory practices.

C. Revised Definitions

Section 106.2 Definition of ''Complainant''

Current regulations: Section 106.30 defines ''complainant'' as ''an individual who is alleged to be the victim of conduct that could constitute sexual harassment.''

Proposed regulations: The Department proposes moving the definition of ''complainant'' to § 106.2, referring to ''sex discrimination'' rather than ''sexual harassment,'' and removing the term ''victim.'' The Department also proposes adding language stating that a third-party complainant (*i.e.,* a person other than a student or employee) must be participating or attempting to participate in the recipient's education program or activity when the alleged sex discrimination occurred.

Reasons: The Department proposes that ''complainant'' encompass anyone who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX. The Department also proposes removing the current definition's reference to the complainant as a ''victim'' as the term could be perceived as stigmatizing or pejorative.

The Department recognizes in proposed § 106.6(g) that a parent, guardian, or other authorized legal representative may have a legal right to act on behalf of a complainant, including by making a complaint of sex discrimination. This approach is consistent with current § 106.6(g), which states that the Title IX regulations must not be ''read in derogation of any legal right of a parent or guardian'' to act on behalf of a complainant, including by filing a formal complaint. The Department stated in the preamble to the 2020 amendments that ''when a party is a minor or has a guardian appointed, the party's parent or guardian may have the legal right to act on behalf of the party,'' although the minor or person with an appointed guardian would be the party (*i.e.,* the complainant). 85 FR 30453. As explained in the preamble to the 2020 amendments, ''the parent or guardian must be permitted to exercise the rights granted to the party . . . whether such rights involve requesting supportive measures or participating in a grievance process.'' *Id.* The Department further explained in the preamble to the 2020 amendments that ''the parent or guardian must be permitted to accompany the student to meetings, interviews, and hearings during a grievance process to exercise rights on behalf of the student, while the

student's advisor of choice may be a different person from the parent or guardian.'' *Id.* As explained in the discussion of proposed § 106.6(g), the Department has received feedback that a reference to parents and guardians is underinclusive because it does not recognize the rights of individuals who are legally authorized to act on behalf of children in out-of-home care. As a result, the Department proposes adding the phrase ''other authorized legal representative'' in proposed § 106.6(g). Under proposed § 106.6(g), a parent, guardian, or other authorized legal representative may have a legal right to act on a student's behalf, including by making a complaint on behalf of a complainant; however, the student would remain the complainant.

The current regulations restrict the persons who can make a complaint under the recipient's grievance procedures for complaints of sex discrimination other than sexual harassment to students and employees. 34 CFR 106.8(c). The current regulations permit any complainant, including a student, employee, or third party who was participating or attempting to participate in the recipient's education program or activity at the time of filing, to file a formal complaint alleging sexual harassment. 34 CFR 106.30(a) (definition of ''complainant'' and ''formal complaint''). After considering the issue, the Department's current view is that a third party who was participating or attempting to participate in the recipient's education program or activity when the alleged sex discrimination occurred should be permitted to make a complaint of sex discrimination, including sex-based harassment, under the recipient's grievance procedures as addressed in proposed § 106.45(a)(2). This would be unlike the current regulations, which consider the complainant's participation in the education program or activity at the time of filing the formal complaint. In addition, although the current regulations' limits on who can file a formal complaint address only complaints of sexual harassment, the proposed regulations would address all complaints of sex discrimination, including sex-based harassment. This proposal is consistent with the decision by the U.S. Court of Appeals for the First Circuit in *Doe* v. *Brown University,* 896 F.3d 127, 132–33 (1st Cir. 2018), which found that the scope of Title IX's ''subject to discrimination under'' language is ''circumscribed to persons who experience discriminatory treatment while participating, or at least attempting to participate, in education programs or activities'' provided by the recipient. *Id.* (upholding district court's dismissal of Title IX claim by third party who was sexually assaulted on recipient's campus but was not participating or attempting to participate in the recipient's education program or activity). Examples of possible third-party complainants include a prospective student, a visiting student-athlete, or a guest speaker who is participating or attempting to participate in the recipient's education program or activity. This third-party participation requirement would not apply to a student, employee, or those persons authorized to act on behalf of a complainant, respondent, or other person under proposed § 106.6(g).

Section 106.2 Definition of ''Complaint''

Current regulations: The current regulations do not define ''complaint.'' However, current § 106.30 defines ''formal complaint'' as a document or electronic submission that contains the complainant's signature or otherwise indicates that the complainant is the person filing the formal complaint; alleges sexual harassment against a respondent; and requests that the recipient investigate the allegation of sexual harassment under its grievance process for formal complaints of sexual harassment in § 106.45. A formal complaint is filed by a complainant with the Title IX Coordinator or signed by the Title IX Coordinator. The current regulations provide several methods for filing the formal complaint, including in person, by mail, or by email. The current regulations specify that when the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under part 106 or under § 106.45, and must comply with the requirements of part 106, including § 106.45(b)(1)(iii).

Current § 106.8(c) requires that a recipient provide notification of its grievance procedures, including how to report or file a complaint of sex discrimination, to the following: applicants for admission and employment; students; parents or legal guardians of elementary and secondary school students; employees; and all unions and professional organizations holding collective bargaining or professional agreements with the recipient.

Proposed regulations: The Department proposes defining ''complaint'' to cover complaints of any type of sex discrimination and not limiting ''complaint'' to a written request. Specifically, the Department proposes removing the definition of ''formal complaint,'' which is limited to a document requesting that the recipient initiate its grievance process under current § 106.45, and replacing it with a definition of ''complaint'' that is an oral or written request to the recipient to initiate the recipient's grievance procedures for sex discrimination under § 106.45, and if applicable § 106.46. The Department proposes moving the definition of ''complaint'' to § 106.2 because its applicability is not limited to sex-based harassment.

The proposed definition would clarify that a complaint may be oral or written. The proposed regulations would remove the requirement that the formal complaint contain the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint.

The proposed definition of ''complaint'' would not specify who can make a complaint, but this information would be specified in proposed § 106.45(a)(2). As explained in the discussion of proposed § 106.45(a)(2), the Department proposes placing limitations on who may make a complaint of sex-based harassment that obligates a recipient to initiate its grievance procedures due to the nature of those allegations. However, the Department does not propose placing any limitations on who can provide information to the Title IX Coordinator about conduct that may constitute sex discrimination under Title IX, including sex-based harassment. When a Title IX Coordinator is notified about conduct that may constitute sex discrimination under Title IX, including sex-based harassment, they would be required to act under proposed § 106.44.

Reasons: The Department proposes defining ''complaint'' to provide clarity for how an individual can request that a recipient initiate its grievance procedures under proposed § 106.45, and if applicable proposed § 106.46, for all types of sex discrimination prohibited by Title IX.

The current regulations do not provide information about how an individual could request that a recipient initiate its grievance procedures in response to sex discrimination other than sexual harassment. First, the current definition of ''formal complaint'' applies only to sexual harassment. Second, although current § 106.8(c) requires a recipient to notify individuals of how to make a complaint, the Department did not define the term ''complaint'' or specify that a complaint is a request to the recipient to initiate its grievance procedures. The current regulations have different requirements

for complaints of sexual harassment and complaints of other forms of sex discrimination under Title IX and require a formal written document to request that the recipient initiate its grievance procedures in response only to sexual harassment. Specifically, current § 106.30 requires a formal written document to request that the recipient initiate its grievance procedures under § 106.45 with respect to allegations of sexual harassment but does not require a formal written document to request that the recipient initiate its grievance procedures under § 106.8(c) with respect to allegations of other forms of sex discrimination. In the preamble to the 2020 amendments, the Department explained that a formal written document was important to avoid confusion in initiating a recipient's grievance procedures under § 106.45. *See* 85 FR 30130.

OCR received feedback from stakeholders during the June 2021 Title IX Public Hearing, listening sessions, and the meetings held in 2022 under Executive Order 12866 that expressed concerns that the 2020 amendments created an onerous and cumbersome process for a complainant seeking to request that the recipient initiate its grievance procedures and requesting that the Department streamline the complaint process. Although the current regulations permit a complainant to file a formal complaint by email and using a digital signature, *see* 85 FR 30133, several stakeholders stated that the signature and writing requirements generally discouraged individuals from making complaints.

Based on the feedback received from stakeholders and the current distinction between a complaint of sex discrimination and a formal complaint of sexual harassment, the Department is concerned that the current regulations may have created a barrier for potential complainants to effectively assert their rights under Title IX. It is the Department's current view that additional clarity is needed to ensure that recipients are aware of and can respond appropriately to sex discrimination in their education programs or activities.

The Department proposes creating a single process to receive these requests by replacing the definition of ''formal complaint'' with a definition of ''complaint'' to clarify that a complaint would be the mechanism by which an individual may request that a recipient initiate its grievance procedures in response to all forms of sex discrimination. The Department's proposed regulations would define ''complaint'' more broadly to include either an oral or a written request to the recipient to initiate the recipient's grievance procedures for complaints of sex discrimination under Title IX, as described in proposed § 106.45, and if applicable proposed § 106.46. This revised definition of ''complaint'' would recognize that a person may seek to make a complaint in a variety of ways and would allow both oral and written complaints, while also no longer requiring a signature.

The proposed regulations would also differ from the current regulations in that they would not require a complaint to be made to the Title IX Coordinator, or to any specific employee of the recipient; a complaint need only be made to the recipient. As explained in greater detail in the discussion of proposed § 106.44(c), the proposed regulations would require a recipient to ensure that its Title IX Coordinator is notified of information about conduct that may constitute sex discrimination under Title IX in the recipient's education program or activity when that information is provided to certain categories of employees. The proposed regulations would also require other categories of employees to, at a minimum, provide the Title IX Coordinator's contact information and information about how to report sex discrimination to any person who provides the employee with information about conduct that may constitute sex discrimination under Title IX. As explained in greater detail in the discussion of proposed § 106.44(f), the proposed regulations would also require a recipient's Title IX Coordinator to take certain steps upon being notified of conduct that may constitute sex discrimination under Title IX. In addition, as explained in greater detail in the discussion of proposed § 106.44(k), a complaint would no longer be required before a recipient could offer to a complainant and respondent its informal resolution process under proposed § 106.44(k); instead, the informal resolution process could be offered and, if accepted, initiated by the recipient when it receives information about conduct that may constitute sex discrimination under Title IX even when no complaint is made.

Third-party complaints. The current regulations require a complainant to be participating or attempting to participate in the recipient's education program or activity at the time of filing a formal complaint of sexual harassment. 34 CFR 106.30(a) (definition of ''formal complaint''). In adding that requirement to the 2020 amendments, the Department explained that ''there is no requirement that [a] complainant must be a student, employee, or [have some] other designated relationship with the recipient in order to be treated as a 'complainant' entitled to a prompt, non-deliberately indifferent response from the recipient,'' but that the participation limitation on when a complainant can file a formal complaint of sexual harassment ''prevents recipients from being legally obligated to investigate allegations made by complainants who have no relationship with the recipient.'' 85 FR 30138, 30198. The Department also provided examples of situations in which a complainant would be attempting to participate in a recipient's education program or activity. *See id.* at 30138, 30198 n.869, 30219. The current regulations do not address third-party complainants or include a participation requirement with respect to complaints of sex discrimination other than sexual harassment; instead, the current regulations state that grievance procedures that address other forms of sex discrimination apply to student and employee complaints. 34 CFR 106.8(c).

OCR heard from several stakeholders during the June 2021 Title IX Public Hearing, listening sessions, and the meetings held in 2022 under Executive Order 12866 who requested either reconsideration of the scope of who is deemed to be attempting to participate in the recipient's education program or activity or eliminating the requirement that a complainant must be participating or attempting to participate in the recipient's education program or activity. The Department also considered that such a requirement may be redundant as applied to employee and student complainants who are, based on their enrollment or employment, either participating or attempting to participate in the recipient's education program or activity. After considering an array of stakeholder views and reevaluating the issue, the Department proposes eliminating this requirement for making a complaint of sex discrimination, including sex-based harassment, with respect to a student or employee complainant.

In proposed § 106.45(a)(2), the Department would specify who can make a complaint requesting that the recipient initiate its grievance procedures. Under proposed § 106.45(a)(2)(iv), a third party must be participating in or attempting to participate in the recipient's education program or activity in order to make a complaint requesting that the recipient initiate grievance procedures. The

Department's proposed regulations seek to ensure that anyone who is participating or attempting to participate in a recipient's program or activity is able to make a complaint of sex discrimination while being cognizant of the possible increased burden for a recipient based on complaints made by third parties who are not participating or attempting to participate in the recipient's education program or activity. The Department's proposed regulations would also shift the focus from whether the third party was participating or attempting to participate in the recipient's education program or activity at the time the complaint was filed to whether the third party was participating or attempting to participate in the recipient's education program or activity when the alleged sex discrimination occurred. For example, under the proposed regulations, the visiting student-athlete who was sexually harassed by a student of the recipient during an intercollegiate swim meet would be considered to be participating in the recipient's education program or activity at the time of the alleged sex-based harassment. In contrast, and also under the proposed regulations, if the same visiting student-athlete was sexually harassed by one of the recipient's students at an off-campus bar days after the swim meet concluded, the visiting student-athlete would not be considered to be participating or attempting to participate in the recipient's education program or activity at the time that the alleged sex-based harassment occurred. The Department's tentative view is that the proposed regulations would be more aligned with the purpose of Title IX to ensure that a recipient operates its education program or activity free from sex discrimination.

Section 106.2 Definition of Prohibited ''Sex-Based Harassment''

Current regulations: Section 106.30(a) defines ''sexual harassment'' as conduct on the basis of sex that satisfies one or more of the following: (1) an employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or (3) ''sexual assault'' as defined in 20 U.S.C. 1092(f)(6)(A)(v), ''dating violence'' as defined in 34 U.S.C. 12291(a)(10), ''domestic violence'' as defined in 34 U.S.C. 12291(a)(8), or ''stalking'' as defined in 34 U.S.C. 12291(a)(30).

Proposed regulations: The Department proposes moving the definition from § 106.30(a) to § 106.2 and clarifying that the definition covers all forms of sex-based harassment, as opposed to only sexual harassment. The proposed new definition of ''sex-based harassment'' would clarify that it covers sexual harassment, harassment on the bases described in proposed § 106.10, and other conduct on the basis of sex that is in one or more of the following categories: (1) an employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or implicitly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct; (2) unwelcome sex-based conduct that is sufficiently severe or pervasive, that, based on the totality of the circumstances and evaluated subjectively and objectively, denies or limits a person's ability to participate in or benefit from the recipient's education program or activity (*i.e.,* creates a hostile environment); or (3)(i) ''sexual assault'' meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation; (ii) ''dating violence'' meaning violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; (iii) ''domestic violence'' meaning felony or misdemeanor crimes of violence committed by a person who (A) is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shares a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction; or (iv) ''stalking'' meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for the person's safety or the safety of others; or (B) suffer substantial emotional distress. The proposed definition also clarifies that conduct meeting the definition of ''sex-based harassment'' in proposed § 106.2 constitutes sex-based harassment that is prohibited under Title IX. With this clarification, the Department recognizes that there may be other types of conduct that could constitute sex-based harassment under other laws or a recipient's policies but are not prohibited under Title IX.

The proposed definition would clarify that the scope of sex-based harassment includes bases that were not expressly covered under the term ''sexual harassment'' in current § 106.30(a), including harassment based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

The proposed definition would also include revisions to the scope of conduct described in its second category, which addresses unwelcome conduct on the basis of sex. These proposed revisions would provide factors to consider when determining whether unwelcome sex-based conduct creates a hostile environment in a recipient's education program or activity.

The third category of the proposed definition would still incorporate the definition of ''sexual assault'' from the Clery Act. The proposed definition would incorporate the definitions of ''dating violence,'' ''domestic violence,'' and ''stalking'' from the Violence Against Women Reauthorization Act of 2022 (VAWA 2022). Instead of including cross-references to statutory provisions in the Clery Act and VAWA 2022, the proposed definition would include language from the statutory definitions themselves to make it clear in the text of the regulations how these terms are defined for purposes of Title IX. The Department proposes incorporating the portion of the definition of ''domestic violence'' that is relevant to Title IX.

Reasons: Sex-Based Harassment. The Department's proposed regulations refer to ''sex-based harassment'' rather than ''sexual harassment.'' This revision is consistent with the Department's statement that it interpreted Title IX to prohibit gender-based harassment in response to comments received on the 2018 NPRM. Specifically, the Department explained that its position in the 2020 amendments remained similar to its position in the 2001 Revised Sexual Harassment Guidance that '' '[a]lthough Title IX does not prohibit discrimination on the basis of sexual orientation, sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's program constitutes sexual harassment prohibited by Title IX under the circumstances described in this guidance.' '' 85 FR 30178–79 (quoting 2001 Revised Sexual Harassment

Guidance at 3). The Department also stated that ''gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, but not involving conduct of a sexual nature, is also a form of sex discrimination to which a school must respond.'' *Id.* at 30179 (quoting 2001 Revised Sexual Harassment Guidance at 3). To address the concern that the 2020 amendments were underinclusive in scope because they were limited to sexual harassment, the Department stated that ''[t]hese final regulations include sexual harassment as unwelcome conduct on the basis of sex that a reasonable person would determine is so severe, pervasive, and objectively offensive that it denies a person equal educational access; this includes but is not limited to unwelcome conduct of a sexual nature, and may consist of unwelcome conduct based on sex or sex stereotyping.'' *Id.*

During the June 2021 Title IX Public Hearing and in listening sessions with stakeholders, OCR received requests to clarify that the Title IX regulations apply to both sexual harassment and other forms of harassment based on sex, including harassment based on sexual orientation and gender identity. These requests indicated to the Department that the current definition of ''sexual harassment'' does not provide adequate clarity as to the scope of harassment covered. Specifically, stakeholders expressed confusion regarding the scope of sexual harassment, including noting that they were receiving questions from their students regarding whether certain forms of harassing conduct are covered under the current definition of ''sexual harassment.'' Stakeholders also expressed concern that the definition of ''sexual harassment'' fails to protect many individuals who experience other forms of sex-based harassment due to the limited coverage of the definition.

After reevaluating the issue, the Department proposes revising the regulatory text to make clear that sexual harassment, as well as other forms of sex-based harassment on the bases described in proposed § 106.10, are covered under the Department's Title IX regulations to dispel any confusion regarding the scope of sex-based harassment that is prohibited under Title IX and therefore requires a recipient to respond. The proposed clarifications would more clearly implement the statements made by the Department in the preamble to the 2020 amendments that Title IX's broad nondiscrimination mandate covers all forms of harassment based on sex, including sexual harassment, which has also been OCR's longstanding view. *See, e.g.,* 2001 Revised Sexual Harassment Guidance at v, 3 (explaining that gender-based harassment, including harassment based on sex stereotyping, is covered under Title IX); 2010 Dear Colleague Letter on Harassment and Bullying at 7–8 (stating that Title IX prohibits gender-based harassment and explaining that ''it can be sex discrimination if students are harassed either for exhibiting what is perceived as a stereotypical characteristic for their sex, or for failing to conform to stereotypical notions of masculinity and femininity''); U.S. Dep't of Educ., Office for Civil Rights, Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972 at 8 (June 2013) (2013 Pregnancy Pamphlet), *https://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf* (''Title IX prohibits harassment of students based on sex, including harassment because of pregnancy or related conditions.''); *see also* 85 FR 30179. The Department also notes that consistent with the Department's position in the 2020 amendments, the proposed definition of ''sex-based harassment'' prohibited under Title IX would apply regardless of the sex of the harasser, *i.e.,* including if the harasser and the person being harassed are members of the same sex and that sex-based harassment ''is not limited to being bi-directional (male-to-female and female-to-male)'' and ''any person may experience [sex-based] harassment as a form of sex discrimination, irrespective of the identity of the complainant or respondent.'' *See* 85 FR 30179. Further explanation of the scope of Title IX's prohibition on sex discrimination and the bases of sex-based harassment covered by this proposed definition is in the discussion of proposed § 106.10.

The Department proposes adding language to the proposed definition of ''sex-based harassment'' clarifying that conduct that meets the definition of ''sex-based harassment'' is prohibited under Title IX and therefore a recipient must take action to address it in accordance with proposed § 106.44. This clarification would also serve to distinguish sex-based harassment that is prohibited under Title IX from conduct that may be sex-based harassment under other laws or recipients' policies but does not meet the Title IX regulatory definition of ''sex-based harassment.'' A recipient may determine that it is obligated to address sex-based harassment that does not meet the definition of ''sex-based harassment'' prohibited under Title IX; however, nothing in the proposed regulations would require it to do so. This is consistent with the Department's position in the current regulations that even when conduct does not meet the definition of sexual harassment under current 106.30(a), nothing precludes a recipient from addressing the conduct under the recipient's code of conduct or other non-Title IX process. *See, e.g., id.* at 30090, 30199, 30206. Thus, under the proposed regulations, a recipient would be able use its Title VII process to meet its obligations under Title VII to address alleged conduct by an employee that does not meet the proposed definition of ''sex-based harassment'' under Title IX because, for example, that conduct did not create a hostile environment. In these instances, a recipient may still have a duty under Title VII to address the alleged conduct before it becomes actionable. *See Erickson* v. *Wis. Dep't of Corr.,* 469 F.3d 600, 605–06 (7th Cir. 2006) (stating that Title VII's '''primary objective' . . . is 'not to provide redress but to avoid harm''' and that ''[e]mployers need to take 'all steps necessary to prevent sexual harassment from occurring,'' including ''taking reasonable steps to prevent harassment once informed of a reasonable probability that it will occur'') (quoting *Faragher* v. *City of Boca Raton,* 524 U.S. 775, 805–06 (1998)); *see also Vance* v. *Ball State Univ.,* 570 U.S. 421, 448–49 (2013) (stating that the employer is liable for harassment if it failed to act reasonably to prevent the harassment). This Title VII obligation is separate from any obligation a recipient has under Title IX to address alleged conduct that meets the proposed definition of ''sex-based harassment'' under Title IX. If the alleged conduct also meets the proposed definition of ''sex-based harassment'' under Title IX, the recipient must use a process that satisfies the requirements set out in proposed § 106.45 and, if applicable proposed § 106.46.

Unwelcome Conduct. The Department proposes retaining the requirement that the conduct in categories one and two of the definition of ''sex-based harassment'' must be unwelcome. Although the Department does not propose revising this requirement, the Department understands it is important to provide recipients with additional clarity on how to analyze whether conduct is unwelcome under the proposed regulations. Conduct would be unwelcome if a person did not request or invite it and regarded the conduct as undesirable or offensive. Acquiescence to the conduct or the failure to complain, resist, or object when the conduct was taking place would not

mean that the conduct was welcome, and the fact that a person may have accepted the conduct does not mean that they welcomed it. For example, a student may decide not to resist the sexual advances of another student out of fear, or a student may not object to a pattern of sexually harassing comments directed at the student by a group of fellow students out of concern that objections might cause the harassers to make more comments. On the other hand, if a student actively participates in sexual banter and discussions and gives no indication that they object, then that would generally support a conclusion that the conduct was not unwelcome, depending on the facts and circumstances. In addition, simply because a person willingly participated in the conduct on one occasion does not prevent that same conduct from being unwelcome on a subsequent occasion. Specific issues related to welcomeness may also arise if the person who engages in harassment is in a position of authority. For example, because a teacher has authority over the operation of their classroom, a student may decide not to object to a teacher's sexually harassing comments during class; however, this does not mean that the conduct was welcome because, for example, the student may believe that any objections would be ineffective in stopping the harassment or may fear that by making objections they will be singled out for harassing comments or retaliation.

Category One: Quid Pro Quo.

The Department proposes generally maintaining the language in the first category of the definition of ''sexual harassment'' in the current regulations with revisions to state that in addition to an employee, an agent or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity is also prohibited from engaging in the quid pro quo conduct described in the first category and that quid pro quo harassment may be explicit or implicit.

In response to requests to broaden the scope of quid pro quo harassment to include persons not directly employed by the recipient, the Department explained in the preamble to the 2020 amendments that ''the quid pro quo harassment description is appropriately and sufficiently broad because it applies to all of a recipient's employees, so that it includes situations where, for instance, a teacher, faculty member, or coach holds authority and control over a student's success or failure in a class or extracurricular activity,'' and ''decline[d] to expand the description to include non-employee students, volunteers, or others not deemed to be a recipient's employee.'' 85 FR 30148. The Department further stated that it was ''persuaded by the Supreme Court's rationale in *Gebser* that Title IX and Title VII differ with respect to statutory reliance on agency principles'' and referenced the language in *Gebser,* noting that Title VII ''explicitly defines 'employer' to include 'any agent,''' *id.* at 30148, but ''Title IX contains no comparable reference to an educational institution's agents, and so does not expressly call for application of agency principles'' *id.* at 30148 n.646 (quoting *Gebser,* 524 U.S. at 283). During the June 2021 Title IX Public Hearing and in listening sessions with stakeholders, OCR received similar requests to prohibit quid pro quo harassment by any person, not just employees. The Department reviewed these requests and now proposes to revise the scope of quid pro quo sex-based harassment to include an agent or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity. The Department proposes this change to effectuate Title IX, consistent with the statutory language prohibiting a person from being excluded from participation in or denied the benefits of any education program or activity on the basis of sex. This proposed change is also consistent with the Department's Title IX regulations regarding the provision of aid, benefit, or services, which have made clear since 1975 that a recipient is responsible for the nondiscriminatory provision of any aid, benefit, or service to a student and have not been limited to the provision of such aid, benefit, or services only by a recipient's employees. 34 CFR 106.31(b).

The Department is mindful of the Supreme Court's decision in *Gebser,* which the Department previously relied upon in declining to expand the description of quid pro quo harassment in response to comments received on the 2018 NPRM. Although the Court in *Gebser* rejected Title VII's agency principles for the purpose of determining a school's liability for monetary damages under Title IX, after revisiting this issue, the Department proposes that this is not the appropriate analysis for assessing the Department's responsibility for the administrative enforcement of Title IX. *Gebser,* 524 U.S. at 283. As explained in greater detail in the discussion of OCR's Guidance and Supreme Court Precedent on Title IX's Application to Sexual Harassment (Section II.B.1), the Court repeatedly and explicitly stated in *Gebser* and *Davis* that the liability standard it established was limited to private actions for monetary damages, not administrative enforcement action. *See, e.g., Gebser,* 524 U.S. at 283, 287; *see also Davis,* 526 U.S. at 633, 639–44, 649–53. It was within this framework that the Court rejected Title VII's agency principles for purposes of determining a school's liability for monetary damages under Title IX. In contrast, the Department's proposal to include agents or other persons authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity in the scope of quid pro quo sex-based harassment is not based on Title VII agency principles and is consistent with Title IX sexual harassment case law holding that ''someone in authority'' may commit quid pro quo sexual harassment. *See, e.g., Papelino* v. *Albany Coll. of Pharmacy Union Univ.,* 633 F.3d 81, 89 (2d Cir. 2011); *Willis* v. *Brown Univ.,* 184 F.3d 20, 25 (1st Cir. 1999).

Because determining whether a person has been authorized to provide aid, benefits, or services as part of a recipient's education program or activity is fact-specific, the Department declines at this time to provide a definitive list of individuals who would qualify but provides examples below to assist a recipient in making this determination for purposes of quid pro quo harassment. For example, some recipients may rely on unpaid volunteers to coach interscholastic athletic teams or club sports teams offered by the recipient. Even though these volunteers are not employed directly by the recipient, unpaid volunteer coaches hold authority and control over a student's participation or performance in an extracurricular activity offered by the recipient. As such, they would qualify as persons who are subject to the prohibition on quid pro quo harassment because they may properly be considered persons authorized by the recipient to provide aid, benefits, or services under the recipient's education program or activity. Similarly, graduate students who teach their own course or serve as a teaching assistant and are responsible for providing instruction and assigning grades in a course (*i.e.,* an aid, benefit, or services to students as part of a recipient's education program or activity) but who are not employed directly by a recipient would also be subject to the prohibition on quid pro quo harassment. In addition, if a recipient contracts with persons or

organizations to provide benefits, services, or opportunities to students under the recipient's education program or activity, those individuals could commit quid pro quo harassment. Other examples of persons who may be authorized by a recipient to provide aid, benefits, or services under the recipient's education program or activity would include but are not limited to, persons who supervise internships or clinical experiences that are part of a student's academic program, volunteers who regularly provide an aid, benefit or service under a recipient's education program or activity, or board of trustees' members who serve as unpaid volunteers. On the other hand, in the Department's experience, students in positions of responsibility in an extracurricular activity, such as a team captain or club president, are generally not authorized by a recipient to provide aid, benefits, or services under the recipient's education program or activity and would not come under this prohibition.

The Department stated, in the preamble to the 2020 amendments, that quid pro quo harassment could include explicit and implicit conduct but did not expressly make this point in the text of the current regulations. The proposed revisions to the regulatory text would incorporate the principle the Department articulated in the preamble to the 2020 amendments that quid pro quo harassment should be interpreted ''broadly to encompass situations where the quid pro quo nature of the incident is implied from the circumstances'' and that ''quid pro quo harassment applies whether the 'bargain' proposed by the recipient's employee is communicated expressly or impliedly.'' 85 FR 30147 (footnotes omitted). In addition, the Department proposes retaining the interpretation articulated in the preamble to the 2020 amendments that ''quid pro quo harassment does not depend on whether 'the student resists and suffers the threatened harm or submits and avoids the threatened harm,' '' to show that the student's ability to participate in or benefit from the school's program has been denied or limited, on the basis of sex in violation of the Title IX regulations. *Id.* at 30148 n.645 (emphasis omitted) (quoting 2001 Revised Sexual Harassment Guidance at 5).

Category Two: Hostile Environment

Distinction between administrative enforcement and private lawsuits for monetary damages. In the 2020 amendments, the Department adopted verbatim the formulation that the *Davis* Court used in the context of private lawsuits for monetary damages: ''unwelcome conduct that a reasonable person would determine is 'so severe, pervasive, and objectively offensive' that it effectively denies a person equal access to education.'' *Id.* at 30036 (quoting *Davis,* 526 U.S. at 650). OCR heard from a variety of stakeholders in connection with the June 2021 Title IX Public Hearing and in listening sessions regarding the current definition of ''sexual harassment.'' In addition, stakeholders provided views on the current definition of ''sexual harassment'' during meetings held in 2022 under Executive Order 12866. Some stakeholders supported the current definition while other stakeholders urged the return to the prior definition of ''sexual harassment'' (*i.e.,* hostile environment) previously used in OCR's administrative enforcement and expressed concern that the current narrower definition, which is based on case law related to private lawsuits for monetary damages, could leave some serious sexual misconduct unaddressed. These stakeholders also expressed concern about the inconsistency between the new, narrower definition in the 2020 amendments and the longstanding, broader definition used in prior OCR guidance, Title VII case law, and EEOC guidance. These stakeholders encouraged the Department to take a more uniform approach to hostile environment harassment, noting that it is a concept developed though court decisions interpreting other Federal statutes prohibiting discrimination, including Title VII and Title VI.

The Department reviewed its decision to use the standards applicable to private suits for monetary damages as the starting point for the standards used by OCR in its administrative enforcement of Title IX, including the Supreme Court's standard for actionable sexual harassment under Title IX. The Department's tentative view is that it is permitted to depart from the standards set out by the Court for actionable sexual harassment under Title IX because the Court expressly acknowledged the power of Federal agencies, such as the Department, to ''promulgate and enforce requirements that effectuate [Title IX's] nondiscrimination mandate,'' even in circumstances that would not give rise to a claim for monetary damages. *Gebser,* 524 U.S. at 292. Such a view is consistent with how the Court has interpreted the Department's broad regulatory authority in other Title IX contexts. For example, the Court also noted that ''the Department of Education could enforce the requirement administratively'' that a school ''promulgate a grievance procedure'' even though the failure to do so ''does not itself constitute 'discrimination' under Title IX.'' *Id.* Similarly, the Court has explained that the Department may require schools to sign assurances of compliance under Title IX, even though the failure to sign such assurances would not itself constitute sex discrimination by the recipient. *See Grove City Coll.,* 465 U.S. at 574.

After considering the issues and reweighing the facts and circumstances, including the views expressed by a variety of stakeholders, the Department proposes retaining the term ''unwelcome conduct'' from the 2020 amendments, but replacing the definition of ''sexual harassment'' from *Davis* in the current regulations with the hostile environment framework to describe when sex-based harassment in category two is prohibited under Title IX.

The proposed regulations thus provide that sex-based harassment in category two would cover unwelcome sex-based conduct that is sufficiently severe *or* pervasive that, based on the totality of the circumstances and evaluated subjectively and objectively, it denies or limits a person's ability to participate in or benefit from the recipient's education program or activity (*i.e.,* the conduct creates a hostile environment).

In the preamble to the 2020 amendments, the Department acknowledged that it is not legally required to adopt the *Gebser/Davis* framework for sexual harassment, but noted that the Supreme Court did not prohibit the Department from doing so and chose to adopt the *Davis* standard for actionable sexual harassment in part because ''aligning the Title IX sexual harassment definition in administrative enforcement and private litigation contexts provides clear, consistent expectations for recipients.'' 85 FR 30149.

The Department's tentative view is that defining ''sex-based harassment'' in category two using the hostile environment framework will enable the Department to enforce Title IX's nondiscrimination mandate and provide more effective protection against sex discrimination in a recipient's education program or activity because the definition of ''sex-based harassment'' covers a broader range of sexual misconduct than that covered under the definition of ''sexual harassment'' in the current regulations. The Department's tentative view is also

that the hostile environment framework appropriately captures the key concepts articulated by the Court in *Davis* and protects the First Amendment rights and interests of students and employees. The Department acknowledges that revising the definition of ''sex-based harassment'' in category two using the hostile environment framework may create additional work for recipients because they will be subject to a different standard in the administrative enforcement context than they are in the context of private suits for monetary damages and because the definition may require recipients to respond to a broader range of conduct, but Title IX's plain language prohibits any discrimination on the basis of sex in a recipient's education program or activity and the Department proposes that in the administrative enforcement context Title IX must function as a strong and comprehensive measure to effectively address sex discrimination. *See generally* 118 Cong. Rec. 5803–5812 (1972) (statement of Sen. Bayh).

Hostile environment analysis. The proposed revisions to the second category of sex-based harassment would require that the unwelcome sex-based conduct be sufficiently severe or pervasive that, based on the totality of the circumstances and evaluated subjectively and objectively, it denies or limits a person's ability to participate in or benefit from the recipient's education program or activity. Requiring the unwelcome sex-based conduct to be evaluated subjectively and objectively and based on the totality of the circumstances is consistent with the analysis discussed by the Department in the preamble to the 2020 amendments, which stated that ''whether harassing conduct is 'objectively offensive' must be evaluated under a reasonable person standard, as a reasonable person in the complainant's position'' and also required that the conduct be unwelcome from a subjective perspective. 85 FR 30167. This is also consistent with *Davis* and relevant Title VII Supreme Court cases. *See, e.g., Davis,* 526 U.S. at 650 (conduct must be ''objectively offensive'' to trigger liability for money damages); *Harris* v. *Forklift Sys.,* 510 U.S. 17, 21–22 (1993) (explaining that ''if the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation'' and that a ''reasonable person'' standard should be used to determine whether sexual conduct constituted harassment); *Oncale,* 523 U.S. at 81 (''[T]he objective severity of harassment should be judged from the perspective of a reasonable person in the [complainant's] position, considering 'all the circumstances.' '' (quoting *Harris,* 510 U.S. at 23)).

The Department's proposal to require that the conduct be ''severe or pervasive'' as opposed to ''severe, persistent, or pervasive'' is consistent with the Court's opinion in *Davis.* Although the *Davis* Court described the conduct at issue in the case as ''persistent,'' that term was not part of the Court's analysis or the definition adopted by the Court. *See Davis,* 526 U.S. at 650–53 (describing damages liability standard when funding recipient is deliberately indifferent to harassment that is ''severe, pervasive, and objectively offensive'').

Title IX prohibits sex-based harassment that denies or limits a person's ability to participate in or benefit from the education program or activity. The Department explained in the preamble to the 2020 amendments that the unwelcome conduct under category two must ''effectively den[y] a person equal access to the recipient's education program or activity'' for two reasons: first, because that was the language used by the Court in *Davis;* and second, because the Department believed that it was the ''equivalent of a violation of Title IX's prohibition on exclusion from participation, denial of benefits, and/or subjection to discrimination.'' 85 FR 30156–57. After considering the issue and reweighing the facts and circumstances, the Department proposes revising this language to encompass sex-based conduct that denies or limits a person's ability to participate in or benefit from the recipient's education program or activity. The Department's current position is that this language more appropriately captures the full scope of Title IX's nondiscrimination mandate. The language of the statute, ''denied the benefits,'' does not require otherwise and, to the contrary, supports the Department's proposed revision because a limitation on equal access constitutes a denial of benefits. 20 U.S.C. 1681(a). For example, Title IX prohibits a recipient from awarding female students half as many credits as male students for taking the same class, even though the recipient has not completely denied female students the credit benefits of taking the class. In this way, a recipient need not completely deny, by policy or effect, a student's equal access to its education program or activity based on sex before it denies a student the benefits of its program or activity, thereby violating Title IX.

The Department's proposed regulatory language is consistent in many respects with the principles articulated in the preamble to the 2020 amendments, which explained the variety of situations that would be covered under the current regulations. There the Department explained that a complainant does not need to have been ''entirely, physically excluded from educational opportunities,'' 85 FR 30169, and ''no specific type of reaction to the alleged sexual harassment is necessary to conclude'' that the complainant was effectively denied equal access to the recipient's education program or activity, *id.* at 30170. The Department also explained that ''[c]ommenters' examples of a third grader who starts bed-wetting or crying at night due to sexual harassment, or a high school wrestler who quits the team but carries on with other school activities following sexual harassment, likely constitute examples of denial to those complainants of 'equal' access to educational opportunities even without constituting a total exclusion or denial of an education.'' *Id.* at 30170. These examples would also satisfy the requirement in the proposed regulations that the harassment must deny or limit the complainant's ability to participate in or benefit from the recipient's education program or activity in order to be covered. The Department also noted in the preamble to the 2020 amendments that ''signs of enduring unequal educational access due to . . . harassment may include, as commenters suggest, skipping class to avoid a harasser, a decline in a student's grade point average, or having difficulty concentrating in class.'' *Id.* These examples would also constitute signs of a denial or limitation of a complainant's ability to participate in or benefit from the recipient's education program or activity under the proposed regulations. Additional information and examples related to this element of the definition are provided in the discussion of factors that a recipient must consider when determining if a hostile environment has been created.

Consistency with the First Amendment. In the preamble to the 2020 amendments, the Department wrote that the ''*Davis* definition of sexual harassment as 'severe, pervasive, and objectively offensive' comports with First Amendment protections,'' while the definition articulated in prior Department guidance ''has led to infringement of rights of free speech and academic freedom of students and faculty.'' *Id.* at 30036 n.88. After considering these issues, the Department's tentative view is that the proposed scope of conduct that would

constitute a hostile environment under the definition of ''sex-based harassment'' in proposed § 106.2 would sufficiently protect the constitutional rights and interests of students and employees. It would do so by requiring not only that the prohibited conduct be sufficiently severe or pervasive that, based on the totality of the circumstances and evaluated subjectively and objectively, it creates a hostile environment, but also that the conduct be based on sex and occur under the recipient's education program or activity. Title IX protects individuals from sex discrimination and does not regulate the content of speech as such. OCR has expressed this position repeatedly in discussing Title IX in prior guidance. *See* 2001 Revised Sexual Harassment Guidance at 22; 2003 First Amendment Dear Colleague Letter; 2014 Q&A on Sexual Violence at 43–44. The Department emphasizes that in cases of alleged sex-based harassment, the protections of the First Amendment must be considered if, for example, issues of speech or expression are involved, including academic freedom. Students, employees, and third parties retain their First Amendment rights, and the Department's proposed regulations would not infringe these rights. The Department further notes that current § 106.6(d), to which the Department is not proposing any changes, states that nothing in the Title IX regulations requires a recipient to ''[r]estrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution.'' 34 CFR 106.6(d).

Consistent with the proposed hostile environment category of sex-based harassment discussed above, the offensiveness of a particular expression as perceived by some persons, standing alone, would not be a legally sufficient basis to establish a hostile environment under Title IX. In addition, a recipient must formulate, interpret, and apply its rules in a manner that respects the legal rights of students and employees when taking action to end sex-based harassment that creates a hostile environment. For instance, although the First Amendment may prohibit a recipient from restricting the rights of students to express opinions about one sex that may be considered derogatory, the recipient can affirm its own commitment to nondiscrimination based on sex and take steps to ensure that competing views are heard. The age of the students involved and the location or forum in which such opinions are expressed may affect the actions a recipient can take consistent with the First Amendment.

Alignment with Title VII. Although courts often rely on interpretations of Title VII to inform interpretations of Title IX, in the preamble to the 2020 amendments the Department explained that there are differences between Title IX ''and workplace policies that may exist in the corporate world.'' 85 FR 30199; *see also Franklin,* 503 U.S. at 75; *Jennings,* 482 F.3d at 695; *Frazier,* 276 F.3d at 66; *Gossett,* 245 F.3d at 1176. The Department also noted that Title VII's prohibition on sexual harassment differs from that under Title IX in the 2020 amendments and recipients that are subject to both Title VII and Title IX must comply with both sets of obligations. 85 FR 30440. The Department further noted that ''[c]ourts impose different requirements under Title VII and Title IX and recipients comply with case law that interprets Title VII and Title IX differently.'' *Id.* at 30443. The Department recognizes the differences between educational and workplace environments and that in the context of private suits for monetary damages under Title IX, the Supreme Court has applied a different definition of ''sexual harassment'' under Title IX than it has in the Title VII context. *Id.* at 30199, 30440, 30443. The Department also heard from stakeholders, including recipients, that the differences between the definitions of ''sexual harassment'' in OCR's administrative enforcement context and the Title VII context created confusion for employees and requesting alignment between the Title IX and Title VII definitions, if possible, for sex-based harassment under the recipient's education program or activity. Although these stakeholders acknowledged that different grievance procedures may be appropriate for resolving student and employee complaints of sex-based harassment given the varying rights of students and employees, they nonetheless expressed a desire for consistency in the definition of ''sex-based harassment'' under Title IX and Title VII.

After considering this issue, including the concerns expressed by stakeholders, the Department's tentative view is that, while not required to do so, it is appropriate to more closely align the hostile environment category of ''sex-based harassment'' in the context of OCR's administrative enforcement of Title IX with how hostile environment sexual harassment is defined by courts and the EEOC under Title VII in the employment context given that recipients must comply with both laws and both Title VII and Title IX cover employees. The proposed hostile environment framework under Title IX is more similar to the definition of ''hostile environment'' under Title VII than the definition of ''sexual harassment'' under the current Title IX regulations. The Department's tentative view is that this alignment will better facilitate recipients' ability to comply with their obligations under the Department's proposed Title IX regulations, while also recognizing recipients' obligations under Title VII. Also, and most fundamentally as discussed above, the proposed hostile environment framework will better enable the Department to implement Title IX's prohibition on sex discrimination. In addition, as explained in the discussion of hostile environment factors, whether unwelcome sex-based conduct has created a hostile environment is a fact-specific determination based on the totality of the circumstances, which enables recipients to take into consideration the characteristics of the parties involved, including whether they are students or employees, in making the determination. Although the Department proposes more closely aligning the definition of ''sex-based harassment'' under Title IX with the definition of ''sexual harassment'' under Title VII, a recipient must still be able to make individualized determinations whether certain conduct constitutes prohibited sex-based harassment and may conclude that certain conduct between employees is not prohibited while the same conduct between students is prohibited and vice versa.

As explained in the discussion of the Framework for Grievance Procedures for Complaints of Sex Discrimination (Section II.F), the Department continues to recognize there are differences between recipients' relationships with their employees and their students. However, the Department does not view these differences as relevant for the analysis of the hostile environment category of sex-based harassment in OCR's administrative enforcement of Title IX, and the Department thus proposes that the same analysis of what constitutes hostile environment sex-based harassment should apply regardless of whether the persons involved in the sex-based harassment are students or employees. The Department's tentative position is that although a recipient's grievance procedures may appropriately vary to ensure an equitable response to complaints involving students and those involving only employees in the postsecondary setting, particularly in light of Title VII's protections for

employees, there is no similar justification for variation in the analysis of what constitutes hostile environment sex-based harassment that applies to students and employees. In addition, as explained in the discussion of the hostile environment factors, the hostile environment analysis requires the recipient to examine the alleged facts from the position of a reasonable person in the complainant's position, considering the surrounding circumstances, and make an individualized determination whether the unwelcome sex-based conduct created a hostile environment based on the totality of the circumstances, including the age and roles of the parties. The Department recognizes that, particularly in a secondary or postsecondary education program or activity, the student environment may differ from the environment of teachers, faculty, and staff in ways that may be relevant for the recipient's fact-specific analysis of whether a hostile environment was created. For additional information regarding the differences between recipients' relationships with their employees and their students and the applicable procedural requirements to complaints of sex-based harassment, see the discussion of the Framework for Grievance Procedures for Complaints of Sex Discrimination (Section II.F). The Department also notes that in addition to more closely aligning with how hostile environment sexual harassment is defined by courts and the EEOC under Title VII, the proposed hostile environment framework in category two of the definition of ''sex-based harassment'' would also more closely align with the definition of ''hostile environment harassment'' in the context of enforcement of the Fair Housing Act by the U.S. Department of Housing and Urban Development. 24 CFR 100.600(a)(2). The Department's tentative view is that although the Department is not required to align its analysis of what constitutes a hostile environment under Title IX with the definition of ''hostile environment harassment'' under the FHA, closer alignment of the two definitions would assist recipients given that the FHA applies to campus housing for students, faculty, or staff, and those institutions that are subject to the FHA and receive Federal funding from the Department must also comply with the Department's Title IX regulations.

Alignment with other Federal civil rights laws enforced by OCR. The Department's proposed regulations would also more closely align the hostile environment analysis under Title IX with how OCR defines ''harassment'' based on race, color, national origin, or disability for administrative enforcement purposes, which would provide increased clarity to recipients. *See* Notice of Investigative Guidance, Racial Incidents and Harassment Against Students at Educational Institutions, 59 FR 11448, 11449–50 (Mar. 10, 1994) (1994 Racial Harassment Guidance), *https://www.govinfo.gov/content/pkg/FR-1994-03-10/pdf/FR-1994-03-10.pdf* (also available at *https://www2.ed.gov/about/offices/list/ocr/docs/race394.html*) (explaining that a hostile environment under Title VI includes racial harassment ''that is sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient''); U.S. Dep't of Educ., Office for Civil Rights, Dear Colleague Letter: Prohibited Disability Harassment (July 25, 2000), *https://www.ed.gov/ocr/docs/disabharassltr.html* (''When harassing conduct is sufficiently severe, persistent, or pervasive that it creates a hostile environment, it can violate a student's rights under the Section 504 and Title II regulations.''); 2010 Dear Colleague Letter on Harassment and Bullying at 1–2 (stating that harassment on the basis of race, color, national origin, sex, or disability ''creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by the school''). The Department is not proposing to simply import a definition of ''hostile environment'' from the context of harassment based on race, color, national origin, or disability. As explained in the preamble to the 2020 amendments, the Department is not required under the Administrative Procedure Act ''to devise identical or even similar rules to eliminate discrimination on the bases of sex, race, or disability (or of any other kind).'' 85 FR 30528. The Department's tentative view, however, is that there is value for recipients, students, and others in incorporating similar concepts, to the extent possible, into the analyses of hostile environment harassment under all of the civil rights laws that the Department enforces.

Factors that a recipient must consider when determining if a hostile environment has been created. Whether a hostile environment has been created is a fact-specific inquiry and requires analyzing the conduct and its effect on the complainant to draw distinctions between conduct that creates a hostile environment and conduct that does not rise to that level. A hostile environment may manifest itself in different ways for different complainants. In view of this fact-specificity, the Department proposes adding language to category two of the definition of ''sex-based harassment'' that would identify factors for determining whether the unwelcome conduct created a hostile environment. Category two of the proposed definition of ''sex-based harassment'' would set out the following factors to consider when determining whether a hostile environment based on sex exists: (i) the degree to which the conduct affected the complainant's ability to access the recipient's education program or activity; (ii) the type, frequency, and duration of the conduct; (iii) the parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the alleged unwelcome conduct; (iv) the location of the conduct, the context in which the conduct occurred, and the control the recipient has over the respondent; and (v) other sex-based harassment in the recipient's education program or activity. A recipient must consider whether each of these factors applies in determining whether a hostile environment based on sex exists but may determine that one or more factors is not relevant to a particular set of facts. Also, the Department does not intend that the specific hostile environment factors listed in proposed § 106.2 would be exhaustive, as evidenced by the use of the word ''includes.'' A recipient would not be prohibited from considering additional relevant factors to determine whether a hostile environment has been created. Below the Department discusses the analysis under each factor in greater detail. Although the facts in the examples below are not necessarily sufficient to demonstrate a sex-based hostile environment (*i.e.,* a fuller, fact-specific analysis would be required), they illustrate how recipients might consider the relevant factors in determining whether a hostile environment has been created.

(1) *The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity.* A hostile environment may manifest itself in different ways for different complainants. In some cases, a complainant's grades may go down or

the complainant may feel forced to withdraw from school because of the harassing behavior. A complainant may also suffer physical injuries or mental or emotional distress. Other complainants may be able to maintain their grades or remain in a program or activity, but it may be more difficult for them to do so because of the harassment. For example, a student may remain in class while enduring a teacher's repeated hostile comments about the complainant's pregnancy, but they may be anxious throughout the day and have difficulty concentrating in class. Similarly, some complainants may be able to remain on a sports team, despite performing less successfully or with greater effort than previously due to humiliation and anger caused by repeated, unwelcome sexual advances from team members. A hostile environment can occur even if the harassment is not targeted specifically at the individual complainant. For example, if a group of students or a teacher regularly directs sexual comments toward a student, a sex-based hostile environment may be created for others in the classroom. A hostile environment can also arise when sex-based harassment occurring *outside* of a recipient's education program or activity creates a sex-based hostile environment *within* the recipient's education program or activity. For example, if a student is sexually assaulted by a fellow student while participating in a travel soccer program not sponsored by the school, the student who was assaulted may be subject to a sex-based hostile environment while at school as a result of that sexual assault when the student who perpetrated the sexual assault and his friends intimidate and mock the student who was sexually assaulted, which causes the student who was sexually assaulted to skip classes to avoid interactions with the other student and his friends.

(2) *The type, frequency, and duration of the conduct.* The more severe or pervasive, the conduct is, the more likely it is to create a hostile environment. For instance, if a complainant is taunted repeatedly by one or more students about not conforming to sex stereotypes because he wears nail polish and has long hair, the complainant may experience a hostile environment based on sex, particularly if the conduct has been going on for a period of weeks or takes place throughout the school or if the taunts are made by a number of students. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the harassment is physical. For example, a single incident of severe physical violence targeting the above student would also likely create a hostile environment for that student. The Department notes that a single incident of sexual assault, stalking, dating violence, or domestic violence as described in category three of the proposed definition of ''sex-based harassment'' (and under the current regulations) would constitute prohibited sex-based harassment with no further showing necessary to demonstrate that a hostile environment exists. These examples are not exhaustive. On the other hand, conduct would not likely create a hostile environment if the recipient determines that the conduct occurs infrequently or is not objectively and subjectively offensive, such as a one-off comment by a student's friend that she was acting ''girly'' or ''like a boy.'' Similarly, because students may date one another, a single request for a date or a gift of flowers from one student to another, for example, even if unwelcome, generally would not create a hostile environment if the request was infrequent. There may be circumstances, however, in which repeated unwelcome requests for dates or similar conduct could create a hostile environment, especially if a person, whose requests for dates have been refused previously, continues requesting dates from the same person in an intimidating, threatening, or repetitive manner. Depending on the facts and circumstances, such conduct could also constitute stalking under category three of the proposed definition of ''sex-based harassment.'' It would be the recipient's responsibility to determine whether the conduct is severe or pervasive.

(3) *The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the alleged unwelcome conduct.* The parties' ages and roles may be especially relevant in cases involving allegations of sex-based harassment of a student by a school employee. For example, due to the level of control a professor, teacher, or coach has over students, harassing conduct by that person toward a student is more likely to create a hostile environment than similar conduct by another student. This factor would also involve consideration of any prior relationships or interaction between the parties, subject to the limitations in proposed § 106.45(b)(7)(iii), and other factors such as how often the parties are required to interact with each other on a regular basis. The parties' previous interactions and other factors about each party may also be particularly relevant when considering allegations that involve conduct that originated outside of the recipient's education program or activity or outside of the United States. For example, if a student was assaulted by a peer in a study abroad program and alleges that a hostile environment exists when both students return to campus, the recipient should consider the parties' previous interactions to fully address any hostile environment within its education program and activity. For additional discussion of conduct that originated outside of the recipient's education program or activity or outside the United States see the discussion of proposed § 106.11.

(4) *The location of the conduct, the context in which the conduct occurred, and the control the recipient has over the respondent.* Harassing conduct that occurs on a school bus may be more intimidating than similar conduct on a school playground, for example, because the restricted area makes it impossible for students to avoid their harassers. Harassing conduct that occurs in a personal or secluded area, such as a dorm room or residence hall, can have a greater effect (*e.g.,* be experienced as more threatening) than would similar conduct in a more public area. On the other hand, harassing conduct that occurs in a more public space may be more humiliating to the person being targeted. Even when harassing conduct occurs outside of the recipient's education program or activity, the location and context of that conduct, and whether or not the recipient has control over the respondent, are relevant to evaluating whether a hostile environment based on sex exists within the recipient's education program or activity. Recipients should be aware that although a recipient's control over a respondent is relevant to evaluating whether a hostile environment based on sex exists when the harassing conduct occurs outside of the recipient's education program or activity, the analysis is different when the harassing conduct occurred in a recipient's education program or activity. In that context, a hostile environment may exist regardless of whether the recipient has control over the respondent, and the recipient would be required to meet its obligations under proposed § 106.44. The amount of control that a recipient has over a respondent is relevant only to the extent it may impact the scope of the recipient's response. For example, if a non-affiliated third party sexually assaults a student on campus, the recipient would be able to provide the student with supportive measures and

could issue a no-trespass order against the non-affiliated third party, if it knows that person's identity, even if the recipient otherwise lacks control over the person.

(5) *Other sex-based harassment in the recipient's education program or activity.* A series of harassing incidents in the recipient's education program or activity could—taken together—create a hostile environment for the targeted student, even if each incident by itself would not. For example, if a student's peers repeatedly denigrate a student as ''girly'' over a period of weeks and the student reports that the treatment is causing him distress and interfering with his ability to concentrate in class, the recipient would have an obligation to determine whether a hostile environment based on sex exists. Even if infrequent or inconsistent incidents may not be sufficiently serious to create a hostile environment, that same treatment repeated by different students in each class throughout the day may do so.

Category Three: Clery Act

The current regulations incorporate the statutory definitions of ''sexual assault'' from the Clery Act and ''dating violence,'' ''domestic violence,'' and ''stalking'' from the Violence Against Women Reauthorization Act of 2013 through cross-references to those statutes. VAWA 2022 renumbered the definitions of ''dating violence'' and ''stalking'' and renumbered and made substantive changes to the definition of ''domestic violence.'' Public Law 117–103.[5] The definition of ''sexual assault'' in the Clery Act remains unchanged.

The Department proposes to include in the proposed definition of ''sex-based harassment'' (§ 106.2) the text of the definitions of ''sexual assault'' in the Clery Act at 20 U.S.C. 1092(f)(6)(A)(v), ''dating violence'' in VAWA 2022 at 34 U.S.C. 12291(a)(11), and ''stalking'' in VAWA 2022 at 34 U.S.C. 12291(a)(36), instead of merely including cross-references to the applicable provisions in VAWA 2013 and the Clery Act. In addition, the Department proposes explicitly setting out how ''domestic violence'' would be defined by incorporating relevant language from the definition of ''domestic violence'' in VAWA 2022 at 34 U.S.C. 12291(a)(12). The Department's proposed definition of ''domestic violence'' would not include all of the language from the definition of ''domestic violence'' in VAWA 2022 because in the Department's current view, some of the VAWA 2022 definition of ''domestic violence'' is not applicable to Title IX. The Department, therefore, proposes including the specific portions of the VAWA 2022 definition of ''domestic violence'' that are applicable to Title IX to avoid confusion given the expanded definition in the VAWA 2022 reauthorization, which added ''in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any coercive behavior committed, enables or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior.'' However, omitting this language does not create a substantive change to the VAWA 2022 definition of ''domestic violence'' for Title IX purposes. The Department also does not propose any substantive changes to the content of the definitions of ''sexual assault,'' ''dating violence,'' and ''stalking.'' The definitions of those terms are the same as the definitions that were incorporated by cross-reference to the Clery Act and VAWA 2013 in the definition of ''sexual harassment'' in the current regulations. The Department's current position is that including the language from the statutory definitions themselves in the proposed definition of ''sex-based harassment'' as opposed to including cross-references to the Clery Act and VAWA will be helpful for recipients by making it clear how these terms are defined for purposes of Title IX.

During the June 2021 Title IX Public Hearing and in listening sessions, OCR heard from stakeholders that there has been some confusion regarding the reference in the current Title IX regulations to the Clery Act's statutory definition of sexual assault. The Department similarly heard about this confusion during meetings held in 2022 under Executive Order 12866. Specifically, stakeholders conveyed confusion because the Clery Act's statutory definition of ''sexual assault,'' which is referenced in the Title IX regulations, refers to forcible and non-forcible sex offenses, but the FBI has retired those terms and those terms are not included in the definition of ''sexual assault'' in the Department's Clery Act regulations. The Department notes that to dispel this confusion, all recipients may find it useful to consult the Department's Clery Act regulations, discussed below, for additional information about the Clery Act's definition of ''sexual assault,'' although only postsecondary institutions are subject to the Clery Act.

As explained above, current and proposed Title IX regulations adopt the Clery Act's statutory definition of the term ''sexual assault,'' 20 U.S.C. 1092(f)(6)(A)(v), which that Act defines as ''an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting [UCR] system of the Federal Bureau of Investigation [FBI].'' The FBI UCR previously consisted of two crime reporting systems: the Summary Reporting System (SRS) and the National Incident-Based Reporting System (NIBRS). The current Clery Act regulations, 34 CFR 668.46(a) and 34 CFR part 668, subpart D, appendix A, define sexual assault as an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program and direct recipients to look to the SRS for a definition of ''rape'' and to the NIBRS for definitions of ''fondling,'' ''statutory rape,'' and ''incest'' as the offenses falling under sexual assault. The Department notes that although the FBI retired the SRS and transitioned to using only the NIBRS in January 2021, the Clery Act regulations, including those regulations' definition of ''sexual assault,'' remain in effect and may be useful for recipients to consult. The Department stated in the preamble to the 2014 Clery Act NPRM that the definition of ''sexual assault'' in the Clery Act regulations reflects the definition of ''sexual assault'' in the Clery Act statute, but the Clery Act regulations remove ''references to forcible and nonforcible sex offenses and identify the sex offenses that sexual assault would include to make the definition clear.'' 79 FR 35418, 35427 (June 20, 2014). The Department explained that it was removing the terms ''forcible'' and ''nonforcible'' from the definition of ''sexual assault'' ''to combat the suggestion that a sex offense has not occurred if physical force was not used.'' *Id.* at 35435.

Section 106.2 Definition of ''Relevant''

Current regulations: None. The term ''relevant'' is not defined in the existing Title IX regulations. The Department stated in the preamble to the 2020 amendments that ''the ordinary meaning of the word should be understood and applied.'' 85 FR 30247 n.1018. In addition, current § 106.45(b)(6)(i) and (ii) states that ''[q]uestions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to

[5] The Department notes that VAWA 2022 does not take effect until October 1, 2022, but chooses to include definitions from VAWA 2022 in these proposed regulations to provide clarity for recipients because it will be in effect when the final regulations are published.

prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.''

The current regulations incorporate the concept of relevance into several provisions, specifically:

- Recipients must conduct an objective evaluation of all relevant evidence (§ 106.45(b)(1)(ii));
- Recipients must train investigators on issues of relevance (§ 106.45(b)(1)(iii));
- Recipients must create an investigative report that fairly summarizes relevant evidence (§ 106.45(b)(5)(vii));
- Recipients must not restrict the ability of either party to gather and present relevant evidence (§ 106.45(b)(5)(iii));
- Postsecondary institutions must ensure that each party's advisor has the ability to ask the other party and any witnesses all relevant questions and follow-up questions, and that only relevant cross-examination and other questions may be asked of a party or witness (§ 106.45(b)(6)(i));
- For all other institutions, including elementary and secondary schools, recipients must provide parties with the opportunity to submit written, relevant questions to the other party (§ 106.45(b)(6)(ii)); and
- For all recipients, the decisionmaker must exclude oral or written questions that are not relevant and explain any decision to exclude a question as not relevant (§ 106.45(b)(6)(i) and (ii)).

Proposed regulations: The Department proposes adding a definition of ''relevant'' to the regulations to help recipients understand their obligations under Title IX. The Department proposes defining ''relevant'' as related to the allegations of sex discrimination under investigation as part of the grievance procedures in § 106.45, and if applicable § 106.46. The proposed regulations would clarify as part of the definition that questions are relevant ''when they seek evidence that may aid in showing whether the alleged sex discrimination occurred,'' and that evidence is relevant ''when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.''

In addition, the proposed regulations, at § 106.45(b)(7), would set out three categories of evidence, including records, that would be impermissible (*i.e.,* must not be accessed, considered, disclosed, or otherwise used) in the grievance procedures, regardless of whether the evidence is relevant. Likewise, questions seeking these types of evidence would be impermissible.

Reasons: Both the current regulations and the proposed regulations use a relevance standard in the grievance procedures. The Department proposes to add a definition of ''relevant'' to the regulatory text to assist recipients in determining relevance and to help parties to understand these determinations. In the preamble to the 2020 amendments, the Department ''decline[d] to define'' the term ''relevant'' and stated that it ''should be interpreted using [its] plain and ordinary meaning.'' 85 FR 30304.

In connection with the June 2021 Title IX Public Hearing, OCR received comments about the difficulty of making relevancy determinations without a regulatory definition. Notwithstanding the Department's instruction in the preamble to the 2020 amendments to use the plain and ordinary meaning of the term ''relevant,'' OCR continued to receive requests for a definition in connection with the June 2021 Title IX Public Hearing. After considering the issue and reweighing the facts and circumstances, including these continued requests, the Department proposes adding a definition of ''relevant'' to the proposed regulations. In light of the varying size, structure, and expertise of recipients, and because relevancy determinations are an integral part of a recipient's grievance procedures, the Department proposes defining ''relevant'' within the regulatory text to provide clarity for recipients, students, and others involved in a recipient's grievance procedures, and to assist those recipients that may not have substantial experience applying this legal concept.

The Department proposes setting out in the regulations the general principle that questions and evidence are relevant when they are related to the allegations of sex discrimination under investigation as part of a recipient's grievance procedures. Although the Department drew a distinction in the preamble to the 2020 amendments between evidence that is directly related to the allegations and relevant evidence, *id.* at 30304, OCR received comments through the June 2021 Title IX Public Hearing that this distinction is not well delineated and is confusing. The Department proposes merging these concepts by defining ''relevant'' as evidence related to the allegations of sex discrimination. This proposed definition would clarify for recipients and others that questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination (*i.e.,* the alleged sex-based harassment or other conduct that could constitute sex discrimination under Title IX) occurred, and that evidence is relevant when it may aid a decisionmaker in determining whether that alleged sex discrimination occurred. If a question or evidence is related to the allegations but is not helpful for determining whether the alleged sex discrimination occurred, that question or piece of evidence would not qualify as relevant.

As explained in greater detail in the discussion of proposed § 106.45(b)(7), the Department also proposes identifying three categories of evidence, as well as questions seeking this evidence, as impermissible regardless of relevance. The current regulations include similar protections against any use of evidence in these three categories but do so in several different provisions. The Department proposes moving these provisions to proposed § 106.45(b)(7) for ease of reference and to make clear to recipients and others that these types of evidence are completely excluded from a recipient's grievance procedures. As explained in greater detail in the discussion of proposed § 106.45(b)(7), the Department also proposes minor changes to the three types of evidence that are not permitted regardless of relevance.

First, proposed § 106.45(b)(7)(i) would provide that evidence that is protected under a privilege as recognized by Federal or State law (*e.g.,* attorney-client privilege, doctor-patient privilege, spousal privilege) would not be permitted and must not be accessed, considered, disclosed, or otherwise used in a recipient's grievance procedures—unless the person holding the privilege has waived it voluntarily in a manner permitted in the recipient's jurisdiction. A similar prohibition is included at current § 106.45(b)(1)(x).

Second, proposed § 106.45(b)(7)(ii) would provide that a party's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party would not be permitted and must not be accessed, considered, disclosed, or otherwise used in the grievance procedures without the party's consent for use in the recipient's grievance procedures. Any consent must be voluntary and in writing. A similar prohibition is included at current § 106.45(b)(5)(i).

Third, proposed § 106.45(b)(7)(iii) would provide that evidence related to

the complainant's sexual interests would not be permitted in a recipient's grievance procedures. Proposed § 106.45(b)(7)(iii) would also provide that evidence related to the complainant's prior sexual conduct would not be permitted in a recipient's grievance procedures unless it is offered to prove that someone other than the respondent committed the alleged conduct or to prove consent with evidence concerning specific incidents of the complainant's prior sexual conduct with the respondent. Similar prohibitions appear at current § 106.45(b)(6)(i) and (ii). Proposed revisions to these prohibitions, such as replacing ''sexual behavior'' with ''sexual conduct'' and replacing ''sexual predisposition'' with ''sexual interests'' are explained in greater detail in the discussion of proposed § 106.45(b)(7). Proposed § 106.45(b)(7)(iii) would further clarify that the fact that prior consensual sexual conduct occurred between the complainant and the respondent does not itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

Section 106.2 Definition of ''Respondent''

Current regulations: Section 106.30(a) defines a ''respondent'' as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Proposed regulations: The Department proposes moving the definition of ''respondent'' from §§ 106.30(a) to 106.2 with minor revisions. The Department proposes defining a ''respondent'' as an individual who is alleged to have violated the recipient's prohibition on sex discrimination.

Reasons: The definition of ''respondent'' in the current regulations is limited to persons who may have engaged in conduct that could constitute sexual harassment. As the proposed regulations would require a recipient to initiate its grievance procedures in response to a complaint of any form of sex discrimination, consistent with Title IX, the Department proposes revising the definition of ''respondent'' to include a person who is alleged to have violated a recipient's prohibition on sex discrimination as opposed to a person who may have engaged in conduct that could constitute sexual harassment. Under proposed § 106.8(b)(1), a recipient would be required to ''adopt and publish a policy stating that it does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates.'' The Department's current view is that it is more accurate to frame the allegations against a respondent in the context of violating the recipient's prohibition on sex discrimination because this prohibition on sex discrimination is directly tied to the recipient's obligation under Title IX to operate its education program or activity free from sex discrimination. A determination that the respondent violated the recipient's prohibition would amount to a determination that sex discrimination occurred, which in turn would obligate the recipient under proposed § 106.44(a) to take prompt and effective action to end any sex discrimination that has occurred in its education program or activity, prevent its recurrence, and remedy its effects.

The Department would recognize in proposed § 106.6(g) that a parent, guardian, or other authorized legal representative may have a legal right to act on behalf of a respondent. This approach is consistent with current § 106.6(g), which states that the Title IX regulations must not be ''read in derogation of any legal right of parent or guardian'' to act on behalf of a respondent. As explained in the preamble to the 2020 amendments, although the student would be the respondent, in such situations involving a minor, ''the parent or guardian, must be permitted to exercise the rights granted to the party . . . whether such rights involve requesting supportive measures or participating in the process outlined in the recipient's grievance process.'' 85 FR 30453. The Department further explained in the preamble to the 2020 amendments, that ''the parent or guardian must be permitted to accompany the student to meetings, interviews, and hearings during a grievance process to exercise rights on behalf of the student, while the student's advisor of choice may be a different person from the parent or guardian.'' *Id.* Accordingly, under proposed § 106.6(g), the parent, guardian, or other authorized legal representative may have a legal right to act on a student respondent's behalf; however, the student would remain the respondent.

The Department also notes that, consistent with the current regulations, a third party may be a respondent to a complaint of sex discrimination, including sex-based harassment, under these proposed regulations. The Department highlighted examples of a recipient's response to complaints involving third-party complainants and respondents in the preamble to the 2020 amendments and explained that the ''regulations require a recipient to respond to sexual harassment whenever the recipient has notice of sexual harassment that occurred in the recipient's own education program or activity, regardless of whether the complainant or respondent is an enrolled student or an employee of the recipient.'' *Id.* at 30488.

Section 106.2 Definitions of ''Supportive Measures,'' ''Disciplinary Sanctions,'' and ''Remedies''

Current regulations: The Title IX regulations, at § 106.30, define ''supportive measures'' as non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or when no formal complaint has been filed. The regulations state that such measures are designed to restore or preserve equal access to the recipient's education program or activity, without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter the respondent from engaging in sexual harassment. The current regulations include a non-exhaustive list of certain types of measures that a recipient can provide as supportive measures. Current § 106.30 also requires a recipient to maintain as confidential any supportive measures it provides, except to the extent such confidentiality would impair the recipient's ability to provide the supportive measures. Finally, the current regulations state that the Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

The current regulations do not define ''disciplinary sanctions'' or ''remedies.'' The term ''remedies'' is used in current § 106.45(b)(i), which states that a recipient must treat ''the complainant and respondent equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent.'' The current regulations explain that remedies ''must be designed to restore or preserve equal access to the recipient's education program or activity'' and may include the same individualized services described in § 106.30 as supportive

measures. 34 CFR 106.45(b)(i). Finally, they provide that ''remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.'' *Id.*

Proposed regulations: The Department proposes to define two related, but distinct, terms—''disciplinary sanctions'' and ''remedies''—and to retain the current definition of ''supportive measures'' with some edits. The Department proposes adding definitions of ''disciplinary sanctions'' and ''remedies'' to provide clarity for recipients as to the meanings of these terms as they are used in the Department's Title IX regulations and to help ensure consistency in how disciplinary sanctions and remedies are utilized by recipients under Title IX.

The Department proposes retaining the current definition of ''supportive measures'' as non-disciplinary, non-punitive, individualized measures, offered as appropriate, as reasonably available, without unreasonably burdening a party, and without fee or charge to the complainant or respondent, with some clarifying amendments. In addition, the Department proposes moving the following provisions from the definition of ''supportive measures'' to other provisions in the proposed regulations: the range of supportive measures to proposed § 106.44(k)(1); and the Title IX Coordinator's obligation to offer and coordinate supportive measures to proposed § 106.44(f)(3). A recipient's obligation to maintain as confidential any supportive measures it provides would be moved to proposed § 106.44(g)(5) and modified to permit a recipient to provide information about supportive measures to persons other than the complainant or respondent as necessary to provide the measure, or to a party only if necessary to restore or preserve the other party's access to the recipient's education program or activity. Finally, the Department proposes revising the definition to clarify that supportive measures may be offered to restore or preserve that party's access to the recipient's education program or to provide support during the recipient's grievance procedures in § 106.45, and if applicable § 106.46, or during the informal resolution process in § 106.44(k). The Department would also clarify that supportive measures can include temporary measures that burden a respondent during the pendency of a grievance procedures, but only when such measures are imposed for non-punitive and non-disciplinary reasons and are designed to protect the safety of the complainant or the recipient's educational environment. And, as explained in greater detail in the discussion of proposed § 106.44(g), the Department proposes including additional provisions to guide the coordination of supportive measures, including the requirement that these temporarily burdensome measures may be imposed only if the respondent is given the opportunity to seek modification or reversal of them.

The Department proposes defining ''disciplinary sanctions'' as consequences imposed on a respondent following a determination that the respondent violated the recipient's prohibition on sex discrimination. As in the current regulations, the Department's proposed definition of ''disciplinary sanctions'' would recognize that a recipient must follow grievance procedures consistent with regulatory requirements before imposing disciplinary sanctions on a respondent. The proposed definition would encompass disciplinary sanctions applied when a recipient determines that the respondent has violated any aspect of the recipient's prohibition on sex discrimination after following grievance procedures under proposed § 106.45, and if applicable proposed § 106.46. Under the proposed regulations, disciplinary sanctions may be applied to a respondent who is a student, employee, or third party.

Finally, the Department proposes including a definition of ''remedies'' in § 106.2 to clarify that remedies are measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had equal access to the recipient's education program or activity limited or denied by sex discrimination. The proposed definition would also clarify that remedies are designed to restore or preserve access to the recipient's education program or activity after a recipient determines that sex discrimination occurred.

Reasons: The Department proposes these definitions to provide clarity and ensure that recipients are aware of their obligations under Title IX. All three definitions describe ways in which a recipient may provide effective protection against and response to sex discrimination. The Department emphasizes that a recipient must take into account the distinct timing, purpose, and considerations of supportive measures, disciplinary sanctions, and remedies before providing or imposing them, as their definitions make clear:

- Supportive measures are intended to preserve or restore a complainant's or respondent's access to the recipient's education program or activity and may be provided to the complainant or respondent, as appropriate, after the Title IX Coordinator has been notified of conduct that may constitute sex discrimination under Title IX;
- Disciplinary sanctions are consequences imposed on a respondent in response to a determination that a respondent violated the recipient's prohibition on sex discrimination and may be applied to a respondent only after a recipient has made this determination; and
- Remedies are intended to preserve or restore access to the recipient's education program or activity and may be provided to a complainant or other person after a recipient determines that sex discrimination occurred, including when a recipient engages in sex discrimination through its own action or inaction.

Supportive Measures. The Department proposes maintaining the existing definition of ''supportive measures'' with revisions to increase readability and clarity and to align this section with other modifications the Department proposes making to the regulations. The Department proposes retaining in the definition of ''supportive measures'' that such measures are non-disciplinary and non-punitive, but proposes using the term ''measures'' rather than using the term ''services'' that is in the current definition. The Department proposes making this change to avoid confusion that may be caused by the current regulations' use of both ''services'' and ''measures'' to describe supportive measures.

The Department also proposes that a recipient must offer supportive measures, as appropriate, to a complainant or respondent for any type of conduct that constitutes sex discrimination, including but not limited to sex-based harassment and retaliation. The Department proposes retaining the language that supportive measures are designed to restore or preserve a party's access to the recipient's education program or activity. At the same time, the Department proposes clarifying that a supportive measure that may burden a respondent during the pendency of a grievance procedure may be imposed as a temporary supportive measure, but only when such a supportive measure is imposed for non-punitive and non-disciplinary reasons and is designed to protect the safety of the complainant or the recipient's educational environment and, as the discussion of proposed § 106.44(g) clarifies, only if the respondent is given an opportunity to seek modification or reversal of such a

measure. As explained in greater detail in the discussion of proposed § 106.44(g), a recipient would also be permitted to impose supportive measures that burden a respondent even if the specific measure imposed is also available as a disciplinary sanction, but only if such a supportive measure is not imposed for punitive or disciplinary reasons and is intended to restore or preserve the complainant's access to the recipient's education program or activity. In light of the potential harm to a student respondent's education from unnecessary or inappropriate implementation of such temporarily burdensome supportive measures, however, a recipient would not be required to impose supportive measures that burden a respondent, but rather would be permitted to impose such measures if the recipient deems the measures appropriate to the circumstances of that case. When imposing supportive measures that burden a respondent, the recipient would be required to engage in a fact-specific inquiry to determine whether burdensome supportive measures are necessary as part of its grievance procedures under proposed § 106.45, and if applicable proposed § 106.46, and if so, which supportive measures would be the least restrictive of the respondent's access to the program or activity while still ensuring nondiscriminatory access for the complainant. As proposed, supportive measures that burden a respondent would terminate once the recipient has determined whether sex discrimination occurred at the conclusion of a grievance procedure. Because supportive measures that burden a respondent may be imposed only during the pendency of a recipient's grievance procedures, they would not be available during an informal resolution process under proposed § 106.44(k).

The Department also proposes adding to the existing definition of ''supportive measures'' that, in addition to the purposes set out in the current regulations and discussed above, supportive measures that do not burden the respondent may be necessary to provide a party with support through the recipient's grievance procedures in proposed § 106.45, and if applicable § 106.46, as well as through the informal resolution process in proposed § 106.44(k). This addition to the existing definition acknowledges that a party may need supportive measures in order to participate fully in and have equal access to a recipient's grievance procedures, whether formal or informal.

The Department proposes moving the list of examples of supportive measures from the definition of ''supportive measures'' to proposed § 106.44(g)(1), which would require a Title IX Coordinator, upon being notified of conduct that may constitute sex discrimination under Title IX, to offer supportive measures to complainants and, if appropriate, respondents. As explained in the discussion of that section, the list is intended to be illustrative and non-exhaustive. In addition, the Department proposes removing from the definition of ''supportive measures'' that a ''recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures'' and moving this clarification of a recipient's obligation to maintain the confidentiality of supportive measures that it provides, subject to limited exceptions, to proposed § 106.44(g)(5).

Finally, the Department proposes removing from the definition of ''supportive measures'' the requirement that the Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Instead, the Department proposes moving this requirement to proposed § 106.44(g)(6), which would state that a Title IX Coordinator would be responsible for offering and coordinating supportive measures.

Disciplinary Sanctions. The Department proposes adding a definition of ''disciplinary sanctions'' to § 106.2 to clarify what constitutes a disciplinary sanction and when imposition of a disciplinary sanction is appropriate.

The proposed definition of ''disciplinary sanctions'' explains that disciplinary sanctions are consequences imposed on a respondent for violating the recipient's prohibition on sex discrimination, but it does not specify the consequences a recipient can or must impose. The proposed definition of ''disciplinary sanctions'' would apply to all determinations that a respondent has violated the recipient's prohibition on sex discrimination. In contrast, the current regulations address disciplinary sanctions only in relation to sexual harassment, following a grievance process under § 106.45 in response to a formal complaint of sexual harassment. The proposed definition would accord with the Department's intent to enable full implementation of Title IX's purpose. Consistent with the current regulations, the proposed regulations would not permit a recipient to impose disciplinary sanctions on a respondent prior to the conclusion of the grievance procedures because imposing a non-temporary or punitive consequence before reaching a determination would be contrary to the requirement to have an adequate, reliable, and impartial investigation and resolution of complaints under proposed § 106.45(f) or the requirement to include a presumption that the respondent is not responsible for the alleged conduct until a determination whether sex discrimination occurred is made at the conclusion of the recipient's grievance procedures for complaints of sex discrimination under proposed § 106.45(b)(3).

Remedies. The Department's proposed regulations would provide a definition of ''remedies'' that ensures effective response to sex discrimination and consistency in available remedies for all forms of discrimination. The Department proposes this change following consideration of comments received as part of the June 2021 Title IX Public Hearing regarding the limited scope of remedies available under the current regulations. Stakeholders asked OCR to clarify the role of remedies in ensuring that students have access to a nondiscriminatory education program or activity following a determination that sex discrimination occurred or that the recipient's own action or inaction resulted in sex discrimination, including but not limited to sex-based harassment.

The Department's proposed definition would also ensure that remedies are available to restore and preserve access to the educational environment when any form of sex discrimination, not only sexual harassment, disrupts that educational environment. For example, following a determination that a teacher retaliated against a student who made a Title IX complaint by disciplining that student in violation of the recipient's prohibition on sex discrimination, that student may be eligible for remedies, such as changes to the student's transcript to remove the disciplinary notation, or a classroom change so that the student is no longer in that teacher's class.

Moreover, the Department recognizes that persons other than the complainant who are participating or attempting to participate in a recipient's education program or activity where sex discrimination occurred may also have their access to the education program or activity limited or denied as a result of that sex discrimination. For this reason, the Department proposes clarifying in the regulations that these individuals may be able to receive remedies. For example, if a high school coach engages

in sex-based harassment of a student-athlete in front of the student-athlete's teammates who then notify the school of the sex-based harassment, and the school determines that sex-based harassment occurred, it may be appropriate to provide remedies to these student-athletes who were also exposed to the sex-based harassment if their equal access to the education program or activity was denied or limited by, for example, the psychological impact of the harassment they witnessed. Remedies in the form of counseling or other supports may be appropriate for these students following the school's determination.

The proposed regulations also recognize that remedies may be appropriate when the recipient's own action or inaction in response to an allegation of sex discrimination resulted in a distinct Title IX violation. For example, if a student reported to the Dean of Students that another student sexually assaulted them on campus and the recipient failed to take the necessary action, the recipient's inaction would likely violate Title IX. *See, e.g., Davis,* 526 U.S. at 643; *Jackson,* 544 U.S. at 173–74. In this example, if the student, as a result of the recipient's failure to act after receiving the student's report, has to continue to attend classes with the respondent and drops out of these classes due to further sex-based harassment or peer retaliation, then the recipient would need to provide remedies to the student to restore or preserve their access to the recipient's education program or activity. These remedies could include, for example, counseling, tutoring, or additional time to complete an assignment to address limitations on the student's access to their education caused by the recipient's failure to meet the requirements of Title IX. In addition, if the recipient's initial steps to address the sex-based harassment were insufficient, then it would be required to take additional steps and provide additional remedies to the student to fulfill its obligation under proposed § 106.44. For example, if a recipient failed to take the steps required under proposed § 106.44 upon being notified that a student was sexually assaulted by another student on campus because of insufficient Title IX Coordinator training, it would need, at minimum, to revise its Title IX Coordinator training on the recipient's obligation to address sex discrimination and the Title IX Coordinator's responsibilities in coordinating the recipient's actions to comply with that obligation as a remedy for its own inaction and, in addition, would need to fully comply with its obligations under proposed § 106.44 to prevent the recurrence of such sex discrimination and remedy its effects.

Examples of possible measures a recipient may need to offer a student to remedy the effects of sex-based harassment, to remedy the additional harm caused by a recipient's action or inaction, or to restore or preserve a student's continued access to a recipient's education program or activity after a determination that sex-based harassment occurred could include: ensuring that a complainant can move safely between classes and while at school or on campus such as by providing a campus escort or allowing a student to park in the teacher's parking lot; making changes to class schedules and extracurricular activities to ensure the complainant and respondent are separated; making adjustments to student housing; providing services including medical support and counseling; providing academic resources and support; reviewing any disciplinary actions taken against the complainant to determine whether there is a causal connection between the sex-based harassment and the misconduct; providing reimbursement for professional counseling services; making tuition adjustments; and any other remedies it deems appropriate.

Remedies provided following a determination that sex discrimination occurred may include measures that were provided as supportive measures during the pendency of the investigation. A temporary restriction on contact or removal from an activity that was imposed as a supportive measure thus may be imposed as a remedy after a finding that sex discrimination occurred if it would be necessary to preserve or restore the complainant's access. Because the remedy would be instituted following a determination that sex discrimination occurred, its function would be to remedy past discrimination rather than provide a temporary protection of the complainant's access while the grievance procedures are underway.

Some actions taken by a recipient could also serve as both a remedy and a disciplinary sanction, *e.g.,* the suspension of a respondent who engaged in sex discrimination may aid in restoring a complainant's access to the recipient's education program or activity while also serving as a disciplinary consequence for the respondent's violation of the recipient's policy.

Neither remedies nor disciplinary sanctions would be available under informal resolution in proposed § 106.44(k) because there would be no final determination that sex discrimination occurred in the informal resolution process. As described in greater detail in the discussion of proposed § 106.44(k), the respondent may agree to terms of a voluntary agreement that may otherwise constitute remedies or disciplinary sanctions had the recipient determined that sex discrimination occurred under the recipient's grievance procedures.

Section 106.30(a) Removal of Reference to a Definition of ''consent''

Current regulations: Current § 106.30(a) states that the Assistant Secretary will not require recipients to adopt a particular definition of ''consent'' with respect to sexual assault, as referenced in this section.

Proposed regulations: The Department proposes removing this provision from the definitions section.

Reasons: The Department proposes removing § 106.30 as a whole and proposes moving some provisions from that section to other provisions in the proposed regulations. The Department proposes removing the current provision addressing consent from the regulations altogether because it is unnecessary and confusing to include language in the definitions section stating that the Department declines to define a certain term.

The Department's position remains, as stated in the preamble to the 2020 amendments, that ''the definition of what constitutes consent for purposes of sexual assault within a recipient's educational community is a matter best left to the discretion of recipients, many of whom are under State law requirements to apply particular definitions of consent for purposes of campus sexual misconduct policies.'' 85 FR 30124. For these reasons, in the 2020 amendments, the Department ''decline[d] to impose a federalized definition of consent for Title IX purposes'' despite requests by some stakeholders to do so. *Id.* at 30125. In response to those requests, the Department instead included a provision for consent in the definitions section stating that the Department would not require recipients to adopt a particular definition of consent.

D. Administrative Requirements

Section 106.8 Designation of Coordinator, Adoption and Publication of Nondiscrimination Policy and Grievance Procedures, Notice of Nondiscrimination, Training, and Recordkeeping

Current regulations: The section heading is ''Designation of coordinator, dissemination of policy, and adoption of grievance procedures.''

Proposed regulations: The Department proposes changing this section heading to ''Designation of coordinator, adoption and publication of nondiscrimination policy and grievance procedures, notice of nondiscrimination, training, and recordkeeping.''

Reasons: The proposed section heading would more accurately describe the content of the section.

Section 106.8(a) Designation of a Title IX Coordinator

Current regulations: Section 106.8(a) requires each recipient to designate at least one employee as the Title IX Coordinator to coordinate its efforts to comply with Title IX's statutory and regulatory requirements. Current § 106.8(a) requires a recipient to notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, of the name or title, office address, email address, and telephone number of the employee or employees designated as the Title IX Coordinator. Current § 106.8(a) also states that any person may report sex discrimination, including sexual harassment, to the Title IX Coordinator using a variety of means at any time.

Proposed regulations: The Department proposes adding two new headings to the section for clarity: ''Title IX Coordinator'' and ''Delegation to designees.'' Proposed § 106.8(a)(1) would maintain the requirement that a recipient must designate and authorize at least one employee as the ''Title IX Coordinator'' to coordinate its efforts to comply with the recipient's responsibilities under the Department's Title IX regulations. In proposed § 106.8(a)(2), the Department proposes adding that, as appropriate, the Title IX Coordinator may assign one or more designees to carry out some of the recipient's responsibilities, but that one Title IX Coordinator must retain ultimate oversight over those responsibilities.

The Department proposes removing language from the existing provision that requires a recipient to provide the contact information for its Title IX Coordinator and that includes specific instructions for how to report sex discrimination to the Title IX Coordinator. Instead, the Department proposes moving the requirement that a recipient must provide notice of nondiscrimination, which must include the contact information for the Title IX Coordinator, how to report information that may constitute sex discrimination under Title IX, how to make a complaint of sex discrimination, and how to locate the recipient's grievance procedures, to proposed § 106.8(c).

Reasons: The Department proposes revisions to § 106.8(a) and (c), to afford greater clarity about a recipient's core obligation to designate a Title IX Coordinator (proposed § 106.8(a)), adopt and publish a nondiscrimination policy and grievance procedures for complaints of sex discrimination and any action prohibited by the regulations (proposed § 106.8(b)), and provide notice of the contact information for its Title IX Coordinator, as well as notice of its nondiscrimination policy and grievance procedures to individuals entitled to receive notification via specific means of publication (proposed § 106.8(c)). As part of this restructuring, the Department proposes limiting § 106.8(a)(1) to the requirement to designate a Title IX Coordinator. The Department proposes moving the requirement that a recipient notify certain people of the contact information for its Title IX Coordinator to the requirement regarding providing a notice of nondiscrimination, which would also include notice of a recipient's nondiscrimination policy and grievance procedures, as described in proposed § 106.8(c)(1)(i) through (v). The Department anticipates that consolidating all of the required contents of the notice of nondiscrimination into proposed § 106.8(c)(1) will make it easier for recipients to understand how to comply with these requirements.

Designees. The Department proposes revisions to § 106.8(a) to expressly permit a recipient to assign one or more designees to carry out some of the Title IX Coordinator's responsibilities, as long as one individual, referred to as the ''Title IX Coordinator,'' retains ultimate authority to coordinate the recipient's compliance with Title IX and oversight over those designated responsibilities. This approach would enable a recipient that enrolls large numbers of students, employs large numbers of employees, provides services in multiple locations, or engages in a large variety of activities to carry out its various Title IX responsibilities effectively. For example, in the elementary school and secondary school setting, a school district could designate the Title IX Coordinator and authorize that person to appoint or oversee building-level coordinators for each school building within the district. These building-level coordinators could carry out some of the Title IX Coordinator's duties, such as providing training or ensuring that grievance procedures are administered correctly in that school building. Alternatively, a Title IX Coordinator could assign a designee to oversee several buildings, or a unit, such as all elementary schools in a district or a medical school within a university. Similarly, a Title IX Coordinator could have designees that oversee compliance with different aspects of the recipient's Title IX obligations, such as those related to athletics, pregnant and parenting students, financial assistance, or sex-based harassment. In each example, the Title IX Coordinator, not one particular designee or group of designees, would retain ultimate authority to coordinate the recipient's compliance with Title IX and oversight over each of the designees' responsibilities and over the recipient's overall compliance with Title IX.

By having one Title IX Coordinator oversee designees, the Title IX Coordinator would ensure consistent Title IX compliance across the recipient's education program or activity. This structure may also help the Title IX Coordinator identify trends across multiple programs or activities of the recipient and coordinate training or educational programming responsive to those trends. For example, if students at three different schools report sex-based harassment on the school bus, the Title IX Coordinator, who is aware of each discrete incident, may realize that these incidents are not isolated, but rather, part of a larger trend indicating a need for better training, supervision, or staffing on school buses across the district.

In addition, this oversight structure is consistent with the view the Department expressed in the preamble to the 2020 amendments, which stressed that a recipient must ensure that a Title IX Coordinator is not ''designated 'in name only' '' and instead is fully authorized to coordinate a recipient's efforts to comply with Title IX. 85 FR 30464. A recipient must ensure that the Title IX Coordinator is effective in this role by ensuring that the Title IX Coordinator has the appropriate authority, support, and resources to coordinate the

recipient's Title IX compliance efforts. In light of this proposed revision to § 106.8(a), every reference to the ''Title IX Coordinator'' in this preamble, other than in the discussion of proposed § 106.8(a)(1) and (2), should be understood to include the Title IX Coordinator and any designees.

Notification requirements. The Department proposes deleting the specific instructions for how to report sex discrimination to the Title IX Coordinator from current § 106.8(a). The Department added the instructions as part of the 2020 amendments; however, as explained in greater detail in the discussion of the notice of nondiscrimination in proposed § 106.8(c), the Department proposes adding to proposed § 106.8(c)(1)(v) a requirement that a recipient include in the content of its notice of nondiscrimination how to report information about conduct that may constitute sex discrimination under Title IX, how to make a complaint of sex discrimination under the regulations, and how to locate the recipient's grievance procedures as described in § 106.45, and if applicable § 106.46. In addition, the Department proposes including in proposed § 106.44(c) that a recipient must impose specific notification requirements upon various employees when the employee has information about conduct that may constitute sex discrimination under Title IX. These notification requirements are explained in greater detail in the discussion of proposed § 106.44(c).

Section 106.8(b) Adoption and Publication of Nondiscrimination Policy and Grievance Procedures

Current regulations: Section 106.8(b)(1) requires a recipient to notify persons entitled to notification under current § 106.8(a) that the recipient does not discriminate on the basis of sex in its education program or activity and that it is required by Title IX not to discriminate in that manner. Current § 106.8(b)(2) requires each recipient to prominently display contact information for its Title IX Coordinator, as well as its Title IX nondiscrimination notice, on its website and in each handbook or catalog. Current § 106.8(c) requires a recipient to adopt and publish grievance procedures for the prompt and equitable resolution of student and employee complaints alleging sex discrimination and a grievance process for formal complaints of sexual harassment under current § 106.45.

Proposed regulations: The Department proposes consolidating the requirements to adopt and publish a nondiscrimination policy and grievance procedures into proposed § 106.8(b). The consolidation would add two headings to clarify that a recipient must adopt and publish a nondiscrimination policy under paragraph (b)(1) and grievance procedures for the prompt and equitable resolution of any action that would be prohibited by Title IX or the regulations, under paragraph (b)(2). The Department proposes adding an explicit requirement in proposed § 106.8(b)(1) that a recipient must adopt and publish a policy stating it does not discriminate based on sex and prohibits sex discrimination in any education program or activity that it operates. The Department also proposes moving the requirement that a recipient adopt and publish grievance procedures consistent with the requirements of § 106.45, and if applicable § 106.46, that provide for the prompt and equitable resolution of complaints alleging any action that would be prohibited by the regulations from current § 106.8(c) to proposed § 106.8(b)(2).

As part of its proposed restructuring of § 106.8(a) through (c), the Department proposes moving the specific requirements in current § 106.8(b) regarding the persons entitled to receive notification of the recipient's notice of nondiscrimination as well as the publications in which a recipient must include its notice of nondiscrimination to proposed § 106.8(c) and 106.8(c)(2), respectively.

Reasons: The Department proposes changes to § 106.8(b) to simplify and clarify a recipient's obligations to adopt and publish a nondiscrimination policy and Title IX grievance procedures.

Adoption and publication of nondiscrimination policy: Although the Department has long required a recipient to notify certain individuals of its nondiscrimination policy, the current Title IX regulations do not make explicit that a recipient must adopt such a policy. The proposed addition to § 106.8(b)(1) provides this clarification. The process for adoption would vary by recipient and jurisdiction. For example, it could include a vote by a board of education for a school district or by a governing board for a postsecondary institution or adoption by leadership within the school district or postsecondary institution. As discussed in the following section regarding proposed § 106.8(c), although the Department proposes clarifying the requirements for publishing a ''notice of nondiscrimination''—which would include information on how persons can locate the recipient's nondiscrimination policy and grievance procedures and specific requirements on where that notice must be published—the Department does not propose specific requirements for how a recipient must publish its nondiscrimination policy. A recipient may choose to include its nondiscrimination policy in full on its website or in printed publications such as a handbook or catalog. In addition, a recipient may choose to print its nondiscrimination policy and make it available in a specific, designated office such as a guidance counselor's office, a Title IX Coordinator's office, or a Dean of Students office.

Adoption and publication of grievance procedures. The Department proposes moving the requirement that a recipient must adopt grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX and the regulations from current § 106.8(c) to proposed § 106.8(b)(2). The Department further proposes revisions to proposed § 106.8(b)(2) to clarify that a recipient's grievance procedures must be published and must provide for the resolution of complaints made by a student, employee, third party participating or attempting to participate in the recipient's education program or activity, or the Title IX Coordinator alleging any action that would violate Title IX or its regulations. The Department proposes adding § 106.8(b)(2) to clarify that a recipient must adopt and publish grievance procedures under Title IX to address all forms of sex discrimination, including sex-based harassment, consistent with the requirements of § 106.45, and if applicable § 106.46.

The Department's proposed revisions would apply proposed § 106.45 as the framework for all complaints of sex discrimination, including sex-based harassment, for all recipients. The Department proposes additional requirements in proposed § 106.46 for grievance procedures that would apply only to complaints of sex-based harassment at postsecondary institutions in which at least one party is a student. Rather than referring to the grievance procedures for complaints of sexual harassment as a grievance ''process,'' the Department proposes making a non-substantive change to refer to the procedures required under both proposed §§ 106.45 and 106.46 as grievance ''procedures,'' consistent with the language used in proposed §§ 106.45 and 106.46.

As with proposed § 106.8(b)(1), under proposed § 106.8(b)(2), a recipient may adopt the required grievance procedures by following its typical policy approval

process approval. For some recipients, grievance procedures that comply with the requirements of proposed § 106.45, and if applicable proposed § 106.46, will be approved by a vote of the recipient's board of education or governing board. For others, a recipient's administrative staff will provide approval. Also, similar to proposed § 106.8(b)(1), although the Department proposes clarifying the requirements for a recipient to provide and publish a notice of nondiscrimination under proposed § 106.8(c), the Department would further leave to a recipient's discretion where and how to publish its grievance procedures.

Section 106.8(c) Notice of Nondiscrimination

Current regulations: Section 106.8(a) requires a recipient to notify applicants for admission and employment, students, parents or legal guardians of elementary school and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator. Current § 106.8(b) requires a recipient to notify the same persons listed in paragraph (a) that it does not discriminate on the basis of sex in the education program or activity that it operates, that it is required by Title IX and the regulations not to discriminate in such a manner, that the requirement not to discriminate in the education program or activity extends to admission and employment, and that inquiries about the application of Title IX and the regulations to such recipient may be referred to the recipient's Title IX Coordinator, to the Assistant Secretary, or both. Current § 106.8(b)(2) requires each recipient to prominently display contact information for its Title IX Coordinator, as well as its Title IX nondiscrimination notice, on its website and in each handbook or catalog. Current § 106.8(c) requires a recipient to notify the same persons listed in paragraph (a) of its grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond.

Proposed regulations: The Department proposes changing the heading of proposed § 106.8(c) from ''Adoption of grievance procedures'' to ''Notice of nondiscrimination.'' The Department also proposes adding two headings—''Contents of notice of nondiscrimination'' and ''Publication of notice of nondiscrimination''—to consolidate and clarify the persons to whom this information must be provided (proposed § 106.8(c)), the specific content a recipient would be required to include in its notice of nondiscrimination, (proposed § 106.8(c)(1)), and where and how a recipient must publicize its notice of nondiscrimination (proposed § 106.8(c)(2)).

Proposed § 106.8(c) would require a recipient to provide a notice of nondiscrimination to the same individuals to whom notice must be provided under current § 106.8(a): students; parents, guardians or other authorized legal representatives of elementary school and secondary school students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the recipient. The Department proposes a minor change to include ''other authorized legal representatives of elementary school and secondary school students'' to the group of individuals entitled to receive the notice of nondiscrimination. Proposed § 106.8(c)(1) would further require a recipient to include the following specific information in its notice of nondiscrimination:

- A statement that the recipient does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and its regulations, including in admission (unless subpart C of part 106 does not apply) and employment (proposed § 106.8(c)(1)(i));
- A statement that inquiries about the application of Title IX and the regulations to the recipient may be referred to the recipient's Title IX Coordinator, to the Office for Civil Rights, or to both (proposed § 106.8(c)(1)(ii));
- The name or title, office address, email address, and telephone number of the recipient's Title IX Coordinator (proposed § 106.8(c)(1)(iii));
- How to locate the recipient's nondiscrimination policy under proposed § 106.8(b)(1) (proposed § 106.8(c)(1)(iv)); and
- How to report information about conduct that may constitute sex discrimination under Title IX, how to make a complaint of sex discrimination under the regulations, and how to locate the recipient's grievance procedures under proposed § 106.8(b)(2), § 106.45, and if applicable § 106.46 (proposed § 106.8(c)(1)(v)).

In proposed § 106.8(c)(2)(i), the Department would provide that a recipient must prominently include all elements of its notice of nondiscrimination set out in paragraphs (c)(i) through (v) in various materials consistent with the existing provision, as well as in each announcement, bulletin, and application form that it makes available to persons entitled to notification under proposed § 106.8(c) or that are used for recruiting students and employees. In proposed § 106.8(c)(2)(ii), the Department proposes adding a provision that, if necessary due to the format or size of any publication referenced in § 106.8(c)(2)(i), the recipient may instead comply with § 106.8(c)(2) by including in those publications a statement that the recipient prohibits sex discrimination in any education program or activity that it operates and that individuals may report concerns or questions to the Title IX Coordinator, and providing the location of the notice on the recipient's website.

Reasons: Addition of subparagraphs. For clarity, the Department proposes revising the heading of this provision, and adding proposed § 106.8(c)(1) and 106.8(c)(2). This would divide the proposed regulations into separate paragraphs addressing the recipients of the notice (proposed § 106.8(c)), the ''Contents of notice'' (proposed § 106.8(c)(1)) and the ''Publication of notice'' (proposed § 106.8(c)(2)).

Persons entitled to notice of nondiscrimination. The Department proposes maintaining the same group of persons entitled to receive notice under current § 106.8(a), with the addition of ''other authorized legal representatives of elementary school and secondary school students'' to encompass persons who are not parents or guardians, but otherwise are authorized to act on behalf of students. The Department also proposes revising ''legal guardian'' to ''guardian'' for consistency with proposed § 106.6(g), which would reference the rights of ''a parent, guardian, or other authorized legal representative.''

Contents of notice of nondiscrimination. The Department proposes maintaining some of the notice requirements in the current regulations and adding other requirements in proposed § 106.8(c)(1)(i) through (v) to ensure that a recipient provides adequate notice of nondiscrimination to all persons entitled to receive notice of this information. The current regulations require a recipient to notify the persons entitled to receive notification under § 106.8(a) of the following: (1) the contact information

for the recipient's Title IX Coordinator; (2) the recipient is required by Title IX and the regulations not to discriminate on the basis of sex; (3) the recipient is prohibited from engaging in sex discrimination in admission and employment; (4) persons may contact the recipient or the Assistant Secretary with inquiries about Title IX or the application of the regulations; and (5) the recipient's grievance procedures and how to make report or file a complaint of sex discrimination, including sexual harassment. Although a recipient is required under current § 106.8(a) through (c) to provide notice of all of this information, a recipient is not required to include this information in a single policy or document. Therefore, the Department proposes requiring recipients to streamline all of these requirements in its notice of nondiscrimination to increase the likelihood that persons entitled to notification of this information are aware of their rights under Title IX and the regulations.

The Department proposes moving to proposed § 106.8(c)(1)(i) the requirement in current § 106.8(b) that a recipient include in its notice of nondiscrimination a statement that the recipient does not discriminate on the basis of sex in its education program or activity, that it is required by Title IX not to discriminate in such a manner, and that it also prohibits sex discrimination in admission (unless subpart C of part 106 does not apply) and employment. The Department also proposes incorporating with slight modifications the requirement from current § 106.8(b)(1) into proposed § 106.8(c)(1)(ii) that a recipient notify the persons entitled to receive a notification under § 106.8(c) that inquiries about the application of Title IX and the regulations may be made to the recipient's Title IX Coordinator, to the Office for Civil Rights, or to both. Current § 106.8(b)(1) refers to the ''Assistant Secretary.'' The Department proposes changing this reference to ''the Office for Civil Rights'' to afford greater clarity for recipients and all individuals entitled to receive such notification that they may contact OCR—in addition to or instead of contacting the recipient—with any inquiries about Title IX or the regulations.

The Department proposes moving the requirement that a recipient provide notice of the name or title, office address, email address, and telephone number of its Title IX Coordinator from current § 106.8(a) to proposed § 106.8(c)(1)(iii). The proposed regulations would not prohibit a recipient from also providing the contact information of designees. The Department's current view is that it will be less confusing for recipients and all persons entitled to receive notice of this information if it is included in a single notice of nondiscrimination.

In addition, the Department proposes requiring a recipient to include in its notice of nondiscrimination and grievance procedures information such as a web address, a direct link, or an explanation of how a hard copy of the recipient's nondiscrimination policy and grievance procedures may be obtained. By including this information, the Department would ensure that all persons entitled to notice of this information know how they can locate a recipient's nondiscrimination policy and grievance procedures on the recipient's website or how they may obtain a hard copy of the nondiscrimination policy and grievance procedures.

Finally, the Department proposes requiring a recipient to explain in its notice of nondiscrimination how to report information about conduct that may constitute sex discrimination under Title IX, how to make a complaint of sex discrimination under the regulations, and how to locate the recipient's grievance procedures under § 106.45, and if applicable § 106.46. The Department recognizes that some individuals may wish to report conduct that may constitute sex discrimination under Title IX without making a complaint that would initiate a recipient's grievance procedures. To afford the opportunity for this type of reporting, the Department proposes requiring a recipient to explain in its notice of nondiscrimination that reporting such conduct to a recipient's Title IX Coordinator or to specific employees as described in proposed § 106.44(c), would obligate a recipient to require its Title IX Coordinator to take further action consistent with proposed § 106.44(f).

To ensure that individuals who wish to make a complaint that initiates a recipient's grievance procedures know how to do so, the Department proposes that a recipient include in its notice of nondiscrimination clear information about sex discrimination and how to make a complaint about such discrimination, including how to locate a recipient's grievance procedures so that a potential complainant understands how the process will work if initiated. As the Department explained in the preamble to the 2020 amendments, it is important to ensure that ''people affected by a recipient's grievance procedures'' know about the grievance procedures and how to initiate them. 85 FR 30472–73. The Department further emphasizes that grievance procedures for investigating and resolving sex discrimination complaints cannot be prompt or equitable unless the parties whose rights are addressed through the grievance procedures have equitable access to them. At a minimum, this means that the parties must know that a recipient's grievance procedures exist, how they work, and how to make a complaint. Therefore, a recipient must ensure that its grievance procedures are widely disseminated and written in clear, accessible, easily understood language that is tailored to the age and background of those impacted by the grievance procedures.

Although proposed § 106.8(c)(1)(v) is similar in substance to current § 106.8(c), which requires a recipient to provide persons entitled to a notification under § 106.8(a) notice of the recipient's grievance procedures including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond, the Department proposes changes consistent with the rest of its proposed regulations. Specifically, proposed § 106.8(c)(1)(v) would reflect the removal of the formal complaint requirement and instead specify that a recipient provide notice of its grievance procedures under proposed §§ 106.8(b)(2), 106.45, and if applicable 106.46, to persons entitled to a notification under § 106.8(c), and that notice include how to report information about conduct that may constitute sex discrimination under Title IX or make a complaint of sex discrimination. The Department also proposes eliminating the requirement that the notice state how the recipient will respond because it is redundant. Persons entitled to notice would already be informed of the recipient's grievance procedures under proposed §§ 106.8(b)(2), 106.45, and if applicable 106.46, which would explain the recipient's process for responding to complaints.

Publication of notice of nondiscrimination. The Department proposes clarifying in § 106.8(c)(2) that a recipient must prominently include all elements of its notice of nondiscrimination set out in proposed § 106.8(c)(1)(i) through (v) in its notice. The Department proposes further clarifying that the types of documents used or distributed by a recipient that are required to include the information set out in proposed § 106.8(c)(1) include each announcement, bulletin, and application form that the recipient

makes available to persons entitled to notification under proposed § 106.8(c) or otherwise uses for recruiting students or employees. As part of the 2020 amendments, the Department removed the previous requirement to include Title IX Coordinator and policy information in announcements, bulletins, and application forms that the recipient made available to specific persons identified in the regulation or otherwise used to recruit students or employees, and referred only to the recipient's website, if any, and handbooks and catalogs. Upon further consideration and reweighing the facts and circumstances, the Department currently understands that it is important that recruitment materials are included in the regulations to ensure that potential applicants are aware that the recipient does not discriminate, how to locate a recipient's nondiscrimination policy and the Title IX Coordinator's contact information when deciding whether to apply to or attend a recipient's education program or activity. The Department also now believes that restoring the requirement to include this information in each announcement, bulletin, and application form used generally or in connection with recruitment would increase awareness regarding the Title IX Coordinator and policy information by reaching additional individuals at various points throughout the year. In addition, providing this information in recruitment materials would assist any potential applicants in understanding and locating the recipient's nondiscrimination policy and grievance procedures and in providing a point of contact within the recipient's organization if needed regarding an experience of sex discrimination during the recipient's recruitment process.

In light of the different types of materials a recipient may use in connection with recruitment (such as pamphlets, flyers, or postcards), and the fact that some of these are space-limited, the Department proposes minimizing the burden on a recipient by allowing an option for the recipient to comply with respect to these publications by providing a website reference to where the notice of nondiscrimination is found under proposed § 106.8(c)(2)(ii). This option would not apply to materials on websites and, in the vast majority of cases, would not apply to printed publications such as handbooks or catalogs, since those would have sufficient space to include at least one single and complete reference to the notice of nondiscrimination in at least one location on the website or in the handbook or catalog.

Section 106.8(d) Training

Current regulations: Section 106.45(b)(1)(iii) addresses a recipient's responsibility to provide training in connection with its obligation to respond to sexual harassment. Specifically, current § 106.45(b)(1)(iii) requires a recipient to ensure that its Title IX Coordinator, investigators, decisionmakers, and any person who facilitates an informal resolution process receives training on the definition of ''sexual harassment'' in current § 106.30, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. It also requires a recipient to ensure that decisionmakers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. Finally, current § 106.45(b)(1)(iii) requires a recipient to ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Under the current regulations, training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

Proposed regulations: The Department proposes § 106.8(d) as a new section to consolidate the recipient's training requirements under Title IX. Specifically, the recipient must provide training as follows, ensuring that training does not rely on sex stereotypes and that individuals receive training related to their responsibilities.

Proposed § 106.8(d)(1) would require that all employees be trained on the recipient's obligation to address sex discrimination in its education program or activity, the scope of conduct that constitutes sex discrimination, including the proposed definition of ''sex-based harassment,'' and all applicable notification and information requirements under proposed §§ 106.40(b)(2) and 106.44.

Proposed § 106.8(d)(2) would require investigators, decisionmakers, and other persons who are responsible for implementing the recipient's grievance procedures or have the authority to modify or terminate supportive measures under proposed § 106.44(g)(4) to be trained, to the extent related to their responsibilities, on each of the following:

- The topics listed in proposed § 106.8(d)(1);
- The recipient's obligations under proposed § 106.44;
- The recipient's grievance procedures under proposed § 106.45, and if applicable proposed § 106.46;
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and
- The meaning and application of the term ''relevant,'' in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance under proposed § 106.45, and if applicable proposed § 106.46.

Proposed § 106.8(d)(3) would require facilitators of an informal resolution process as described in proposed § 106.44(k) to be trained on the topics listed in proposed § 106.8(d)(1), the rules and practices associated with the recipient's informal resolution process, and on how to serve impartially, including by avoiding conflicts of interest and bias.

Proposed § 106.8(d)(4) would require the Title IX Coordinator and any designees to be trained on:

- All of the topics listed in proposed § 106.8(d)(1) through (3);
- Their specific responsibilities under §§ 106.8(a), 106.40(b)(3), 106.44(f), and 106.44(g);
- The recipient's recordkeeping system and the requirements of § 106.8(f); and
- Any other training necessary to coordinate the recipient's compliance with Title IX.

Reasons: The Department has reviewed the training requirements in the current regulations and proposes that, to best fulfill Title IX's nondiscrimination mandate, appropriate staff training related to Title IX must cover more than the grievance procedures for sexual harassment. Many of the requirements of current § 106.45(b)(1)(iii) are included in proposed § 106.8(d), including the requirement that trainings not rely on sex stereotypes. The Department proposes adding § 106.8(d) to make clear that employees must receive training on a variety of aspects of Title IX that are relevant and critical to their specific roles. The proposed provision combines all proposed staff training requirements for easy accessibility and lists requirements according to employees' particular responsibilities. This would help a recipient ensure it is

appropriately training staff for each position.

Proposed § 106.8(d)(1) would first specify training requirements for all employees and would cover a recipient's confidential employees, non-confidential employees, and student-employees. This all-employee training requirement would serve an important purpose of ensuring that those most likely to interact with students in their day-to-day work (such as teachers, professors, and student-facing staff) as well as with other employees have the training necessary to understand their role in ensuring the recipient's compliance with its Title IX obligations. This would include the scope of conduct that constitutes sex discrimination, including the definition of ''sex-based harassment,'' how to respond consistent with proposed § 106.40(b)(2) to information about a student's pregnancy or related conditions, and how to respond consistent with proposed § 106.44 to information about conduct that may constitute sex discrimination under Title IX.

Proposed § 106.8(d)(2) would require investigators, decisionmakers, and other persons who are responsible for implementing the recipient's grievance procedures or have the authority to modify or terminate supportive measures in proposed § 106.44(g)(4) to be trained on certain topics, to the extent related to their responsibilities. The group covered by this training requirement would be broader than current § 106.45(b)(iii) in that it includes persons who are not investigators, decisionmakers, or coordinators, but are responsible for implementing the recipient's grievance procedures or have the authority to modify or terminate supportive measures. This proposed clarification is meant to ensure that all persons who are involved in the investigation and resolution of a Title IX complaint are properly trained. The Department proposes moving the training requirements for facilitators of informal resolutions to a separate section to better reflect the unique responsibilities of that role.

Proposed § 106.8(d)(2) would require investigators, decisionmakers, and other persons who are responsible for implementing the recipient's grievance procedures or have the authority to modify or terminate supportive measures under proposed § 106.44(g)(4) to be trained on many of the same topics as are required in current § 106.45(b)(iii), including the definition of prohibited ''sex-based harassment,'' the recipient's grievance procedures, how to serve impartially, and how to assess the relevance of questions and evidence. Proposed § 106.8(d)(2) would also add additional topics, including the core elements included in training for all employees under proposed § 106.8(d)(1) and the recipient's obligations under proposed § 106.44. It would also apply the existing training requirement of § 106.45(b)(iii) on issues of relevance more generally because relevancy considerations are not limited to an investigative report and arise throughout an investigation. The Department also proposes that this training would include training on the types of questions and evidence that that are impermissible regardless of relevance. The Department believes these topics would be important for those persons who are responsible for implementing the recipient's grievance procedures or have the authority to modify or terminate supportive measures to understand their responsibilities as part of the recipient's Title IX compliance efforts.

The Department also proposes removing certain named topics from current § 106.45(b)(1)(iii). The Department has not proposed training on ''the scope of the recipient's education program or activity'' as an express, separate topic because this should be covered by the obligation to provide training on the recipient's obligation to address sex discrimination in its education program or activity in proposed § 106.8(d)(1). Similarly, the specific requirement in current § 106.45(b)(iii) to provide training on ''how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes'' would be covered by the proposed requirement in proposed § 106.8(d)(2) to provide training on ''the recipient's obligations under § 106.44'' and ''the recipient's grievance procedures as described in § 106.45, and if applicable § 106.46.''

The current regulations, at § 106.45(b)(1)(iii), also require training on any technology to be used at a live hearing. The proposed regulations would permit the use of technology to conduct live hearings with the parties in separate locations. Unlike the current regulations, the Department proposes removing the requirement that the decisionmaker personally receive technology training; however, a recipient would be responsible for ensuring that technology used during any live hearing enables the decisionmaker and parties to simultaneously see and hear the party or witness while that person is speaking or communicating in another format. Accordingly, the proposed regulations would require that the technology operate effectively as required but not that the decisionmaker serve as the operator of the technology.

Proposed § 106.8(d)(3) would set special training requirements for facilitators of an informal resolution process under proposed § 106.44(k), including the core elements included in training for all employees under proposed § 106.8(d)(1), as well as training on the rules and practices associated with the recipient's informal resolution process and on how to serve impartially, including by avoiding conflicts of interest and bias. Proposed § 106.8(d) would not require facilitators of informal resolution to be trained on the recipient's grievance procedures or on prejudgment of the facts at issue because a facilitator is not responsible for implementing the recipient's grievance procedures and is not engaged in factfinding, so training on those topics would not be appropriate for a facilitator of an informal resolution process in the way it would be for a decisionmaker or investigator.

Lastly, proposed § 106.8(d)(4) would require the Title IX Coordinator and any designees to be trained on all topics required under proposed § 106.8(d)(1) through (3), as well as their specific responsibilities under proposed §§ 106.8(a), 106.40(b)(3), 106.44(f), and 106.44(g), the recipient's recordkeeping system and the requirements of proposed § 106.8(f), and any other training necessary to coordinate the recipient's compliance with Title IX. Because of the central role of the Title IX Coordinator under the current and proposed regulations, training of the Title IX Coordinator is critical to a recipient's effective compliance with Title IX. The Department proposes the broadest training requirement for the Title IX Coordinator because the person in that role should understand all aspects of the recipient's Title IX compliance program, including their own roles and responsibilities and the roles and responsibilities of all other employees.

Section 106.8(e) Students With Disabilities

Current regulations: None.

Proposed regulations: The Department proposes adding a new paragraph that addresses the potential intersection of Federal disability law with Title IX in the elementary school, secondary school, and postsecondary institution contexts. Proposed § 106.8(e) would provide clarification regarding the alignment of Title IX compliance with the requirements of the Individuals

with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) throughout the recipient's implementation of grievance procedures as discussed in § 106.45, and if applicable § 106.46. The Department proposes requiring that if a complainant or respondent is an elementary or secondary student with a disability, the Title IX Coordinator must consult with that student's Individualized Education Program (IEP) team or group of persons knowledgeable about the student under Section 504 (Section 504 team). Further, the Department proposes adding that for a postsecondary student with a disability, the Title IX Coordinator may consult, as appropriate, with the individual or office that the recipient has designated to provide support to students with disabilities.

Reasons: Students with disabilities experience sex-based harassment in significant numbers, with certain populations of students with disabilities at higher risk, as the Department has recognized previously, including in the preamble to the 2020 amendments. 85 FR 30079. For these students, supportive measures that address the harassment's effects in relation to a student's disability may require tailoring in ways that may not be obvious to a Title IX Coordinator. In addition, in cases in which students with disabilities are respondents, care must be taken that any supportive measures are adopted with awareness of how they might impact the students' equal access to the recipient's education program or activity. Similarly, the rights of students with disabilities under the Federal laws cited in the proposed provision may preclude or require tailoring of otherwise appropriate supportive measures or emergency removals, or, for students found responsible for sex-based harassment, disciplinary sanctions. To help elementary school and secondary school recipients and their Title IX Coordinators comply with the proposed regulations and not interfere with rights of students with disabilities under other Federal laws, the Department proposes that the regulations make clear the Title IX Coordinator has the responsibility to consult with the IEP team and Section 504 team who are already charged by Federal law with making individualized decisions about students with disabilities.

In the elementary school and secondary school context, the IDEA and Section 504 ensure protections for students with disabilities. There are distinctions among the rights granted and procedures required by each statute that are crucial in other contexts. For purposes of the proposed regulations, however, it is only necessary to note that the implementing regulations for the IDEA and Section 504 require that a group of persons—the IEP team or Section 504 team—is responsible for making individualized determinations about what constitutes a free appropriate public education (FAPE) for each child with a disability. 34 CFR 300.17; 34 CFR 104.33. The team must address, among many other things, questions regarding the placement, special education, and related services that are appropriate for that student. 34 CFR 300.300 through 300.328; 34 CFR 104.34 through 104.36.

For an elementary or secondary student complainant or respondent who is a student with a disability, the Title IX grievance procedures may intersect with the decisions, including those about FAPE, made by the IEP team or Section 504 team. A student with a disability involved in a Title IX proceeding would best be served by the Title IX Coordinator consulting the student's IEP team or Section 504 team throughout the implementation of the grievance procedures described in proposed § 106.45, as well as in the offer and coordination of any supportive measures as described in proposed § 106.44(g)(7). For this reason, the Department proposes making this consultation with the IEP team or Section 504 team a requirement for an elementary or secondary student complainant or respondent who is a student with a disability. This consultation should be carried out with an understanding of the sensitivity of the issues involved and a priority on preserving the confidentiality of the student and other parties involved to the extent possible.

Federal law does not grant students with disabilities in higher education any similar right to a team of knowledgeable persons coming together to make individualized FAPE decisions. Under Section 504, a postsecondary student with a disability does not have to disclose that they have a disability. Generally, if a student with a disability would like an academic adjustment or other modification related to their disability, they must provide information related to their disability to the postsecondary institution, and the institution must then consider their request. Because of those differences, including that a student with a disability may not have established a voluntary relationship with the postsecondary institution's office that serves students with disabilities, the Department proposes that the consultation between a Title IX Coordinator and the postsecondary institution's disability services office should be permitted but not required.

Section 106.8(f) Recordkeeping

Current regulations: Section 106.45(b)(10)(i) requires a recipient to maintain the following records for a period of seven years: each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under paragraph (b)(6)(i) of this section; any disciplinary sanctions imposed on the respondent; any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity; any appeals and the result therefrom, any informal resolution and the result therefrom; and all materials used to train Title IX Coordinators, investigators, decisionmakers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website, the recipient must make these materials available upon request for inspection by members of the public.

For each response required under § 106.44, current § 106.45(b)(10)(ii) requires a recipient to create and maintain for a period of seven years: records of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment. It further requires a recipient to document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If a recipient does not provide a complainant with supportive measures, current § 106.45(b)(10)(ii) requires the recipient to document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.

Proposed regulations: The Department proposes moving the recordkeeping requirements to § 106.8(f), broadening them to cover records related to a recipient's actions in response to all forms of sex discrimination, not only sexual harassment, and maintaining the seven-year retention period for records and the general types of records described in the

current regulations. The Department proposes revising the description of the records a recipient is required to maintain to align with the other proposed changes to the regulations. The Department also proposes removing current § 106.45(b)(10)(ii) requiring a recipient to maintain records documenting that its response was not deliberately indifferent and that its decision not to provide a complainant with supportive measures was not clearly unreasonable in light of the known circumstances because these types of records would no longer be applicable under the proposed regulations at § 106.44, which would no longer refer to a deliberate indifference standard.

Consistent with the Department's proposed clarification of a recipient's duty to prevent discrimination and ensure equal access for students and employees in connection with pregnancy or related conditions, the Department proposes revising the recordkeeping requirement to include records documenting the actions the recipient took to meet its obligations under proposed §§ 106.40 and 106.57.

In addition, the Department proposes retaining the requirement that a recipient must retain records of certain training materials but broadening the scope of the training materials to cover all forms of sex discrimination, including but not limited to sexual harassment, consistent with proposed § 106.8(d).

The Department also proposes retaining the requirement that a recipient make these training materials publicly available on its website, or if the recipient does not maintain a website, the recipient must make these materials available upon request for inspection by members of the public. The Department proposes broadening the scope of the training materials that must be posted on the recipient's website or made available upon request to cover all forms of sex discrimination, not just sexual harassment, consistent with proposed § 106.8(d).

Proposed § 106.8(f)(1) would require each recipient to maintain, for a period of seven years:

- For each complaint of sex discrimination, records documenting the informal resolution process under proposed § 106.44(k) or the grievance procedures under proposed § 106.45, and if applicable proposed § 106.46, and the resulting outcome;
- For each incident of conduct that may constitute sex discrimination under Title IX of which the Title IX Coordinator was notified, records documenting the actions the recipient took to meet its obligations under proposed § 106.44;
- All materials used to provide training under proposed § 106.8(d). A recipient would be required to make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient would be required to make these materials available upon request for inspection by members of the public; and
- All records documenting the actions the recipient took to meet its obligations under proposed §§ 106.40 and 106.57.

Reasons: After reevaluating the issues covered by the current recordkeeping requirements, the Department proposes revising the requirements to ensure that they address the full scope of a recipient's obligation to respond to complaints of sex discrimination under Title IX. The Department's current regulations do not address the types of records, if any, a recipient is required to maintain regarding complaints of sex discrimination other than sexual harassment.

The Department proposes maintaining the requirement in the current regulations related to the general types of records that must be kept and maintaining the seven-year record retention period, while eliminating the specificity in the types of records each recipient is required to maintain. This proposed change corresponds with proposed changes elsewhere in the proposed regulations regarding a recipient's obligations to respond to complaints of sex discrimination under Title IX. For example, when a recipient uses its grievance procedures under proposed § 106.45, and if applicable proposed § 106.46, to meet its obligations under proposed § 106.44, the recipient would be required to maintain records of that process, which would include some of the same records currently required under § 106.45(b)(10)(i)(A). In addition, consistent with current § 106.45(b)(10)(i)(C), proposed § 106.8(f)(1) would require a recipient to maintain records of its informal resolution process under proposed § 106.44(k), if it uses that process to meet its obligations under proposed § 106.44. The Department's statement in the preamble to the 2020 amendments ''that while the final regulations require records to be kept for seven years, nothing in the final regulations prevents recipients from keeping their records for a longer period of time if the recipient wishes or due to other legal obligations'' would also continue to apply under the proposed regulations. 85 FR 30411.

The Department also proposes removing the records described in current § 106.45(b)(10)(ii) that relate to a recipient's demonstrating its compliance with the deliberate indifference standard from the recordkeeping requirement because those requirements would no longer be relevant under the proposed regulations which, as explained in the discussion of proposed § 106.44, would remove the deliberate indifference standard. The recordkeeping requirement related to supportive measures in § 106.45(b)(10)(ii) of the current regulations, although still applicable under the proposed regulations, is covered by records discussed in proposed § 106.8(f)(2), which would require a recipient to maintain records of the actions the recipient took to meet its obligations under § 106.44. As explained in the discussion of proposed § 106.44(g), these actions would include offering supportive measures, as appropriate, to the complainant and respondent.

For the same reasons discussed above regarding the modification of the recordkeeping requirement to cover all sex discrimination, including but not limited to sexual harassment, consistent with Title IX, the Department proposes revising the requirement in current § 106.45(b)(10)(i)(D) to require a recipient to maintain all training materials used to provide training on sex discrimination, including sexual harassment, under § 106.8(d). Under proposed § 106.8(f)(3), a recipient would also be required to publicly post these materials on its website consistent with current § 106.45(b)(10)(i)(D), or if the recipient does not maintain a website, to make these materials available upon request for inspection to members of the public.

Finally, under proposed § 106.8(f)(4), the Department proposes requiring a recipient to maintain all records documenting the actions the recipient took to meet its obligations under proposed §§ 106.40 and 106.57 regarding students and employees who are pregnant or experiencing pregnancy-related conditions. This would ensure that OCR is able to assess a recipient's compliance with those obligations, including but not limited to, the implementation of reasonable modifications and provision of lactation space for students because of pregnancy or related conditions under proposed § 106.40(b)(3) and (4), and the provision of lactation time and space for employees under proposed § 106.57(e).

E. Action by a Recipient To Operate Its Education Program or Activity Free From Sex Discrimination

Section 106.44(a) General

Current regulations: Section 106.30(a) defines ''actual knowledge'' as notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school recipient. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient. Notice as used in this paragraph includes but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in § 106.8(a). The regulations require a recipient to respond to sexual harassment or allegations of sexual harassment only if it has actual knowledge.

Current § 106.44(a) states that a recipient with actual knowledge of sexual harassment in its education program or activity against a person in the United States must respond promptly in a manner that is not deliberately indifferent. That provision further states a recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of known circumstances.

Proposed regulations: Proposed § 106.44(a) states that a recipient must take prompt and effective action to end any sex discrimination that has occurred in its education program or activity, prevent its recurrence, and remedy its effects, and it clarifies that to ensure it can satisfy this obligation, the recipient must comply with proposed § 106.44.

Reasons: A recipient's duty to operate its education program or activity free from sex discrimination. Title IX prohibits all forms of sex discrimination in a recipient's education program or activity. In the 2020 amendments, the Department added a requirement at 34 CFR 106.44(a) that ''[a] recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent.'' In doing so, the Department extended and adapted the *Gebser/Davis* framework from private litigation for monetary damages to the context of administrative enforcement of Title IX. *See, e.g.,* 85 FR 30038, 30088 (noting that the 2020 amendments ''apply an adapted condition of actual knowledge'' and a deliberate indifference standard that was ''adapted from the *Gebser/Davis* framework''). In discussing the actual knowledge standard in the preamble to the 2020 amendments, the Department stated that ''[b]ecause Title IX is a statute 'designed primarily to prevent recipients of Federal financial assistance from using the funds in a discriminatory manner,' it is a recipient's own misconduct—not the sexually harassing behavior of employees, students, or other third parties—that subjects the recipient to liability in a private lawsuit under Title IX, and the recipient cannot commit its own misconduct unless the recipient first knows of the sexual harassment that needs to be addressed.'' *Id.* at 30038 (quoting *Gebser,* 524 U.S. at 292) (footnotes and emphasis omitted). The Department added that ''[t]he Supreme Court thus rejected theories of vicarious liability (*e.g.,* respondeat superior) and constructive notice as the basis for a recipient's Title IX liability in private Title IX lawsuits.'' *Id.* (citing *Gebser,* 524 U.S. at 289; *Davis,* 526 U.S. at 650).

With respect to deliberate indifference as the appropriate standard of liability for administrative enforcement, the Department stated in the preamble to the 2020 amendments that the ''adaptions of the three-part *Gebser/Davis* framework achieve important policy objectives that arise in the context of a school's response to reports, allegations, or incidents of sexual harassment in a school's education program or activity, including respect for freedom of speech and academic freedom, respect for complainants' autonomy, protection of complainants' equal educational access while respecting the decisions of State and local educators to determine appropriate supportive measures, remedies, and disciplinary sanctions, consistency with constitutional due process and fundamental fairness, and clear legal obligations that enable robust administrative enforcement of Title IX violations.'' *Id.* at 30035.

The Department remains committed to these objectives: respect for freedom of speech and academic freedom; respect for complainants' autonomy; protection of complainants' equal educational access while respecting the decisions of recipients to determine appropriate supportive measures, remedies, and disciplinary sanctions; consistency with constitutional due process and fundamental fairness; and clear legal obligations that enable robust administrative enforcement of Title IX violations. Further, the Department's tentative view is that the proposed revisions to § 106.44 would effectively achieve these objectives while better ensuring that all recipients fulfill the Title IX mandate to provide a nondiscriminatory educational environment. As explained in greater detail in the discussion of the proposed definition of ''sex-based harassment'' (§ 106.2), the Department also holds the tentative position that the administrative enforcement standard set out in the proposed regulations would adequately and fully address the particular concerns regarding free speech and academic freedom that the Department discussed in the 2020 amendments in connection with its standard for enforcing Title IX.

The Department recognized in the preamble to the 2020 amendments that there are important differences between judicial and administrative enforcement for purposes of effectuating Title IX's nondiscrimination mandate and noted that ''some violations of Title IX may lend themselves to the administrative remedy of terminating Federal financial assistance, while other violations may lend themselves to a judicial remedy in private litigation.'' *Id.* at 30032 (citing *Cannon,* 441 U.S. at 704–06). More specifically, OCR's focus in the administrative enforcement context is on a recipient's responsibility under the nondiscrimination requirements of the Title IX statute and regulations to take prompt and effective action to prevent, eliminate, and remedy sex discrimination occurring in its programs or activities, while a court's focus is on a school's liability to compensate a person who suffered harm as a result of the school's action or inaction.

OCR received feedback from stakeholders during the June 2021 Title IX Public Hearing and in listening sessions both in support of and in opposition to the references to actual knowledge and the deliberate indifference standard in the 2020 amendments. For example, OCR heard from stakeholders who supported the ''actual knowledge'' definition or who wanted the definition of ''notice'' to be narrowed even further. On the other hand, OCR also received feedback from stakeholders expressing concern about the narrowness of the actual knowledge standard. These stakeholders urged the Department to return to the constructive knowledge standard set out in OCR's

prior guidance. Stakeholders also expressed concern that the actual knowledge standard enables a recipient to ignore sexual harassment simply because allegations of harassing conduct were not reported to the right employee.

OCR also heard from stakeholders since the 2020 amendments went into effect asking the Department to reconsider the application of the standard of liability for private actions for monetary damages to a recipient's obligation to respond to sexual harassment in the administrative enforcement context. A variety of stakeholders representing all educational levels, including elementary school and secondary school administrators, representatives from postsecondary institutions, Title IX Coordinators, State Attorneys General, and advocacy organizations, expressed concern that the deliberate indifference standard is inappropriate in the administrative enforcement context. Stakeholders stated that the deliberate indifference standard erodes efforts to promote and nurture institutional trust by appearing to hold schools to a lower standard and could be construed to deprive OCR of critical enforcement authority, including the ability to address sex discrimination before it rises to the level of the recipient being held liable for money damages in private lawsuits. In addition, other stakeholders explained that it is difficult for recipients to implement the deliberate indifference standard for sexual harassment in cases that also raise discrimination on other bases, such as race and disability, in which the Department has retained its longstanding standard that looks to the reasonableness of a recipient's response as the appropriate standard for administrative enforcement. They argued that by maintaining uniform standards across civil rights statutes, the Department would reduce confusion and strengthen enforcement in addressing such intersectional claims. In addition to the difficulty associated with requiring recipients to navigate different policies, stakeholders noted that the Department's application of a different standard of liability for sexual harassment than for other forms of discrimination raises questions regarding equity, specifically as to why the Department requires recipients to meet a less stringent standard for responding to complaints about sexual harassment than for complaints of other types of prohibited harassment and discrimination, including sex discrimination.

The Department acknowledged in the preamble to the 2020 amendments that ''[n]either *Gebser* nor *Davis* indicated whether the Department's administrative enforcement of Title IX should continue to turn on vicarious liability and constructive notice.'' *Id.* at 30038. The preamble to the 2020 amendments further acknowledged that *Gebser* and *Davis* did not require the Department to adopt deliberate indifference as the standard of liability in the administrative enforcement context. *Id.* at 30043. As explained in greater detail in the discussion of OCR's Guidance and Supreme Court Precedent on Title IX's Application to Sexual Harassment (Section II.B.1), the Supreme Court explicitly acknowledged the authority of Federal agencies, such as the Department, to ''promulgate and enforce requirements that effectuate [Title IX's] nondiscrimination mandate,'' even in circumstances that would not give rise to a claim for money damages. *Gebser,* 524 U.S. at 292. The Department thus explained in the preamble to the 2020 amendments that it ''adopt[ed] the actual knowledge condition from the *Gebser/Davis* framework,'' even though the Department was not required to do so, and acknowledged that it had adapted that standard, stating that it was ''tak[ing] into account the different needs and expectations of students in elementary and secondary schools, and in postsecondary institutions, with respect to sexual harassment and sexual harassment allegations.'' 85 FR 30038. The Department further explained that it chose to invoke deliberate indifference as an apparent threshold for the Department's administrative enforcement of Title IX with certain modifications, even though it was not required to do so under either *Gebser* or *Davis,* because it viewed this standard as ''the best policy approach to further Title IX's non-discrimination mandate.'' *Id.* at 30043.

The Department's longstanding position is that it cannot compel a recipient to comply with Title IX—for example by terminating Federal funds from the recipient—simply because an official identified in the ''actual knowledge'' definition of the current regulations (*e.g.,* an elementary school teacher or bus driver) knew of sexual harassment and failed to tell the recipient's Title IX administrators about it, with the result that the school failed to promptly and effectively respond. This is consistent with OCR's practice when it seeks to administratively enforce the Department's Title IX regulations through an investigation or compliance review. OCR begins by providing notice to the recipient of the allegations of potential Title IX violations it is investigating; if OCR finds a violation, OCR is required to seek voluntary corrective action from the recipient before pursuing fund termination or other enforcement mechanisms. 20 U.S.C. 1682; 34 CFR 100.7(d) (incorporated through 34 CFR 106.81); *see also Gebser,* 524 U.S. at 287–89; 2001 Revised Sexual Harassment Guidance at iii–iv. In the administrative enforcement process, OCR provides notice of the alleged sex discrimination to the recipient, as well as an opportunity for the recipient to take appropriate corrective action at multiple stages during the process.

Notwithstanding that a recipient cannot be liable for *monetary damages,* or be subject to administrative enforcement, unless and until officials with authority to take corrective action are made aware of the problem and fail to adequately respond, because Title IX provides that ''[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance,'' 20 U.S.C. 1681(a), a recipient has a legal duty to operate its education program or activity free from sex discrimination at all times. This legal duty to operate its education program or activity in a manner in which people are not subjected to sex discrimination exists regardless of who has notice of any discriminatory conduct. It also covers all forms of sex discrimination and is not limited just to sexual harassment. Thus, proposed § 106.44(a) would require a recipient to take prompt and effective action to end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects, consistent with the statutory text. This requirement would include situations in which a recipient determines that a respondent's conduct violated its prohibition on sex discrimination, which would amount to a determination that sex discrimination had occurred, as explained in the discussion of the proposed definition of ''respondent'' (§ 106.2). This requirement would also include situations in which a recipient reviews its own actions in response to a complaint and determines that it discriminated based on sex in its policy or practice. For example, proposed § 106.44(a) would require a recipient to provide remedies as appropriate to a student who experienced discrimination as a result of another student violating its prohibition on sex discrimination and prevent the recurrence of that

discrimination. Likewise, if a recipient determines that it did not provide a required modification to a pregnant student or discriminated based on sex in the provision of athletic opportunities, it would be required under proposed § 106.44(a) to provide remedies for its own discrimination based on sex and take additional action as needed to prevent recurrence.

Current § 106.44(a) states that ''[a] recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent'' and provides that the recipient's ''Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures'' and ''explain to the complainant the process for filing a formal complaint.'' If the recipient receives a formal complaint under those procedures, current § 106.44(b) then obligates the recipient to follow additional requirements discussed elsewhere in the current regulations. Prior to the 2020 amendments, OCR had interpreted Title IX to require a recipient with notice of sexual harassment to ''promptly investigate to determine what occurred and then take appropriate steps to resolve the situation.'' 2001 Revised Sexual Harassment Guidance at 15; *see also* 1997 Sexual Harassment Guidance, 62 FR 12042. This obligation existed regardless of whether the harassed student filed a complaint or asked the school to take action on the student's behalf. 2001 Revised Sexual Harassment Guidance at 15.

In the preamble to the 2020 amendments, the Department explained its view that requiring a recipient to take '' 'effective corrective actions to stop the harassment [and] prevent its recurrence,' . . . ostensibly holds a recipient strictly liable to 'stop' and 'prevent' sexual harassment.'' 85 FR 30044 n.165 (quoting 2001 Revised Sexual Harassment Guidance at 10, 12); *see also id.* at 30046 (explaining that ''these final regulations do not unrealistically hold recipients responsible where the recipient took all steps required under these final regulations, took other actions that were not clearly unreasonable in light of the known circumstances, and a perpetrator of harassment reoffends''). In light of these concerns, the Department adopted the deliberate indifference standard, stating that this standard would afford recipients greater discretion in responding to sexual harassment. *Id.* at 30044 n.165. In doing so, the Department specified that the only steps, outside of the grievance process, that a recipient was obligated to take were those listed in current § 106.44(a)—*i.e.,* the Title IX Coordinator must promptly contact the complainant, discuss supportive measures, and explain the process for filing a complaint. None of these steps requires the recipient to ensure continued equal access to its education program or activity for the parties and more broadly for a recipient's educational community or otherwise ensures that a recipient meets its legal duty under Title IX to operate its education program or activity free from sex discrimination.

OCR heard, through the June 2021 Title IX Public Hearing and in listening sessions, concerns about the Department's suggestion that a school's obligation to respond to sexual harassment occurs only in situations in which a recipient has actual knowledge of sexual harassment. OCR also heard concerns about the way in which the current regulations limit a recipient's required response to actual knowledge—that a recipient is required only to offer a complainant supportive measures and provide the complainant with information about the recipient's grievance procedures, unless a formal complaint is filed through the recipient's grievance procedures. Stakeholders expressed a concern that in shifting from a reasonableness standard to deliberate indifference, the Department no longer required schools to act proactively to address sex discrimination in their educational environment. They noted that under the 2020 amendments, the Department failed to require recipients to fully address the impact of sexual harassment in their educational environments, and further failed to impose any obligations to respond to possible sex discrimination other than requiring them to adopt grievance procedures for the prompt and equitable resolution of sex discrimination complaints contained in current § 106.8(c). Together, these concerns suggested that the approach adopted in the 2020 amendments may have created a troubling gap in implementing Title IX's prohibition on sex discrimination: a recipient may have information about possible sex discrimination in its education program or activity and yet may have no obligation to take any action to address it if a formal complaint is not filed and the recipient's Title IX Coordinator determines that the allegations do not warrant overriding a complainant's wishes and initiating a complaint. These stakeholders further commented that there are other steps a recipient can and should take to address sex discrimination outside of acting through its grievance procedures and asked the Department to reconsider its approach.

To address these concerns, dispel confusion created by the 2020 amendments, and ensure a recipient fulfills its legal duty to operate its education program or activity free from sex discrimination, proposed § 106.44(a) would require a recipient to take prompt and effective action to end any sex discrimination that has occurred in its education program or activity, prevent its recurrence, and remedy its effects. Although the Department does not propose a specific timeframe for ''prompt'' action to end sex discrimination, as the Department explained in the preamble to the 2020 amendments, what would constitute reasonably prompt timeframes in a recipient's grievance process under current § 106.45 ''is judged in the context of the recipient's obligation to provide students and employees with education programs and activities free from sex discrimination.'' 85 FR 30269. Outside the context of a recipient's grievance procedures for complaints of sex discrimination, the Department reaffirms that ''prompt'' action to end sex discrimination in a recipient's education program or activity ''is necessary to further Title IX's nondiscrimination mandate.'' *Id.* An unreasonable delay by a recipient to end sex discrimination would not meet Title IX's obligation.

The Department notes that proposed § 106.44(a)'s requirement of prompt and effective action would not compel any particular officials of a recipient to know of and respond effectively to sex discrimination that has not yet occurred; however, it would impose an obligation on a recipient to act effectively by taking reasonable steps calibrated to ensure that its Title IX Coordinator learns of possible discrimination so that the recipient can promptly and effectively address the discrimination based on all available information. And when a recipient's response does not end discrimination and prevent its recurrence, the prompt and effective response requirement would mean that the recipient must reevaluate its response and take additional steps to end sex discrimination in its education program or activity. This approach is consistent with Federal courts' interpretation of *Gebser* and *Davis* and what is required of a recipient under the deliberate indifference standard for monetary damages, when a recipient's response to

discrimination must be designed to effectively end the discrimination and prevent its recurrence and when courts have required a recipient to reevaluate its response if it proves ineffective. *See, e.g., Patterson* v. *Hudson Area Sch.,* 551 F.3d 438, 449 (6th Cir. 2009) (''Given that [the recipient] knew that its methods were ineffective, but did not change those methods, 'a reasonable jury certainly could conclude that at some point during the . . . period of harassment[,] the school district's standard and ineffective response to the known harassment became clearly unreasonable.' ''), abrogated on other grounds, *Foster* v. *Bd. of Regents of Univ. of Mich.,* 982 F.3d 960 (6th Cir. 2020); *see also, e.g., Zeno* v. *Pine Plains Cent. Sch. Dist.,* 702 F.3d 655, 669–71 n.12 (2d Cir. 2012) (applying *Davis* in Title VI claim); *Doe* v. *Sch. Bd. of Broward Cnty.,* 604 F.3d 1248, 1261 (11th Cir. 2010) (' 'W]here a school district has knowledge that its remedial action is inadequate and ineffective, it is required to take reasonable action in light of those circumstances to eliminate the behavior.' '' (quoting *Vance* v. *Spencer Cnty. Pub. Sch. Dist.,* 231 F.3d 253, 260–61 (6th Cir. 2000))).

In the administrative enforcement context, the Department proposes that a recipient meets its obligation to take prompt and effective action to end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects by complying with the steps required under the additional provisions in proposed § 106.44, as appropriate. Importantly, nothing in the proposed regulations would affect the fact that the Department may not ''terminat[e] or refus[e] to grant or to continue [Federal financial] assistance under [a] program or activity to any recipient'' until the Department has made an express finding on the record of a failure to comply with a regulatory or statutory requirement, ''after opportunity for hearing.'' 20 U.S.C. 1682.

Section 106.44(b) Monitoring

Current regulations: None.

Proposed regulations: The Department proposes adding a requirement at § 106.44(b) that a recipient must require its Title IX Coordinator to monitor barriers in the recipient's education program or activity to reporting information about conduct that may constitute sex discrimination under Title IX, and then the recipient must take steps reasonably calculated to address barriers that have been identified.

Reasons: As explained in the discussion of Sex Discrimination Generally (Section II.A), Title IX requires a recipient to operate its education program or activity in a manner that is free from sex discrimination. It is the Department's current view that a recipient must identify and address barriers to reporting information that may constitute sex discrimination under Title IX in order to fulfill this obligation.

The Department has long emphasized the importance of a recipient's efforts to prevent sex discrimination. For example, in the preamble to its 2020 amendments to the Title IX regulations, the Department repeatedly acknowledged the importance of efforts to prevent sex discrimination. 85 FR 30063 (stating that ''the Department agrees with commenters that educators, experts, students, and employees should also endeavor to prevent sexual harassment from occurring in the first place'' (emphasis omitted)); *id.* at 30070 (''The Department understands . . . that prevention of sexual harassment incidents before they occur is a worthy and desirable goal.''); *id.* at 30126 (''The Department shares commenters' beliefs that measures preventing sexual harassment from occurring in the first place are beneficial and desirable.''). The Department also added requirements related to training for certain employees in the 2020 amendments to the Title IX regulations, 34 CFR 106.45(b)(1)(iii), that serve a prevention function and thus are crucial to the fulfillment of Title IX. For example, current § 106.45(b)(1)(iii) requires ''Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in § 106.30'' and ''the scope of the recipient's education program or activity.''

In addition, a longstanding concern of the Department has been that information about conduct that may constitute sex discrimination under Title IX may be underreported to officials of recipients who are able to take effective steps to address it. For example, in the preamble to the 2020 amendments, the Department noted concerns raised by stakeholders that ''sexual assault is chronically underreported'' and that while most of those who experience sexual assault tell someone about their experience, only a small minority of incidents of sexual assault are reported to officials such as the Title IX Coordinator. 85 FR 30110. In response to these concerns, the Department emphasized that the Title IX Coordinator's role is to ensure that ''all students have clear, accessible options for making reports.'' *Id.* at 30111. Under the 2020 amendments, a recipient is required to provide and disseminate the contact information for its Title IX Coordinator to those seeking to report sexual harassment, as well as to institute anti-bias training for the Title IX Coordinator. *Id.* at 30111–12. The current regulations do not, however, require a recipient to take specific steps to ensure that information about conduct that may constitute sex discrimination under Title IX is not underreported.

Following the implementation of the 2020 amendments, OCR continued to hear from stakeholders who expressed concerns regarding barriers to reporting information about conduct that may constitute sex discrimination under Title IX. During the June 2021 Title IX Public Hearing, OCR received feedback from some stakeholders noting that a majority of students (one stakeholder stated that it was 90 percent of students) who had experienced sex-based harassment did not report it to their school. Stakeholders pointed to a variety of reasons for this substantial underreporting, including inadequacies in a recipient's response to reports, such as a failure to communicate promptly, to investigate as required, to address violations of restrictions on contact, or to respond effectively to retaliation. In addition, some stakeholders stated that students were deterred from reporting sex-based harassment because they feared being disciplined for violating the recipient's code of conduct related to personal alcohol or drug use or consensual sexual activity. On this issue, some stakeholders noted that they or others had been disciplined after reporting sex-based harassment, including for the very conduct about which they complained. *Cf.* Complaint at ¶¶ 8, 16, *L.C.* v. *Williamsburg Cnty. Sch. Dist.,* 2018–CP–45–00359 (S.C. Ct. Com. Pl. Aug. 14, 2018) (alleging that the plaintiff, a female middle school student, was disciplined for unauthorized access to the boys' bathroom following her report to the school that three male students forced her to enter the boys' bathroom to sexually assault her). Stakeholders noted that discipline for these collateral conduct violations in response to reports of sex-based harassment deters further reporting. Although stakeholders generally expressed that supportive measures encouraged reporting, some also explained that the lack of particular supportive measures, such as academic adjustments in the aftermath of sex-based harassment or trauma-informed counseling to provide confidential

support, disincentivized reporting. Finally, stakeholders shared concerns about the role of the Title IX Coordinator, particularly in elementary schools and secondary schools, including that students and employees may not know who the Title IX Coordinator is or what the Title IX Coordinator's responsibilities are, and that the Title IX Coordinator may not have sufficient experience or training to respond effectively to reports of sex discrimination.

Recognizing that these barriers may interfere with a recipient's ability to offer its programs and activities free from sex discrimination, as required by Title IX, the Department proposes that the recipient's Title IX Coordinator would have responsibility to monitor for barriers to reporting. The Department also proposes requiring that when the Title IX Coordinator has identified such a barrier, the recipient must take steps reasonably calculated to address the barrier, consistent with Title IX and the Department's regulations. Proposed § 106.44(b) would thus complement the recipient's efforts under proposed § 106.44(a) to ensure that its education program or activity is free from sex discrimination. By requiring its Title IX Coordinator to monitor for barriers to reporting and then take steps reasonably calculated to address those barriers, the recipient would ensure that it is monitoring conditions in its educational environment that might have the effect of chilling reporting of sex discrimination. By addressing barriers to reporting, proposed § 106.44(b) would also support a recipient in complying with its obligations under Title IX, including to prohibit retaliation under proposed § 106.71. The Department notes that under this proposed requirement, a recipient may use various strategies to identify barriers, such as conducting regular campus climate surveys, seeking targeted feedback from students and employees who have reported or made complaints about sex discrimination, participating in public awareness events for purposes of receiving feedback from student and employee attendees, or regularly publicizing and monitoring an email address designated for receiving anonymous feedback about barriers to reporting sex discrimination. The Department acknowledges that recipients vary in size and resources, and emphasizes that recipients have the opportunity to choose strategies that will be effective in their educational setting. The Department also notes that in order to fulfill its monitoring obligation, a recipient may need to direct its Title IX Coordinator to use multiple strategies to ensure that the recipient is identifying barriers for all populations, particularly those who may face additional barriers to reporting, including students with disabilities or persons with limited English proficiency. *See* 85 FR 30109.

Under proposed § 106.44(b), the recipient must take steps reasonably calculated to address actual or perceived barriers, if any, consistent with Title IX and the Department's regulations. These steps must be tailored to respond to the identified impediments and obstacles to reporting, and could include, for example, more frequent and prominent publication of the Title IX Coordinator's contact information; relocation of the Title IX Coordinator's office to a more visible, accessible location; ensuring that the Title IX Coordinator's office is adequately staffed; enhancing training for employees with Title IX responsibilities; the development and circulation of user-friendly Title IX materials; publicized assurances that the recipient will not discipline parties or witnesses to a grievance procedure for certain code of conduct violations (*e.g.,* prohibitions on personal alcohol or drug use, consensual sexual relations, or unauthorized access to facilities) that may be disclosed or uncovered during the Title IX process; a wider variety of supportive measures; and targeted trainings on how to assert Title IX rights for students and employees.

Section 106.44(c) Notification Requirements

Current regulations: Section 106.30(a) defines ''actual knowledge'' as notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school recipient. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient. Notice as used in this paragraph includes but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in § 106.8(a). The regulations require a recipient to respond to sexual harassment or allegations of sexual harassment only if it has actual knowledge.

Current § 106.44(a) states that a recipient with actual knowledge of sexual harassment in its education program or activity against a person in the United States must respond promptly in a manner that is not deliberately indifferent. That section further states a recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of known circumstances.

Proposed regulations: Under proposed § 106.44(c)(1), an elementary school or secondary school recipient would be obligated to require all of its employees who are not confidential employees to notify the Title IX Coordinator when the employee has information about conduct that may constitute sex discrimination under Title IX.

Under proposed § 106.44(c)(2)(i), all other recipients would be obligated, at a minimum, to require any employee who is not a confidential employee and who has authority to institute corrective measures on behalf of the recipient to notify the Title IX Coordinator when the employee has information about conduct that may constitute sex discrimination under Title IX.

Under proposed § 106.44(c)(2)(ii), all other recipients would also be obligated, at a minimum, to require any employee who is not a confidential employee and who has responsibility for administrative leadership, teaching, or advising in the recipient's education program or activity to notify the Title IX Coordinator when the employee has information about a student being subjected to conduct that may constitute sex discrimination under Title IX.

Under proposed § 106.44(c)(2)(iii), all other recipients would also be obligated, at a minimum, to require any employee who is not a confidential employee and who has responsibility for administrative leadership, teaching, or advising in the recipient's education program or activity and has information about an employee being subjected to conduct that may constitute sex discrimination under Title IX to either: (A) notify the Title IX Coordinator when the employee has information about conduct that may constitute sex discrimination against employees under Title IX; or (B) provide the contact information of the Title IX Coordinator and information about how to report sex discrimination to any person who provides the information.

Under proposed § 106.44(c)(2)(iv), all other recipients would also be obligated,

at a minimum, to require all employees who are not confidential employees, if any, to either: (A) notify the Title IX Coordinator when the employee has information about conduct that may constitute sex discrimination under Title IX; or (B) provide the contact information of the Title IX Coordinator and information about how to report sex discrimination to any person who provides information regarding conduct that may constitute sex discrimination under Title IX.

Proposed § 106.44(c)(3) would provide factors for a postsecondary institution to consider when determining whether a person who is a student and an employee would be subject to the requirements in proposed § 106.44(c)(2) for employees.

Proposed § 106.44(c)(4) would explain that the requirements under proposed § 106.44(c)(1) and (2) would not apply when the only employee with information about conduct that may constitute sex discrimination under Title IX is the employee-complainant.

Reasons: The Department stated in the preamble to the 2020 amendments that the actual knowledge framework it adopted ''achieve[s] important policy objectives that arise in the context of a school's response to reports, allegations, or incidents of sexual harassment in a school's education program or activity, including . . . respect for complainants' autonomy, protection of complainants' equal educational access while respecting the decisions of State and local educators to determine appropriate supportive measures, remedies, and disciplinary sanctions, consistency with constitutional due process and fundamental fairness, and clear legal obligations that enable robust administrative enforcement of Title IX violations.'' *Id.* at 30035 (footnotes omitted). These objectives remain constant, and the Department submits that the proposed regulations more effectively achieve these objectives while ensuring that all recipients provide a nondiscriminatory educational environment consistent with their duty under Title IX.

As explained in the discussion of the definition of ''actual knowledge'' in the current regulations, current § 106.30(a) defines ''actual knowledge'' as notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school recipient. In addition, current § 106.44(a) states that a recipient with actual knowledge of sexual harassment in its education program or activity against a person in the United States must respond promptly in a manner that is not deliberately indifferent. After reconsidering this issue in light of stakeholder feedback and a recipient's obligation to ensure that its education program or activity is free from sex discrimination regardless of notice, the Department proposes that the most effective way to ensure that a recipient's program or activity is free from sex discrimination is through regulations that set out a recipient's particular obligations regarding notification to the recipient's Title IX Coordinator and other requirements for various employees who have information concerning conduct that may constitute sex discrimination under Title IX. This would include requiring particular categories of employees to take specific actions when these employees have information about conduct that may constitute sex discrimination under Title IX. In addition, because the obligation under Title IX for a recipient to operate its education program or activity free from sex discrimination extends to all forms of sex discrimination, not just sexual harassment, these obligations and employee actions must not be limited to sexual harassment.

Under proposed § 106.44(c), these specific employee obligations would include either notifying the recipient's Title IX Coordinator when the employee has information about conduct that may constitute sex discrimination under Title IX or providing the contact information of the recipient's Title IX Coordinator and information about how to report sex discrimination to any person who provides the employee with information about conduct that may constitute sex discrimination under Title IX. Whether an employee would be obligated to notify the Title IX Coordinator directly or provide the Title IX Coordinator's contact information and information about reporting would depend on the employee's role, including whether the employee is employed by an elementary school or secondary school or other recipient, whether the employee has authority to take corrective action or has responsibility for administrative leadership, teaching, or advising in the recipient's education program or activity, whether the conduct that may constitute sex discrimination under Title IX affected students or employees, and whether the employee meets the definition of a ''confidential employee'' in proposed § 106.2.

Elementary schools or secondary schools (proposed § 106.45(c)(1)). Under proposed § 106.44(c)(1), an elementary school or secondary school would be obligated to require any employee who is not a confidential employee to notify the Title IX Coordinator when the employee has information about conduct that may constitute sex discrimination under Title IX. This proposed requirement reflects the Department's current position that in the elementary school and secondary school setting, school administrators, teachers, and other employees exercise a considerable degree of control and supervision over a recipient's students, and requiring all nonconfidential employees to notify the Title IX Coordinator about conduct that may constitute sex discrimination under Title IX would implement Title IX's guarantee of protection against sex discrimination in a manner that best serves the needs and expectations of those students. The Department agrees with the view expressed in the preamble to the 2020 amendments ''that employees at elementary and secondary schools stand in a unique position with respect to students.'' *Id.* at 30040. In addition, as explained in the preamble to the 2020 amendments, ''[e]lementary and secondary schools generally operate under the doctrine of in loco parentis, under which the school stands 'in the place of' a parent with respect to certain authority over, and responsibility for, its students'' and ''employees at elementary and secondary schools typically are mandatory reporters of child abuse under State laws for purposes of child protective services.'' *Id.* at 30039–40. This proposed amendment is also consistent with the definition in the 2020 amendments of ''actual knowledge'' for recipients that are elementary schools or secondary schools, which imputes to the recipient the knowledge of any of its employees.

Recipients other than elementary schools and secondary schools (proposed § 106.44(c)(2)). As explained in the discussion of proposed § 106.44(a), in connection with the June 2021 Title IX Public Hearing and listening sessions, OCR heard from stakeholders who supported the ''actual knowledge'' definition or who wanted the definition of ''notice'' to be narrowed even further and others who expressed concern that the actual knowledge standard might be read to enable a recipient to ignore sexual harassment simply because allegations of harassing conduct were not reported to the right employee. In addition, OCR also heard from several stakeholders in connection with the June 2021 Title IX Public Hearing who cautioned the

Department not to impose a requirement that all postsecondary employees report information about possible sexual harassment to the Title IX Coordinator and to instead permit postsecondary institutions to craft reporting procedures based on what will be most effective for ensuring compliance with Title IX in their educational environment, while also ensuring that students know what to expect before they share information about conduct that may constitute sex discrimination under Title IX with an employee.

The preamble to the 2020 amendments also discussed the desire to provide autonomy to complainants in support of limiting the definition of ''actual knowledge'' at postsecondary institutions to employees with the authority to institute corrective measures on behalf of the recipient. The preamble to the 2020 amendments stated that ''[t]he extent to which a wide-net or universal mandatory reporting system for employees in postsecondary institutions is beneficial, or detrimental, to complainants, is difficult to determine, and research (to date) is inconclusive.'' *Id.* at 30042 (citing Merle H. Weiner, *A Principled and Legal Approach to Title IX Reporting,* 85 Tenn. L. Rev. 71, 78–79, 82–84 (2017)). The preamble further stated that research demonstrates ''that respecting an alleged victim's autonomy, giving alleged victims control over how official systems respond to an alleged victim, and offering clear options to alleged victims are critical aspects of helping an alleged victim recover from sexual harassment.'' *Id.* at 30042–43 (citing Margaret Garvin & Douglas E. Beloof, *Crime Victim Agency: Independent Lawyers for Sexual Assault Victims,* 13 Ohio St. J. Crim. L. 67, 69–70, 71–72 (2015); Patricia A. Frazier et al., *Coping Strategies as Mediators of the Relations Among Perceived Control and Distress in Sexual Assault Survivors,* 52 J. Counseling Psych. 3 (2005); Ryan M. Walsh & Steven E. Bruce, *The Relationships Between Perceived Levels of Control, Psychological Distress, and Legal System Variables in a Sample of Sexual Assault Survivors,* 17 Violence Against Women 603, 611 (2011); Nancy Chi Cantalupo, *For the Title IX Civil Rights Movement: Congratulations and Cautions,* 125 Yale J.L. & Feminism 281, 291 (2016); Weiner at 117). The preamble to the 2020 amendments explained that through the current regulations, ''the Department aims to respect the autonomy of complainants and to recognize the importance of a complainant retaining as much control as possible over their own circumstances following a sexual harassment experience, while also ensuring that complainants have clear information about how to access the supportive measures a recipient has available (and how to file a formal complaint initiating a grievance process against a respondent if the complainant chooses to do so) if and when the complainant desires for a recipient to respond to the complainant's situation.'' *Id.* at 30043. The Department further asserted in the preamble that ''complainants will benefit from allowing postsecondary institutions to decide which of their employees (aside from the Title IX Coordinator, and officials with authority) may listen to a student's disclosure of sexual harassment without being mandated to report the sexual harassment incident to the Title IX Coordinator.'' *Id.* at 30113.

The Department continues to recognize the importance of complainant autonomy outside of the context of elementary school and secondary school settings, as discussed in the preamble to the 2020 amendments, and also recognizes concerns expressed by stakeholders that the limitation on which employees are covered by the definition of ''actual knowledge'' under current § 106.30(a) for postsecondary institutions is too narrow and insufficient to ensure that recipients meet their obligation under Title IX to operate their education programs or activities free from sex discrimination. In view of this, the Department's tentative position is that it would be appropriate to obligate recipients other than elementary schools or secondary schools to require any employee who is not a confidential employee and who has authority to institute corrective measures on behalf of the recipient to notify the Title IX Coordinator when the employee has information about conduct that may constitute sex discrimination under Title IX. The Department's tentative position is also that it would be appropriate to obligate recipients other than elementary schools or secondary schools to require any employee who is not a confidential employee and who has responsibility for administrative leadership, teaching, or advising in a recipient's education program or activity, to notify the Title IX Coordinator when the employee has information about a student being subjected to conduct that may constitute sex discrimination under Title IX.

Requiring employees with the authority to institute corrective measures to notify the Title IX Coordinator when they have information about conduct that may constitute sex discrimination under Title IX is generally consistent with the definition of ''actual knowledge'' in the sexual harassment context in current § 106.30(a). Although employees with responsibility for administrative leadership, teaching, and advising in the recipient's education program or activity may not actually have the authority to institute corrective measures on behalf of the recipient, these employees are responsible for providing aid, benefits, or services to students. In light of this responsibility, it is likely that a student would view these employees as persons who would have the authority to redress sex discrimination or to whom they could provide information regarding sex discrimination with the expectation that doing so would obligate the recipient to act. The same is true for employees with administrative roles who are not student-facing (*e.g.,* a director of an employee benefits program). With respect to employees who have responsibility for administrative leadership, teaching, or advising, the Department proposes requiring these employees to notify the Title IX Coordinator only when they have information about a student being subjected to conduct that may constitute sex discrimination under Title IX. The Department's proposal is based on its current view that students are differently situated than employees and may be less capable of self-advocacy than employees. The different characteristics of students and employees are explained in greater detail in the discussion of the Framework for Grievance Procedures for Complaints of Sex Discrimination (Section II.F).

The Department also now believes that it would be appropriate to provide recipients other than elementary schools and secondary schools with the option to determine, based on their own administrative structure, education community, and State or local legal requirements, the notification obligations of certain types of employees. This would include employees who are not confidential employees and who have responsibility for administrative leadership, teaching, or advising in the recipient's education program or activity who have information about an employee being subjected to conduct that may constitute sex discrimination under Title IX and all other employees who are not confidential employees, if any, who have information about conduct that may constitute sex discrimination under

Title IX. Thus, under proposed § 106.44(c)(2)(iii) and (iv), these recipients would have discretion to determine whether these types of employees must either: (A) notify the Title IX Coordinator when they have such information; or (B) provide the contact information of the Title IX Coordinator and information about how to report sex discrimination when they receive such information. The recipient would have discretion to determine which of these two actions these types of employees must take.

The Department's current view is also that complainant autonomy and the ability to seek out confidential resources would be better supported by proposing a definition of ''confidential employee'' and requirements for confidential employees than by limiting the category of employees at recipients other than elementary schools and secondary schools who must notify the Title IX Coordinator of conduct that may constitute sex discrimination under Title IX. The proposed definition of ''confidential employee'' and requirements for confidential employees are explained in greater detail in the discussion of the proposed definition of ''confidential employee'' (§ 106.2) and proposed requirements for confidential employees (§ 106.44(d)).

The Department explained in the preamble to the 2020 amendments that a recipient is required to notify all students or employees ''of the contact information for the Title IX Coordinator and how to report sexual harassment for purposes of triggering a recipient's response obligations,'' but expressed the belief ''that students at postsecondary institutions benefit from retaining control over whether, and when, the complainant wants the recipient to respond to the sexual harassment that the complainant experienced.'' *Id.* at 30040. The Department agrees that requiring this type of general notification is necessary to effectuate the goals of Title IX and proposed § 106.8(a)(2) and (c)(2) would require similar notifications. The Department's current understanding, however, is that in addition to these general notification requirements, recipients other than elementary schools or secondary schools should also have additional notification requirements when certain types of employees who are not confidential employees have information about conduct that may constitute sex discrimination under Title IX. The determination whether the employee would be required to notify the Title IX Coordinator of information about conduct that may constitute sex discrimination under Title IX or provide the contact information of the Title IX Coordinator and information about how to report sex discrimination would be made by the recipient and not the employee. A recipient would make this determination, and could do so either by determining that one of these two options would be more appropriate for the role and responsibilities of an individual employee or a group of employees (*e.g.,* all employees who interact with students in the dining hall or all public safety officers or all employees with a particular employment status). Proposed § 106.44(c)(2)(iii) and (iv) would, however, require that if a recipient does not require these types of employees to notify the Title IX Coordinator about conduct that may constitute sex discrimination under Title IX, the employee must be required to provide the contact information of the recipient's Title IX Coordinator as well as information regarding how to report sex discrimination to the person who shared the information about conduct that may constitute sex discrimination under Title IX. The Department's current understanding is that although it is appropriate to provide recipients other than elementary schools or secondary schools with some discretion regarding the reporting responsibilities of certain categories of nonconfidential employees, to fulfill the goals of Title IX it would be necessary for a recipient to require that any person who provides information regarding conduct that may constitute sex discrimination under Title IX also receive information regarding how they can contact the recipient's Title IX Coordinator and report or make a complaint of sex discrimination if they decide that they want the recipient to take the specific steps outlined in proposed § 106.44, proposed § 106.45, and if applicable proposed § 106.46.

Employee with the authority to institute corrective measures. The Department's current position, which is consistent with the Department's position in the 2020 amendments, is that whether an employee has the authority to institute corrective measures on behalf of a recipient is a fact-specific determination that rests on the recipient's own policies regarding whether an employee has the authority to take action to address sex discrimination on behalf of the recipient. As explained in the preamble to the 2020 amendments, this determination is best left up to the recipient because ''[d]etermining whether an individual is an 'official with authority' is a legal determination that depends on the specific facts relating to a recipient's administrative structure and the roles and duties held by officials in the recipient's own operations'' and ''[p]ostsecondary institutions ultimately decide which officials to authorize to institute corrective measures on behalf of the recipient.'' *Id.* at 30039–40. The preamble to the 2020 amendments further noted that ''[t]he Supreme Court viewed this category of [employees] as the equivalent of what 20 U.S.C. 1682 calls an 'appropriate person' for purposes of the Department's resolution of Title IX violations with a recipient.'' *Id.* at 30039 (citing *Gebser,* 524 U.S. at 290 (''An 'appropriate person' under § 1682 is, at a minimum, an official of the recipient entity with authority to take corrective action to end the discrimination.'')). The Department also explained that ''a recipient also may empower as many officials as it wishes with the requisite authority to institute corrective measures on the recipient's behalf.'' *Id.* at 30107.

Employee with responsibility for administrative leadership, teaching, or advising. It is the Department's current understanding that employees with responsibility for administrative leadership would include deans, coaches, public safety supervisors, and other employees with a similar level of responsibility, such as those who hold positions as assistant or associate deans and directors of programs or activities. The Department anticipates that employees with teaching responsibilities would include any employee with ultimate responsibility for a course, which could include full-time, part-time, and adjunct faculty members as well as graduate students who have full responsibility for teaching and grading students in a course. It is the Department's current understanding that employees with responsibility for advising would include academic advisors, as well as employees who serve as advisors for clubs, fraternities and sororities, and other programs or activities offered or supported for students by the recipient. When a person is both a student and an employee, the Department expects that the person would be required to notify the Title IX Coordinator only of information that may constitute sex discrimination under Title IX that was shared with the person while they were fulfilling their employment responsibilities (*e.g.,* receiving information about sex discrimination from a student during class or office hours). Similar to employees who have the authority to institute corrective

measures on behalf of the recipient, the Department now believes that whether an employee has responsibility for administrative leadership, teaching, or advising is a fact-specific determination to be made by the recipient taking into account the types of factors just discussed and any others that may be relevant in the recipient's educational environment.

Information about conduct that may constitute sex discrimination under Title IX. The Department anticipates that under proposed § 106.44(c), it would not be necessary for the employee to have factual information that definitively indicates that sex discrimination occurred in order for the employee's notification requirements under proposed § 106.44(c) to apply. Rather, it would be enough for the employee to have information about conduct that could reasonably be understood to constitute sex discrimination under Title IX, including conduct that could constitute sex-based harassment. This is similar to the position the Department took in the preamble to the 2020 amendments explaining that the recipient ''need not have received notice of facts that definitively indicate whether a reasonable person would determine that the complainant's equal access has been effectively denied'' in order to prompt its obligation to respond under current § 106.44 because the obligation to respond is also prompted by allegations of sexual harassment. *Id.* at 30192. The Department also notes that under proposed § 106.8(d)(1)(ii), a recipient would be required to train all employees on the scope of conduct that constitutes sex discrimination under Title IX, including the definition of ''sex-based harassment'' in proposed § 106.2. The Department's current belief is that this proposed training requirement would help recipients ensure that employees are able to recognize when they have information about conduct that may constitute sex discrimination under Title IX.

The Department also currently believes that an employee may receive information about conduct that may constitute sex discrimination under Title IX in a variety of ways, which is similar to the position the Department took in the 2020 amendments. *See, e.g., id.* at 30110, 30115, 30040 (noting that allegations of sexual harassment can come from any source, *i.e.,* from the person alleged to be the victim of sexual harassment, from any third party such as a friend, parent, or witness to sexual harassment, or from the employee's firsthand observation of conduct that could constitute sexual harassment). Under the proposed regulations, similar to the discussion in the preamble to the 2020 amendments, an employee may witness sex discrimination, hear about sex discrimination allegations from a complainant or witness, receive information or a written or verbal complaint about sex discrimination from someone other than the complainant, including another student, a parent, a member of the local community, or the media, or learn of conduct that may constitute sex discrimination under Title IX by any other means. These other means could include indirectly learning of conduct that may constitute sex discrimination under Title IX, for example, through flyers about the conduct distributed at the school or posted around the school.

The Department also notes the increasing use of social media and other online platforms as a means of communication between students and the rise of online harassment as a form of sex-based harassment, including on these platforms. The Department recognizes that online harassment is constantly evolving as forms of these platforms evolve and that harassment targeted at students and employees on these media platforms may impact a recipient's education program or activity. The Department does not expect that a recipient will follow the online activity of its students that is not part of the recipient's education program or activity; however, when an employee has information about sex-based harassment among its students that took place on social media or other online platforms and created a hostile environment in the recipient's education program or activity, the recipient would have an obligation to address that conduct. Therefore, a recipient under the proposed regulations would be required to ensure that its employees understand their obligation, depending on their role, to either provide that information to the Title IX Coordinator or provide the Title IX Coordinator's information and reporting information to the person who alerted them to the conduct that may constitute sex-based harassment. *See Feminist Majority Found.* v. *Hurley,* 911 F.3d 674, 688–89 (4th Cir. 2018) (holding that a recipient cannot ignore ''the sexual harassment that pervaded and disrupted its campus solely because the offending conduct took place through cyberspace''). For example, consider a situation in which sexually explicit photographs of a student have been posted on a social media group used by a number of students who attend school together. Several students discuss these photographs and make comments about them to the student during class and a student who witnesses this reports it to a teacher. As a result of the discussion and comments in class, the student in the photographs skips classes and extracurricular activities to avoid those students who made comments to her. Although the photographs were on social media, the students' engagement with the explicit photographs at school and comments about them to the affected student would create a hostile environment in the recipient's education program or activity because the conduct was sufficiently severe or pervasive that it denied or limited that student's ability to participate or benefit from the school's education program or activity.

Student employees (proposed § 106.44(c)(3)). The Department recognizes that a person may be both a student and an employee of a postsecondary institution. In such cases a postsecondary institution would need to make a fact-specific inquiry to determine whether the requirements of proposed § 106.44(c)(2) would apply. To guide a postsecondary institution in making this determination, proposed § 106.44(c)(3) would set out two factors that a postsecondary institution must consider, at a minimum: whether the person's primary relationship with the postsecondary institution is to receive an education and whether the person learns of conduct that may constitute sex discrimination under Title IX while the person was performing employment-related work. The Department's view is that a postsecondary institution must consider these factors because they appropriately focus the inquiry on the primary relationship between the person and the postsecondary institution (*e.g.,* whether the person is a full-time employee who enrolls in a class outside of work hours or a student who works part-time for the postsecondary institution as part of the student's financial aid package) and the student-employee's role or activities when the information regarding conduct that may constitute sex discrimination under Title IX was received (*e.g.,* whether they were in their work environment or elsewhere fulfilling work-related responsibilities, or in class as a student, in the cafeteria with friends, or in an extracurricular activity). Nothing in proposed § 106.44(c)(3) would prohibit a postsecondary institution from considering additional factors in determining whether a person is primarily a student or an employee.

Employee-complainants (proposed § 106.44(c)(4)). The Department

proposes that it would be inappropriate to require an employee to notify the Title IX Coordinator of information about conduct that may constitute sex discrimination under Title IX when the only employee with the information is the employee-complainant. The Department recognizes that not all employee-complainants may feel comfortable reporting sex discrimination to the recipient's Title IX Coordinator. The Department's current view is that in general, employees can reasonably be expected to have more information and capacity than students to notify the Title IX Coordinator that they were subjected to sex discrimination if they want the recipient to take action because employees are required to be trained on the recipient's reporting requirements. In view of this, the Department currently believes that the decision as to whether to notify the Title IX Coordinator that the employee was subjected to sex discrimination or make a complaint of sex discrimination, including sex-based harassment, should be left up to the employee-complainant. Under proposed § 106.44(c)(4), if an employee-complainant tells another employee that they were subject to sex discrimination, that employee would be required to comply with the requirements under proposed § 106.44(c)(1) or (2).

Sections 106.44(d) and 106.2 ''Confidential employee'' requirements and definition

Current regulations: Sections 106.30(a) and 106.44(a) require a recipient to respond to incidents of sexual harassment when the recipient receives notice through its Title IX Coordinator or any official who has authority to institute corrective measures on its behalf, or through any employee of an elementary school or secondary school. The current regulations do not refer to confidential employees, or any group of employees to which reporting would not obligate the recipient to respond.

Proposed regulations: The Department proposes adding a definition of ''confidential employee'' and specifying certain requirements for those employees when they are informed of conduct that may constitute sex discrimination under Title IX. Proposed § 106.44(d) would make clear that an employee covered by the definition of ''confidential employee'' in proposed § 106.2 would not be required to notify the Title IX Coordinator when a person informs them of conduct that may constitute sex discrimination under Title IX. Instead, proposed § 106.44(d) would require a recipient to notify all participants in the recipient's education program or activity of the identity of its confidential employees, if any, and require that a confidential employee, in response to a person who informs that employee of conduct that may constitute sex discrimination under Title IX, explain their confidential status and provide that person with the contact information of the recipient's Title IX Coordinator and explain how to report information about conduct that may constitute sex discrimination under Title IX.

The Department's proposed definition of ''confidential employee'' would include three categories. The first category would include employees whose communications are privileged under Federal or State law associated with their role or duties for the institution. The second category would include employees whom the recipient has designated as a confidential resource for the purpose of providing services to individuals in connection with sex discrimination. If the employee also has a role or duty that is not associated with providing these services, the employee's status as confidential would be limited to information received about sex discrimination in connection with providing these services. The third category would be limited to employees of postsecondary institutions who conduct human subjects-research studies that have been approved by the recipient's Institutional Review Board (IRB) and that are designed to gather information about sex discrimination. Those employees' status as confidential would be limited to information about sex discrimination received while conducting the approved study.

Reasons: As explained in the discussion of proposed § 106.44(a), the Department proposes clarifying the action a recipient must take in response to sex discrimination in its education program or activity.

OCR received comments through listening sessions and the June 2021 Title IX Public Hearing that stressed the importance of access to confidential resources for persons who have been subjected to sex-based harassment, including sexual violence. For example, one stakeholder emphasized the need for schools to have a mechanism for confidential reporting to allow students to receive supportive measures without disclosing their identity to their harasser or initiating a Title IX investigation.

The Department explained in the preamble to the 2020 amendments that because postsecondary institutions have the discretion to decide who to authorize as officials with authority under current § 106.30(a), a postsecondary institution can ''decide that other employees should remain confidential resources to whom a student at a postsecondary institution might disclose sexual harassment without automatically triggering a report by the employee to the Title IX Coordinator.'' 85 FR 30526. As a result of the proposed changes reflected in proposed § 106.44(a) and (c), it is important to clarify a recipient's responsibilities in relation to its employees who provide confidential services.

The proposed role for confidential employees would take into account the need for a recipient to find out about and promptly take action in response to sex discrimination in its education program or activity, as discussed regarding proposed § 106.44(a) through (c), and the importance of ensuring that persons who have experienced discrimination also have access to confidential services when appropriate. Under proposed § 106.44(d), a confidential employee would not be expected to report what they learn about sex discrimination to the Title IX Coordinator, but the recipient would be required to take certain steps to ensure that persons who report sex discrimination to a confidential employee understand the employee's confidential status and how to report sex discrimination to the Title IX Coordinator. Ensuring that some employees are able to receive confidential reports of sex discrimination, including sex-based harassment, is a longstanding priority for the Department and would be consistent with the practices of many schools both before and since the 2020 amendments. The Department also notes that making confidential employees available may also result in more individuals feeling comfortable to seek the support they need to address the immediate effects of sex-based harassment or other sex discrimination and ultimately find the confidence to make the recipient aware of incidents that may otherwise have gone unreported.

The first category of confidential employees would include employees whose communications are privileged under Federal or State law associated with their role or duties. For example, physicians and clergy affiliated with the institution could be considered confidential employees under this first category. Current § 106.45(b)(1)(x) prohibits a recipient from using information protected under a legally recognized privilege, and current § 106.45(b)(5)(i) prohibits a recipient

from using a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party. The proposed regulations would provide similar protection for legally recognized privileges by designating employees who hold these privileges as confidential employees. The proposed regulations are also consistent with prior OCR guidance and the exemption of pastoral and professional counselors from reporting obligations under the Clery Act. *See* 2014 Q&A on Sexual Violence at 22; 34 CFR 668.46(c)(8).

The second category of confidential employees would include employees designated by the recipient to provide confidential services to individuals who may have experienced or been accused of engaging in conduct that may constitute sex discrimination. The information received by these employees about sex discrimination would also be confidential. For example, a recipient may designate certain employees as advisors to students in its grievance procedures. These advisors would serve as confidential employees while providing services to individuals in connection with those grievance procedures. Employees designated as confidential resources would not qualify as confidential employees while engaged in other activities, such as teaching or coaching. This category of confidential employees would enable recipients to offer confidential resources to students without creating overly broad exceptions. This proposed exception is consistent with the Clery Act's exemption of employees from reporting obligations as campus security authorities when they are acting as a pastoral or professional counselor. 34 CFR 668.46(a), (b)(4)(iv), (c)(8).

The third category of confidential employees would apply in the limited situation in which employees of postsecondary institutions are conducting IRB-approved studies involving human subjects that are designed to gather information about sex discrimination. For example, participants in clinical trial or other research studies on sexual violence in campus settings may reveal information about personal experiences of sex-based harassment. If an employee were required to report these incidents to the Title IX Coordinator, the researchers would need to alert participants as part of the process for consenting to participate in the study, *i.e.,* during the informed consent process. This would likely deter some individuals with relevant experience from participating in or making full disclosures in the study. Sharyn J. Potter & Katie M. Edwards, *Institutional Title IX Requirements for Researchers Conducting Human Subjects Research on Sexual Violence and other Forms of Interpersonal Violence* at 3–4 (2015), *https://scholars.unh.edu/pirc_reports/3* (stating that if researchers inform participants that the researchers must disclose names revealed during research, ''[t]he result will likely be that students with relevant victimization or perpetration experiences will not volunteer to participate in research, which would likely deter from participating the very people intended to be the primary subjects of the investigation. This may severely restrict the ability of researchers to gather credible data . . . .''). To enable postsecondary institutions to conduct effective research studies on sex discrimination, including studies that may assist postsecondary institutions with prevention or effective responses to incidents of sex discrimination, the proposed regulations would treat the employees who conduct these studies as confidential employees while they are working in their capacity as researchers for the study. *See id.* at 5. This designation as a confidential employee would be limited to information received while conducting the approved study.

To make informed decisions about reporting sex discrimination, individuals must understand how to report such conduct and which employees will provide information they receive about such conduct to the recipient's Title IX Coordinator. Proposed § 106.44(d)(1) would require a recipient to inform students and any other participants in the recipient's education program or activity of the identity of any confidential employees. In addition, under proposed § 106.44(d)(2), whenever someone informs a confidential employee that sex discrimination, including sex-based harassment or related peer retaliation, may have occurred, the confidential employee would be required to explain to that person the employee's confidential status and how to report the conduct. As part of this explanation, the confidential employee would be required to provide that person with the contact information of the recipient's Title IX Coordinator and explain how to report information about conduct that may constitute sex discrimination under Title IX. These steps would help to ensure that individuals who provide information about sex discrimination to confidential employees understand what further steps they can take if they would like to report sex discrimination or make a Title IX complaint.

Nothing in proposed § 106.44(c), (d), or (e) is intended to exempt a recipient's employees—including confidential employees—from complying with any obligations under Federal, State, or local law to report sex discrimination, including sex-based harassment. In addition, § 106.6(f), to which the Department does not propose making any changes, makes clear that the requirements in the Title IX regulations do not alleviate recipient's obligations to its employees under Title VII. The exceptions set out in proposed § 106.44(d) pertain only to a recipient's obligations under Title IX and would not alleviate any obligations a recipient may have under Title VII to respond to information about sex discrimination.

Section 106.44(e) Public awareness events

Current regulations: None.

Proposed regulations: In proposed § 106.44(e), the Department clarifies that when a postsecondary institution's Title IX Coordinator is notified about conduct that may constitute sex-based harassment under Title IX that was provided by a person during a public event held on the postsecondary institution's campus or on an online platform sponsored by a postsecondary institution to raise awareness about sex-based harassment associated with a postsecondary institution's education program or activity, the postsecondary institution would not have to take action in response to this information under proposed §§ 106.44, 106.45, or 106.46 unless the information reveals an immediate and serious threat to the health or safety of students or other persons in the postsecondary institution's community. Although a postsecondary institution would not be obligated to act in response to information about individual allegations shared during a public awareness event in the manner set out in proposed §§ 106.44, 106.45, or 106.46, a postsecondary institution would be required to use this information to inform its efforts to prevent sex-based harassment, including by providing tailored training to address alleged sex-based harassment in a particular part of its education program or activity or at a specific location when information indicates there may be multiple incidents of sex-based harassment.

Reasons: OCR received feedback from stakeholders during the June 2021 Title IX Public Hearing explaining that information about sex-based harassment

may be revealed during events like Take Back the Night, which are intended to empower students and promote public awareness about sex-based harassment. These stakeholders explained that requiring employees to report allegations of sex-based harassment that they learn about during these events discourages students from participating in such events.

After considering these issues, it is the Department's current understanding that it would be appropriate under Title IX to take into account the many benefits provided by public awareness events hosted by postsecondary institutions or organized independently by a postsecondary institution's students to raise awareness about sex-based harassment, such as Take Back the Night or other forums at which a postsecondary institution's students may disclose experiences with sex-based harassment. In view of this, the Department's proposed regulations at proposed § 106.44(e) would include an exception to the required action that a postsecondary institution must take in response to information about conduct that may constitute sex-based harassment under Title IX, specifically that when a postsecondary institution's Title IX Coordinator is notified of information about conduct that may constitute sex-based harassment under Title IX that was provided by a person during public awareness events, the postsecondary institution would not be obligated to act in response to the information under proposed §§ 106.44, 106.45, or 106.46. This proposed exception would apply only to public awareness events held on a postsecondary institution's campus or through an online platform sponsored by a postsecondary institution because those are the events where it is most likely that a postsecondary institution's employees would be present and could hear information about conduct that may constitute sex-based harassment. Without this exception, under proposed § 106.44(f), the Title IX Coordinator would be required to take certain steps upon being notified of this information.

The Department notes that nothing in proposed § 106.44(e) would obligate a postsecondary institution's employees to attend public awareness events. If an employee is in attendance, the notification requirements under proposed § 106.44(c)(2) would apply to the employee, but the Title IX Coordinator's obligations under proposed § 106.44(f) upon being notified by the employee of information about conduct that may constitute sex-based harassment under Title IX would not apply. Under proposed § 106.44(b), the recipient and the recipient's Title IX Coordinator would still be obligated to monitor the recipient's education program or activity for barriers to reporting information about conduct that may constitute sex discrimination under Title IX. The Department also notes that nothing in proposed § 106.44(e) would prohibit a postsecondary institution from sharing the contact information of the recipient's Title IX Coordinator or information about how to report discrimination, including sex discrimination, at public awareness events.

The proposed exception would not apply when a Title IX Coordinator is notified of information shared during a public awareness event about conduct that may constitute sex-based harassment under Title IX that reveals an immediate and serious threat to the health or safety of students or other persons in the postsecondary institution's community. The language regarding immediate and serious threat to health or safety is aligned with the language regarding emergency removals in current § 106.44(c) and proposed § 106.44(h) and should be interpreted in the same way as those terms are interpreted in the context of emergency removals, as explained in the discussion of proposed § 106.44(h). As noted in the discussion of proposed § 106.44(c)(1), the Department agrees with the position stated in the preamble to the 2020 amendments that employees at elementary schools and secondary schools stand in a unique position with respect to responding to sex discrimination affecting their students, and the Department anticipates that it would be appropriate to limit the proposed exception for public awareness events to postsecondary institutions. In addition, proposed § 106.44(e) would not bar a recipient from taking additional action in response to information about conduct that may constitute sex-based harassment shared at a public awareness event if it so chooses.

Proposed § 106.44(e) would also clarify that although when a postsecondary institution's Title IX Coordinator is notified of information about conduct that may constitute sex-based harassment under Title IX provided by a person at a public awareness event, the postsecondary institution would not be obligated to act in response to this information under proposed §§ 106.44, 106.45, or 106.46, the postsecondary institution would be required to use this information to inform its efforts to prevent sex-based harassment. This use would include providing tailored training to address alleged sex-based harassment in a particular part of its education program or activity or at a specific location, or when information indicates there may be multiple incidents of sex-based harassment or when information indicates a single incident of sex-based harassment has occurred and there is a reasonable likelihood that additional incidents may occur at that location in the future. Depending on the information provided, a postsecondary institution might also take steps to protect against sex discrimination at a particular location, such as enhanced lighting, more frequent safety patrols. The proposed regulations would provide a postsecondary recipient with discretion to determine the specific manner in which it integrates the information from disclosures into its prevention training. The Department also notes that proposed § 106.44(e) is consistent with the requirements of at least one State law regarding responses by postsecondary institutions to information provided during public awareness events. *See, e.g.,* N.Y. Educ. Law § 6446(1)(e) (2015) (stating that an institution is not required to respond to information disclosed during a public awareness event but permitting the institution to use the information provided at such events to inform its education and prevention efforts).

In addition, § 106.6(f), to which the Department does not propose any changes, makes clear that the requirements under the Title IX regulations do not alleviate a recipient's obligations to its employees under Title VII. The public awareness event exception set out in proposed § 106.44(e) would pertain only to a postsecondary institution's obligations under Title IX and would not alleviate any obligations a postsecondary institution may have under Title VII to respond to information about sex-based harassment.

Section 106.44(f) Title IX Coordinator Requirements

Current regulations: Section 106.44(a) requires a recipient's Title IX Coordinator to promptly contact the complainant to discuss supportive measures and to explain the process for filing a formal complaint. Current § 106.44(b)(1) states that a recipient must follow a grievance process that complies with § 106.45 in response to a formal complaint.

Proposed regulations: Proposed § 106.44(f) states that a recipient must require its Title IX Coordinator to take the following steps upon being notified of conduct that may constitute sex

discrimination under Title IX: (1) treat the complainant and respondent equitably; (2) notify the complainant of the grievance procedures as described in proposed § 106.45, and if applicable proposed § 106.46, and if a complaint is made, notify the respondent of the applicable grievance procedures and notify the parties of the informal resolution process as described in this section if available and appropriate; (3) offer and coordinate supportive measures as described in proposed § 106.44(g), as appropriate, to the complainant and respondent to restore or preserve that party's access to the recipient's education program or activity; (4) in response to a complaint, initiate the grievance procedures or informal resolution process under § 106.44(k) as described in proposed § 106.45, and if applicable proposed § 106.46; (5) in the absence of a complaint or informal resolution process, determine whether to initiate a complaint of sex discrimination that complies with the grievance procedures described in proposed § 106.45, and if applicable proposed § 106.46, if necessary to address conduct that may constitute sex discrimination under Title IX in the recipient's education program or activity; and (6) take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity, in addition to remedies provided to an individual complainant.

Reasons: Treat the complainant and the respondent equitably. The Department proposes retaining the general requirement in current § 106.44(a) that a recipient must treat complainants and respondents equitably, although the Department proposes moving this requirement from current § 106.44(a) to proposed § 106.44(f)(1) to align with other changes made to this provision. The Department also proposes eliminating the two examples of equitable treatment that appear in current § 106.44(a) because they may be underinclusive. It is the Department's current view that equitable treatment requires more than providing supportive measures to the parties and following grievance procedures prior to imposing disciplinary sanctions. This is explained in greater detail in the discussion of proposed §§ 106.45(b)(1) and (h)(3) and (4).

The Department proposes modifying the two examples of equitable treatment and moving them to proposed § 106.45(h)(3) (a recipient must provide remedies to a complainant as appropriate when it determines sex discrimination occurred) and proposed § 106.45(h)(4) (a recipient must follow grievance procedures that comply with proposed § 106.45, and if applicable proposed § 106.46, before imposing disciplinary sanctions against a respondent), which address a recipient's treatment of the parties in the context of its sex discrimination grievance procedures. Proposed § 106.45(b)(1) would require a recipient's grievance procedures to treat the parties equitably, consistent with the requirement in proposed § 106.44(f)(1).

Notify the complainant of the recipient's sex discrimination grievance procedures and inform the respondent of the grievance procedures if a complaint of sex discrimination is made. The Department proposes § 106.44(f)(2)(i) to ensure that a complainant receives information about their right to request that the recipient initiate its grievance procedures. This provision is consistent with current § 106.44(a), which requires the Title IX Coordinator, as part of the recipient's general response to actual knowledge of sexual harassment, to promptly contact the complainant about the availability of supportive measures and the process for making a complaint with the recipient.

Because a recipient will not always learn of conduct that may constitute sex discrimination under Title IX directly from a complainant, proposed § 106.44(f)(2) would require a Title IX Coordinator, when the complainant's identity is known, to notify the complainant of the grievance procedures for sex discrimination complaints, and proposed § 106.44(k) would give the recipient the discretion to offer an informal resolution process, if available and appropriate. When a Title IX Coordinator does not know the identity of the complainant, the Title IX Coordinator may provide information about the recipient's grievance procedures to the individual, if any, who reported conduct that may constitute sex discrimination under Title IX.

Proposed § 106.44(f)(2)(ii) would also require a Title IX Coordinator to provide the respondent with information about its sex discrimination grievance procedures if a complaint is made that obligates the recipient to initiate those procedures. Although a recipient would be required to publish notice of its grievance procedures under proposed § 106.8(b)(2), providing this information to the respondent at the time the recipient initiates its sex discrimination grievance procedures would ensure the respondent, and the respondent's parent, guardian, or other authorized legal representative in the case of an elementary school or secondary school student, is adequately apprised of the grievance procedures and the rights they afford the respondent. Proposed § 106.44(f)(2)(ii) would also require a Title IX Coordinator to provide the parties with information about informal resolution, if available and appropriate, when a complaint of sex discrimination is made.

Offer and coordinate supportive measures to the complainant and respondent to restore or preserve that party's access to the recipient's education program or activity. Proposed § 106.44(f)(3) would require a Title IX Coordinator to offer and coordinate supportive measures to restore or preserve a party's access to the recipient's education program or activity. The Department proposes requiring the Title IX Coordinator to not only offer but also ''coordinate'' supportive measures. The Department added this coordination requirement, which is not in current § 106.44(a), to align this provision with proposed § 106.8(a)(1), which would require a recipient to designate and authorize a Title IX Coordinator to coordinate its efforts to comply with its responsibilities under the regulations, including the Title IX Coordinator's responsibility to provide supportive measures to the complainant and respondent to restore or preserve a party's access to the recipient's education program or activity. A more detailed explanation of the types of supportive measures that are available to a complainant or a respondent is included in the discussion of supportive measures in proposed § 106.44(g).

In response to a complaint, initiate the applicable grievance procedures or informal resolution process. In many instances, a recipient and its Title IX Coordinator will learn of conduct that may constitute sex discrimination under Title IX when a complaint is made. In these circumstances, the recipient must initiate its grievance procedures under proposed § 106.45, and if applicable proposed § 106.46. These grievance procedures, each of which permit recipients to offer an informal resolution process, are explained in greater detail in the discussion of individual sections in proposed §§ 106.45 and 106.46.

Determine whether to initiate a complaint when a sex discrimination complaint is not made. When a Title IX Coordinator is notified of conduct that may constitute sex discrimination under Title IX, but a complaint has not been made and an informal resolution process has not been initiated, the Department currently believes that a Title IX Coordinator must determine

whether to initiate a complaint of sex discrimination that complies with the applicable grievance procedures as described in proposed § 106.45, and if applicable proposed § 106.46. A Title IX Coordinator would do so after determining, on a case-by-case basis, that initiating the recipient's grievance procedures is necessary to address conduct that may constitute sex discrimination under Title IX in the recipient's education program or activity. As explained in the discussion of proposed § 106.44(c), the Department continues to recognize the importance of complainant autonomy in decisionmaking about whether to request that the recipient initiate its grievance procedures or participate in the recipient's grievance procedures. Therefore, the Department currently believes a recipient should honor a complainant's request not to proceed with a complaint investigation when doing so is consistent with a recipient's obligation to ensure it operates its education program or activity free from sex discrimination.

The 2020 amendments authorize the Title IX Coordinator to initiate the grievance procedures in current § 106.45 by signing a ''formal complaint'' as defined in current § 106.30, while clarifying that doing so does not make the Title IX Coordinator a complainant or party for purposes of the complaint or the grievance procedures under current § 106.45. The 2020 amendments do not explain under what circumstances a Title IX Coordinator may initiate a formal complaint; however, the preamble to the 2020 amendments states that the regulations ''leave recipients flexibility to investigate allegations even where the complainant does not wish to file a formal complaint where initiating a grievance process is not clearly unreasonable in light of the known circumstances.'' 85 FR 30131. The preamble provides one example of when a Title IX Coordinator might initiate a complaint—when presented with allegations ''against a potential serial sexual perpetrator''—but gives no guidance other than this example on what factors a Title IX Coordinator should consider when determining to initiate the recipient's grievance procedures. *Id.*

The Department also offers its current understanding about when a Title IX Coordinator should initiate grievance procedures even though the complainant elected not to make a complaint. Consistent with the example provided in the preamble to the 2020 amendments, a Title IX Coordinator should initiate a complaint when the alleged conduct presents an immediate and serious threat to the health or safety of a complainant or other persons or would prevent the recipient from affording a nondiscriminatory environment for all students. To make this decision, a Title IX Coordinator may weigh the following factors, which take into account both a recipient's duty to ensure equal access to its education program or activity and a nondiscriminatory educational environment as well as the wishes of an individual complainant not to proceed with a complaint investigation.

- *Risk of additional sex discrimination.* Circumstances that suggest a risk of additional acts of sex discrimination, including when there have been other reports or complaints of sex discrimination by the respondent or a history or pattern of behavior that suggests a risk of future discrimination by the respondent (*e.g.,* when a respondent continues to subject others to unwelcome sexual attention despite multiple unsuccessful efforts to address the respondent's behavior and prevent continued harassment);
- *Seriousness of alleged sex discrimination.* Whether the alleged incident involved violent acts, threats of violence or retaliation, or use of a weapon;
- *Age and relationship of the parties.* The parties' ages and roles within the recipient's education program or activity, including whether there is a power imbalance between them, such as when a professor is accused of sexually harassing a student; and
- *Scope of alleged sex discrimination.* Information suggesting a pattern, ongoing sex discrimination, or conduct alleged to have occurred in a setting in which multiple individuals were impacted, such as in a particular graduate program, in an extracurricular activity, on in connection with a specific athletic team.

In addition to considering the alleged sex discrimination itself and the factors above, the Department notes that a Title IX Coordinator may also consider factors such as the ones below in determining whether to initiate a complaint to address sex discrimination in the recipient's education program or activity:

- *Availability of evidence to assess whether sex discrimination occurred.* When corroborating evidence such as video footage, visitor logs, communication records, written documentation, or multiple known witnesses is available, a Title IX Coordinator may determine that initiating the recipient's grievance procedures would be an effective step to address sex discrimination. The lack of such information could weigh against initiating the recipient's grievance procedures absent a cooperating complainant, in which case a recipient would still need to comply with proposed § 106.44(f)(6) and require its Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity, in addition to providing remedies to an individual complainant; and
- *Disciplinary Sanctions.* A Title IX Coordinator may also consider whether the alleged conduct, if established, might require removal of the respondent from campus or another disciplinary restriction on the respondent to end the discrimination and prevent its recurrence, a factor that could counsel in favor of initiating the recipient's grievance procedures because disciplinary sanctions are not otherwise permitted.

Finally, the Department notes that in cases of sex discrimination by a recipient's employee, a Title IX Coordinator may be more likely to initiate the recipient's grievance procedures, even if the individual complainant does not wish to do so, because of considerations specific either to the affected workplace or the students with which the employee works, if any.

Other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity. As explained in the discussion of proposed § 106.44(a), the Department has reconsidered the facts and circumstances and now believes current § 106.44 may not ensure that a recipient with information about conduct that may constitute sex discrimination under Title IX in its education program or activity will take steps to end the discrimination and prevent its recurrence. The current standard permits a recipient to limit its response to the steps required in current § 106.44(a) when the recipient has knowledge that sexual harassment has or may have taken place. The Department currently proposes in § 106.44(a) to require a recipient to take other appropriate prompt and effective responsive action to address sex discrimination in its education program or activity by taking steps to end any sex discrimination that has occurred, prevent its recurrence, and remedy its effects in every case. A recipient has this obligation because it is required under Title IX to operate its education program or activity free from sex

discrimination. To effectuate that obligation, the Department proposes requiring additional steps when a Title IX Coordinator is notified of conduct that may constitute sex discrimination under Title IX. These steps are designed to ensure a recipient addresses sex discrimination by taking appropriate prompt and effective steps to end any discrimination, prevent its recurrence, and remedy its effects.

Specifically, proposed § 106.44(f)(6) would require a Title IX Coordinator who has been notified of conduct that may constitute sex discrimination under Title IX to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur. These steps would be taken in addition to any supportive measures a Title IX Coordinator may offer an individual complainant under proposed § 106.44(f)(3) or remedies a complainant may receive if a recipient either initiates its grievance procedures under proposed § 106.45, and if applicable proposed § 106.46, and determines that sex discrimination occurred or affords the parties an informal resolution process. Proposed § 106.44(f)(6) would further recognize that, consistent with the recipient's obligation to operate its education program or activity free from sex discrimination, a Title IX Coordinator must take appropriate prompt and effective steps outside of a recipient's grievance procedures, when necessary, to ensure that sex discrimination does not continue or recur.

In addition, under proposed § 106.44(f)(6), a Title IX Coordinator would be required, as appropriate, to take other prompt and effective steps in response to information about conduct that may constitute sex discrimination under Title IX regardless of whether the recipient has also initiated its grievance procedures or facilitated an informal resolution process for the parties. The Department proposes these additional steps to address two distinct concerns. First, sex discrimination that is not investigated through a recipient's grievance procedures or addressed by the parties through an informal resolution process, because a complaint was not made or initiated by the recipient's Title IX Coordinator or the parties did not elect to participate in an informal process when offered to them, may nevertheless require prompt and effective action by the recipient so sex discrimination does not continue or recur in its education program or activity. And second, even if a recipient's grievance procedures or informal resolution process fully resolve the parties' needs, sex discrimination in the recipient's education program or activity may impact individuals beyond the parties. In such cases, Title IX's prohibition on sex discrimination would also require a recipient's Title IX Coordinator to take additional prompt and effective steps to ensure sex discrimination does not continue or recur for the recipient's broader educational community. To address both concerns, the Department proposes in § 106.44(f)(6) that a recipient's Title IX Coordinator would need to take other prompt and effective steps to ensure a nondiscriminatory educational environment for the complainant and for others within its educational environment who are affected by the discrimination, as appropriate under the circumstances.

Although proposed § 106.44(f)(6) does not prescribe the specific steps that are necessary for a recipient to ensure that the sex discrimination does not continue or recur in its education program or activity, in all cases, a Title IX Coordinator's response must be effective to end the sex discrimination, prevent its recurrence, and remedy its effects. To ensure an effective response, the proposed regulation would require that a Title IX Coordinator must consider the report of possible sex discrimination in light of information reasonably available to the Title IX Coordinator. A Title IX Coordinator must also ensure that the response addresses any risk to the complainant of harm that is related to the allegations of sex discrimination, if a recipient did not initiate its grievance procedures or facilitate an informal resolution process, and to others within the school's educational environment who may be impacted by the discrimination. The steps a Title IX Coordinator would need to take will vary depending on the nature of the allegations, the source of the complaint, the individuals involved (*e.g.,* elementary school or secondary school students, undergraduate or graduate students, faculty/staff), the size and structure of the school, and other factors that the recipient deems relevant. If a Title IX Coordinator's actions are ineffective at ending the sex discrimination and preventing its recurrence, the Title IX Coordinator would need to take additional, different steps, to fulfill a recipient's obligation to address sex discrimination in its education program or activity.

If a recipient addressed a complaint through its grievance procedures, it may have access to specific information that the sex discrimination had an impact on the recipient's educational community beyond the parties. Even if a recipient did not investigate a complaint through its grievance procedures, the recipient's Title IX Coordinator may have access to information, including past reports to the Title IX Coordinator, corroborating information such as video footage, visitor logs available to the recipient, or written documentation, and any other relevant information that suggest the conduct has impacted the complainant and other members of the recipient's educational community. A Title IX Coordinator may need to speak with the respondent, if known, and other students or individuals who may have witnessed the reported sex discrimination or have information about the sex discrimination to determine what occurred or whether additional steps are necessary to ensure that sex discrimination does not continue or recur in its education program or activity.

The Department recognizes that it would not always be necessary for a Title IX Coordinator to take additional steps to ensure that sex discrimination does not continue or recur in its education program or activity, for example, when the sex discrimination involved only the parties and did not impact others participating or attempting to participate in the recipient's education program or activity, and the sex discrimination was addressed fully through a recipient's grievance procedures or informal resolution process. However, in all cases, when a recipient's response to sex discrimination is not effective to end the sex discrimination and prevent the recurrence of discrimination for the complainant or the recipient's broader educational community, under the proposed regulations, a Title IX Coordinator must reevaluate the recipient's response and implement other approaches. In addition, when a Title IX Coordinator fails to take prompt and effective steps to end sex discrimination and prevent its recurrence, a recipient would be responsible for remedying the discriminatory effects of its inaction. For example, if a Title IX Coordinator delayed responding to a report of sex discrimination and as a result the complainant continued to experience sex discrimination that caused the complainant's grades and health to suffer, the recipient would be responsible for remedying these harms. This may require a recipient to permit the complainant to retake courses or resubmit assignments without academic or financial penalty or to reimburse the complainant for counseling expenses incurred while the recipient delayed responding. Affording remedies in these

circumstances is also consistent with the proposed definition of ''remedies'' in § 106.2. Thus, in all cases, Title IX's prohibition on sex discrimination would require a recipient's Title IX Coordinator to take prompt and effective steps, including by remedying the effects of sex discrimination, to ensure that discrimination does not continue or recur in its education program or activity.

When a recipient has not initiated its grievance procedures, a Title IX Coordinator may need to take non-disciplinary action to stop the discrimination, such as instituting restrictions on contact between the parties, barring a third party from visiting the recipient's campus, or other action consistent with the recipient's policies. In some cases, after taking these steps, a Title IX Coordinator may learn of additional incidents or obtain information that causes the Title IX Coordinator to revisit whether to initiate a complaint under the recipient's grievance procedures. For example, if the Title IX Coordinator determines that the recipient must impose disciplinary sanctions on a respondent to effectively end the sex discrimination and prevent its recurrence, the Title IX Coordinator would need to initiate the recipient's grievance procedures under proposed § 106.45, and if applicable proposed § 106.46, and would be able to impose sanctions only if there is a determination that the respondent violated the recipient's policy prohibiting sex discrimination. However, in many cases, a Title IX Coordinator's ability to take prompt and effective steps to end the sex discrimination and prevent its recurrence may not warrant imposition of discipline or otherwise require the Title IX Coordinator to initiate its grievance procedures.

To ensure sex discrimination does not continue or recur and deny equal access to its education program or activity for a recipient's educational community, a Title IX Coordinator may need to provide additional training for staff on how to respond appropriately to sex discrimination, monitor known risks of sex discrimination in programs and activities in which sex discrimination has been reported in the past, or pursue strategies other than discipline to address the conduct. For example, a Title IX Coordinator may need to take steps to repair an educational environment in which sex discrimination occurred, such as within a specific class, department, athletic team, or program. A Title IX Coordinator may also consider providing educational programming aimed at the prevention of sex discrimination.

Finally, a Title IX Coordinator's obligations under proposed § 106.44(f)(6) may also include taking action related to a third party who is engaging in sex discrimination. For example, if a Title IX Coordinator is notified that a third party who is not a student or an employee of the recipient is attending events organized by the recipient and engaging in harassing or discriminatory behavior at such events, the Title IX Coordinator would need to take prompt and effective action to end such discrimination and prevent its recurrence even if no complaint is made. In this example, the Title IX Coordinator may choose to bar the third party from the recipient's events or campus in general, or otherwise take appropriate prompt and effective steps to ensure sex discrimination does not continue or recur in its education program or activity.

Section 106.44(g) Supportive Measures

Current regulations: Section 106.44(a) of the current regulations requires a recipient to treat complainants and respondents equitably by offering supportive measures to a ''complainant'' as defined in current § 106.30, and following a grievance process that complies with current § 106.45 before imposing disciplinary sanctions or taking any action that is not a supportive measure with respect to a respondent. Current § 106.44(a) also requires a recipient's Title IX Coordinator to promptly contact the complainant to discuss supportive measures and to explain the process for filing a formal complaint.

Proposed regulations: The Department proposes adding several provisions to clarify a recipient's obligation to offer supportive measures to a complainant or a respondent. Proposed § 106.44(g) would make clear that upon being notified of conduct that may constitute sex discrimination under Title IX, a Title IX Coordinator must offer supportive measures, as appropriate, to the complainant or respondent to the extent necessary to restore or preserve that party's access to the recipient's education program or activity. Proposed § 106.44(g) would also clarify that for allegations of sex discrimination other than sex-based harassment or retaliation, a recipient, its employee, or other person authorized to provide aid, benefit or services on the recipient's behalf is not required to alter the conduct that is alleged to be sex discrimination for the purpose of providing a supportive measure. Proposed § 106.44(g)(1) provides examples of supportive measures that a recipient could deem to be appropriate, including but not limited to, counseling, extension of deadlines and other course-related adjustments, campus escort services, increased security and monitoring of certain areas of the campus, restrictions on contact between the parties, leaves of absence, voluntary or involuntary changes in class, work, housing, or extracurricular or any other activity regardless of whether or not there is a comparable alternative, and training and education programs related to sex-based harassment.

Proposed § 106.44(g)(2) would clarify that supportive measures can include measures that burden a respondent, such as requiring changes in a respondent's class, work, housing, extracurricular or any other activity. Proposed § 106.44(g)(2) would, however, place limits on the ability of a recipient to impose measures that burden a respondent, including requiring that such measures are imposed only during the pendency of a recipient's grievance procedures under proposed § 106.45, and if applicable proposed § 106.46, requiring that they be terminated at the conclusion of the grievance procedures, and requiring that they must be no more restrictive of the respondent than necessary to restore or preserve the complainant's access to the recipient's education program or activity. In addition, under this proposed provision a recipient may not impose such supportive measures for punitive or disciplinary reasons. Proposed § 106.44(g)(4) would also require the recipient to provide a respondent burdened by a supportive measure with the opportunity to seek modification or termination of such measures before they are imposed, or, if necessary under the circumstances, as soon as possible after the measure has taken effect, by appeal to an official other than the one who originally imposed the measures. The Department further proposes that a recipient must also provide a complainant or respondent affected by a supportive measure with the opportunity to seek additional modification or termination of such supportive measure if circumstances change materially.

The proposed regulations would also permit a recipient to modify, terminate, or continue supportive measures, other than those that burden a respondent, at the conclusion of grievance procedures or the informal resolution process (proposed § 106.44(g)(3)); protect complainant and respondent privacy by permitting disclosure of supportive measures only as necessary to provide them or when a recipient needs to

inform a party of supportive measures provided to another party in order to restore or preserve that party's access to the education program or activity (proposed § 106.44(g)(5)); confirm that the Title IX Coordinator would be responsible for offering and coordinating supportive measures (proposed § 106.44(g)(6)); require a recipient to consult with the IEP team, 34 CFR 300.321, or Section 504 team, 34 CFR 104.35(c), when implementing supportive measures for an elementary school or secondary school student with a disability (proposed § 106.44(g)(7)(i)); and suggest that when implementing supportive measures for a postsecondary student with disability, a recipient may consult, as appropriate, with the individual or office that the recipient has designated to provide support to students with disabilities (proposed § 106.44(g)(7)(ii)).

Reasons: Require a recipient to offer supportive measures to a complainant or respondent. As explained in the discussion of amendments to regulatory definitions in Section II.C, ''supportive measures'' would be defined in proposed § 106.2 as non-disciplinary, individualized measures that are offered as appropriate, as reasonably available, without unreasonably burdening a party, and without fee or charge to a complainant or respondent to: (i) restore or preserve that party's access to the recipient's education program or activity, including temporary measures that burden a respondent when such measures are imposed for non-punitive and non-disciplinary reasons and are designed to protect the safety of the complainant or the recipient's educational environment, or deter the respondent from engaging in sex-based harassment; or (ii) provide support to the complainant or respondent through the recipient's grievance procedures or informal resolution process.

Consistent with this definition, proposed § 106.44(g) would require a Title IX Coordinator to offer supportive measures not only to a complainant, but also to a respondent, when necessary to accomplish the objective of ensuring that party's access to the recipient's education program or activity. The appropriate supportive measures offered to a complainant or respondent would be determined by the recipient, as set out in proposed § 106.44(g), and would be offered and coordinated by the Title IX Coordinator. Proposed § 106.44(f)(3) and (g) would maintain the requirement from the current definition of ''supportive measures'' in § 106.30 that a Title IX Coordinator must offer supportive measures to the complainant before or after a complaint has been made or when no complaint has been made. Depending on the circumstances, it might be appropriate for a Title IX Coordinator to offer supportive measures to a respondent if, and then after, the respondent has received notice of the allegations.

In addition, the proposed regulations would also clarify that supportive measures are available for all forms of sex discrimination. Despite the current definition of ''supportive measures'' in § 106.30, which states that the measures are available for complainants and respondents, current § 106.44(a) requires only that a recipient, in responding to actual knowledge of sexual harassment in an education program or activity, offer supportive measures to a complainant. To align with the current and proposed definitions of ''supportive measures,'' as well as proposed § 106.44(a), the Department proposes requiring a recipient to offer supportive measures whenever a Title IX Coordinator is notified of any type of conduct that may constitute sex discrimination under Title IX, not just sex-based harassment. For allegations of sex discrimination other than sex-based harassment or retaliation, proposed § 106.44(g) would clarify that a recipient's provision of supportive measures would not require the recipient, its employee, or other person authorized to provide aid, benefit or services on the recipient's behalf to alter the alleged discriminatory conduct for the purpose of providing a supportive measure. However, if the recipient determines that sex discrimination occurred, the recipient would then be required to alter or end the discriminatory conduct. For example, in response to a complaint about sex discrimination in grading, a recipient would not be required to change the complainant's grade as a supportive measure while an investigation is pending. If the recipient determines that sex discrimination in grading occurred, the recipient might then be required to change the complainant's grade when providing a remedy to the complainant.

A recipient has substantial discretion to offer supportive measures including, when necessary, measures that burden a respondent. Proposed § 106.44(g)(1) is consistent with, and further clarifies, the definition of ''supportive measures'' in current § 106.30, which confers broad discretion on a recipient in deciding which supportive measures are reasonable. A recipient's discretion, however, would be limited by the requirement to offer supportive measures to a complainant or respondent only as appropriate to restore or preserve that party's access to the recipient's education program or activity. Supportive measures would also need to be reasonable in light of the facts and circumstances surrounding the allegations and the grievance procedures.

Factors a recipient may consider in offering such supportive measures include: (1) the need expressed by the complainant or respondent; (2) the ages of the parties involved, the nature of the allegations, and their continued effects on the complainant or respondent; (3) whether the parties continue to interact directly in the recipient's education program or activity, including student employment, shared residence or dining facilities, class, or while using campus transportation; and (4) whether steps have already been taken to mitigate the harm from the parties' interactions, such as implementation of a civil protective order. In addition to these factors, a recipient should consider the supportive measures a complainant or respondent may need to facilitate their participation in the recipient's grievance procedures or informal resolution process. The Department recognizes that participation in grievance procedures or an informal resolution process may necessitate supportive measures to address not only the stress associated with participation, but also conflicts with classes, assignment deadlines, student employment, and other commitments that may arise as a result of that participation.

Proposed § 106.44(g)(2) would also clarify that a recipient has the discretion to impose supportive measures that temporarily burden a respondent but not for the purpose of discipline or punishment. This is consistent with the current definition of ''supportive measures,'' which requires that supportive measures be non-disciplinary and non-punitive in nature and that they are not unreasonably burdensome to the non-requesting party as a procedural protection for a respondent. 34 CFR 106.30. In the preamble to the 2020 amendments, the Department also stated that any disciplinary sanctions described or listed by the recipient in its own grievance process would constitute actions that the recipient considers disciplinary and, thus, could not constitute supportive measures under current § 106.30. 85 FR 30182. OCR received feedback from stakeholders through the June 2021 Title IX Public Hearing, as well as in listening sessions, that requested additional options for supportive measures during the pendency of an investigation to protect the complainant's access to the

recipient's education program or activity. These stakeholders expressed frustration that under the 2020 amendments, it appears that the only supportive measures that burden a respondent that a recipient can impose prior to resolving a complaint are mutual restrictions on contact and expressed concern that preventing a recipient from imposing supportive measures that burden a respondent could limit a complainant's access to the recipient's education program or activity even in cases in which the recipient concludes that it would be reasonable to impose such temporary limits on the respondent. Stakeholders also requested that the Department allow recipients to take additional actions to protect a complainant's safety. The Department heard from stakeholders who wanted to ensure that student respondents were still able to access their education while the recipient resolves a complaint through its grievance procedures, emphasizing that a student respondent is entitled to procedural protections prior to the implementation of any supportive measures that would limit their educational access.

After careful consideration of these comments, the Department proposes clarifying in § 106.44(g) that supportive measures would include measures that burden a respondent that are imposed temporarily during the pendency of a recipient's grievance procedures under proposed § 106.45, and if applicable proposed § 106.46. The Department also proposes clarifying that supportive measures that burden a respondent may include actions that a recipient has also identified as possible disciplinary sanctions. After reweighing the facts and circumstances, it is the Department's tentative position that actions by a recipient are not inherently disciplinary simply because they are listed as possible disciplinary sanctions, and that a recipient may utilize them as supportive measures as long as such actions are offered to restore or preserve a complainant's access to a recipient's education program or activity and not imposed for punitive or disciplinary purposes. In the Department's tentative view, these clarifications would provide a recipient with more discretion to make case-specific judgments about how best to proceed in cases in which one party or the other will necessarily be denied some access to a program or activity during the pendency of grievance procedures, but only if the measures meet the proposed regulations' requirements to ensure fairness to all parties as just described. In deciding which supportive measures are reasonable, a recipient should consider whether supportive measures that do not burden the respondent would suffice to preserve the complainant's access to the recipient's education program or activity and, if not, should consider the impact of any contemplated supportive measures that temporarily burden the respondent or the respondent's access to the recipient's education program or activity. In undertaking this evaluation, a recipient must ensure that a supportive measure preserves or restores the complainant's nondiscriminatory access to the recipient's education program or activity.

In light of feedback OCR received from stakeholders during listening sessions and in connection with the June 2021 Title IX Public Hearing emphasizing the potential harm to a respondent's education from the unnecessary or inappropriate implementation of supportive measures that burden the respondent and to ensure fairness for all parties to a recipient's grievance procedures, the Department proposes, in § 106.44(g)(2), to include limitations on a recipient's discretion to impose these measures. The proposed limitations would require that supportive measures that burden a respondent be imposed only during the pendency of the recipient's grievance procedures and terminate following the recipient's determination regarding the allegations in the complaint. Further, proposed § 106.44(g)(2) would require supportive measures that burden a respondent to be reasonable and no more restrictive than necessary to restore or preserve the complainant's access to the education program or activity. The Department proposes these limits to ensure not only that a recipient considers the needs of the individuals involved, but also to ensure that, even when similar actions are involved, supportive measures remain distinct from disciplinary sanctions, which are consequences that can be imposed only following a determination that the respondent violated the recipient's prohibition on sex discrimination. As explained in the discussions of proposed § 106.44(h) and (i), nothing in proposed § 106.44(g)(2) should be construed as precluding a recipient from removing a respondent from the recipient's education program or activity on an emergency basis if the recipient determines that an immediate and serious threat to the health and safety of students or other persons justifies the removal and the requirements of proposed § 106.44(h) are otherwise followed, nor would proposed § 106.44(g)(2) preclude a recipient from placing an employee respondent on administrative leave from employment responsibilities under proposed § 106.44(i).

The Department recognizes that by imposing supportive measures that burden a respondent, the recipient is potentially requiring the respondent to temporarily alter or forego access to the education program or activity during the pendency of grievance procedures. In view of this, the Department proposes requiring the recipient to provide the respondent procedural protections when imposing such measures. Proposed § 106.44(g)(4) would therefore require a recipient to provide a respondent with the opportunity to seek termination or modification of a burdensome supportive measure before the measure is imposed, or if necessary under the circumstances, as soon as possible after the measure has taken effect, from an impartial employee who is someone other than the employee who made the contested decision. The employee imposing the supportive measures or reviewing a request to terminate or modify such measures may be the Title IX Coordinator, who is also tasked with coordinating any supportive measures provided to the parties. However, to ensure that a respondent receives an independent review, the Department proposes that neither the Title IX Coordinator nor any other employee may both impose and review the same supportive measures. Moreover, proposed § 106.44(g)(4) would require that the recipient offer this opportunity to review prior to imposing any supportive measures that burden a respondent or, if necessary under the circumstances, as soon as possible after the measure has taken effect. Offering the opportunity for review prior to the imposition of the measures is preferable from the standpoint of ensuring that a respondent is not unnecessarily restricted or deprived of educational opportunities. Accordingly, whenever it is practical and appropriate, the recipient should provide the respondent an opportunity to review and seek modifications of burdensome supportive measures prior to imposing them. Yet the Department proposes to offer recipients flexibility concerning timing in order to account for the wide range of supportive measures available under proposed § 106.44(g)(1) and to allow a recipient to take into account the respondent's interests as well as other concerns, such as ensuring the complainant's safety or

ability to access the educational environment. There may be times when offering such a review is impractical until after supportive measures that burden the respondent have been imposed. Proposed § 106.44(g)(4) would also require a recipient to provide complainants and respondents affected by a supportive measure with the opportunity to seek additional modification or termination of such supportive measure if circumstances change materially.

Proposed § 106.44(g)(1) would specifically identify restrictions on contact as an example of a supportive measure that may be utilized by a recipient. Current § 106.30 includes only mutual restrictions on contact between the parties on the list of possible supportive measures. However, in the preamble to the 2020 amendments, the Department responded to concerns that mutual restrictions on contact may unfairly burden a complainant, may be unnecessary, and may fail to ensure complainant safety. 85 FR 30184. In particular, stakeholders had asked the Department to clarify that recipients may also impose non-mutual restrictions on the parties when appropriate. Although the Department declined to modify § 106.30 to include non-mutual restrictions on contact in the list of supportive measures, the preamble clarified that their absence from the list ''does not mean that one-way no-contact orders are never appropriate.'' *Id.* Rather, the Department noted in the preamble that ''[a] fact-specific inquiry is required into whether a carefully crafted no-contact order restricting the actions of only one party would meet the § 106.30 definition of supportive measures.'' *Id.* In particular, the Department recognized that non-mutual no-contact orders may be necessary supportive measures to enforce restraining or protective orders issued by a court. *Id.* The preamble further explained that ''if a one-way no-contact order does not unreasonably burden the other party, then a one-way no-contact order may be appropriate.'' *Id.* OCR has since received feedback through the June 2021 Title IX Public Hearing and listening sessions urging clarification that temporary non-mutual no-contact orders are among those supportive measures that a recipient may offer when necessary. Stakeholders noted that by including mutual no-contact orders in the list of supportive measures without a reference to non-mutual no-contact orders, the 2020 amendments did not accurately communicate what supportive measures a recipient may offer consistent with its obligations under Title IX. These stakeholders stated that this apparent gap would be particularly problematic in dating or domestic violence situations when a respondent may manipulate or pressure a complainant into violating a mutual no-contact order, putting the complainant at risk of discipline as a result of the respondent's behavior.

To ensure that recipients understand that they are not limited to imposing mutual restrictions on contact between the parties as supportive measures, the Department proposes eliminating the term ''mutual'' from the non-exhaustive list of supportive measures under § 106.44(g)(1). The Department also reiterates that the list of possible supportive measures in proposed § 106.44(g)(1) would be illustrative and not exclusive. As with other supportive measures, a recipient should consider the appropriateness and necessity of non-mutual restrictions on contact in light of the factors described above, including a party's expressed need for a non-mutual restriction, the nature of the allegations and their continued effects on the parties, and whether and how the parties continue to interact in the recipient's education program or activity. In addition, because a non-mutual restriction on contact may be a supportive measure that burdens a respondent, a recipient should also pursue less restrictive supportive measures to restore or preserve a complainant's access to the recipient's education program or activity when possible and only impose non-mutual restrictions on contact when necessary and when no other supportive measure will suffice.

Finally, the Department also includes in proposed § 106.44(g)(1) training and education programs related to sex-based harassment as supportive measures. Training and education programs are within the scope of the current definition of ''supportive measures'' in § 106.30, which states that supportive measures are designed to deter future sex-based harassment. The Department recognizes the significant role training plays in shaping a school and campus climate and environment, especially when the training is interactive and incorporates hypothetical examples of scenarios that may arise for recipients. In some circumstances, providing training and education programs to parties regarding a recipient's policies may be helpful in restoring or preserving access to a recipient's education program or activity or may assist the parties in ensuring meaningful participation in the recipient's grievance procedures. Although such training may be implemented as a remedy following a determination that sex discrimination occurred, there may also be circumstances in which training is warranted during the pendency of the recipient's grievance procedures or independent of the outcome of any grievance procedures. For example, when a recipient receives a complaint of sex-based taunts occurring at school athletic events, it may be clear to the recipient that additional training for the larger school community is necessary to preserve access to a recipient's education program or activity regardless of the ultimate outcome of the complaint.

Duration of supportive measures. Proposed § 106.44(g)(3) would permit a recipient to terminate or modify supportive measures that do not burden a respondent at the conclusion of its grievance procedures under proposed § 106.45, and if applicable proposed § 106.46, or at the conclusion of the informal resolution process under proposed § 106.44(k), or the recipient may continue to provide supportive measures, as appropriate. The Department did not clarify in the 2020 amendments the duration of supportive measures or whether a recipient may continue to offer them after the conclusion of its sexual harassment grievance procedures, regardless of the outcome. However, the Department did emphasize in current § 106.44(a) that supportive measures could be provided in the absence of a complaint, and in that sense indicated that such measures would not be contingent on the outcome of a complaint. Under proposed § 106.44(g)(3), a recipient would have the discretion to decide on a case-by-case basis how long supportive measures are needed. The same factors used to make the determination about which supportive measures to offer would also be relevant to determinations about the duration of those measures, including whether they remain necessary to restore or preserve a complainant's or respondent's access to the recipient's education program or activity, such as when the parties participate in the same classes, student employment, residence, or dining facilities. Some supportive measures, such as those that limit interactions between the parties, may be necessary and appropriate to implement for the duration of the parties' participation in the recipient's education program or activity. Others, such as academic adjustments or counseling, may be necessary for a shorter period of time, also depending on the circumstances. As explained in the discussion of

proposed § 106.44(g)(2), a recipient would be required to terminate supportive measures that burden a respondent no later than the conclusion of the recipient's grievance procedures under proposed § 106.45, and if applicable proposed § 106.46.

Confidentiality of supportive measures and Title IX Coordinator's role. The current definition of ''supportive measures'' in § 106.30 states that recipients must maintain as confidential any supportive measures provided to the complainant or respondent except when doing so would impair the recipient's ability to provide the supportive measures. Proposed § 106.44(g)(5) would preserve this requirement and clarify that a recipient must ensure that it does not disclose information about supportive measures to persons other than the complainant or respondent unless necessary to provide the supportive measures. A recipient may also inform a party of supportive measures provided to, or imposed on, the other party only if necessary to restore or preserve that party's access to the education program or activity.

Proposed § 106.44(g)(6) would incorporate the requirement from the current definition of ''supportive measures'' and the requirement in current § 106.44(a) that a recipient's Title IX Coordinator is responsible for offering and coordinating supportive measures. 34 CFR 106.30 and 106.44(a). This responsibility would not require the Title IX Coordinator to be the employee who implements the supportive measures, but the Title IX Coordinator would ultimately be responsible for ensuring that the measures are implemented appropriately. For example, if the Dean of Academic Affairs implements a supportive measure during the recipient's grievance procedures to move a student respondent from one laboratory to another and bar their entry into their previous laboratory, the Title IX Coordinator would be responsible for ensuring that the supportive measure is fully implemented, including that the necessary personnel are notified to deactivate the student respondent's identification card or otherwise bar entry to the respondent's previous laboratory.

Addressing disagreements over supportive measures. The Department recognizes that a complainant and respondent are impacted by a recipient's decisions regarding supportive measures. In certain situations, a complainant or respondent may not agree with a recipient's decision to grant or deny a request for a specific supportive measure, or may object to the decision to modify or terminate an existing supportive measure. To ensure that parties are afforded an opportunity to contest a recipient's decisions regarding a supportive measure, proposed § 106.44(g)(4) would provide a mechanism for parties to seek review from an impartial employee who is not the employee responsible for the contested decision and who has the authority to change the supportive measure, if appropriate. The Department further notes that although the opportunity to challenge a supportive measure exists at the time a recipient makes an initial decision to grant or deny a request for a specific supportive measure, or a decision to modify or terminate an existing supportive measure, proposed § 106.44(g)(4) would also require a respondent to allow a complainant or respondent to bring an additional challenge to a decision regarding a supportive measure, including a burdensome supportive measure, when circumstances change materially.

Administering supportive measures involving a student with a disability. Finally, when a recipient implements a supportive measure involving an elementary school or secondary school student with a disability, proposed § 106.44(g)(7)(i) would require the recipient's Title IX Coordinator to consult with the student's IEP team, 34 CFR 300.321, or the Section 504 team, 34 CFR 104.35(c), to help ensure the recipient's implementation of supportive measures complies with IDEA and Section 504. In the case of a postsecondary student with a disability, proposed § 106.44(g)(7)(ii) would permit a recipient's Title IX Coordinator, as appropriate, to consult with the person or office that the recipient designated to provide supports for students with disabilities to help ensure compliance with Section 504 (*e.g.,* disability services office), including consideration of any disability-related modifications, adjustments, or services required under Section 504. Because a postsecondary student with a disability is not required to disclose a disability to their school or request disability-related modifications, adjustments, or services, proposed § 106.44(g)(7)(ii) would leave it to the discretion of a recipient's Title IX Coordinator to consult with the disability services office in appropriate circumstances. For example, when a party discloses to a postsecondary recipient's Title IX Coordinator that they are a student with a disability, the recipient should discuss with the party available resources including those provided through the recipient's disability services office. The party may already receive disability-related supports and services and may or may not require additional supports, or the party may not wish to request disability-related support in connection with the recipient's response to alleged sex discrimination. In light of a postsecondary student's discretion to request such services, the Title IX Coordinator should provide the party information about available resources and honor the student's request regarding whether to involve disability services office staff. These protections would also ensure that a recipient appropriately considers its obligations to comply with Federal disability rights laws prior to offering supportive measures to a student as part of its grievance procedures.

Section 106.44(h) Emergency Removal

Current regulations: Section 106.44(c) allows a recipient to remove a respondent from its education program or activity on an emergency basis following an individualized safety and risk analysis and a determination that the respondent poses an immediate threat to the physical health or safety of any student or other person arising from the allegations of sexual harassment. Current § 106.44(c) requires a recipient that seeks to remove a respondent on an emergency basis to provide the respondent with notice and an immediate opportunity to challenge the removal. Current § 106.44(c) further states that emergency removal does not modify any rights under the IDEA, Section 504, or the Americans with Disabilities Act of 1990 (ADA).

Proposed regulations: The Department proposes broadening the language in current § 106.44(c), to permit emergency removal of a respondent after a recipient conducts an individualized assessment and determines that an immediate threat to the health or safety of any student, employee, or other person arising from the alleged sex discrimination exists, and moving it to proposed § 106.44(h). To afford protection for the full range of possible threats—physical and non-physical—that a respondent may pose, the Department proposes removing the limiting term ''physical'' and adding language that focuses instead on the seriousness of the threat to a person's health or safety (physical or non-physical).

Reasons: The Department recognizes the need to allow a recipient flexibility to remove a respondent from its education program or activity on an emergency basis, and expressly provides

for such removals in current § 106.44(c). Consistent with other changes to proposed § 106.44, the Department proposes changing emergency removal to permit a recipient to address threats arising from all forms of alleged sex discrimination, and not limiting emergency removal to alleged sex-based harassment.

In addition, OCR received feedback through the June 2021 Title IX Public Hearing and listening sessions that current § 106.44(c) sets too high a bar to effectuate the provision's goal of safety. Specifically, postsecondary institutions and safety compliance officers noted that by limiting emergency removals to circumstances in which a respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment, current § 106.44(c) fails to account for the significant non-physical harms some respondents pose to complainants and other individuals in connection with alleged sex-based harassment. Some threats may present an immediate and serious non-physical threat to student safety that warrants the emergency removal of a respondent following an individualized assessment. For example, a complainant who is stalked by a respondent may not experience a physical threat as a result of stalking, yet the stalking could present a serious and immediate threat to the student's mental health. The Department seeks to address such serious non-physical threats on the same basis as physical threats. Therefore, the Department proposes clarifying the scope of threat to encompass all serious threats to health and safety, which would include but is not limited to threats to physical health and safety, to account for the non-physical threats that may justify immediate action. To accomplish this change, the Department proposes deleting the term ''physical'' as a restrictive qualifier on threats to health and safety and adding the term ''serious'' to confirm that non-serious threats do not warrant emergency removal. It is the Department's tentative view that this proposed revision would give recipients the necessary flexibility to ensure a safe campus community while protecting the rights of all students. The Department further notes that the current regulations require a recipient to provide ''the respondent with notice and an opportunity to challenge the decision immediately following the removal,'' 34 CFR 106.44(c), a protection that the proposed regulations retain. Nothing in the current or proposed regulations would preclude a respondent from bringing an additional challenge to the emergency removal at a later time if circumstances have changed or new facts come to light that warrant reconsideration of the recipient's decision.

Section 106.44(i) Administrative Leave

Current regulations: Section 106.44(d) states that ''nothing in this subpart precludes a recipient from placing a non-student-employee respondent on administrative leave during the pendency of a grievance process'' consistent with current § 106.45, provided that in doing so a recipient must not modify any rights available to a respondent under Section 504 or the ADA.

Proposed regulations: The Department proposes maintaining current § 106.44(d) in proposed § 106.44(i) with minor revisions. The Department proposes changing ''nothing in this subpart'' to ''nothing in this part,'' and clarifying that administrative leave would be permitted during the pendency of the recipient's grievance procedures.

Reasons: The Department proposes changing ''nothing in this subpart'' to ''nothing in this part'' to align with other proposed changes to the regulations, including the relocation of the proposed definitions from subpart D to subpart A. The Department also proposes removing the term ''non-student'' to clarify that a recipient may place any employee respondent on administrative leave. This change would allow a recipient to treat its employees similarly with respect to the conditions of their employment by allowing the recipient to place both student-employees and non-student-employees on administrative leave when appropriate. The Department also proposes removing the reference to ''grievance process that complies with § 106.45'' and clarifying that this provision would apply to the recipient's grievance procedures, which encompass the grievance procedures under proposed § 106.45, and if applicable proposed § 106.46 The Department proposes this change to ensure that the recipient has discretion to place an employee respondent on administrative leave while following grievance procedures described in proposed § 106.45, and if applicable proposed § 106.46.

Section 106.44(j) Recipient Prohibition

Current regulations: Current § 106.71(a) includes a requirement that a recipient must keep confidential the identities of ''any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by'' FERPA or its regulations or required by law or to carry out the purposes of Title IX.

Proposed regulations: In proposed § 106.44(j), the Department would limit a recipient's ability to disclose the identities of parties, witnesses, or other participants when conducting an informal resolution process under proposed § 106.44(k), implementing grievance procedures under proposed § 106.45, and if applicable proposed § 106.46, and requiring a Title IX Coordinator to take any other appropriate steps under proposed § 106.44(f)(6). The Department would prohibit a recipient from disclosing the identity of a party, witness, or others participating in the above-referenced processes except when the person whose identity would be disclosed has consented to the disclosure, when permitted by FERPA, when required by law, or to carry out the purposes of Title IX.

Reasons: As explained in the discussion of proposed § 106.44(a), a recipient has a duty under Title IX to operate its education program or activity free from sex discrimination. The Department's tentative view is that, in order to effectuate Title IX in this regard, a recipient must refrain from disclosing the identities of parties, witnesses, and others participating subject to the exceptions listed in proposed § 106.44(j) because such disclosures are likely to chill participation in the recipient's efforts to address sex discrimination.

Current § 106.71(a) requires the recipient to keep confidential the identities of the parties or witnesses except for reasons required by law, permitted by FERPA, necessary to carry out Title IX responsibilities, or when the parties themselves permit disclosure of their own identities. The Department proposes changes to this prohibition on disclosure for clarity and also proposes moving this prohibition to proposed § 106.44 because it relates to a recipient's broader responsibilities to address information about conduct that may constitute sex discrimination in its program or activity, as addressed in proposed § 106.44, and does not identify conduct that constitutes ''retaliation,'' as defined in proposed § 106.2.

The Department proposes modifying the protection of this provision to apply beyond parties and witnesses to also

include others participating in the informal resolution process, grievance procedures, and other appropriate steps taken by the Title IX Coordinator. Others participating in these processes may include advisors, parents, guardians, or other authorized representatives for the parties, an interpreter for a person with limited English proficiency, or a notetaker who provides services as a reasonable modification for a person with a disability. Without a prohibition on the recipient disclosing their identities, some of these other individuals may be reluctant to participate in the recipient's Title IX processes. Their lack of participation could, in turn, impair the recipient's efforts to address information about conduct that may constitute sex discrimination, including by affecting the equitable treatment of the complainant and respondent as required by proposed §§ 106.44(f)(1) and 106.45(b)(1). In addition, the proposed change aligns with how these individuals are described elsewhere in the proposed regulations, including in proposed § 106.71, and would provide clarity while ensuring comprehensive coverage.

The Department also seeks to provide clarity by relocating the prohibition on a recipient disclosing the identity of persons participating in any way in its Title IX processes to proposed § 106.44(j) because this requirement is not limited to retaliation, which is the subject of proposed § 106.71. The Department's tentative position is that this change would reduce confusion and enhance clarity about the scope of a recipient's obligation to keep these persons' identities confidential. As in current § 106.71(a), proposed § 106.44(j) would prohibit a recipient from disclosing the identities of parties, witnesses, or others participating in the recipient's Title IX processes unless one of the stated exceptions applies. The Department proposes retaining the stated exceptions from current § 106.71(a) with minor changes in wording to be consistent with the proposed regulations. The prohibition in proposed § 106.71(a) on ''retaliation,'' as defined in proposed § 106.2, would also continue to apply to any intimidation, threat, coercion, or discrimination by the recipient for the purpose of retaliation, including disclosures about persons participating in any of the recipient's Title IX processes. In the preamble to the 2020 amendments, the Department explained that unnecessary exposure of these persons' identities for any reason may lead to retaliation:

> [U]nnecessarily exposing the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, may lead to retaliation against them and [the Department] would like to prevent such retaliation.

85 FR 30537. Through the June 2021 Title IX Public Hearing, OCR heard support for this prohibition because this type of disclosure may directly raise the risk of, and even encourage, retaliation. These stakeholders observed that once the information is released by the recipient, students may take sides and engage in retaliation against parties, witnesses, and those involved in administering the grievance procedures. In addition, stakeholders noted that some students may not choose to share with their classmates or family members that they reported, made a complaint, or participated in the recipient's grievance procedures, and disclosures by others could result in disclosures to those individuals. The Department notes that the same may be true for employees who may choose not to share their participation with colleagues. The Department also reiterates that if the disclosure were made for retaliatory purposes as discussed by stakeholders, then it would constitute retaliation and would be prohibited by proposed § 106.71(a). However, the Department's tentative view is that, in addition to a disclosure made for retaliatory purposes, any disclosure for reasons other than those permitted or required by proposed § 106.44(j) may chill reporting of sex discrimination or participation in the recipient's efforts to address sex discrimination. Therefore, the Department's tentative position is that, independent of its obligation to prohibit retaliation, including its own retaliatory disclosure of the identities of parties, witnesses, or other participants under proposed § 106.71, the recipient must not disclose these identities other than as provided in proposed § 106.44(j) so that the recipient's own actions do not create a barrier to these individuals' participation in the recipient's efforts to address information that may constitute sex discrimination. In this regard, the Department's proposal would clarify that a recipient's disclosure of the identity of a party, witness, or other participant except as otherwise specified, is prohibited.

Section 106.44(k) Informal Resolution Process

Current regulations: Section 106.45(b)(9) allows a recipient to offer an informal resolution process that does not involve a full investigation and adjudication, such as mediation, at any time prior to reaching a determination regarding responsibility. This section also requires a recipient to provide a written notice to the parties disclosing the allegations; the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared. Recipients must first obtain the parties' voluntary, written consent to the informal resolution process.

There are currently several restrictions on a recipient's discretion to offer an informal resolution process. A recipient must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student; require informal resolution as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, the waiver of the right to an investigation and adjudication of formal complaints of sexual harassment; require the parties to participate in an informal resolution process; or offer an informal resolution process unless a formal complaint is filed.

Proposed regulations: The Department proposes adding § 106.44(k)(1), which would specify that a recipient may offer an informal resolution process at any time prior to determining whether sex discrimination occurred, unless there are allegations that an employee engaged in sex discrimination toward a student or such a process would conflict with Federal, State, or local law. Proposed § 106.44(k)(1) would also state that a recipient that provides an informal resolution process must, to the extent necessary, also require its Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity.

The Department proposes clarifying that a recipient would have discretion regarding whether to offer an informal resolution process at any time prior to determining under proposed § 106.45, and if applicable proposed § 106.46, whether sex discrimination occurred, which is a point not explicitly addressed in the current regulations. The Department also proposes, at § 106.44(k)(1)(i) and (ii), making clear that this discretion would include the recipient's authority to determine whether informal resolution is appropriate and to decline to offer informal resolution regardless of one or more of the parties' wishes, including, for example, if the recipient determines that the alleged conduct would present a future risk of harm to others. Proposed § 106.44(k)(1)(i) would also make clear that a recipient may offer informal resolution without first requiring that a complaint be made; rather, a recipient has discretion to determine whether it is appropriate to offer an informal resolution process when it receives information about conduct that may constitute sex discrimination under Title IX, or a complaint of sex discrimination is made.

The Department also proposes clarifying that a recipient must not require or pressure the parties to participate in an informal resolution process instead of the recipient's grievance procedures. Proposed § 106.44(k)(2) would preserve the current requirement that the recipient must obtain the parties' voluntary consent to the informal resolution process and must not require waiver of the right to an investigation and adjudication of a complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercise of any other right.

The Department proposes keeping the same elements currently required for written notice of the informal resolution process and would add requirements that provide the parties with more detailed information about what an informal resolution process would entail. This would include, in proposed § 106.44(k)(3), the types of potential terms that the parties might voluntarily agree to as a part of an informal resolution process, including, among others, restrictions on contact. In addition, proposed § 106.44(k)(3) would require a recipient to communicate that and other specified information to the parties before initiating an informal resolution process. A recipient would be required to communicate this information in writing only when offering informal resolution of sex-based harassment complaints involving a postsecondary student complainant or respondent in proposed § 106.46(j).

Reasons: Clarification of discretion. The Department proposes clarifying in § 106.44(k) that a recipient would have discretion to determine whether it is appropriate to offer an informal resolution process when it receives information about conduct that may constitute sex discrimination under Title IX or a complaint of sex discrimination is made. The proposed regulations would not require a recipient to provide an informal resolution process and would not specify the types of informal resolution processes that a recipient may offer to its students, employees, or third parties, in part because appropriate options might vary depending on the factual circumstances. In the elementary school setting, for example, options might include requiring the respondent to take steps to repair the relationship with the complainant without requiring the students to interact face-to-face, such as through writing or drawing an apology. In the postsecondary setting, an informal resolution process could involve mediation or a more complex restorative justice process. As the Department recognized in the preamble to the 2020 amendments, such an informal resolution process could provide ''greater flexibility to recipients in serving their educational communities.'' 85 FR 30403. An informal resolution process is not a fact-finding, investigative process as specified in the grievance procedures under proposed § 106.45, and if applicable proposed § 106.46, and does not involve a determination of whether sex discrimination occurred. Instead, it is an alternative avenue through which parties may reach a resolution. The Department's tentative view is that a recipient is in the best position to determine whether an informal resolution process would be a potential good fit depending upon the facts and circumstances, except that a recipient must not offer an informal resolution process to resolve allegations that an employee engaged in sex-based harassment toward a student. In that circumstance, the Department is concerned that it is too difficult to ensure that mediation or other forms of informal resolution would be truly voluntary on the part of a student who reports sex-based harassment by a recipient's employee due to the power differential and potential for undue influence or pressure exerted by an employee over a student.

Proposed § 106.44(k)(1)(i) and (ii) also would make clear that a recipient would have the discretion to determine that informal resolution is not appropriate and decline to offer it regardless of one or more of the parties' wishes. This would clarify that a recipient has discretion to consider the context and circumstances when it receives information about conduct that may constitute sex discrimination under Title IX or a complaint of sex discrimination is made in deciding whether to offer an informal resolution option. The Department would like to ensure that recipients are aware of their flexibility regarding informal resolution, for example, in circumstances in which a recipient determines that the alleged conduct would present a future risk of harm to others and an informal resolution process would be inappropriate. This would allow a recipient to tailor its response to the needs of the parties, subject to the overall guardrails provided by the regulations. The Department also notes that, consistent with proposed § 106.44(f)(1), a recipient must exercise this discretion in a manner that is equitable to the parties and within its Title IX process as a whole; it may not act arbitrarily or otherwise impermissibly in offering or declining to offer an informal resolution process. A recipient's discretion would be further limited by proposed § 106.44(k)(2) which states a recipient must not require or pressure the parties to participate in an informal resolution process, and that the recipient must obtain the parties' voluntary consent to the informal resolution process.

Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity. Even if the parties reach an informal resolution, sex discrimination, including sex-based harassment, in the recipient's education program or activity may impact individuals beyond the parties. In such cases, proposed § 106.44(k)(1) would require a recipient's Title IX Coordinator, to the extent necessary, to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity. To ensure equal access to its education program or activity for those persons, a recipient may need to provide additional training for staff on how to respond appropriately to sex discrimination, monitor known risks of sex discrimination in programs and activities in which sex discrimination has been reported in the past, or pursue

strategies other than discipline to address the conduct. For example, a recipient may need to take steps to repair an educational environment in which sex-based harassment occurred, such as within a specific class, department, athletic team, or program. A recipient may also consider providing educational programming aimed at the prevention of sex-based harassment.

Deletion of requirement to file a formal complaint to invoke informal resolution. As the proposed regulations would no longer require a party to file a formal complaint, the Department proposes removing the requirement in current § 106.45(b)(9) that a recipient must not offer informal resolution unless a formal complaint has been filed. Under proposed § 106.44(k), a recipient would have discretion as to whether to offer an informal resolution process without requiring the complainant to make a complaint requesting that the recipient initiate its grievance procedures. Circumscribing a recipient's ability to offer this process as an alternative to the recipient's grievance procedures would undermine the Department's goal of ensuring that, to the extent appropriate, a recipient can provide students and others with a range of effective options that are meaningful in their educational environments for addressing and resolving allegations of sex discrimination consistent with Title IX. The Department's reasons for the proposed removal of the formal complaint requirement are addressed in greater detail in the discussion of the proposed definition of ''complaint'' (§ 106.2).

Provide notice and ensure that the facilitator for the informal resolution process is not the same as the investigator or decisionmaker for grievance procedures involving the same information reported or complaint. Proposed § 106.44(k)(3) would clarify that as part of the informal resolution process, the recipient would be required to provide the parties with notice on a variety of points related to the informal resolution process. Proposed § 106.44(k)(3) would maintain all of the notice requirements of current § 106.45(b)(9)(i) and add requirements to ensure that parties would receive information that is important to understanding the process. Specifically, the Department proposes that a recipient must explain the allegations; requirements of the informal resolution process; the right to withdraw at any time and initiate or resume the recipient's grievance procedures; that agreement to a resolution would preclude initiating or resuming grievance procedures arising from the same allegations; a description of the potential terms that may be requested or offered in an informal resolution agreement; which records will be maintained or could be shared; a statement that if the recipient initiates or resumes its grievance procedures, the recipient or a party must not access, consider, disclose, or otherwise use information, including records, obtained solely through an informal resolution process as part of the investigation or determination of outcome of the complaint; and a statement that an informal resolution facilitator could serve as a witness [6] for purposes other than providing information obtained solely through the informal resolution process.

Proposed § 106.44(k)(3)(ii) would require a recipient to explain the requirements of the informal resolution process it chooses to offer to the parties. This explanation could include a discussion about to what extent, if any, the proceedings will be kept confidential. Informal or alternative dispute resolution processes often are confidential to ensure that the parties engage fully and candidly in the process. A recipient, if it chooses, should inform the parties if the informal resolution process would be confidential, and how the recipient would respond to any admissions made by a party. For example, the recipient could inform the parties that if someone makes an admission of criminal activity, that information could be forwarded to relevant law enforcement authorities. Similarly, the recipient could specify that it would keep confidential any record obtained solely through the informal resolution process, as stated in proposed § 106.44(k)(3)(vii), unless such disclosure is required by law, for example under a subpoena.

A recipient might also clarify the consequences that would follow upon learning of any fraud by a party to an informal resolution agreement. For example, if a recipient learns that a party to an informal resolution agreement made a material misstatement of a fact, or made fraudulent representations, that another party relied upon in reaching the agreement, then the recipient could decide to void the agreement and resume the grievance procedure or pursue other actions against that defrauding party. Finally, proposed § 106.44(k)(3)(iii) would make explicit that the parties have the right to withdraw from the informal resolution process prior to agreeing to a resolution and that any party could initiate or resume the recipient's grievance procedures. These additional requirements provide important information to the parties so that they have a complete understanding of all aspects of the informal resolution process. The Department notes that informal resolution of a complaint under Title IX would not necessarily resolve a recipient's obligations under other Federal law (*e.g.,* Title VII), State law, or other applicable rules or policies.

In addition, proposed § 106.44(k)(4) would require that the facilitator of the informal resolution process not be the same person as the investigator or decisionmaker in the recipient's grievance procedures. The Department proposes adding this provision to further protect against any improper access, consideration, disclosure, or other use of information obtained solely through the informal resolution process, or conflict of interest, in the event a party terminates informal resolution and the complaint proceeds to grievance procedures under proposed § 106.45, and if applicable proposed § 106.46.

Potential terms that may be requested or offered in an informal resolution agreement. The Department also proposes adding § 106.44(k)(5), which would provide examples of potential terms that may be requested or offered in an informal resolution process and included in an agreement. Consistent with the other changes discussed above, the Department's current view is that this added specificity would provide recipients with needed guidance about the contours of an informal resolution process. The proposed regulations would emphasize the voluntary nature of entering into an agreement as part of an informal resolution process and would also preserve a recipient's discretion and flexibility to allow for these terms. Finally, proposed § 106.44(k)(5)(ii) would incorporate language from the preamble to the 2020 amendments contemplating that an

[6] This provision includes an additional requirement that would codify an expectation from the preamble to the 2020 amendments regarding facilitators potentially serving as witnesses in a process under current § 106.45. Following comments received to the 2018 NPRM, the preamble to the 2020 amendments stated, ''[w]ith respect to informal resolution facilitators potentially serving as witnesses in subsequent formal grievance processes, we leave this possibility open to recipients. If recipients were to accept such witnesses, then the Department would expect this possibility to be clearly disclosed to the parties as part of the § 106.45(b)(9)(i) requirement in the final regulations to provide a written notice disclosing any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.'' 85 FR 30400–01. The proposed regulations would clarify the situations in which an informal resolution facilitator can serve as a witness.

informal resolution agreement can include measures that would be considered remedies or disciplinary sanctions had the recipient determined that sex discrimination occurred under the recipient's grievance procedures. *See* 85 FR 30401 (''Informal resolutions may reach agreements between the parties, facilitated by the recipient, that include [measures similar to supportive measures] but that also could include disciplinary measures, while providing finality for both parties in terms of resolving allegations raised in a formal complaint of sexual harassment.'').

F. Framework for Grievance Procedures for Complaints of Sex Discrimination

1. Title IX Grievance Procedures

Grievance procedures are a critical component of effective enforcement of Title IX's prohibition on sex discrimination because they ensure that a recipient has a process in place for investigating and resolving complaints of sex discrimination. For this reason, since 1975, the Title IX regulations have required a recipient to adopt and publish grievance procedures that provide for the prompt and equitable resolution of complaints of sex discrimination. *See* 34 CFR 106.8(c). OCR has addressed how individual recipients effectively implement their Title IX grievance procedures through decades of enforcement activities. *See* U.S. Dep't of Educ., Office for Civil Rights, Case Resolutions Regarding Sex Discrimination, *https://www2.ed.gov/about/offices/list/ocr/frontpage/caseresolutions/sex-cr.html*. In addition, OCR has provided subregulatory guidance on its interpretation of the regulatory requirement. *See, e.g.,* 2014 Q&A on Sexual Violence at 12–14 (describing appropriate elements of grievance procedures that provide for the prompt and equitable resolution of complaints).

OCR's interpretation of the requirement to provide prompt and equitable grievance procedures has always been informed by the due process rights of the persons involved in a public recipient's grievance procedures. Although it does not enforce the Due Process Clause, ''[t]he Department, as an agency of the Federal government, is subject to the U.S. Constitution, including the Fifth Amendment, and will not interpret Title IX to compel a recipient, whether public or private, to deprive a person of due process rights.'' 85 FR 30051, n.226 (citing 2001 Revised Sexual Harassment Guidance at 22). And although the Due Process Clause does not apply to private recipients, the Department's proposed regulations, consistent with the 2020 amendments, require all recipients to adopt grievance procedures that provide for the fair resolution of complaints of sex discrimination. *Id.* at 30047 (adopting ''procedures that ensure that Title IX is enforced consistent with both constitutional due process, and fundamental fairness, so that whether a student attends a public or private institution, the student has the benefit of a consistent, transparent grievance process with strong procedural protections regardless of whether the student is a complainant or respondent'').

The Supreme Court and other Federal courts have recognized that procedural due process requirements depend on the circumstances of each particular case. *See Morrissey* v. *Brewer,* 408 U.S. 471, 481 (1972) (''[D]ue process is flexible and calls for such procedural protections as the particular situation demands.''); *Gorman* v. *Univ. of R.I.,* 837 F.2d 7, 12 (1st Cir. 1988) (''Due process, which may be said to mean fair procedure, is not a fixed or rigid concept, but, rather, is a flexible standard which varies depending upon the nature of the interest affected, and the circumstances of the deprivation.''). As a flexible standard, what due process requires will vary based on several factors, including the type of institution involved and the nature of the potential sanction at issue. The Supreme Court has stated that in the context of public elementary schools and secondary schools, procedural due process requires, at a minimum, notice and a meaningful opportunity to be heard. *Goss* v. *Lopez,* 419 U.S. 565, 579 (1975) (''At the very minimum, therefore, students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing.''). In *Goss,* the Court observed that the Due Process Clause may require additional procedures for more severe sanctions. *Id.* at 584 (''Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures.''). In the context of an elementary school or secondary school student ''facing temporary suspension,'' *Goss* noted that due process entitles the student to ''oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.'' *Id.* at 581. The Supreme Court emphasized that ''[t]here need be no delay between the time 'notice' is given and the time of the hearing,'' noting that ''[i]n the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred.'' *Id.* at 582.

Federal appellate courts have generally determined that a public postsecondary institution's disciplinary proceedings are subject to procedural due process requirements. *See, e.g., Doe* v. *Miami Univ.,* 882 F.3d 579, 600 (6th Cir. 2018) (''When a student faces the possibility of suspension, we have held that the minimum process a university must provide is notice of the charges, an explanation of the evidence against the student, and an opportunity to present his side of the story before an unbiased decision maker.'') (citations omitted); *Doe* v. *Cummins,* 662 F. App'x 437, 442, 445, 451 (6th Cir. 2016) (determining that procedural due process applies to disciplinary action against a student even when the student was placed on disciplinary probation and required to write extra papers, but was not suspended); *Gorman,* 837 F.2d at 12 (holding that a student facing expulsion or suspension from a public educational institution is entitled to the protections of the Due Process Clause); *Rosenfeld* v. *Ketter,* 820 F.2d 38, 40 (2d Cir. 1987) (holding that sufficient due process was provided to a university student facing suspension when the student was given the opportunity ''to characterize his conduct, put it in the proper context and urge that University rules not be enforced against him'' and stating that a formal hearing was not required); *Dixon* v. *Ala. State Bd. of Educ.,* 294 F.2d 150, 151 (5th Cir. 1961) (holding that procedural due process requires some form of notice and hearing before public college students may be expelled for misconduct and noting that the nature of the hearing may vary depending on the particular circumstances of the case); *Janati* v. *Univ. of Nev. Las Vegas Sch. of Dental Med.,* No. 2:15–cv–01367–APG–CWH, 2017 WL 1181571, at *4 (D. Nev. Mar. 29, 2017), *aff'd,* 738 F. App'x 438 (9th Cir. 2018) (holding that ''[u]niversity students likely have some procedural due process rights in academic disciplinary proceedings,'' and explaining that the required process in the educational context includes the minimums of some kind of notice and some kind of hearing, but not a full judicial hearing). Courts have also made clear, however, that school disciplinary proceedings are not civil or criminal trials and, as such, the parties are not entitled to the same rights as parties in a civil trial or defendants in a criminal trial. *See, e.g., Bd. of Curators of Univ. of Mo.* v. *Horowitz,* 435 U.S. 78, 88

(1978) (''A school is an academic institution, not a courtroom or administrative hearing room.''); *Doe* v. *Univ. of Ky.,* 860 F.3d 365, 370 (6th Cir. 2017) (citing *Cummins,* 662 F. App'x at 446) (holding that ''school disciplinary proceedings, while requiring some level of due process, need not reach the same level of protection that would be present in a criminal prosecution''); *Nash* v. *Auburn Univ.,* 812 F.2d 655, 664 (11th Cir. 1987) (''Due process requires that appellants have the right to respond, but their rights in the academic disciplinary process are not co-extensive with the rights of litigants in a civil trial or with those of defendants in a criminal trial.'').

a. The 2020 Amendments

The Department explained in the preamble to the 2020 amendments that although the Supreme Court has held that sexual harassment is a form of sex discrimination under Title IX and set out the circumstances under which a recipient may be liable for monetary damages when a student or employee sexually harasses a student, ''the Supreme Court's Title IX cases have not specified conditions under which a recipient must initiate disciplinary proceedings against a person accused of sexual harassment, or what procedures must apply in any such disciplinary proceedings.'' 85 FR 30046. More specifically, the Department recognized that ''the Supreme Court has not ruled on what constitutional due process looks like in the 'particular situation' of Title IX sexual harassment adjudications . . . '' *Id.* at 30051 (footnote omitted). As a result, ''Federal appellate courts have taken different approaches to which specific procedures are constitutionally required under the general proposition that due process in the educational discipline context requires some kind of notice and some kind of opportunity to be heard, and for private institutions not subject to constitutional requirements, which specific procedures are required to comport with fundamental fairness.'' *Id.*

The Department nonetheless articulated in the 2020 amendments its understanding of the significant role due process principles play in shaping fair grievance procedures and affirmed that its understanding was consistent with OCR's prior guidance that ''the rights established under Title IX must be interpreted consistent with any federally guaranteed due process rights involved in a complaint proceeding'' and ''[p]rocedures that ensure the Title IX rights of the complainant, while at the same time according due process to both parties involved, will lead to sound and supportable decisions.'' *Id.* at 30047 n.192 (citing 2001 Revised Sexual Harassment Guidance at 22). Although the Department explained in the preamble to the 2020 amendments that ''[t]he grievance process [for formal complaints of sexual harassment] prescribed in the final regulations [in § 106.45] is important for effective enforcement of Title IX and is consistent with constitutional due process and conceptions of fundamental fairness,'' it also recognized that ''constitutional due process does not require the specific procedures included in the § 106.45 grievance process [for formal complaints of sexual harassment].'' *Id.* at 30053. The Department further explained that ''each of the procedural requirements in § 106.45 is prescribed because the Department views the requirement as important to ensuring a fair process for both parties rooted in the fundamental due process principles of notice and meaningful opportunities to be heard.'' *Id.*

In adopting very specific requirements for grievance procedures for formal complaints of sexual harassment, the Department explained that it had ''determined that the current regulatory reference to 'grievance procedures' that are 'prompt and equitable' does not adequately prescribe a consistent, fair, reliable grievance process for resolving allegations of Title IX sexual harassment.'' *Id.* at 30240. The Department stressed that it adopted these additional requirements for sexual harassment complaints to help recipients ''respond meaningfully to allegations of sexual harassment (including sexual assault) on campuses, while also providing due process protections for both parties.'' *Id.* at 30048. It explained that ''[t]he § 106.45 grievance process is designed for the particular 'practical matters' presented by allegations of sexual harassment in the educational context.'' *Id.* at 30053 (footnote omitted). The Department also asserted that the grievance procedure requirements it adopted for complaints of sexual harassment ''build upon the foundation set forth in the Department's guidance, yet provide the additional clarity and instruction missing from the Department's guidance as to how recipients must provide for the needs of complainants, with strong procedural rights that ensure due process protections for both complainants and respondents.'' *Id.* at 30049. The Department further stated ''[w]e believe that the procedures in the § 106.45 grievance process will ensure that recipients apply a fair, truth-seeking process that furthers the interests of complainants, respondents, and recipients in accurately resolving sexual harassment allegations.'' *Id.*

b. Feedback From Stakeholders Regarding the Grievance Procedures in Current § 106.45

Having had some experience with the implementation of the 2020 amendments, stakeholders representing elementary school and secondary school teachers, administrators, and professional staff, postsecondary institution administrators and faculty, students and parents, professional organizations, advocacy groups, and States Attorneys General stressed to OCR, in listening sessions and through the June 2021 Title IX Public Hearing, that the Department should revise the grievance procedures required under current § 106.45 to account for concerns and challenges that this implementation presented across these settings. To avoid confusion, the preamble discussion refers to the procedures set out in proposed §§ 106.45 and 106.46 as ''grievance procedures,'' even though the preamble to the 2020 amendments generally refers to procedures required under current § 106.45 as a ''grievance process.''

Elementary schools and secondary schools. OCR received significant feedback from stakeholders related to the unique needs of elementary schools and secondary schools as well as requests to reduce some of the burdens the grievance procedures requirements imposed on these schools. These stakeholders said the 2020 amendments related to grievance procedures impeded instead of effectuated efforts to comply with Title IX. Based on their experiences attempting to comply with the 2020 amendments, elementary school and secondary school stakeholders overwhelmingly reported that the current regulations taken as a whole are unworkable for elementary schools and secondary schools.

Administrators at elementary schools and secondary schools described their struggle to implement the grievance procedures under the current regulations and expressed the need for grievance procedures that would allow for more flexibility. For example, stakeholders shared that the grievance procedures should permit them to quickly separate children in response to some incidents of sex-based harassment, such as when administrators of elementary schools and secondary schools need to be able to immediately address certain behavior on the playground. Stakeholders also stressed the need for grievance procedures in

that setting that allow schools to address possible sex discrimination early and proactively to promote student and campus safety. These stakeholders urged the Department to exempt elementary schools and secondary schools from the provisions in current § 106.45 that impose a lengthy timeline. These provisions include, for example, requiring a recipient to provide written notice to the parties of allegations potentially constituting sex-based harassment with sufficient time to prepare a response before any initial interview; providing written notice of the logistic details and purpose of all meetings, including interviews and hearings, with sufficient time to prepare to participate; and building in ten days for parties to respond to a summary of the evidence obtained as part of the investigation (current § 106.45(b)(2)(i)(B), (b)(5)(v), and (b)(5)(vi)). Stakeholders explained that these and other provisions prevent schools from handling incidents when they arise and significantly delay their ability to respond to sex-based harassment when it occurs.

OCR also received feedback from multiple stakeholders that a process that may have taken days under an elementary school or secondary school's previous grievance procedures now takes several months under the 2020 amendments because of these and other time-consuming requirements, including the need to create an investigative report for the parties' review and written response at least ten days prior to a hearing or other time of determination (current § 106.45(b)(5)(vii)). Other stakeholders urged the Department to establish different grievance procedures for elementary schools and secondary schools than those required for postsecondary institutions, noting their view that the 2020 amendments were clearly focused on postsecondary institutions.

Postsecondary institutions. OCR also heard from postsecondary institution stakeholders that the procedures in current § 106.45 are overly prescriptive and burdensome in ways that impede their response to sexual harassment, similar to concerns raised regarding application of the procedures to elementary schools and secondary schools. These stakeholders objected to the 2020 amendments as setting out regulations that micromanaged disciplinary processes at postsecondary institutions, significantly limiting their ability to resolve sexual harassment allegations promptly and equitably through grievance procedures that function effectively in their educational environment. The Department also heard from stakeholders in 2022 in meetings held under Executive Order 12866, after the NPRM was submitted to OMB, that application of the grievance procedures as required by the 2020 amendments at some recipients extends the process for resolving complaints, to the detriment of all parties. Stakeholders also objected to certain provisions that they said, based on experience, had discouraged reporting of sexual harassment. For example, as noted in the discussion of proposed § 106.46(f) and (g), some postsecondary institutions described the live hearing and cross-examination requirements as too prescriptive and burdensome to apply effectively. They questioned the utility of live hearings, noting that much of the information elicited during a hearing relates to questions that were asked and answered during an investigation. Stakeholders reported to OCR that they had observed a reduction in complaints filed and greater reluctance to move forward with grievance procedures as a result of the live hearing and cross-examination requirements in the 2020 amendments.

Employee-complainants and respondents. OCR also heard from a variety of stakeholders about the negative effect of current § 106.45 on a recipient's ability to handle complaints of sex-based harassment involving employees. Some of these stakeholders expressed general concern about the lack of clarity in the 2020 amendments on how Title VII interacts with Title IX in instances of employee-on-employee harassment allegations. Other stakeholders suggested that incidents of sex-based harassment involving employees as a complainant or respondent be removed in their entirety from the proposed Title IX regulations and instead handled by a recipient under its existing Title VII procedures, while still others suggested that the Title IX regulations that govern employee respondents be revised so that they are less prescriptive than the procedures required in current § 106.45. A number of stakeholders commented that applying the requirements in current § 106.45 to sexual harassment complaints involving an employee respondent is unworkable because they are overly and unnecessarily burdensome, noting that those requirements were designed with students as the primary focus. Some of these stakeholders expressed the view that some aspects of current § 106.45, specifically the live hearing with cross-examination requirement, make it difficult for recipients to address sexual harassment in situations where a complainant or witness declines to submit to cross-examination. These stakeholders expressed concern that in these situations, current § 106.45 has negatively impacted their handling of sexual harassment allegations involving their employees. Some stakeholders also voiced concerns that because the requirements of current § 106.45 apply to sexual harassment allegations involving all of a recipient's employees, including at-will employees, recipients may not discipline at-will employees for sexual misconduct in the same way that they can address other forms of misconduct by such employees.

Third-party complainants and respondents. OCR also heard from stakeholders that current § 106.45 exceeds the appropriate bounds of the procedural protections required to ensure fairness when applied to third-party complainants and respondents. One stakeholder suggested that a recipient should not be required to implement highly prescriptive procedures prior to restricting campus access for a third-party visitor who the recipient determined had engaged in sexual harassment on campus. The stakeholder noted that it would be excessive to require, for example, a hearing with cross-examination before imposing such restrictions on a visitor.

Additional concerns. Finally, the current regulations include detailed grievance procedure requirements only for complaints of sexual harassment. OCR heard from stakeholders that they need guidance regarding what provisions are necessary to ensure the prompt and equitable resolution of complaints of sex discrimination other than sex-based harassment. Stakeholders asserted that sexual harassment should not be singled out, and asked the Department to adopt uniform standards for grievance procedures that apply to all complaints of sex discrimination.

2. The Department's Proposed Revisions to Title IX's Grievance Procedure Requirements

a. Overall Considerations and Framework

The Department has preliminarily determined that certain grievance procedure requirements are appropriate for, and necessary to effectuate, Title IX's nondiscrimination mandate with respect to all types of sex discrimination complaints at all types of recipients. In addition, the Department has preliminarily determined that certain additional procedural protections are appropriate for one particular subset of

sex discrimination complaints—those concerning sex-based harassment involving at least one student at a postsecondary institution. The Department recognizes the concerns expressed by stakeholders that current § 106.45 may limit the ability of recipients across a wide range of settings and serving a large variety of students to respond promptly and effectively to sex-based harassment. The Department also recognizes the importance of recipients having clarity about grievance procedures necessary to ensure full implementation of Title IX. The requirement that a recipient adopt grievance procedures dates back to 1975 and has remained constant in the Department's Title IX regulations, including the 2020 amendments—it provides that a recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of sex discrimination complaints. 34 CFR 106.8(c). The Department's proposed regulations take into account both this longstanding requirement and the concerns expressed about the 2020 amendments, and would provide for appropriate procedural protections that account for the age, maturity, and level of independence of students in various educational settings, the particular contexts of employees and third parties, and the need to ensure that recipients have grievance procedures that provide for prompt and equitable resolution of sex discrimination complaints in their respective settings.

Elementary schools and secondary schools. In light of the stakeholder concerns described above, the Department proposes that grievance procedures that apply to complaints of sex discrimination at elementary schools and secondary schools must account for the younger student population and unique context for students attending these schools, which operate educational environments that are distinct from those attended by postsecondary students. In addition to compulsory attendance rules and the need for age-appropriate standards for classroom behavior, certain adults (*i.e.,* parents, guardians, or other authorized legal representatives) have a legal right to be present and provide assistance to their student in Title IX grievance procedures in the elementary school and secondary school setting. This legal authorization for an adult representative does not apply to most students at postsecondary institutions. Elementary schools and secondary schools also work with children for whom a lengthy process is less effective at preventing the recurrence of sex discrimination. Younger students are less likely to appreciate the causal connection between prior behavior and any subsequent discipline imposed after lengthy grievance procedures, possibly rendering the delayed discipline less effective at deterring similar conduct in the future.

Postsecondary institutions. The Department recognizes that postsecondary institutions operate education environments that are distinct from elementary schools and secondary schools and serve a student population who are older, more likely to be living apart from a parent or guardian, and generally function with more independence from parents or guardians. The Department also recognizes that parents or guardians do not typically have legal authority to exercise rights on behalf of a postsecondary student, by virtue of the student's age, in a way that they, or another authorized legal representative, would have for a student in elementary school or secondary school, under proposed § 106.6(g). Students at postsecondary institutions are therefore required to self-advocate in grievance procedures related to alleged sex-based harassment that involves their own conduct or experiences, but also may have more need, especially postsecondary students who are newly independent, for additional procedural protections and for someone to assist them in an advisory capacity as set out in proposed § 106.46(c)(2)(ii) and (e)(2). Also, in contrast to employees, who may have an employment relationship with the recipient of indeterminate length and who have protection in relation to sex-based harassment under Title VII as well as Title IX, students at postsecondary institutions typically are enrolled for a relatively short, finite term and do not have the protection of Title VII in their capacity as students. Therefore, the Department tentatively recognizes the additional procedural protections in proposed § 106.46, as uniquely accounting for the needs of postsecondary students in that setting.

Employee-complainants and employee respondents. With respect to sex discrimination complaints involving a recipient's employees, the Department tentatively recognizes the need for grievance procedures to ensure that a recipient can respond to reports of employee-on-employee sex-based harassment and other forms of sex discrimination involving employees promptly and equitably as required by Title IX, and also comply with its obligations under Title VII, using a framework that is suited to these types of complaints. This includes complaints involving temporary, part-time, full-time, at-will, unionized, tenured, and student-employees, each category of whom may be entitled to unique grievance procedures based on their respective employment designations. The requirement that the recipient's grievance procedures must be prompt and equitable means, in this context, that a recipient's grievance procedures under Title IX must function well alongside the procedures it uses to implement Title VII and, to the extent not inconsistent, other laws and collective bargaining agreements that govern the employment relationship for complaints of sex-based harassment involving employees. The Department also recognizes that a recipient is not necessarily required by Title VII to apply all of the requirements in current or proposed § 106.45 to sex-based harassment complaints involving employees. Section 106.6(f), to which the Department does not propose any changes, makes clear that the requirements under the Title IX regulations do not alleviate a recipient's obligations to its employees under Title VII. The requirements for grievance procedures for complaints of sex discrimination in proposed § 106.45, and if applicable proposed § 106.46, are limited to Title IX and would not apply to any actions a recipient would take as part of its Title VII obligations to its employees. In addition, under the proposed regulations, a recipient would retain the ability to place an employee on administrative leave under proposed § 106.44(i) during the pendency of grievance procedures in proposed § 106.45, and if applicable proposed § 106.46.

Third-party complainants and respondents. The Department's tentative view is that to effectuate Title IX's objective to operate its education programs or activities free from sex discrimination, a recipient's grievance procedures would need to afford appropriate procedural protections to ensure the prompt and equitable resolution of complaints, even when applied to third parties. But the grievance procedures would not need to afford all the same procedural protections that are afforded when a party is a student at a postsecondary institution, in light of the different relationship the recipient has to a third party. The Department expects that, unlike a student, a third party may not have an ongoing connection to a recipient or any party to a complaint of sex discrimination. In addition, a third party's participation or attempted

participation in the recipient's education program or activity is likely to be much more limited than that of a student or employee. Therefore, the Department recognizes that these differences in the third party's relationship to the recipient should inform the requirements a recipient must meet when responding to information about conduct by or involving a third party in its education program or activity that may constitute sex discrimination under Title IX. The Department views the requirements in proposed § 106.45 as accounting for these considerations.

The Department also proposes adding § 106.45(a)(2)(iv) to expressly state that third parties who are participating or attempting to participate in the recipient's education program or activity may make complaints of sex discrimination under proposed § 106.45.

Other recipients. In addition to elementary schools, secondary schools, and postsecondary institutions, Title IX applies to numerous other recipients such as State education agencies, State vocational rehabilitation agencies, public libraries, museums, and a range of other entities that receive Federal financial assistance from the Department. There is wide variation in the number and population of students served, the number of employees, and the administrative structure within these additional categories of recipients, yet all are required to provide an education program or activity that is free from sex discrimination. The Department views the requirements for grievance procedures proposed under § 106.45 as affording adequate flexibility while providing the minimal requirements to ensure an equitable grievance procedure with respect to all sex discrimination complaints at these types of recipients.

All claims of sex discrimination. The Department also recognizes that the grievance procedure requirements in current § 106.45 do not apply to all types of sex discrimination complaints, and instead are limited to complaints of sexual harassment. As a result, stakeholders representing a range of recipients, including elementary schools and secondary schools, as well as postsecondary institutions and professional associations, reported to OCR that after the 2020 amendments, they lacked guidance on what grievance procedures are required for all other types of sex discrimination complaints, beyond the basic requirement that their grievance procedures must be prompt and equitable. *See* 34 CFR 106.8(c). OCR previously provided recipients subregulatory guidance on the basic elements of prompt and equitable grievance procedures; however, the Department rescinded that guidance and did not replace it with regulations. As noted in the discussion of stakeholders' concerns in Feedback from Stakeholders Regarding the Grievance Procedures in Current § 106.45 (Section II.F.1.b), stakeholders requested the Department restore guidance on grievance procedures for all forms of sex discrimination to ensure that recipients know how to satisfy their obligations under Title IX and how to address sex discrimination complaints other than sex-based harassment complaints. The Department notes concerns identified through OCR's enforcement experience that not all recipients apply prompt and equitable grievance procedures to address sex discrimination complaints at their schools outside the context of sex-based harassment. OCR also has observed that some recipients make ad hoc decisions about complaints of different treatment and retaliation under Title IX, often without incorporating appropriate legal standards or involving the recipient's Title IX Coordinator, and thereby not ensuring that complainants and respondents are treated equitably. OCR has found in some cases that allegations of different treatment in grading were handled solely through application of a recipient's grading policies and not analyzed as sex discrimination even when a complainant alleges that the grade they received was the result of sex discrimination. This failure to involve the Title IX Coordinator means that complainants alleging sex-based grade disparities may be subjected to inconsistent processes for resolution of their complaints, which may or may not include the recipient's grievance procedures. It also may prevent the Title IX Coordinator from identifying and addressing a pattern of discrimination in the recipient's education program or activity. The Department is also aware of situations through OCR's enforcement efforts in which recipients did not apply grievance procedures that comply with Title IX to investigate complaints of sex discrimination in athletics, but rather applied general conduct codes promulgated by specific sports teams. Such codes do not focus on sex discrimination, do not provide for measures to preserve parties' access to the recipient's education program or activity or to protect against retaliation, and do not contain many of the requirements and safeguards of the Title IX grievance procedures, with the result that such cases were not promptly investigated and addressed.

Proposed framework. In light of these considerations, including this feedback from stakeholders and OCR's enforcement experience, a portion of which is described above, the Department reviewed the requirements in current § 106.45 to assess whether they are necessary to provide the parties with prompt and equitable grievance procedures that are designed to ensure a fair and reliable process. The Department also considered the need to adopt a framework for the grievance procedures that a recipient must follow when responding to *all* complaints of sex discrimination in light of the recipient's obligations under Title IX to operate its education program or activity free from sex discrimination, not just sexual harassment.

The Department explained in the preamble to the 2020 amendments that the nature of the protections needed ''in the 'particular situation' of elementary and secondary schools may differ from protections necessitated by the 'particular situation' of postsecondary institutions.'' 85 FR 30052 (footnotes omitted). The Department maintains this view, and also currently believes that the specific procedures necessary to afford prompt and equitable grievance procedures that are designed to ensure a fair and reliable process for sex discrimination complaints will differ based on the nature of the allegations (*e.g.,* sex-based harassment or other forms of sex discrimination, such as failure to provide equitable athletic opportunities or pregnancy discrimination) and the unique characteristics of the individuals involved (*e.g.,* age, level of independence, relationship to the recipient). The Department reaffirms its commitment to promulgating regulations that provide clear requirements for prompt and equitable grievance procedures that afford a fair and reliable process consistent with principles of due process and the rights of all involved. The Department's view is that clear requirements for grievance procedures for all complaints of sex discrimination, not only sexual harassment complaints, are needed to provide recipients necessary clarity on how to afford an equitable process to resolve all sex discrimination complaints.

The Department proposes a comprehensive framework for grievance procedures that builds upon the grievance procedures required under the 2020 amendments, with certain modifications to address the concerns noted above, including to make that framework easier to follow and implement and to preserve discretion

for recipients to meet their Title IX obligations through procedures that will be effective in their educational environment. Under the Department's framework, proposed § 106.45 contains specific requirements for grievance procedures that would apply to all complaints of sex discrimination at any recipient and a new proposed § 106.46 contains additional requirements that would apply only to complaints of sex-based harassment involving a student complainant or student respondent at a postsecondary institution. The provisions the Department proposes limiting to grievance procedures required under § 106.46 include several requirements from current § 106.45—live hearings (which would be optional), equitable access to an investigation report that summarizes the relevant and not otherwise impermissible evidence in advance of a live hearing if a hearing is provided, and cross-examination if a live hearing is conducted—that stakeholders reported were unworkable and unhelpful for elementary schools and secondary schools in light of the unique educational needs of students in that setting. The requirements the Department proposes under the new framework would seek to clarify basic elements that are essential to a reliable and equitable process for resolving complaints of sex discrimination. The benefit of specifying these elements is to ensure that all recipients have information about what is necessary to satisfy the regulations' longstanding requirement of ''prompt and equitable grievance procedures.''

The proposed regulations at §§ 106.44, 106.45, and 106.46 would clarify the obligations of a recipient to respond promptly and effectively to information and complaints about sex discrimination in its education program or activity in a way that ensures full implementation of Title IX. The Department invites comments on whether there are additional requirements that should be included in, or removed from, the current and proposed regulations to assist recipients in meeting their obligation under Title IX to provide an educational environment free from discrimination based on sex. The Department also seeks comment on whether and how any of the proposed grievance procedures (or any proposed additions from commenters) should apply differently to various subgroups of complainants or respondents, such as students or employees, or students at varying educational levels.

b. Proposed § 106.45

The Department's tentative view is that the provisions in proposed § 106.45 would establish the basic elements of a fair process, set clear guideposts for prompt and equitable grievance procedures, and ensure transparent and reliable outcomes for recipients, students, employees, and others participating or attempting to participate in a recipient's education program or activity. These grievance procedure requirements would apply to all complaints of sex discrimination, including sex-based harassment, at all recipients. The provisions in proposed § 106.45(b) include basic requirements that are overarching and apply at all or multiple stages of a recipient's grievance procedures. Some of these basic requirements are already included, in whole or in part, in current § 106.45, such as equitable treatment of complainants and respondents and a duty to ensure that any Title IX Coordinator, investigator, or decisionmaker involved in a recipient's grievance procedures does not have a conflict of interest or bias for or against an individual complainant or respondent or against complainants or respondents generally. The Department also proposes requiring grievance procedures for all sex discrimination complaints to include provisions regarding notice to the parties of allegations of sex discrimination (proposed § 106.45(c)), reasonably prompt timeframes for the major stages of a recipient's grievance procedures (proposed § 106.45(b)(4)), rules regarding what evidence is allowed in a recipient's grievance procedures and how a decisionmaker must weigh and assess the evidence (proposed § 106.45(b)(6) and (7), (h)(1)), and provisions to ensure an adequate, reliable, and impartial investigation of sex discrimination complaints (proposed § 106.45(f)). These provisions build on the requirements of current § 106.45, which the Department explained included specific requirements to afford complainants and respondents in complaints of sexual harassment ''clear, strong procedural rights and protections that foster a fair process leading to reliable outcomes,'' and to provide ''consistency, predictability, and transparency as to a recipient's obligations.'' *Id.* at 30213; *see also id.* at 30381 (''[T]he Department has included in the § 106.45 grievance process those procedural protections the Department has determined necessary to serve the critical interests of creating a consistent, fair process promoting reliable outcomes.''). The Department continues to believe that all parties and recipients require clear guidance for grievance procedures that lead to fair and reliable outcomes. The Department's current view is that the requirements in proposed § 106.45, which it adopted under the 2020 amendments to afford fair and reliable outcomes in sexual harassment complaints under current § 106.45, and which it proposes modifying in these proposed regulations, are also an effective means of ensuring that grievance procedures for all types of sex discrimination complaints are equitable and reliable for all parties.

Through its enforcement work, OCR has also recognized that reasonably prompt timeframes and an adequate, reliable, impartial investigation, among other requirements in proposed § 106.45, are essential to ensuring a prompt and equitable resolution for all sex discrimination complaints, including sex-based harassment. Because these requirements are fundamental to a fair process, the Department anticipates that many schools already incorporate them in their grievance procedures for sex discrimination complaints.

c. Proposed § 106.46

The Department's current position is that the requirements in proposed § 106.46, which are incorporated from current § 106.45 with modifications as explained in greater detail in the discussion of individual sections in § 106.46, would apply only to complaints of sex-based harassment involving a student complainant or student respondent at a postsecondary institution. These requirements afford protections that are appropriate to the age, maturity, independence, needs, and context of students at postsecondary institutions. The Department limited some of the provisions in the 2020 amendments to postsecondary institutions for similar reasons, noting that ''postsecondary institutions present a different situation than elementary and secondary schools because, for instance, most students in elementary and secondary schools tend to be under the age of majority such that certain procedural rights generally cannot be exercised effectively (even by a parent acting on behalf of a minor).'' *Id.* at 30052 (footnotes omitted). Further, due to their age and independence from parents and guardians, postsecondary institutions generally expect students to self-advocate as part of their educational experience, including by participating independently of parents, guardians, or other authorized representatives in disciplinary proceedings. Consistent

with the 2020 amendments, the Department aims to adopt requirements for grievance procedures that ''accomplish the objective of a consistent, predictable Title IX grievance process while respecting the fact that elementary and secondary schools differ from postsecondary institutions.'' *Id.*

The Department also recognizes that postsecondary students are often newly independent and still learning to self-advocate. To account for this, proposed § 106.46 would retain certain provisions from current § 106.45 that afford postsecondary students greater protections. The Department's tentative view is that the additional requirements in proposed § 106.46 are necessary for students at postsecondary institutions who would not be entitled to have a parent, guardian, or other authorized legal representative present at meetings or proceedings, unlike complainants and respondents in complaints of sex-based harassment at elementary schools and secondary schools. The Department further submits that any delay associated with implementing the additional requirements of proposed § 106.46 would not limit a postsecondary student's ability to understand the consequences of their behavior in the same manner as it could for elementary school and secondary school students. Such delays may limit an elementary school or secondary school's ability to prevent the recurrence of sex discrimination consistent with Title IX, which is of particular concern in the context of full-time, full-week school attendance requirements in elementary school and secondary school settings.

The Department's current view is that the additional requirements of proposed § 106.46 are also not necessary for others, including employees and third parties, who, as noted in the discussion of concerns raised by stakeholders in Feedback from Stakeholders Regarding the Grievance Procedures in Current § 106.45 (Section II.F.1.b), have different relationships with postsecondary institutions and in the case of employees, may be afforded additional rights or protections under Title VII or other laws, agreements, or commitments by the recipient. Affording additional procedural requirements for postsecondary students is also consistent with the Department's understanding of due process as a '' 'flexible' concept dictated by the demands of a 'particular situation,' '' which in the case of postsecondary institutions addressing complaints of sex-based harassment involving a student complainant or respondent ''may dictate different procedures than what might be appropriate in other situations.'' *Id.*

The Department also currently believes that the provisions in proposed § 106.46 for sex-based harassment complaints involving students at the postsecondary level may not be necessary to ensure an equitable process for other types of sex discrimination complaints at the postsecondary level, and could have the unintended consequence of impeding effective enforcement of Title IX for such complaints by adding requirements that may unnecessarily delay a recipient's prompt response to possible sex discrimination. At this time, the Department views these additional provisions as necessary to address sex-based harassment complaints, which allege conduct that is highly personal and often of a different nature than other types of alleged sex discrimination. Sex-based harassment complaints may require greater participation by a complainant and respondent in grievance procedures than other complaints of sex discrimination would require. In fact, not all sex discrimination complaints will involve two parties in a contested factual dispute where credibility determinations may play a critical role. In many sex discrimination complaints, such as complaints alleging unequal treatment of student athletes based on sex, there will not be two parties whose conduct and credibility are closely scrutinized. Instead, these cases, which are often highly contested, require analysis of available data and information regarding the specific factors that apply to equal opportunity in athletics. Similarly, alleged different treatment in grading or in providing opportunities to benefit from specific programs and activities, will require a close analysis of grading rubrics, opportunities offered, and other evidence, if any, of impermissible sex-based different treatment. Yet sex-based harassment complaints subject to the provisions of proposed § 106.46 could, and often would involve a student respondent who faces a potential disciplinary sanction as a consequence of the grievance procedures. The Department submits that the risk of disciplinary sanction of a student respondent necessitates affording additional procedural protections to ensure an equitable outcome. These additional provisions would not be necessary for other complaints of sex discrimination that often would not involve a student respondent facing similar consequences.

To account for all of these differences, under the Department's proposed framework, a postsecondary institution responding to complaints of sex-based harassment involving a student complainant or student respondent would apply the provisions in proposed § 106.46 in addition to the provisions under proposed § 106.45. The additional requirements in proposed § 106.46 for complaints of sex-based harassment would address the specialized needs of postsecondary student complainants and postsecondary student respondents, and, when applied together with the requirements in proposed § 106.45, would afford such students equitable grievance procedures tailored to their circumstances. The Department also proposes several revisions to the provisions from current § 106.45 that are incorporated into proposed § 106.46 to address concerns raised by stakeholders; these changes are explained in greater detail in the discussion of individual sections in proposed § 106.46.

The Department includes the following additional procedural protections for sex-based harassment complaints involving at least one student at a postsecondary institution in proposed § 106.46:

- Provisions governing student employees (proposed § 106.46(b));
- Written notice requirements, including written notice of the allegations as well as written notice of information related to the parties' specific rights under the recipient's grievance procedures (proposed § 106.46(c));
- Additional requirements for complaint dismissal (proposed § 106.46(d)) and investigation (proposed § 106.46(e)) such as the right to an advisor during the investigation (proposed § 106.46(e)(2)), discretion to allow expert witnesses (proposed § 106.46(e)(4)), and equitable access to relevant and not otherwise impermissible evidence (proposed § 106.46(e)(6));
- A process for evaluating allegations and assessing credibility, including a process for evaluating and limiting questions during any hearing (proposed § 106.46(f));
- The option to provide for a live hearing (proposed § 106.46(g)); and
- Written notice related to the parties' rights and responsibilities in a recipient's informal resolution process under proposed § 106.44(k), if one is offered (proposed § 106.46(j)).

Several of the provisions proposed in § 106.46 preserve the requirement that a postsecondary institution provide specified information to the parties in writing. These provisions would require

a postsecondary institution in complaints of sex-based harassment involving a student complainant or student respondent to provide written notice of the allegations and information about the recipient's grievance procedures (proposed § 106.46(c)); obtain the complainant's voluntary withdrawal of a complaint in writing before dismissing a complaint per the complainant's request and provide the parties written notice of a dismissal and the basis for the dismissal (proposed § 106.46(d)); provide written notice explaining any delay in the timeframe to investigate the complaint (proposed § 106.46(e)(5)); provide a written determination of whether sex-based harassment occurred (proposed § 106.46(h)); and comply with the requirements for appeals in writing (proposed § 106.46(i)(3)). It is the Department's current view that preserving the requirement that a postsecondary institution comply with these provisions in writing is appropriate in light of the particular circumstances of postsecondary students, and will support postsecondary institutions' fulfillment of their obligation under Title IX to provide an education program or activity free from sex discrimination.

The Department notes that, as set out in proposed § 106.45(i), the proposed framework for all grievance procedures under proposed § 106.45 would allow a recipient to incorporate any of the additional provisions required in grievance procedures under proposed § 106.46 to grievance procedures under proposed § 106.45, provided they apply equally to the parties.

G. Grievance Procedures for the Prompt and Equitable Resolution of Complaints of Sex Discrimination

Section 106.45 Grievance Procedures for the Prompt and Equitable Resolution of Complaints of Sex Discrimination

Current regulations: Section 106.45 addresses the required grievance procedures for formal complaints of sexual harassment. The specific requirements of current § 106.45 are explained in greater detail in the discussion of each subsection.

Current § 106.8(c) requires a recipient to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by the regulations and a grievance process that complies with current § 106.45 for ''formal complaints'' as defined in current § 106.30. The current regulations do not include specific requirements for grievance procedures for complaints of sex discrimination other than formal complaints of sexual harassment.

Proposed regulations: As explained in the discussion of the Framework for Grievance Procedures for Complaints of Sex Discrimination (Section II.F), proposed § 106.45 contains specific requirements for grievance procedures that would apply to all complaints of sex discrimination at any recipient and a new proposed § 106.46 contains additional requirements that would apply only to complaints of sex-based harassment involving a student complainant or student respondent at a postsecondary institution.

Proposed § 106.45(a)(1) would clarify that for complaints of sex discrimination, a recipient must have prompt and equitable grievance procedures in writing, with provisions that incorporate the requirements of proposed § 106.45. Proposed § 106.45(a)(2) would set out who can make a complaint of sex discrimination requesting that the recipient initiate its grievance procedures. Proposed § 106.45(b) would provide a number of basic requirements that a recipient's grievance procedures for complaints of sex discrimination under proposed § 106.45 would have to include. In addition to the basic requirements, proposed § 106.45 would also include the following provisions: notice of allegations (proposed § 106.45(c)); dismissal of a complaint (proposed § 106.45(d)); consolidation of complaints (proposed § 106.45(e)); complaint investigation (proposed § 106.45(f)); evaluating allegations and assessing credibility (proposed § 106.45(g)); and determination of whether sex discrimination occurred (proposed § 106.45(h)). Proposed § 106.45(i) would also permit a recipient to adopt additional provisions, as long as they apply equally to the parties, and proposed § 106.45(j) would permit a recipient to resolve a complaint through its informal resolution process. Finally, proposed § 106.45(k) would provide that, for complaints alleging sex-based harassment, the grievance procedures must describe the range of supportive measure available and describe (or list) the possible disciplinary sanctions and remedies.

Additional detailed explanation of the requirements of proposed § 106.45 is provided in the discussion of each subsection, including proposed changes from current § 106.45.

Section 106.45(a) Discrimination on the basis of sex

Current regulations: Section 106.45(a) states that a recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX.

Proposed regulations: The Department proposes removing this provision from the regulations in its entirety.

Reasons: After reevaluating this issue, the Department proposes removing current § 106.45(a) as redundant because current § 106.31(a) and (b)(4) already prohibit different treatment based on sex, making this section unnecessary. In addition, it is appropriate to remove this provision because formal complaints would no longer be required under the proposed regulations.

The Department explained in the preamble to the 2020 amendments that current § 106.45(a) merely declares that actions toward a complainant or respondent may constitute sex discrimination. 85 FR 30238–39. The Department also stated that this provision emphasizes that a recipient must not treat a party differently on the basis of sex and that the Department disagreed that the provision creates a new protected class of respondents because it provides protections from sex discrimination to all persons. *Id.*

After considering the issue and reweighing the facts and circumstances, the Department's tentative view is that § 106.31(a), both in its current form and with the revisions included in the proposed regulations, and current § 106.31(b)(4) are adequate to address the concerns that current § 106.45(a) was drafted to address. In particular, current § 106.31(a) and proposed § 106.31(a)(1) prohibit sex ''discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient,'' 34 CFR 106.31(a), and § 106.31(b)(4) prohibits a recipient from ''subject[ing] any person to separate or different rules of behavior, sanctions, or other treatment'' on the basis of sex. *Id.* at 106.31(b)(4). The Department interprets these provisions to require a recipient to carry out its grievance procedures to address complaints of sex discrimination, including sex-based harassment, in a nondiscriminatory manner and to prohibit a recipient from treating any party differently based on sex. The Department maintains its view that discrimination based on sex against a party in the context of a grievance procedure would violate Title IX.

Section 106.45(a)(1) General

Current regulations: Section 106.45(b) states that for the purpose of addressing formal complaints of sexual harassment, a recipient's grievance process must comply with the requirements of this section. The current regulations do not contain a provision stating whether a recipient should be considered a respondent when the complaint alleges that the recipient's policy or practice discriminates based on sex.

Proposed regulations: Proposed § 106.45(a)(1) would clarify that for purposes of addressing complaints of sex discrimination, a recipient's prompt and equitable grievance procedures must be in writing and must include provisions that incorporate the requirements of proposed § 106.45. It would further clarify that the requirements in proposed § 106.45 related to a respondent apply only to sex discrimination complaints alleging that a person violated the recipient's prohibition on sex discrimination and explain that when a sex discrimination complaint alleges that a recipient's policy or practice discriminates based on sex, the recipient is not considered a respondent. For additional requirements regarding the application of this provision in grievance procedures for sex-based harassment complaints involving postsecondary students, see the discussion of proposed § 106.46(a).

Reasons: Proposed § 106.45(a)(1) would maintain the general principle from current § 106.45(b) that a recipient must comply with the requirements in the grievance procedures for complaints but would broaden the provision to apply to complaints of all forms of sex discrimination, not just sexual harassment, to conform with other changes in the proposed regulations. The Department proposes removing references to formal complaints of sexual harassment and applying proposed § 106.45(a)(1) to all complaints of sex discrimination to account for other proposed changes to the regulations.

The Department recognizes that not all complaints of sex discrimination involve active participation by a complainant and respondent in the grievance procedures and therefore, some provisions in proposed § 106.45 would not be applicable for all complaints of sex discrimination. This is true for complaints alleging that the recipient's own policy or procedures discriminate based on sex (*e.g.,* when a complaint alleges that the recipient's policies discriminate on the basis of sex in the provision of extracurricular activities). For example, the requirement to follow grievance procedures before imposing disciplinary sanctions on a respondent (proposed § 106.45(b)(11)) would not apply when the alleged sex discrimination involves a policy or practice of the recipient but does not allege sex discrimination by an individual student, employee, or third-party respondent. Similarly, a recipient would not be afforded the right to appeal the dismissal of a sex discrimination complaint against it (proposed § 106.45(d)(3)), nor would an informal resolution process be available in sex discrimination complaints that do not involve a student, employee, or third-party respondent (proposed § 106.45(j)). The Department's current view is that because the provisions in proposed § 106.45 related to a respondent would not apply to all complaints of sex discrimination, it is necessary to include language clarifying this in proposed § 106.45(a)(1). Clarifying that a recipient is not a respondent is also consistent with how the Department proposes defining a ''respondent'' in proposed § 106.2 as a person alleged to have violated the recipient's prohibition on sex discrimination.

Section 106.45(a)(2) Complaint

Current regulations: The current regulations do not contain a related provision but state in § 106.44(b) that all recipients must follow a grievance process that complies with § 106.45 in response to a formal complaint of sexual harassment. The current regulations define a ''formal complaint'' in § 106.30(a) as a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. The current regulations also state that at the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed. In addition, the current regulations in § 106.8(c) require a recipient to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints of sex discrimination.

Proposed regulations: The Department proposes adding § 106.45(a)(2), which would state that the following persons have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that the recipient initiate its grievance procedures: (i) a complainant; (ii) a person who has a right to make a complaint on behalf of a complainant under § 106.6(g); or (iii) the Title IX Coordinator. In addition, any student or employee, or any third party participating or attempting to participate in the recipient's education program or activity when the alleged sex discrimination occurred would have a right to make a complaint of sex discrimination other than sex-based harassment.

Reasons: Any person seeking to request that a recipient initiate its grievance procedures under proposed § 106.45, and if applicable proposed § 106.46, must make a complaint of sex discrimination, including sex-based harassment. In light of the unique circumstances of sex-based harassment, the Department proposes different requirements for who may make a complaint of sex-based harassment and who may make a complaint of sex discrimination other than sex-based harassment.

Proposed § 106.45(a)(2)(i) through (iii) would allow a ''complainant,'' defined in proposed § 106.2 as a person alleged to have been subjected to sex discrimination; anyone who has a right to make a complaint on a complainant's behalf under proposed § 106.6(g); or the Title IX Coordinator to make a complaint of sex discrimination, including sex-based harassment. Under the proposed definition of ''complainant'' in § 106.2, a third-party complainant who wants to make a complaint of sex discrimination, including sex-based harassment, must be participating or attempting to participate in the recipient's education program or activity when the alleged sex discrimination occurred. For example, if a student enrolled in University A is taking a class at University B through an agreement between the universities and is subjected to sex-based harassment by a student enrolled in University B while attending class at University B, the student would be permitted to make a complaint of sex-based harassment through University B's grievance procedures because the student is a third party participating in University B's education program or activity when the sex-based harassment occurred. Or, for example, if a student who plays for School A's basketball team is subjected to sex-based harassment by a student enrolled in School B while at School B to play in a basketball game, the student would be permitted to make a complaint of sex-based harassment through School B's grievance procedures because the student is a third party participating in School B's education program or activity when the sex-based harassment

occurred. The Department notes that Student A could also choose to make a complaint through School A's grievance procedures because the basketball team is part of School A's education program or activity, but School A would not necessarily have authority to require the respondent student from School B to participate in School A's grievance procedures or to impose disciplinary sanctions on the respondent from School B.

Proposed § 106.45(a)(2)(i) through (iii) would generally be consistent with the requirements under the current regulations regarding who can file a formal complaint of sexual harassment, with some minor revisions consistent with other proposed changes to the regulations. For additional information regarding these proposed changes see the discussion of the proposed definitions of ''complaint'' and ''complainant'' (§ 106.2).

Proposed § 106.45(a)(2)(i) through (iii) would allow a complainant, a person who has a right to make a complaint on behalf of a complainant under proposed § 106.6(g), and the Title IX Coordinator to make a complaint of sex-based harassment. Under proposed § 106.45(a)(2)(iv), however, the Department would limit the ability of non-complainants, including other students and employees, and third parties who are participating or attempting to participate in the recipient's education program or activity to make complaints of sex-based harassment, while allowing them to make complaints of sex discrimination other than sex-based harassment. The Department proposes this limitation because it recognizes that sex-based harassment complaints may involve allegations about deeply personal aspects of the complainant's life, and that a complainant should therefore have the opportunity to choose whether or not to request that the recipient initiate its grievance procedures, except in the limited circumstances in which a Title IX Coordinator would be obligated to initiate the recipient's grievance procedures if the complainant chose not to, as explained in the discussion of proposed § 106.44(f)(5). During the June 2021 Title IX Public Hearing, commenters requested that the Department provide flexibility to complainants to determine whether to participate in the recipient's grievance procedures given these considerations. The Department's proposed regulations recognize the importance of complainant autonomy and also the requirement under Title IX that a recipient operate an education program or activity free from sex discrimination, including sex-based harassment. Therefore, although the Department's proposal would limit who can make a complaint of sex-based harassment to the individuals identified in proposed § 106.45(a)(2)(i) through (iii), other individuals, including witnesses to sex-based harassment, may inform the Title IX Coordinator of any potential sex-based harassment. Upon receiving notification about conduct that may constitute sex-based harassment from someone other than the individuals identified in proposed § 106.45(a)(2)(i) through (iii), the recipient must require its Title IX Coordinator to take steps consistent with proposed § 106.44(f).

The Department recognizes that in some instances, particularly in situations in which systemic sex discrimination is being alleged, the person who may have information regarding the discrimination may not themselves be subjected to the sex discrimination at issue. For example, the boys' soccer coach may have information about disparities between boys' and girls' athletic facilities, including locker rooms, that the girls' soccer coach may not be able to access. Allowing the boys' soccer coach to make a complaint of sex discrimination brings this concern to the recipient's attention and serves the recipient's and Department's interest in ensuring a nondiscriminatory educational environment based on sex. The Department's proposed approach is informed by its interest in allowing students and employees to make a complaint about sex discrimination in the education program or activity to the recipient and in permitting the recipient to focus its resources on complaints made by persons who have a relationship with the recipient. The Department thus proposes to allow only those third parties who are participating or attempting to participate in a recipient's education program or activity at the time of the alleged discrimination to make a complaint. This proposed limitation on third parties is generally consistent with the Department's reasoning in the preamble to the 2020 amendments. 85 FR 30198 (explaining that the requirement that the complainant must be participating or attempting to participate in the recipient's education program or activity ''prevents recipients from being legally obligated to investigate allegations made by complainants who have no relationship with the recipient'').

Section 106.45(b) Basic Requirements for Grievance Procedures

Current regulations: Section 106.45(b) requires all recipients to use a grievance process for formal complaints of sexual harassment that complies with all of the requirements of § 106.45. It also states that any provisions, rules, or practices other than those required by this section that a recipient adopts as part of its grievance process for handling ''formal complaints'' of ''sexual harassment'' as defined in current § 106.30 must apply equally to both parties.

Proposed regulations: Proposed § 106.45(b) contains the introductory language to the basic requirements for the grievance procedures. The seven provisions in proposed § 106.45(b) would include basic requirements that are overarching and apply at all or multiple stages of a recipient's grievance procedures. As explained in the individual discussions of proposed § 106.45(b)(1) through (7), some of these basic requirements are already included, in whole or in part, in current § 106.45. The Department also proposes moving the language in current § 106.45(b) regarding additional provisions of a recipient's grievance procedures to proposed § 106.45(i).

Reasons: The Department's proposed revisions are necessary to be consistent with other proposed changes to the regulations.

Section 106.45(b)(1) Treat Complainants and Respondents Equitably

Current regulations: Section 106.45(b)(1)(i) requires a recipient to treat complainants and respondents equitably by providing remedies to a complainant when a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not ''supportive measures'' as defined in current § 106.30, against a respondent. Remedies must be designed to restore or preserve a complainant's or other person's access to the recipient's education program or activity. Remedies may include the same individualized services described in current § 106.30 as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

Proposed regulations: The Department proposes maintaining the requirement in the current regulations to treat complainants and respondents equitably but moving it to proposed

§ 106.45(b)(1) and applying it to all complaints of sex discrimination, not just formal complaints of sexual harassment. The Department proposes moving the language regarding remedies for the complainant to proposed § 106.45(h)(3) and the language regarding following grievance procedures that comply with this section before the imposition of any disciplinary sanctions against a respondent to proposed § 106.45(h)(4). In addition, the Department proposes moving the language describing what remedies may include to the definition of ''remedies'' in § 106.2.

Reasons: The proposed revision to require a recipient to treat complainants and respondents equitably in its grievance procedures for complaints of sex discrimination as opposed to limiting this requirement only to grievance procedures for complaints of sexual harassment is necessary to effectuate Title IX and make the regulatory text consistent with other changes proposed by the Department regarding a recipient's grievance procedures as explained in the discussion of the Framework for Grievance Procedures for Complaints of Sex Discrimination (Section II.F). The proposed addition of a definition of ''remedies'' in proposed § 106.2 would render unnecessary certain portions of the explanation of remedies in current § 106.45(b)(1)(i), including the examples of remedies in that provision.

Although the Department continues to believe that a recipient must provide remedies to a complainant and follow grievance procedures that comply with the requirements in proposed § 106.45, and if applicable proposed § 106.46, before imposing disciplinary sanctions on a respondent, the Department proposes moving these requirements to different provisions rather than linking them to the requirement to treat complainants and respondents equitably. The purpose of this proposed change is to clarify that the requirement to treat complainants and respondents equitably is not limited to these two requirements. One factor for a recipient to consider in ensuring complainants and respondents are treated equitably is whether the parties, witnesses, and other participants can engage fully in the grievance procedures. In particular, to ensure equal opportunity for persons with disabilities, it may be necessary for a recipient to provide auxiliary aids and services for effective communication and make reasonable modifications to policies, practices, and procedures. In addition, it may be necessary for a recipient to provide language assistance services, such as translations or interpretation, for persons with limited English proficiency.

Section 106.45(b)(2) Conflicts of Interest/Bias

Current regulations: Section 106.45(b)(1)(iii) prohibits a Title IX Coordinator, investigator, decisionmaker, or anyone who facilitates an informal resolution process from having a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Section 106.45(b)(1)(iii) also outlines several specific training requirements for persons filling those roles. Current § 106.45(b)(7)(i) states that the decisionmaker cannot be the same person as the Title IX Coordinator or the investigator(s).

Proposed regulations: Consistent with the current regulations, proposed § 106.45(b)(2) would require that any person designated as a Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. As further explained in the discussion of proposed § 106.44(k), the Department proposes moving the requirement that the facilitator of an informal resolution process not have a conflict of interest or bias from current § 106.45(b)(1)(iii) to proposed § 106.44(k), as part of the section of the proposed regulations that describes a recipient's obligations related to informal resolution.

As further explained in the discussion of proposed § 106.8(d), the Department also proposes revising and moving training requirements from current § 106.45(b)(1)(iii) to a consolidated training provision at proposed § 106.8(d). The Department also proposes eliminating the categorical prohibition on the same person serving as both decisionmaker and Title IX Coordinator or investigator.

Reasons: To ensure that the grievance procedures are equitable, a recipient must ensure that the procedures are administered impartially. The Department therefore proposes retaining—in proposed § 106.45(b)(2)—the requirement that any person designated as a Title IX Coordinator, investigator, or decisionmaker must not have a conflict of interest or bias regarding complainants or respondents generally or regarding a particular complainant or respondent.

The Department proposes moving the requirement that the facilitator of the informal resolution process be free from bias and conflict of interest from current § 106.45(b)(1)(iii) to proposed § 106.44(k). The Department proposes this technical change to align with the relocation of the informal resolution process from § 106.45(b)(9) in the current regulations to § 106.44(k) in the proposed regulations.

The proposed regulations would continue to require the Title IX Coordinator, investigators, and decisionmakers to receive training; however, the Department proposes consolidating those training requirements in proposed § 106.8(d) rather than in the section on grievance procedures as the current regulations do.

Proposed § 106.45(b)(2) would also eliminate the prohibition on the decisionmaker being the same person as the Title IX Coordinator or investigator. Before the 2020 amendments, some recipients implemented a single-investigator model in which one person or one team both investigated a complaint and made findings of fact as to whether a respondent violated the recipient's prohibition on sexual harassment. This model, then in use by a variety of recipients across the country, was specifically prohibited under the 2020 amendments. In 2020, the Department said it was concerned that combining the investigative and adjudicative functions in a single entity raised an unnecessary risk of bias that unjustly impacts one or both parties in Title IX grievance procedures. 85 FR 30367–69. Specifically, the Department stated that placing these varied responsibilities in the hands of a single individual or team risks those involved improperly relying on information gleaned during one role to affect decisions made while performing a different role, and that separating the roles of investigation from adjudication protects the parties by making it more likely that the fact-based determination regarding responsibility is based on an objective evaluation of relevant evidence. *Id.* at 30369–70. The Department stated any concern about decisionmakers not having the same level of training or expertise as investigators would be addressed by the regulation's ''robust training and impartiality requirements for all individuals serving as Title IX Coordinators, investigators, or decision-makers,'' that it would ''effectively promote the reliability of fact-finding and the overall fairness and accuracy of the grievance process.'' *Id.* at 30368

Through listening sessions and the June 2021 Title IX Public Hearing, OCR learned that the requirement that a recipient have separate staff members to handle investigation and adjudication is

burdensome for some schools in a way that undermined these schools' ability to ensure that their education programs or activities are free from sex discrimination under Title IX, particularly those that are under-resourced or that do not have a large number of staff. Stakeholders also explained that having an additional staff member who is unfamiliar with the allegations and evidence serve as decisionmaker after the conclusion of an investigation results in a prolonged Title IX process, negatively impacting the students who are participating in that process. Conversely, these stakeholders argued that using the single-investigator model permitted recipients to investigate and resolve complaints expeditiously, drawing from a small pool of trained experts, and would allow a recipient to more easily and effectively deliver the highest level of expertise available for assessing allegations and evidence. In light of these comments, the Department is concerned that the prohibition on the single-investigator model sometimes worked to the detriment of the quality of recipients' grievance procedures and their decisionmaking about the allegations and relevant facts.

In addition, OCR learned through the June 2021 Title IX Public Hearing that prior to the 2020 amendments, employing a single investigator from outside the recipient's community, under the guidance of the recipient's Title IX Coordinator, enabled some postsecondary institutions to have a highly trained expert who could conduct an equitable investigative process without perceived institutional bias. Some recipients also expressed their belief that, through this model, they saw more students seeking institutional support and resolution of complaints.

For small or under-resourced recipients, OCR also heard that permitting a single-investigator model would help ensure prompt and equitable grievance procedures while reducing the number of personnel a recipient would need for each investigation and resolution. If a recipient has a small school or campus community, a requirement that increases the number of employees involved in the grievance procedures also increases the likelihood of the parties having to interact with those employees in the regular course of their participation in the recipient's education program or activity. OCR heard about students who had changed majors or avoided courses, clubs and organizations, and athletic opportunities to avoid interacting with employees in those areas who had also administered their grievance procedures related to sexual harassment allegations. Stakeholders who provided these comments explained that some students had found the procedures painful, and some had concerns about those employees knowing traumatic information about them.

After reweighing the facts and circumstances, including but not limited to the feedback received through listening sessions and the June 2021 Title IX Public Hearing, it is the Department's current view that the single-investigator model, when implemented in conjunction with the other proposed measures designed to ensure equitable treatment of the parties as required throughout proposed § 106.45, and if applicable proposed § 106.46, can offer recipients an effective option for resolving complaints of sex discrimination in a way that ensures fair treatment of all parties and enables compliance with Title IX. In conducting an investigation and reaching a determination, the recipient's responsibility is to gather and review evidence with neutrality and without bias or favor toward any party. That is, the recipient is not in the role of prosecutor seeking to prove a violation of its policy. Rather, the recipient's role is to ensure that its education program or activity is free of unlawful sex discrimination, a role that does not create an inherent bias or conflict of interest in favor of one party or another. The Department's earlier stated concerns about the reliability of fact-finding and overall fairness and accuracy of the grievance procedures will still be effectively addressed by the other proposed requirements which clarify a recipient's obligations and make it easier to achieve those obligations, and these protections would now apply to all complaints of sex discrimination, not just those that allege sex-based harassment. Among other obligations, a recipient must: treat the complainant and respondent equitably (proposed §§ 106.44(f)(1), 106.45(b)(1)); provide robust training and anti-bias requirements (proposed §§ 106.8(d), 106.45(b)(2)); objectively evaluate all relevant evidence (proposed § 106.45(b)(6)); review all evidence gathered to determine which evidence is relevant and what is impermissible (proposed § 106.45(f)(3)); provide each party with a description of evidence that is relevant and not otherwise impermissible (proposed § 106.45(f)(4)); provide the right to appeal a complaint dismissal (proposed § 106.45(d)); and, if additional provisions are adopted as part of its grievance procedures, apply those provisions equally to the parties (proposed § 106.45(i)). These provisions would reinforce each other in protecting the overall fairness and accuracy of the grievance procedures.

In conducting an investigation and reaching a determination, the recipient's responsibility is to gather and review evidence with neutrality and without bias or favor toward any party. That is, the recipient is not in the role of prosecutor seeking to prove a violation of its policy. Rather, the recipient's role is to ensure that its education program or activity is free of unlawful sex discrimination, a role that does not create an inherent bias or conflict of interest in favor of one party or another.

The Department is aware that, prior to August 2020, some recipients used a single investigator or team of investigators to investigate complaints of sex-based harassment and make determinations whether sex-based harassment occurred. The Department invites comments on recipients' experiences using that model to comply with Title IX and the steps taken, if any, to ensure adequate, reliable, and impartial investigation and resolution of complaints, including equitable treatment of the parties and reliable grievance procedures that are free from bias. The Department also invites comments on these issues from persons who were parties or served as an advisor to a party to a complaint that was investigated and resolved by a recipient using a single investigator model.

Section 106.45(b)(3) Presumption That the Respondent Is Not Responsible for the Alleged Conduct Until a Determination Is Made at the Conclusion of the Grievance Procedures

Current regulations: Section 106.45(b)(1)(iv) requires a recipient to include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process for formal complaints of sexual harassment.

Proposed regulations: The Department proposes maintaining this provision with minor revisions, including relocating the provision to proposed § 106.45(b)(3) and applying the provision to complaints of sex discrimination, not just sexual harassment.

Reasons: The proposed revisions are necessary to make the regulatory text consistent with the Department's proposed changes to apply the grievance procedures described in proposed § 106.45 to all forms of sex discrimination, including sex-based

harassment, as explained in the discussion of the Overall Considerations and Framework (Section II.F.2.a). The Department also notes that proposed § 106.45(b)(3) would not apply to a sex discrimination complaint that does not allege that a person violated the recipient's prohibition on sex discrimination because in those complaints there would not be a respondent. Nevertheless, in such cases the Department would not presume that a recipient accused of sex discrimination through its policy or practice operated its program or activity in a discriminatory manner until a determination whether sex discrimination occurred is made at the conclusion of the recipient's grievance procedures for complaints of sex discrimination.

Section 106.45(b)(4) Timeframes

Current regulations: Section § 106.45(b)(1)(v) states that, with respect to a recipient's grievance process for formal complaints of sexual harassment, the recipient must include reasonably prompt timeframes for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of timeframes for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

Proposed regulations: The Department proposes revising this provision to state that a recipient must establish reasonably prompt timeframes for the major stages of the grievance procedures, including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay. The Department also proposes providing examples of types of major stages and using ''parties'' instead of ''complainant'' and ''respondent.'' The Department proposes removing the examples of good cause. Finally, the Department proposes moving the revised language of this provision to proposed § 106.45(b)(4). For additional requirements regarding the application of this provision in grievance procedures for sex-based harassment complaints involving postsecondary students, see the discussion of proposed § 106.46(e)(5).

Reasons: In the preamble to the 2020 amendments, the Department explained that recipients should retain flexibility to designate time frames that are reasonably prompt, and stated that what is ''reasonable'' is a ''decision made in the context of a recipient's purpose of providing education programs or activities free from sex discrimination, thus requiring recipients to designate time frames taking into account the importance to students of resolving grievance processes so that students may focus their attention on participating in education programs or activities,'' 85 FR 30272. The Department added that a recipient must balance this consideration ''with the need for recipients to conduct grievance processes fairly in a manner that reaches reliable outcomes, meeting the requirements of § 106.45, in deciding what time frames to include as 'reasonably prompt' in a recipient's grievance process for formal complaints of sexual harassment under Title IX.'' *Id.* Although the Department supports the rationale of current § 106.45(b)(1)(v), it proposes making minor revisions to the provision to simplify the regulatory language and better align it with other sections of the Title IX regulations and the Department's Clery Act regulations. In particular, the Clery Act regulations at 34 CFR 668.46(k)(3)(i)(A) require a proceeding that both is ''[c]ompleted within reasonably prompt timeframes'' designated by the postsecondary institution's policy and includes ''a process that allows for the extension of timeframes for good cause with written notice to the accuser and the accused of the delay and the reason for the delay.'' Proposed § 106.45(b)(4) uses similar language. Allowing a recipient to use the same standard for different types of Title IX grievance procedures, and a standard that is largely similar to that required for postsecondary institutions under the Clery Act, would reduce administrative burden for all recipients and, in particular, postsecondary institutions.

To increase clarity, proposed § 106.45(b)(4) would require a recipient to establish timeframes for the major stages of the grievance procedures rather than only for the conclusion of the grievance process as in the current provision. Requiring a recipient to establish timeframes for the major stages of its grievance procedures would help parties understand the approximate length of each stage of the recipient's process, while the current provision requires only that a recipient alert parties to a timeframe for the completion of the overall process. Also, to assist recipients in understanding what a major stage is, the Department proposes providing examples in § 106.45(b)(4) such as evaluation (*i.e.,* the recipient's determination of whether to dismiss or investigate a complaint of sex discrimination), investigation, determination, and appeal, if any.

The Department also proposes deleting the examples of good cause for extending the recipient's timeframe and adding a requirement to consider extensions on a case-by-case basis. After reviewing these examples, the Department is concerned that their inclusion in the regulations may have inadvertently suggested to recipients that extensions were mandatory in each of those situations—regardless of whether they were requested by the parties or whether extensions were warranted in the particular situation—which may have slowed down overall investigation and resolution of complaints. The Department continues to believe that good cause may include, for example, considerations such as the absence of a party, a party's advisor, or a witness, or a variety of other situations. In proposed § 106.45(b)(4), the Department would remove the examples from the regulatory text to help clarify that the need to extend timeframes must be considered on a case-by-case basis. Recipients may be able to address many of these circumstances in a way that can avoid the need for an extension. For example, a witness who is unavailable in person may nevertheless be available through videoconference. Likewise, a recipient may require a party to choose an advisor who has appropriate availability, or to select another advisor with sufficient availability if their current advisor's availability is very limited, to enable the grievance procedures to proceed promptly and equitably. With respect to the need for language assistance or reasonable modifications, the Department anticipates that a recipient should ordinarily be expected to address these needs within its established timeframes. For example, a recipient should be prepared to provide a sign language or foreign language interpreter from the outset if needed for a party or witness to participate in the grievance procedures. However, when the reasonable modification a party requests is itself an extension of time (for example, additional time for an individual with ADHD who requires additional time to review or respond to allegations), it may be appropriate for the recipient to extend time on this basis. In any event, a recipient should

bear in mind that although proposed § 106.45(b)(4) would provide flexibility to accommodate the need for extensions, the recipient remains obligated to ensure that its overall grievance procedures are prompt and equitable to comply with proposed § 106.45, and if applicable proposed § 106.46.

In addition, the Department proposes revising § 106.45(b)(4) to state that a recipient must provide notice of an extension to the parties rather than to ''the complainant and the respondent.'' This change would make clear that in cases in which there are multiple complainants or respondents (for example, if several complaints are consolidated), a recipient must provide notice of extensions to all parties. The Department also proposes changing the term ''grievance process'' to the term ''grievance procedures'' to be consistent with language used throughout proposed §§ 106.44, 106.45, and 106.46, including the heading of this subpart.

Section 106.45(b)(5) Reasonable Limitations on Sharing of Information

Current regulations: Section 106.45(b)(5)(iii) prohibits a recipient from restricting the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

Proposed regulations: Proposed § 106.45(b)(5) states that a recipient must take reasonable steps to protect the privacy of the parties and witnesses during the pendency of a recipient's grievance procedures. These steps to protect privacy must not restrict the parties' ability to obtain and present evidence, including by speaking to witnesses, subject to proposed § 106.71; to consult with a family member, confidential resource, or advisor; to prepare for a hearing, if one is offered; or otherwise to defend their interests. For additional requirements regarding the application of this provision in grievance procedures for sex-based harassment complaints involving postsecondary students, see the discussion of proposed § 106.46(e)(6)(iii).

Reasons: The current regulations, at § 106.45(b)(5)(iii), state that a recipient must not restrict either party's ability to discuss the allegations under investigation or to gather and present relevant evidence. The Department proposes moving this requirement to proposed § 106.45(b)(5) and modifying this provision in several ways. Under proposed § 106.45(b)(5), the Department would require a recipient to take reasonable steps—within specified limits—to protect the privacy of the parties and witnesses while the grievance procedures are ongoing.

First, the Department proposes revising the current regulations that prohibit a recipient from restricting in any way the parties' ability to discuss the allegations under investigation. Proposed § 106.45(b)(5) would instead require a recipient to take reasonable steps to protect privacy; however, proposed § 106.45(b)(5) would also continue to protect the parties' ability to discuss the allegations by imposing limitations on the types of reasonable steps that a recipient would be able to take to protect privacy. Under proposed § 106.45(b)(5), a recipient would not be permitted to restrict the parties' ability to obtain and present evidence, including by speaking to witnesses. Likewise, a recipient would not be permitted to restrict the parties' ability to speak with a family member, confidential resource, or advisor. A recipient would also not be permitted to take steps to protect privacy that would restrict the parties' ability to prepare for a hearing (if one is offered) or to otherwise defend their interests (*e.g.,* restricting the parties' ability to speak with providers of disability-related services or language access services).

In the preamble to the 2020 amendments, the Department concluded that a recipient should not restrict the right of its students and employees to discuss the allegations under investigation. In reaching this conclusion, the Department highlighted the importance of allowing parties ''to seek advice and support outside the recipient's provision of supportive measures,'' and the ''ability to discuss the allegation under investigation where the party intends to, for example, criticize the recipient's handling of the investigation or approach to Title IX generally.'' 85 FR 30295. The Department determined that a fair grievance process required that ''both parties have every opportunity to fully, meaningfully participate by locating evidence that furthers the party's interests and by confiding in others to receive emotional support and for other personally expressive purposes,'' and that such benefits outweighed the risks of harm identified by stakeholders. *Id.* at 30296.

During the June 2021 Title IX Public Hearing, stakeholders expressed concerns regarding the Department's prohibition on any restrictions on the parties' ability to discuss the allegations and to gather relevant evidence, emphasizing that parties need protection from slander and social retaliation, that some students use social media to harass and shame the parties, and that the potential consequences of harassment based on students' participation in the recipient's Title IX process and related allegations are serious, including attempted suicide. One commenter expressed during the June 2021 Title IX Public Hearing that schools should not prohibit parties from discussing their cases with others since such discussions may be necessary for gathering evidence, but schools should stop that information from being used to retaliate. A group of stakeholders urged the Department through a listening session to permit reasonable limitations on the sharing of information to protect students and prevent the spread of sensitive information that would undermine fair proceedings, as long as these limitations do not prejudice the ability of the parties to collect evidence, speak to witnesses, consult with an advisor, or prepare for a hearing. These stakeholders asked the Department to make clear that it will not sanction schools that take reasonable steps to protect privacy or require parties to keep information confidential.

Upon considering the issue and reweighing the facts and circumstances, including views expressed by a wide array of stakeholders in listening sessions and in connection with the June 2021 Title IX Public Hearing, the Department proposes modifying the current regulations to better address these concerns. Through proposed § 106.45(b)(5), the Department would take account of both the parties' need to disclose information to certain individuals and the harms of overbroad disclosure. Proposed § 106.45(b)(5) would enable a recipient to take steps to prevent the harms repeatedly raised by stakeholders, while also respecting the Department's objectives as discussed in the preamble to the 2020 amendments.

Proposed § 106.45(b)(5) would protect the ability of the parties to gather evidence and to confide in others and would address concerns about the chilling effect on reporting and potential interference with the integrity of the grievance procedures associated with widespread information sharing. Under proposed § 106.45(b)(5), the Department would require a recipient to take reasonable steps to protect the privacy of the parties and witnesses during the pendency of the grievance procedures. In doing so, proposed § 106.45(b)(5) would fulfill the purpose of enabling a recipient to take steps that are responsive to its educational environment and its interest in preserving the fairness and integrity of its grievance procedures. Unrestricted disclosures of sensitive information could threaten the fairness of the

process by deterring parties or witnesses from participating, negatively affecting the reliability of witness testimony, facilitating retaliatory harassment, and other potential harms. Even if the parties, witnesses, and others participating do not disclose sensitive information, the fear that such information might be disclosed could affect those individuals' willingness to participate fully in the process. Proposed § 106.45(b)(5) would not permit a recipient to prohibit parties from criticizing the recipient's handling of the grievance procedures; however, the provision would allow a recipient to take reasonable steps to protect the privacy of the parties and witnesses during the pendency of the grievance procedures.

The proposed regulations would also include protections against witness intimidation and retaliatory disclosures of information as part of the general prohibition on retaliation under current and proposed § 106.71. Proposed § 106.45(b)(5) would also further protect against the harmful effects of improper disclosures by requiring a recipient to take proactive steps to protect privacy while the grievance procedures are ongoing. A party's intimidation of a witness or a party's improper disclosure of information to a witness could compromise the fairness of the grievance procedures. Whereas current and proposed § 106.71 would allow, as appropriate, subsequent disciplinary action for a party who engages in this type of retaliatory conduct, proposed § 106.45(b)(5) would focus on the preventive steps that a recipient would need to take as a means of safeguarding the fairness of the process and the reliability of the outcome. In addition, proposed § 106.45(b)(5) would not apply after the conclusion of the grievance procedures, yet the protections of current and proposed § 106.71 would remain in effect.

Proposed § 106.45(b)(5) would cabin the discretion that a recipient has in taking these reasonable steps to protect privacy, however, including by clarifying that any steps must not restrict the parties' ability to obtain and present evidence. Similarly, to ensure the fairness of the process, proposed § 106.45(b)(5) would prohibit the recipient from taking any steps to protect privacy that restrict the parties' ability to consult with an advisor, prepare for a hearing, or otherwise defend their interests consistent with current § 106.45(b)(5)(iv) and (6). In addition, consistent with the Department's previous acknowledgment that the grievance process is ''challenging, difficult, and stressful to navigate,'' 85 FR 30305, proposed § 106.45(b)(5) would protect the parties' ability to speak with family members or confidential resources about the process. Moreover, nothing in proposed § 106.45(b)(5) would prohibit a recipient from allowing the parties to consult with individuals beyond those listed in § 106.45(b)(5). Finally, proposed § 106.45(b)(5) would protect the parties' ability to speak with witnesses, subject to the requirement in proposed § 106.71 that a recipient prohibit intimidation, threats, coercion, or discrimination against any individual, including witnesses, for the purpose of interfering with any right under Title IX. A recipient's obligations under proposed § 106.71 are explained in more detail in the discussion of that proposed provision.

The Department reiterates that students, employees, and third parties retain their First Amendment rights, and the Department's proposed regulations would not infringe on these rights. The Department further notes that current § 106.6(d), to which the Department is not proposing any changes, states that nothing in the Title IX regulations ''requires a recipient to . . . [r]estrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution.'' 34 CFR 106.6(d). Accordingly, when taking reasonable steps to protect the privacy of the parties and witnesses, a recipient must be mindful of the rights protected by the First Amendment, when relevant.

Section 106.45(b)(6) Objective Evaluation of All Relevant Evidence and 106.45(B)(7) Exclusion of Impermissible Evidence

Current regulations: Section 106.45(b)(1)(ii) requires a recipient to objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence. In addition, current § 106.45(b)(1)(ii) prohibits recipients from making credibility determinations based on a person's status as a complainant, respondent, or witness.

The current regulations also address in several different provisions certain types of evidence that cannot be used or are not relevant in the grievance procedures. Current § 106.45(b)(1)(x) prohibits the use of questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege unless that privilege has been waived by the person holding the privilege. In addition, current § 106.45(b)(5)(i) prohibits a recipient from accessing, considering, disclosing, or otherwise using a party's treatment records made or maintained by recognized professionals, paraprofessionals, or assistants to those professionals acting in those specified capacities unless the recipient obtains voluntary, written consent of that party for use in the recipient's grievance procedures as defined in current § 106.45. Further, current § 106.45(b)(6)(i) and (ii) state that ''[q]uestions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant'' unless questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the alleged conduct or to prove consent, if the questions and evidence pertain to specific incidents of the complainant's prior sexual behavior.

Proposed regulations: In proposed § 106.45(b)(6), the Department would retain the requirement that a recipient objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and the requirement that credibility determinations must not be based on a person's status as a complainant, respondent, or witness. The Department proposes making a minor change to this provision by incorporating a cross-reference to the definition of ''relevant'' in proposed § 106.2. The Department also proposes moving and clarifying the three categories of impermissible evidence, which appear in various provisions in the current regulations, to proposed § 106.45(b)(7). Under proposed § 106.45(b)(7), a recipient must exclude these three types of evidence, and questions seeking these types of evidence, as impermissible (*i.e.,* must not be accessed, considered, disclosed, or otherwise used), regardless of whether they are relevant—except as specified in proposed § 106.45(b)(7).

The requirement that evidence must be relevant and the prohibition on the use of three types of evidence (except as specified in proposed § 106.45(b)(7)) would apply to the grievance procedures under proposed § 106.45, and if applicable proposed § 106.46. Thus, the prohibitions on the use of evidence, and questions seeking that evidence, would apply to all recipients in all sex discrimination grievance procedures.

Under the first category in proposed § 106.45(b)(7)(i), a recipient could not access, consider, disclose, or otherwise use in its grievance procedures evidence that is protected under a privilege as recognized by Federal or State law (*e.g.,* attorney-client privilege)—unless the person holding the privilege has waived it voluntarily in a manner that is

permitted in the recipient's jurisdiction. In light of this proposed addition, the Department proposes removing current § 106.45(b)(1)(x), which similarly prohibits the use of evidence or questions that seek evidence protected under a legally recognized privilege.

Under the second category in proposed § 106.45(b)(7)(ii), a party's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party must not be accessed, considered, disclosed, or otherwise used in the grievance procedures without that party's consent for the records to be used in the recipient's grievance procedures. Any consent must be voluntary and in writing. Current § 106.45(b)(5)(i) prohibits a recipient from accessing, considering, disclosing, or otherwise using these treatment records. The proposed regulations would move this prohibition to proposed § 106.45(b)(7)(ii).

Under the third category in proposed § 106.45(b)(7)(iii), evidence related to the complainant's prior sexual conduct must not be accessed, considered, disclosed, or otherwise used in a recipient's grievance procedures unless it is offered to prove that someone other than the respondent committed the alleged conduct or to prove consent with evidence concerning specific incidents of the complainant's prior sexual conduct with the respondent. The proposed regulations would clarify that the fact that prior consensual sexual conduct between the complainant and respondent has occurred does not demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude a determination that sex-based harassment occurred. The consideration of evidence related to the complainant's sexual interests would also be impermissible. Because the proposed regulations incorporate these prohibitions into proposed § 106.45(b)(7)(iii), the Department proposes removing descriptions of these same prohibitions from current § 106.45(b)(6)(i) and (ii), which address hearings and written questions. Instead, the Department proposes including cross-references to proposed § 106.45(b)(7) within proposed § 106.46(f), which would address credibility assessments and hearings.

Reasons: In proposed § 106.45(b)(6), the Department proposes inserting a cross-reference to proposed § 106.2 to make clear that a recipient should apply the regulatory definition of ''relevant'' at proposed § 106.2 when evaluating the relevance of evidence. As noted in the discussion of the definition of ''relevant'' in proposed § 106.2, the Department proposes adding this definition to assist recipients in determining which evidence is relevant and to help parties understand these determinations.

Proposed § 106.45(b)(7) identifies three categories of evidence that a recipient must not access, consider, disclose, or otherwise use, or permit questions seeking, in a recipient's grievance procedures required by the proposed regulations regardless of whether evidence in these categories is relevant. The current regulations create similar protections against any use of this evidence but do so in several different provisions. The Department proposes moving these provisions to § 106.45(b)(7) for ease of reference and to make clear to recipients and others that these types of evidence would be excluded from the general requirement that the recipient conduct an objective evaluation of all relevant evidence. The Department is also proposing minor changes to the three categories of evidence that may not be used regardless of relevance.

Under the first category, the Department proposes prohibiting any use of evidence or questions seeking evidence that is protected under a privilege as recognized by Federal or State law. Current § 106.45(b)(1)(x) prohibits the use of questions or evidence protected under a legally recognized privilege unless that privilege has been waived by the person holding the privilege. The Department remains committed to protecting this information, and proposes moving this protection of privileged information to § 106.45(b)(7)(i), without changing the nature or scope of this protection. Current § 106.45(b)(1)(x) prohibits a recipient from using information protected by a legally recognized privilege without specifying the source(s) for this privilege. To avoid any confusion, the Department proposes clarifying that the source of that legally recognized privilege would be a privilege that arises under Federal or State law. In the proposed regulations, the Department would clarify that this evidence may be used in the recipient's grievance procedures only if the person holding the privilege has waived the privilege voluntarily and in a manner permitted in the recipient's jurisdiction. Consequently, the Department proposes removing current § 106.45(b)(1)(x), which prohibits the use of evidence or questions that seek evidence protected under a legally recognized privilege, as duplicative of proposed § 106.45(b)(7)(i).

Under the second category, the Department proposes prohibiting any use of, or questions seeking, a party's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party absent the party's voluntary, written consent. The current regulations prohibit the use of these records at § 106.45(b)(5)(i). The Department proposes reaffirming the protection of treatment records by moving it to the list of impermissible types of evidence at § 106.45(b)(7)(ii).

The Department also proposes technical edits to this provision. Specifically, the Department proposes removing the term ''psychiatrist'' from the list of professions because a psychiatrist is covered by the term ''physician.'' The Department also proposes removing the phrase ''requiring the professional or paraprofessional to be acting or assisting in the professional or paraprofessional's capacity'' because this is covered by the requirement that the records be made in connection with the provision of treatment. The protection of treatment records under proposed § 106.45(b)(7)(ii) would encompass treatment records that are made and maintained by the recipient (such as when a physician is employed by the recipient), as well as treatment records that are made and maintained by external providers. Even when a party affirmatively provides treatment records to the recipient, proposed § 106.45(b)(7)(ii) would still require the recipient to obtain voluntary, written consent to use those records in the recipient's grievance procedures.

Current § 106.45(b)(5)(i) references the FERPA regulations, at 34 CFR 99.3, and requires the recipient to obtain consent of a parent related to the party's records for a party that is not an eligible student under those regulations. The FERPA regulations define an eligible student as ''a student who has reached 18 years of age or is attending an institution of postsecondary education.'' 34 CFR 99.3. The Department proposes removing this reference because the proposed regulations would make clear, in proposed § 106.6(g), that nothing in these regulations would limit the rights of a parent, guardian, or otherwise authorized legal representative to act on behalf of their child, including in a recipient's grievance procedures. When evaluating evidence that is relevant but may be impermissible, the Department expects recipients to be mindful of the rights of parents, guardians, and other authorized legal representatives under

proposed § 106.6(g). These rights may include the authority to provide consent on behalf of a minor student for the use of such evidence.

Under the third category, the Department proposes clarifying in § 106.45(b)(7)(iii) that evidence, or questions seeking evidence, about the complainant's sexual interests and prior sexual conduct would be impermissible and a recipient must not rely upon such evidence regardless of relevance other than in either of two narrow exceptions: (1) when evidence of the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct; or (2) when evidence concerning specific incidents of the complainant's prior sexual conduct with the respondent is offered to prove consent. This provision is substantially similar to the corresponding prohibition in the current regulations, at § 106.45(b)(6)(i) and (ii), on questions and evidence about the complainant's sexual predisposition and prior sexual behavior. In the preamble to the 2020 amendments, the Department noted that these prohibitions ''mirror[ ] rape shield protections applied in Federal courts,'' 85 FR 30103, and that ''rape shield protections serve a critically important purpose in a Title IX sexual harassment grievance process: Protecting complainants from being asked about or having evidence considered regarding sexual behavior, with two limited exceptions,'' *id.* at 30351. Although the current regulations deem these types of questions and evidence not to be relevant, *see id.* at 30353, the proposed regulations would clarify that these types of questions and use of these types of evidence would be impermissible regardless of relevance.

In addition, the Department proposes adding language concerning the exception for specific incidents of prior sexual conduct between the complainant and the respondent to clarify the narrow scope of this exception. Proposed § 106.45(b)(7)(iii) would explain that although evidence concerning specific incidents of a complainant's prior sexual conduct with the respondent may be permissible when offered to prove consent, the mere fact that prior consensual sexual conduct between the complainant and respondent occurred or that there are similarities in the types of communications related to consent does not itself demonstrate or imply the complainant's consent to the alleged sex-based harassment and does not preclude a determination that sex-based harassment occurred.

The Department also proposes modifying two terms in § 106.45(b)(7)(iii), though the proposed provision would exclude the same universe of questions and evidence as the current provision. The Department proposes replacing references to the complainant's ''prior sexual behavior'' with ''prior sexual conduct.'' The Department tentatively views the term ''prior sexual conduct'' as more precise because the proposed regulations repeatedly use the term ''conduct,'' including within this provision to refer to an exception for evidence that would be offered to prove who engaged in the alleged conduct.

In addition, the Department proposes replacing the term ''sexual predisposition'' with the term ''sexual interests.'' In the preamble to the 2020 amendments, the Department stated that its ''use of the phrase 'sexual predisposition' is mirrored in Fed. R. Evid. 412.'' *Id.* In response to the 2018 NPRM, the Department received comments that the phrase '' 'sexual predisposition' . . . harkens back to the past and puts on trial the sexual practices and identity of the complainant, which have no relevance to the adjudication of particular allegations.'' *Id.* at 30351. The Department sought to clarify in the preamble to the 2020 amendments that ''far from indicating intent to harken back to the past where sexual practices of a complainant were used against a complainant, the final regulations take a strong position that questions or evidence of a complainant's 'sexual predisposition' are simply irrelevant, without exception.'' *Id.* at 30353. The Department would maintain its position that questions seeking this evidence are not permitted and that this evidence must not be relied upon; however, the Department would seek to convey this prohibition without using an outdated phrase that may conjure the type of assumptions that the Department seeks to prohibit. Evidence related to sexual predisposition that is prohibited under the current regulations would continue to be prohibited as evidence related to sexual interests under the proposed regulations.

The Department proposes moving the protection just described from current § 106.45(b)(6)(i) and (ii) to proposed § 106.45(b)(7)(iii). In the current regulations, the prohibition on questions and evidence about the complainant's sexual predisposition and prior sexual behavior appears in the section about hearings but does not provide protection when the same evidence is presented in connection with an investigation. Instead, under the current regulations, when evidence related to a party's sexual predisposition or prior sexual behavior is directly related to the allegations, the Department stated that ''the recipient should allow both parties an equal opportunity to inspect and review such evidence to be able to prepare to respond to it or object to its introduction in the investigative report or at the hearing.'' *Id.* at 30428. The Department is concerned that permitting the parties to review these types of evidence undermines the purpose of this protection. Disclosing evidence of a complainant's prior sexual conduct (beyond the narrow exceptions) or sexual interests could unnecessarily harm complainants and chill reporting even if questioning about that evidence is ultimately prohibited at a hearing. Consequently, the Department proposes moving the prohibition on questions and evidence about sexual interests and prior sexual conduct to § 106.45(b)(7)(iii), where it would apply to the entirety of the grievance procedures under § 106.45, and if applicable § 106.46.

Section 106.45(c) Notice of Allegations

Current regulations: Current § 106.45(b)(2) requires a recipient to provide parties who are known to the recipient with written notice of the allegations of sexual harassment and of the recipient's grievance process, including any informal resolution process. Sufficient detail must be provided in this notice, including the conduct allegedly constituting sexual harassment, the identities of the parties involved in the alleged incident, and the date and location of the alleged incident.

In addition, current § 106.45(b)(2) requires that the notice inform the parties that they may have an advisor of their choice, who may be an attorney, that they have a right to inspect and review certain evidence, and of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process. Current § 106.45(b)(2) also provides that if, in the course of an investigation, the recipient decides to investigate allegations about the complainant or respondent that are not included in the notice provided above, the recipient must provide notice of the additional allegations to the parties whose identities are known.

The current regulations do not include specific requirements for a written notice of allegations for complaints of sex discrimination other

than formal complaints of sexual harassment.

Proposed regulations: The Department proposes maintaining some components of current § 106.45(b)(2), eliminating or clarifying others, and extending the requirement for a recipient to provide the parties with notice of allegations in its resolution of any complaints of sex discrimination, rather than only for sexual harassment. The Department proposes a more detailed written notice of allegations for complaints of sex-based harassment involving students at postsecondary institutions in proposed § 106.46(c).

Because the proposed regulations do not include a formal complaint requirement, the Department would clarify that the notice of allegations must be provided upon initiation of the recipient's grievance procedures as described in proposed § 106.45 and any informal resolution process under proposed § 106.44(k).

Proposed § 106.45(c) would preserve the current requirements that the recipient notify the parties of the applicable grievance procedures and provide sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident, the conduct alleged to constitute sex discrimination under Title IX, and the date and location of the alleged incident, to the extent that information is available to the recipient. The Department proposes requiring the notice to also include a statement that retaliation is prohibited.

Proposed § 106.45(c) would preserve, with some additional clarification, the requirement in the current regulations that a recipient provide notice of additional allegations to the parties if, in the course of an investigation, the recipient decides to investigate additional allegations about the respondent, if applicable, that were not included in the initial notice.

The Department proposes giving recipients flexibility to provide the notice that would be required under proposed § 106.45(c) either orally or in writing.

For additional requirements regarding the application of this provision in grievance procedures for sex-based harassment complaints involving postsecondary students, see the discussion of proposed § 106.46(c).

Reasons: Consistent with the requirement to provide adequate, reliable, and impartial investigations, proposed § 106.45(c) would require a recipient to provide the parties with notice of the allegations. The Supreme Court, in the context of a due process case concerning the rights of public school students facing temporary disciplinary suspension, reinforced the importance of this opportunity, stating that students in that context are entitled to notice of the charges and an explanation of the evidence against them. *Goss,* 419 U.S. at 581. The Department therefore proposes applying this principle to a recipient's initiation of grievance procedures for any complaint of sex discrimination. Proposed § 106.45(c) would require a recipient to provide notice of the applicable grievance procedures, any informal resolution process, the identities of the parties involved in the incident, the conduct alleged to constitute sex discrimination under Title IX, and the date and location of the alleged incident, to the extent that information is available to the recipient.

The Department also proposes requiring a recipient to notify the parties that retaliation is prohibited in proposed § 106.45(c). This proposed change responds to comments OCR received in the June 2021 Title IX Public Hearing and in listening sessions that complainants sometimes experience retaliation after complaining of sex discrimination. Requiring a recipient to remind the parties early in the grievance procedures that retaliation for making a complaint or otherwise participating in the grievance procedures is prohibited would help prevent efforts to retaliate and would ensure that parties know to report it if it happens.

Proposed § 106.45(c) would preserve the requirement in current § 106.45(b)(2)(ii) that a recipient provide notice of additional allegations to the parties if, in the course of an investigation, the recipient decides to investigate additional allegations that were not included in the initial notice. This requirement is important for ensuring that parties have sufficient information about the allegations at issue with sufficient time as set out in the recipient's grievance procedures to identify or provide evidence relevant to those allegations. Consistent with the scope of the grievance procedures under proposed § 106.45, the Department proposes changing this requirement to cover any additional allegations of sex discrimination. The Department proposes a minor change to provide better guidance about the circumstances that would trigger this requirement. The proposed addition would specify that the additional allegations requiring notice are about: (1) the respondent's conduct toward the complainant, if applicable; or (2) conduct alleged in a new complaint that has been consolidated with the original complaint.

As further explained in the discussion of proposed § 106.46(c), the Department proposes requiring a more detailed and formal notice of allegations for complaints of sex-based harassment involving student parties at postsecondary institutions. The Department proposes that complaints of sex discrimination but not sex-based harassment involving postsecondary student parties be resolved under the more flexible and streamlined requirements of proposed § 106.45(c).

Proposed § 106.45(c) would not prescribe whether notice of the allegations must be in writing; a recipient would be able exercise its discretion regarding whether to provide the required notice in writing. In some cases, it may be important to provide written notice of the allegations, particularly in cases involving more serious conduct and more serious consequences. Written notice may also sometimes be required under State or local law or recipient policy where suspension or other serious disciplinary consequences may apply. In all cases, proposed § 106.8(f) would require the recipient to maintain records documenting its response to complaints of sex discrimination, including the notice of allegations. However, the Department does not propose to require notice of the allegations to be in writing in all cases because doing so may limit a recipient's ability to respond promptly and in an age- and developmentally appropriate way when a student complains of sex discrimination. For example, in the elementary school or secondary school context, a requirement that a recipient always provide written notice of allegations would limit a recipient's ability to respond to an incident when it occurs, even though such a prompt response can be a valuable teaching moment, particularly with younger students. And with respect to many sex discrimination complaints that do not allege sex-based harassment, there may be no respondent and therefore no need to provide notice of the allegations because the complainant will already have information about the alleged sex discrimination. In all cases, however, the proposed regulations would require the notice of the allegations to be clear so that a respondent and complainant both understand the alleged conduct the recipient intends to investigate. Clear notice affords each party the opportunity to present their account of what happened, including providing relevant evidence and witnesses in support of their account. When notice is

inadequate, it would not meet the requirements of proposed § 106.45(c).

In addition, proposed § 106.45(c) would not include an express provision permitting a recipient to delay providing notice of the allegations to the parties in circumstances when the recipient has legitimate concerns for the safety of any person as a result of providing notice. The Department's current view is that it is not necessary to include an express provision authorizing a recipient to delay providing notice of the allegations in order to address safety concerns because ''upon initiation of grievance procedures'' in proposed § 106.45(c) should be understood to permit a recipient to delay notice to the parties in order to address safety concerns. Consistent with proposed § 106.46(c)(3), a recipient's legitimate safety concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

Similarly, proposed § 106.45(c) would not require the notice of allegations to include specific statements that the respondent is presumed not responsible, that a determination regarding responsibility is made at the conclusion of the grievance process, that parties may have an advisor of their choice, that they can review evidence, or whether the recipient's code of conduct prohibits knowingly making false statements or knowingly submitting false information, though a recipient may include such statements in its notice of allegations if it determines that doing so is appropriate. As with the question of whether the notice of allegations should be reduced to writing, providing the parties notice of this information may be appropriate and helpful in some cases, particularly in cases involving more serious conduct and more serious consequences, but the Department's tentative view is that requiring it in all cases may prevent a recipient from responding promptly and appropriately to all forms of sex discrimination in the educational environment. As explained in more detail in the discussion of proposed § 106.46(c), a postsecondary institution would be required to communicate these points in writing when implementing grievance procedures for complaints of sex-based harassment involving postsecondary students in light of the unique circumstances of those students.

Section 106.45(d) Dismissal of a Complaint

Current regulations: Section 106.45(b)(3)(i) states that a recipient must investigate allegations in a formal complaint unless the conduct alleged in the formal complaint would not constitute ''sexual harassment'' as defined in current § 106.30 if proved, did not occur in the recipient's education program or activity, or did not occur against a person in the United States. In such cases, the recipient must dismiss the complaint with respect to that conduct for purposes of sexual harassment. Section 106.45(b)(3)(i) further states that such dismissals do not preclude the recipient from taking action under a different provision of its code of conduct.

Current section 106.45(b)(3)(ii) permits a recipient to dismiss a formal complaint or any of the allegations raised in a formal complaint if at any time during the investigation or hearing, the complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the complaint or any of the allegations in the complaint, the respondent is no longer enrolled or employed by the recipient, or specific circumstances prevent the recipient from gathering sufficient evidence to make a determination on the complaint or any of the complaint allegations.

When a recipient dismisses a complaint for any of these reasons, current § 106.45(b)(3)(iii) requires the recipient to promptly and simultaneously send written notice of the dismissal and the reasons for it to the parties.

Proposed regulations: The Department proposes revising § 106.45(b)(3) to permit, but not require, a recipient to dismiss allegations in a complaint of sex discrimination in certain circumstances. Proposed § 106.45(d)(4) would further require a recipient that dismisses a complaint to comply with the requirements of proposed § 106.44 by, at a minimum: (1) offering supportive measures to the complainant as appropriate under proposed § 106.44(g); (2) offering supportive measures to the respondent as appropriate, under proposed § 106.44(g), for dismissals under § 106.45(d)(1)(iii) or (iv) in which the respondent has been notified of the allegations; and (3) requiring its Title IX coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity under proposed § 106.44(f)(6), in addition to remedies provided to an individual complainant.

The Department proposes adding § 106.45(d)(1)(i) to provide that a recipient may dismiss a complaint when it is unable to identify the respondent after taking reasonable steps to do so. The Department also proposes changing current § 106.45(b)(3)(ii) to state in proposed § 106.45(d)(1)(ii) that a recipient may dismiss a complaint if the respondent is not participating in the recipient's education program or activity or not employed by the recipient, rather than allowing dismissal only if the respondent is no longer enrolled in the recipient's education program or activity or no longer employed by the recipient. The Department proposes maintaining, in proposed § 106.45(d)(1)(iii), the part of current § 106.45(b)(3)(ii) that permits a recipient to dismiss a complaint or complaint allegations when a complainant withdraws them. The Department proposes revising this provision by eliminating the requirement that the complainant notify the Title IX Coordinator in writing of the withdrawal (except in postsecondary complaints of sex-based harassment involving a student party, as explained in greater detail in the discussion of proposed § 106.46(d)). In addition, the Department would add proposed § 106.45(d)(1)(iv), which would permit but not require a recipient to dismiss a complaint of sex discrimination or some of its allegations when, after making reasonable efforts to clarify the allegations with the complainant, the recipient determines that the conduct alleged, even if proven, would not constitute sex discrimination under Title IX. The Department also proposes removing the requirement that a recipient dismiss a complaint when the conduct alleged did not occur in the recipient's education program or activity or against a person in the United States. In addition, the Department proposes removing language from current § 106.45(b)(3)(i) that a dismissal under that paragraph does not preclude action under another provision of the recipient's code of conduct. Finally, the Department proposes eliminating from current § 106.45(b)(3)(ii) the provision that permits a recipient to dismiss a complaint when ''specific circumstances'' prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

The Department proposes clarifying in § 106.45(d)(2) that upon dismissal, a recipient must promptly notify the complainant of the dismissal and the reasons for it, and, if a respondent has already been notified of the allegations, then the recipient must also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the

complainant, or simultaneously if notification is in writing. The Department also proposes incorporating current § 106.45(b)(8), which grants parties a right to appeal dismissals, into proposed § 106.45(d)(3). Proposed § 106.45(d)(3) would provide that when a complaint is dismissed, the recipient must notify all parties that a dismissal may be appealed, and in an appeal of a complaint dismissal, a recipient must: (i) notify the parties when an appeal is filed and implement appeal procedures equally for the parties; (ii) ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint; (iii) ensure that the decisionmaker for the appeal has been trained as set out in proposed § 106.8(d)(2); (iv) provide the parties a reasonable and equivalent opportunity to make a statement in support of, or challenging, the outcome; and (v) notify all parties of the result of the appeal and the rationale for the result. For additional requirements regarding the application of this provision in grievance procedures for sex-based harassment complaints involving postsecondary students, see the discussion of proposed § 106.46(d).

Reasons: Eliminating mandatory dismissals and permitting dismissals in certain circumstances. To ensure a nondiscriminatory educational environment as required by Title IX, OCR has long interpreted Title IX to require that a recipient must respond to notice of possible sexual harassment by determining what occurred and resolving any sexual harassment. Prior to 2020, the Department had not addressed whether a recipient could dismiss complaints of sexual harassment (*i.e.,* decline to investigate or decline to complete an investigation) and if so, under what circumstances. Section 106.45(b)(3) of the 2020 amendments includes a mandatory dismissal provision, which requires an initial assessment of whether alleged conduct constitutes sexual harassment in a recipient's education program or activity. 85 FR 30289. Since the 2020 amendments went into effect, however, OCR has received feedback objecting to § 106.45(b)(3)(i), including from recipients, through the June 2021 Title IX Public Hearing and numerous listening sessions with stakeholders, and the Department received additional feedback in 2022 meetings held under Executive Order 12866. Some stakeholders expressed concern that requiring the dismissal of complaints without completing an investigation deprives a recipient of the opportunity to afford students the full protections of Title IX's nondiscrimination mandate. Others raised practical concerns, including concerns about the timing of such dismissals, asking how a recipient can effectively judge at the outset whether an allegation meets the definition of sexual harassment, noting that such a rule creates uncertainty for all parties and exposes a recipient to potential liability if either party challenges the dismissal.

The Department's current view is that a recipient should not be required to determine whether the conduct alleged meets the definition of sex discrimination at the outset of a complaint. Based on the feedback described, the Department recognizes that in most cases, it will not be clear whether alleged conduct could constitute sex discrimination under Title IX and, therefore, a recipient would be required to take additional steps to comply with its obligation under Title IX to have its education program or activity free from sex discrimination. In these cases, the proposed grievance procedures would guide the recipient's investigation and determination to ensure that both are prompt and equitable. The Department recognizes, however, that making such a determination may be appropriate in a limited set of circumstances, when it is clear from the allegations alone that the conduct alleged, even if proven, would not constitute sex discrimination under Title IX. In those cases, the Department's current view is that a recipient should have the discretion to dismiss the complaint and avoid conducting an unnecessary investigation.

Having reconsidered the issues in light of the facts and circumstances, including but not limited to stakeholder concerns, the Department proposes amending § 106.45(b)(3) to permit but not require a recipient to dismiss a complaint for any of the following reasons: (i) the recipient is unable to identify the respondent after taking reasonable steps to do so (proposed § 106.45(d)(1)(i)); (ii) the respondent is not participating in the recipient's education program or activity and is not employed by the recipient (proposed § 106.45(d)(1)(ii)); (iii) the complainant voluntarily withdraws any or all of the allegations in the complaint and the recipient determines that without the complainant's withdrawn allegations, the conduct that remains in the complaint, even if proven, would not constitute sex discrimination under Title IX (proposed § 106.45(d)(1)(iii)); and (iv) the recipient determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX (proposed § 106.45(d)(1)(iv)).

The Department recognizes that for many sex discrimination complaints, there will not be a ''respondent'' as that term is understood in the context of sex-based harassment complaints; rather, the claim will be that the school's policies or practices deprived students of an equal educational opportunity based on sex in violation of Title IX. In such cases, a recipient would still be able to dismiss a complaint based on one of the two dismissal bases that are not tied to a particular respondent: proposed § 106.45(d)(1)(iii), when the complainant withdraws some or all of the allegations of the complaint and the remaining allegations, even if true, would not constitute sex discrimination under Title IX; and proposed § 106.45(d)(1)(iv), when the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX.

Proposed § 106.45(d)(4) would further require a recipient that dismisses a complaint to comply with the requirements of proposed § 106.44(f) and (g) by, at a minimum: (1) offering supportive measures to the complainant as appropriate under proposed § 106.44(g); (2) offering supportive measures to the respondent as appropriate under proposed § 106.44(g) for dismissals under § 106.45(d)(1)(iii) or (iv) in which the respondent has been notified of the allegations; and (3) require its Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination related to any of the allegations or information contained in the complaint does not continue or recur within the recipient's education program or activity under proposed § 106.44(f). These steps are necessary because dismissal of a complaint of sex discrimination occurs before a recipient determines whether sex discrimination occurred. Therefore, although a recipient would not be required to comply with the requirements of its sex discrimination grievance procedures after dismissing a complaint, it would nevertheless be required to take steps to ensure that the complainant and respondent are offered supportive measures as appropriate and that its education program or activity operates free from sex discrimination.

Finally, the Department proposes deleting the statement that a dismissal under current § 106.45(b)(3)(i) does not preclude action under another provision of the recipient's code of conduct. The preamble to the 2020 amendments explained that this statement was

included in response to concerns raised by commenters that a recipient would no longer be able to use its own grievance procedures to investigate and resolve allegations that did not meet the current regulations' definition of ''sexual harassment.'' 85 FR 30288. This provision would no longer be necessary because proposed § 106.45(d) would not require a recipient to dismiss allegations. This change would address recipients' concerns that the 2020 amendments excluded from the grievance procedures conduct that should be within their scope. Moreover, although the Department does not consider it necessary to refer to the other tools a recipient may employ to address alleged misconduct, a recipient has always been and would continue to be free to use other available procedures, and nothing in proposed § 106.45(d) would preclude a recipient from doing so.

When the recipient is unable to identify the respondent. The Department proposes amending current § 106.45(b)(3) to permit a recipient to dismiss a complaint when, after taking reasonable steps to identify the respondent, the recipient is unable to do so. Reasonable steps may include but are not limited to interviewing the complainant, interviewing potential witnesses, and reviewing contemporaneous records such as video footage and visitor logs if relevant. The Department's position is that it is appropriate to allow such dismissals at a recipient's discretion when reasonable efforts to identify the respondent are not successful.

In deciding whether dismissal may be appropriate when the respondent is unknown, a recipient should consider whether there are good reasons to proceed with grievance procedures without a respondent. In some cases, the specific steps set out in proposed § 106.45 will not be effective without a respondent. Although proposed § 106.45(d)(1)(i) allows a recipient to dismiss a complaint for which a respondent cannot be identified, a recipient that chooses to do so must nevertheless comply with the requirements of proposed § 106.44(f) and (g) by offering supportive measures and requiring its Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity (proposed § 106.45(d)(4)).

In cases in which a recipient identifies a respondent after dismissing a complaint, either while taking necessary steps under proposed § 106.44(f) to ensure equal access to its education program or activity or through other means, it would be permitted to reinstate a dismissed complaint and complete its grievance procedures at that time. A recipient would not need to reinstate its grievance procedures in every case. Factors a recipient may consider in deciding whether to reinstate its grievance procedures would include but are not limited to whether the complainant or the respondent still participates or is attempting to participate in the recipient's education program or activity, whether the alleged conduct has been addressed fully through the other steps taken under proposed § 106.44(f) and (g), and whether there is a risk of continued sex discrimination or a concern regarding safety of the broader community.

When the respondent is not participating in the recipient's education program or activity and is not employed by the recipient. The Department proposes clarifying in § 106.45(d)(1)(ii) that a recipient may dismiss a complaint when the respondent is not participating in the recipient's education program or activity and is not employed by the recipient. In such circumstances, proposed § 106.45(d)(4) would require the recipient to comply with the requirements of proposed § 106.44(f) and (g) by offering the complainant supportive measures and requiring its Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity.

The current regulations permit dismissal when a respondent is no longer enrolled in or employed by the recipient. The proposed modification—changing the term ''enrolled in'' to the term ''participating in''—would recognize that some student respondents may continue to participate in a recipient's education program or activity even though they are not enrolled and that their participation could affect the complainant's access to the recipient's education program or activity. Such continued participation could include serving in an alumni organization, as a volunteer, or attending school-related events. In addition, a student who is on an approved leave from a postsecondary institution typically plans to return to the campus community and thus remains part of, and therefore a participant in, the recipient's education program or activity, even if from a distance. A recipient would have the discretion to restrict such an individual's ability to continue participating in its education program or activity, either under proposed § 106.44(g) as a supportive measure to the extent necessary to restore or preserve the complainant's equal access to its education program or activity, or under proposed § 106.45, and if applicable proposed § 106.46, as a disciplinary action at the conclusion of its grievance procedures. Finally, proposed § 106.45(d)(1)(ii) would encompass complaints against a respondent who was never enrolled in or employed by a recipient, and permits dismissal of those complaints as well. As explained in the discussion of the proposed definition of a ''respondent'' (§ 106.2), a third party may be a respondent to a complaint of sex discrimination.

By proposing to permit a recipient to dismiss a complaint of sex discrimination because the respondent is not a student or an employee of the institution or is a former student or employee, the Department does not suggest that a recipient lacks an obligation under Title IX to address sex discrimination by such respondents. Rather, consistent with the Department's explanation in the preamble to the 2020 amendments, a recipient must respond to notice of sexual harassment in its education program or activity ''regardless of whether the complainant or respondent is an enrolled student or an employee of the recipient.'' *See* 85 FR 30488. As explained in greater detail in the discussion of proposed § 106.44(a), the proposed regulations would affirm a recipient's obligation to take action to end any sex discrimination that has occurred in its education program or activity, even by third parties.

Dismissal of a Title IX complaint against a third-party respondent or a respondent who is a former student or former employee is nevertheless permitted when, for example, a recipient determines that its lack of control over the respondent or other factors would prevent it from completing its grievance procedures. In such cases, proposed § 106.45(d)(4)) would apply. Under the proposed regulations, the recipient would be required, at a minimum, to comply with the requirements of proposed § 106.44(f) and (g) by offering the complainant supportive measures and requiring its Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity. In some cases, ensuring equal

access may warrant noting in a student's academic records that the student withdrew with a disciplinary action pending and is ineligible to re-enroll without reinstatement of the grievance procedures, or noting in a former employee's personnel file that the employee is ineligible for rehire pending completion of the grievance procedures. In other cases, to ensure equal access to its education program or activity for the complainant, a recipient may need to impose restrictions on a respondent who has no relationship to the recipient, such as barring the respondent from accessing the recipient's facilities or participating in activities that are otherwise open to members of the public.

When the complainant voluntarily withdraws any or all of the allegations in the complaint. The Department proposes maintaining current § 106.45(b)(3)(ii), which permits a recipient to dismiss a complaint or any of the allegations raised in a complaint upon request of the complainant. The Department proposes revising this dismissal basis in proposed § 106.45(d)(1)(iii) to clarify that such dismissals are permitted when the complainant voluntarily withdraws any or all of the allegations in the complaint. Requiring a recipient to determine that the complainant's withdrawal is voluntary would guard against situations in which a complainant is coerced or pressured to withdraw a complaint but does not do so voluntarily or knowingly. For recipients and complaints subject only to the Title IX grievance procedures in proposed § 106.45, the Department proposes eliminating the requirement that a complainant request dismissal of a complaint or complaint allegations in writing to the Title IX Coordinator, although a complainant is not precluded from making a request in that manner. The Department recognizes that through discussions between a complainant and a Title IX Coordinator or others during the course of grievance procedures, a complainant may withdraw some or all complaint allegations. As explained in the discussion of the proposed definition of a ''complaint'' (§ 106.2), which the Department proposes would not have to be made in writing, OCR heard from stakeholders during the June 2021 Title IX Public Hearing that requirements from the 2020 amendments that a formal complaint be written and indicate that the complainant is the person filing, such as by including the complainant's physical or digital signature, created an unnecessarily burdensome process and discouraged some individuals from making complaints. Based on the information received from stakeholders and after reconsidering the issue, the Department's current position is that requiring a written withdrawal request for purposes of complying with Title IX may be overly prescriptive and impose unnecessary requirements on complainants and recipients in those circumstances and possibly imposes unnecessary burdens on respondents (except in postsecondary complaints of sex-based harassment involving a student party, which is explained in greater detail in the discussion of proposed § 106.46(d)(1)).

In cases in which a complainant withdraws some or all of the allegations and informs the recipient that they do not want an investigation to proceed, the Department's current view is that a recipient should override a student's request that an investigation not proceed only in limited instances in which the recipient determines that the potential harm from ongoing sex discrimination outweighs the complainant's interest in not initiating the grievance procedures, including consideration of any potential harms the complainant identifies that may follow from initiation of the recipient's grievance procedures. This position is reflected in the preamble to the 2020 amendments, which noted that a Title IX Coordinator might initiate a grievance process when a complainant chooses not to file a formal complaint to prevent a respondent from continuing to engage in sexual harassment. 85 FR 30131. Consistent with OCR's longstanding position regarding when a recipient should override a complainant's request for confidentiality or not take action in response to a report of sexual harassment, the recipient must, prior to dismissing a complaint withdrawn by a complainant, determine whether it can honor such a request and still provide a safe and nondiscriminatory environment for all students. *See, e.g.,* 2014 Q&A on Sexual Violence at 20; *see also* 2001 Revised Sexual Harassment Guidance at 17 (a recipient should honor a complainant's request for confidentiality ''as long as doing so does not prevent the school from responding effectively to the harassment and preventing harassment of other students'').

In addition, the Department proposes including a safeguard in § 106.45(d)(1)(iii)—that the recipient may dismiss the complaint only if it determines that without the withdrawn allegations, the conduct alleged in the complaint would not constitute sex discrimination under Title IX if proven—to balance a complainant's request not to proceed with a complaint of sex discrimination against a recipient's obligation to ensure its education program or activity operates free from sex discrimination. In some cases, a complainant's withdrawal of allegations would leave no remaining allegations for a recipient to address through its grievance procedures. Dismissal would then be permitted under proposed § 106.45(d)(1)(iii). In other cases in which a complainant withdraws some or all of the allegations in a complaint, there may be remaining allegations that would independently constitute sex discrimination under Title IX. This might occur in a complaint that involves multiple complainants, allegations against several respondents, or alleged discrimination that occurred on more than one occasion. Before dismissing the complaint under proposed § 106.45(d)(1)(iii), the recipient must consider whether other factors, including its obligation to afford equal access to its education program or activity, warrant initiating grievance procedures. In making this determination, a recipient may consider the seriousness of the sex discrimination, whether circumstances suggest an increased risk of additional acts of sex discrimination by the respondent or others, and whether the recipient has other means to obtain relevant evidence to determine whether sex discrimination occurred. These considerations may similarly guide a Title IX Coordinator in determining whether to initiate sex discrimination grievance procedures in response to information about conduct that may constitute sex discrimination under Title IX but where there is no complaint or the complainant requests that the grievance procedures not be initiated, as explained in the discussion of proposed § 106.44(f)(5). Proposed § 106.45(d)(1)(iii) would leave to the discretion of the recipient to determine whether any alleged conduct that remains could, if proven, constitute sex discrimination under Title IX.

Dismissal of allegations involving conduct that if proven would not constitute sex discrimination under Title IX. Proposed § 106.45(d)(1)(iv) would permit, but not require, a recipient to dismiss a complaint when, prior to completing its grievance procedures, the recipient determines that the conduct alleged would not constitute sex discrimination under Title IX even if proven. The procedures in proposed § 106.45 are designed to

elicit sufficient information to enable a recipient to make an informed decision as to whether sex discrimination occurred. Prohibiting a recipient from continuing its grievance procedures, as the mandatory dismissal provision of the current 2020 amendments does, may require a recipient to make a hasty judgment call at the outset of the complaint about whether the allegations, if proven, would constitute sex discrimination under Title IX. However, in the early stages of the complaint process, gathering more information may help to confirm whether the allegations, if true, would amount to sex discrimination. For instance, in cases of sex-based harassment in which one or more of the parties may have been incapacitated during the alleged incident, a recipient may gain additional information to establish what occurred through witness interviews conducted as part of its investigation under its grievance procedures. In other cases, a complainant may report an allegation of sex-based harassment but lack information about severity or pervasiveness, for example, that a recipient might receive through evidence gathering under its grievance procedures. Requiring dismissal of all such complaints would prevent a recipient from using its grievance procedures to address possible sex-based harassment in its education program or activity. The Department recognized this in the preamble to the 2020 amendments when, in response to comments, the Department declined to permit dismissal of ''frivolous complaints'' because ''the point of the § 106.45 grievance process is to require the recipient to gather and objectively evaluate relevant evidence before reaching conclusions about the merits of the allegations.'' 85 FR 30290.

The Department proposes revising the regulations to ensure it is clear that a recipient has the discretion to dismiss allegations that, if proven, would establish that the alleged conduct was not based on sex or did not subject a person to sex discrimination in a recipient's education program or activity in the United States, as set out in proposed § 106.11. Proposed § 106.45(d)(1)(iv) would require a recipient to make reasonable efforts to clarify the allegations with the complainant prior to dismissal. In cases of sex-based harassment, this would require a recipient to clarify with the complainant, when relevant, whether the complainant is experiencing a hostile environment within the recipient's education program or activity in the United States stemming from conduct that occurred outside the education program or activity or outside the United States. Although a recipient has discretion under proposed § 106.45(d)(1)(iv) to distinguish between allegations that implicate Title IX and those that do not, the Department reiterates that a recipient must not exercise its discretion in a manner that predetermines witness credibility or the sufficiency of evidence nor would the recipient be permitted to dismiss complaints to avoid a complicated or contested investigation.

Specific circumstances. The Department proposes removing language from § 106.45(b)(3)(ii) that permits a recipient to dismiss a complaint when specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. In the preamble to the 2020 amendments, the Department explained that this provision ''is intended to apply narrowly to situations where specific circumstances prevent the recipient from meeting its burden in § 106.45(b)(5)(i) to gather sufficient evidence to reach a determination.'' *Id.* The 2020 amendments did not define ''specific circumstances,'' but the preamble included examples of the types of specific circumstances that might warrant dismissal, including when the passage of time between alleged sex-based harassment and the filing of a formal complaint ''prevent a recipient from collecting enough evidence to reach a determination,'' *id.* at 30214, and ''[w]hen a formal complaint contains the allegations that are precisely the same as allegations the recipient has already investigated and adjudicated,'' *id.* at 30214 n.939.

The Department's current view is that allowing a recipient to dismiss a complaint for undefined ''specific circumstances'' is unnecessary in light of other, specific dismissal provisions. The Department is also concerned that this undefined category is potentially so broad that it fails to provide adequate guidance to recipients about when it applies. To address the first example from the preamble to the 2020 amendments, the passage of time between alleged sex discrimination and when a complaint is made does not always mean a recipient will be unable to collect enough evidence to reach a determination. Under the proposed regulations, the ''specific circumstances'' provision would not be necessary because a recipient would have two other avenues for resolving complaints in this circumstance: (1) It would be able to dismiss the complaint under proposed § 106.45(d)(1)(iv) if the allegations in the complaint—once clarified with the complainant—could not constitute sex discrimination under Title IX; or (2) It could conduct an investigation, evaluate the available evidence it has been able to gather (if any) for its persuasiveness, and, if appropriate, determine that sex discrimination did not occur. As for the second example from the preamble to the 2020 amendments, if a complainant were to make a complaint with only specific allegations that the recipient had already investigated, the recipient could notify the complainant that the allegations have already been resolved and either (1) decline to open a new complaint, or (2) dismiss the complaint if it had been opened before the recipient realized that the allegations duplicate those previously investigated. Considering the discussion above, the Department's current view is that allowing specific circumstances to serve as a basis for dismissal without defining what constitutes specific circumstances does not adequately apprise a recipient of the circumstances that would permit dismissal and those circumstances—such as a complicated, resource intensive investigation—that would not. Rather than retain the term ''specific circumstances'' as a vague, catchall basis for dismissing complaints, the Department proposes eliminating that provision and revising § 106.45(b)(3) to include several defined bases for discretionary dismissal.

Notification of Dismissal. Proposed § 106.45(d)(2) would clarify that upon dismissal, a recipient must promptly notify the complainant of the dismissal and the basis for the dismissal, and, if a respondent has already been notified of the allegations, then the recipient must also notify the respondent of the dismissal and the basis for it promptly following notification to the complainant, or simultaneously if notification is in writing. The Department proposes requiring that notice of a complaint dismissal be in writing only for postsecondary recipients for sex-based harassment complaints involving a student complainant or student respondent (*see* proposed § 106.46(d)(2)), but nothing in the proposed regulations would preclude other recipients or postsecondary recipients in other circumstances from providing notice of a dismissal to the parties in writing.

Appeal of Dismissal. In addition, proposed § 106.45(d)(3) would incorporate current § 106.45(b)(8), which grants parties a right to appeal dismissals. The provision at proposed

§ 106.45(d)(3) would require a recipient to notify all parties that a dismissal may be appealed; provide any party with an opportunity to appeal; notify the other party when an appeal is filed; and implement appeal procedures equally for the parties. This right to appeal would further require robust protections such as training for appeal decisionmakers on how to serve impartially, including by avoiding bias, conflicts of interest, and prejudgment of the facts at issue; strict separation of the appeal decisionmakers from those who investigated and adjudicated the underlying complaint to reinforce independence and neutrality; and a reasonable, equivalent opportunity for the parties to participate in the appeal process. Finally, the recipient must notify all parties of the result of the appeal and the rationale for the result.

Section 106.45(e) Consolidation of Complaints

Current regulations: Section 106.45(b)(4) permits a recipient to consolidate formal complaints involving allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, when the sexual harassment allegations arise out of the same facts or circumstances. The preamble to the 2020 amendments clarified that complaints ''by one party against the other party'' refers to counter-complaints. 85 FR 30291. Section 106.45(b)(4) also states that when ''a grievance process involves more than one complainant or more than one respondent, references in this section to the singular 'party,' 'complainant,' or 'respondent' include the plural, as applicable.''

Proposed regulations: The Department proposes retaining the language of § 106.45(b)(4) as it appears in the current regulations, with one substantive change and four minor changes for consistency with changes in other provisions of the proposed regulations. The Department also proposes moving this provision to proposed § 106.45(e). Proposed § 106.45(e) would allow a recipient to consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party (*i.e.,* when a respondent seeks to pursue a counter-complaint against a complainant), when the allegations of sex discrimination arise out of the same facts or circumstances. If one of the complaints to be consolidated is a complaint of sex-based harassment involving a student complainant or student respondent at a postsecondary institution, proposed § 106.45(e) would clarify that the grievance procedures for investigating and resolving the consolidated complaint must comply with the requirements of proposed §§ 106.45 and 106.46.

In addition, the Department proposes replacing references to ''formal complaints'' with ''complaints,'' and replacing references to ''sexual harassment'' with ''sex discrimination'' and ''sex-based harassment,'' as applicable. The Department proposes replacing the phrase ''the other party'' with ''another party'' to reflect that certain complaints might involve more than two parties. The Department also proposes removing the reference to the ''grievance process.''

Consistent with current § 106.45(b)(4), proposed § 106.45(e) would state that when more than one complainant or more than one respondent is involved, references in this section and in proposed § 106.46 to the singular form of the terms ''party,'' ''complainant,'' or ''respondent'' include the plural, as applicable.

Reasons: The Department proposes maintaining a recipient's ability to consolidate complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations arise out of the same facts or circumstances. In order to align this provision with proposed § 106.45, which addresses grievance procedures for any complaint of sex discrimination, not just sex-based harassment, the Department proposes modifying the scope of consolidation under proposed § 106.45(e) to allow a recipient to consolidate any complaint of sex discrimination with another complaint of sex discrimination as long as the allegations of sex discrimination arise out of the same facts or circumstances. Current § 106.45(b)(4) limits consolidation to complaints of sexual harassment and does not address whether consolidation is available for other forms of sex discrimination such as consolidation of complaints involving retaliation related to complaints of sex-based harassment.

For example, if a person alleges that they were retaliated against for making a complaint of sex-based harassment or otherwise exercising their rights under Title IX related to sex-based harassment, the retaliation complaint may involve the same parties as a complaint related to the underlying sex-based harassment. Accordingly, when the sex-based harassment and related retaliation allegations arise out of the same facts or circumstances (and when the complaints are against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party), proposed § 106.45(e) would permit a recipient to consolidate these complaints.

Proposed § 106.45(e) would require that when one of the complaints to be consolidated is a complaint of sex-based harassment involving a student complainant or student respondent at a postsecondary institution, the recipient must comply with the requirements of proposed §§ 106.45 and 106.46 to investigate and resolve the consolidated complaint. Proposed § 106.71 likewise would require that when a complaint of retaliation is consolidated with a complaint of sex-based harassment involving a student at a postsecondary institution, the recipient must comply with the grievance procedures in proposed §§ 106.45 and § 106.46. As explained in the discussion of proposed § 106.46 (Section II.F.2.c), the Department's current view is that the additional provisions of proposed § 106.46 would address the specialized needs of postsecondary student complainants and respondents in complaints of sex-based harassment and, when applied together with the requirements in proposed § 106.45, would ensure equitable grievance procedures tailored to the circumstances of students attending postsecondary institutions. For this reason, when a consolidated complaint involves a complaint of sex-based harassment involving a student at a postsecondary institution, the Department proposes that the postsecondary institution would be required to comply with these additional requirements.

In addition to clarifying that consolidation is available for any complaint of sex discrimination, the Department proposes minimal changes to proposed § 106.45(e) to align with global changes in the proposed regulations.

First, the Department proposes replacing ''formal complaints'' with ''complaints.'' As explained in the discussion of the proposed definition of ''complaint'' (§ 106.2), the Department proposes removing the formal complaint requirement for purposes of initiating a recipient's obligation to follow its grievance procedures for complaints of sex discrimination as described in proposed §§ 106.45 and 106.46.

Second, the Department proposes replacing the term ''sexual harassment'' with the term ''sex discrimination'' or ''sex-based harassment,'' as applicable.

As explained in greater detail in the discussion of the Overall Considerations and Framework (Section II.F.2.a) and the proposed definition of ''sex-based harassment'' (§ 106.2), the Department proposes these changes to make clear that all forms of sex discrimination and all forms of harassment based on sex are within the scope of the grievance procedures described in proposed §§ 106.45 and 106.46 to dispel any confusion regarding the scope of Title IX's coverage of harassment.

Third, the Department proposes to replace the phrase ''the other party'' with ''another party'' because complaints might involve more than two parties.

Finally, the Department proposes removing the reference to the ''grievance process'' because the proposed regulations instead use the term ''grievance procedures'' to refer to the procedures outlined in proposed §§ 106.45 and 106.46.

Section 106.45(f)(1) Investigative Burden on Recipients

Current regulations: Section 106.45(b)(5)(i) requires a recipient to ensure that both the burden of proof and the burden of gathering evidence sufficient to reach a responsibility determination rest on the recipient and not on the parties. This provision prohibits a recipient from accessing, considering, disclosing, or using a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party—unless the party provides voluntary, written consent to the recipient for use in the grievance process. If the party is not an ''eligible student,'' as defined in 34 CFR 99.3, the recipient must obtain the voluntary, written consent of a ''parent,'' as defined in 34 CFR 99.3.[7]

Proposed regulations: Proposed § 106.45(f)(1) would require that the recipient—and not the parties—bear the burden of conducting an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

The Department proposes retaining the prohibition in current § 106.45(b)(5)(i) that a recipient may not access, consider, disclose, or otherwise use a party's treatment records, but would move this language to proposed § 106.45(b)(7) with technical edits.

Reasons: Proposed § 106.45(f)(1) would retain the language in the current provision requiring that the recipient—and not the parties—bear the burden of gathering sufficient evidence to reach a determination. The Department proposes replacing the phrase ''determination of responsibility'' with the phrase ''determine whether sex discrimination occurred.'' The Department proposes substituting this language consistent with the language used in other provisions in the proposed regulations and to provide clarity about the type of determination involved.

Current § 106.45(b)(5)(i) prohibits a recipient from accessing, considering, disclosing, or using a party's treatment records, unless the party consents to their use. The Department proposes moving the full description of this prohibition, with minor proposed revisions, to proposed § 106.45(b)(7), where all three categories of impermissible evidence are described in full. As outlined by the Department in the discussion of proposed § 106.45(b)(7), the Department proposes consolidating this prohibition with other forms of impermissible evidence for ease of reference and to make clear to recipients and others that these types of evidence would be excluded from the general requirement that the recipient conduct an objective evaluation of all relevant evidence. The Department explains the proposed changes to the protection of treatment records in greater detail in the discussion of proposed § 106.45(b)(7).

Section 106.45(f)(2) Opportunity To Present Relevant Witnesses and Other Evidence

Current regulations: Section 106.45(b)(5)(ii) requires a recipient to provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and to present other inculpatory and exculpatory evidence.

Proposed regulations: Proposed § 106.45(f)(2) would require a recipient to provide an equal opportunity for the parties to present relevant fact witnesses, as well as other inculpatory and exculpatory evidence.

Reasons: Proposed § 106.45(f)(2) would retain the requirement that a recipient provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence, and would clarify that the fact witnesses and evidence must be ''relevant'' as defined in proposed § 106.2. The topic of expert witnesses in grievance procedures resolving complaints of sex-based harassment involving students at the postsecondary level would now appear in proposed § 106.46(e)(4).

The proposed relevance limitation on the opportunity to produce witnesses and other evidence is consistent with the numerous provisions in the current and proposed regulations that limit the evidence in the grievance procedures to evidence that is ''relevant,'' as defined in proposed § 106.2. The current regulations incorporate the concept of relevance into several provisions, specifically:

- § 106.45(b)(1)(ii) (objective evaluation of all relevant evidence);
- § 106.45(b)(1)(iii) (training on issues of relevance);
- § 106.45(b)(5)(iii) (no restriction on the ability of either party to gather and present relevant evidence);
- § 106.45(b)(5)(vii) (investigative report that fairly summarizes relevant evidence);
- § 106.45(b)(6)(i) (ability of the party's advisor to ask all relevant questions and follow-up questions, and only relevant cross-examination and other questions may be asked of a party or witness);
- § 106.45(b)(6)(ii) (opportunity to submit written, relevant questions to the other party); and
- § 106.45(b)(6)(i) and (ii) (decisionmaker must exclude oral or written questions that are not relevant and explain any decision to exclude a question as not relevant).

Similarly, in proposed §§ 106.45 and 106.46, relevance is discussed in:

- Section 106.45(b)(6) (objective evaluation of all relevant evidence);
- Section 106.45(f)(2) (equal opportunity for parties to present relevant fact witnesses and other evidence);
- Section 106.45(f)(3) (review of evidence gathered to determine relevance);
- Section 106.45(f)(4) (description of the relevant evidence);
- Section 106.45(h)(1) (requirement that the decisionmaker evaluate relevant evidence for persuasiveness);
- Section 106.46(c)(2)(iii) (notice of the opportunity to receive access to relevant evidence or to an investigative report that accurately summarizes this evidence);
- Section 106.46(e)(6) (provide either equitable access to the relevant evidence or to the same written investigative report that accurately summarizes this evidence);

[7] Under § 99.3 of the regulations implementing the FERPA set out at 34 CFR part 99, an ''[e]ligible student means a student who has reached 18 years of age or is attending an institution of postsecondary education,'' and a ''[p]arent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.''

• Section 106.46(f)(1)(i) (credibility determinations include allowing the decisionmaker to ask relevant questions and allowing each party to propose relevant questions);
• Section 106.46(f)(1)(ii) (ability of the party's advisor to ask all relevant questions);
• Section 106.46(f)(3) (decisionmaker must determine whether a proposed question is relevant and explain any decision to exclude a question as not relevant); and
• Section 106.46(h)(1)(iii) (written determination must contain an evaluation of relevant evidence).

The Department justified the requirement to provide an equal opportunity to present witnesses and evidence in the preamble to the 2020 amendments as ''an important procedural right and protection for both parties'' that ''will improve the reliability and legitimacy of the outcomes recipients reach in Title IX sexual harassment grievance processes.'' 85 FR 30293. In the preamble to the 2020 amendments, the Department described this provision as referring to relevant witnesses and evidence. *See id.* at 30283 (stating that information about the allegations under investigation ''allows both parties to meaningfully participate during the investigation, for example by gathering and presenting inculpatory or exculpatory evidence (including fact and expert witnesses) relevant to each allegation under investigation''). The Department now proposes making this explicit in the proposed regulations. Placing a relevance limitation on witnesses and evidence would limit the potential harm and unnecessary or wasteful use of recipients' and parties' resources caused by the introduction of irrelevant testimony and evidence.

Under proposed § 106.45(f)(2), a recipient would be required to provide the parties with the opportunity to present fact witnesses and other relevant evidence. Separately, under proposed § 106.45(f)(3), the recipient then would be required to evaluate whether the evidence is relevant and not otherwise impermissible, consistent with proposed §§ 106.2 and 106.45(b)(7).

Although current § 106.45(b)(5)(ii) requires a recipient to provide an equal opportunity for the parties to present expert witnesses, the Department proposes moving this requirement to proposed § 106.46(e)(4) and limiting its application to complaints of sex-based harassment involving a student complainant or a student respondent at a postsecondary institution. A recipient investigating and resolving a complaint under proposed § 106.45 would retain the discretion to determine whether to allow the parties to present expert witnesses. In making this determination, a recipient would be required to comply with proposed § 106.45(b)(1) and (f). A recipient would need to apply the determination about whether to allow expert witnesses equally to the parties, as part of the requirement to provide for equitable procedures and for the adequate, reliable, and impartial investigation and resolution of complaints. As explained in greater detail in the discussion of proposed § 106.46(e)(4), the use of expert witnesses may introduce delays without adding a meaningful benefit to the recipient's investigation and resolution of the case.

Section 106.45(f)(3) Review and Determination of Relevant Evidence

Current regulations: None.

Proposed regulations: Proposed § 106.45(f)(3) would require a recipient to review all evidence gathered through the investigation and determine which evidence is relevant and which evidence is impermissible regardless of relevance, consistent with proposed §§ 106.2 and 106.45(b)(7).

Reasons: The Department proposes clarifying in proposed § 106.45(f)(3) that a recipient must review all evidence gathered throughout the investigation. This provision would require the recipient to determine which evidence is ''relevant,'' as defined in proposed § 106.2, and which evidence is impermissible regardless of relevance, as set out in proposed § 106.45(b)(7).

The current regulations, at § 106.45(b)(1)(ii), state that a recipient's grievance process must ''[r]equire an objective evaluation of all relevant evidence.'' The proposed regulations would retain this requirement for the recipient's grievance procedures at § 106.45(b)(6). The Department proposes adding § 106.45(f)(3) to make clear that when investigating a complaint of sex discrimination and throughout the process set out in the § 106.45 grievance procedures, a recipient must determine which evidence gathered through the investigation is relevant and which is impermissible regardless of relevance, consistent with proposed §§ 106.2 and 106.45(b)(7).

Section 106.45(f)(4) Description of Evidence

Current regulations: Section 106.8(c) requires a recipient to adopt and publish grievance procedures for the prompt and equitable resolution of student and employee complaints alleging sex discrimination and a grievance process for formal complaints of sexual harassment under § 106.45. Current § 106.45(b)(5)(vi) provides that for formal complaints of sexual harassment, a recipient must provide the parties with an equal opportunity to review and respond to evidence obtained during the investigation that is directly related to the allegations raised in a formal complaint of sexual harassment. Current § 106.45(b)(5)(vi) contains additional requirements related to reviewing evidence, which are explained in the discussion of proposed § 106.46(e)(6).

Proposed regulations: Proposed § 106.45(f)(4) would require a recipient, as part of its obligation to conduct an adequate, reliable, and impartial investigation of sex discrimination complaints, to provide each party with a description of the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible. Proposed § 106.45(f)(4) would also require a recipient to provide the parties with a reasonable opportunity to respond to this description of evidence. For additional requirements regarding the application of this provision in grievance procedures for sex-based harassment complaints involving postsecondary students, see the discussion of proposed § 106.46(e)(6).

Reasons: The current regulations require a recipient to provide the parties with the opportunity to inspect and review the evidence directly related to the allegations in response to a formal complaint of sexual harassment. The current regulations do not expressly require a recipient to provide access to the evidence or a description of the evidence for complaints of sex discrimination other than formal complaints of sexual harassment.

Under proposed § 106.45(f)(4), the Department proposes requiring a recipient to, at minimum, provide the parties with a description of the relevant evidence as part of the investigation of all sex discrimination complaints. A recipient may provide this description orally or in writing. Proposed § 106.8(f)(1) would require a recipient to maintain records documenting the process that the recipient conducted under the grievance procedures under proposed § 106.45, and if applicable proposed § 106.46, for each complaint of sex discrimination. Accordingly, a recipient that provides the parties with an oral description of the evidence to comply with proposed § 106.45(f)(4) would need to maintain a written record of this description. Likewise, a recipient would need to maintain any written

description of the evidence that it provides to the parties.

In addition, under proposed § 106.45(f)(4), the Department proposes requiring a recipient to provide the parties with a reasonable opportunity to respond to the description of the evidence as part of the investigation of the complaint.

For complaints of sex-based harassment involving a student complainant or student respondent at a postsecondary institution, the postsecondary institution would be required to comply with both proposed §§ 106.45(f)(4) and 106.46(e)(6). As explained in the discussion of proposed § 106.46(e)(6), a postsecondary institution would be required to provide the parties with equitable access to the relevant and not otherwise impermissible evidence, or to a written investigative report that accurately summarizes this evidence. As stated in proposed § 106.46(e)(6)(iv), compliance with the requirements of proposed § 106.46(e)(6) would also satisfy the requirements of proposed § 106.45(f)(4).

In the preamble to the 2020 amendments, the Department stated that the purpose of current § 106.45(b)(5)(vi) is to enable the parties to ''meaningfully prepare arguments based on the evidence that further each party's view of the case, or present additional relevant facts and witnesses that the decision-maker should objectively evaluate before reaching a determination regarding responsibility, including the right to contest the relevance of evidence.'' 85 FR 30303. The proposed regulations would likewise provide the parties with sufficient information about the relevant evidence to meaningfully prepare arguments, contest the relevance of evidence, and present additional evidence for consideration but would also enable recipients to more effectively fulfill their obligations under Title IX by allowing them to tailor the manner in which they present the relevant, permissible evidence in light of the ages of the parties, severity of the alleged conduct, volume of evidence, other case-specific factors, and factors specific to the recipient's educational environment.

Numerous stakeholders, in listening sessions and the June 2021 Title IX Public Hearing, urged the Department to provide greater discretion for elementary school and secondary school recipients. Many stakeholders commented that they have found the current regulations to be onerous, protracted, and unworkable in practice for elementary school and secondary school recipients. It is the Department's tentative view that proposed § 106.45(f)(4) would streamline the investigation process while ensuring that parties receive a description of the relevant evidence so that they can have a meaningful opportunity to be heard in response to the evidence under consideration by the recipient. The Department observes that in *Goss,* the Supreme Court held that students facing a temporary suspension are entitled to notice of the charges against them and ''if [the student] denies them, an explanation of the evidence the authorities have and an opportunity to present [the student's] side of the story.'' 419 U.S. at 581. The description of the relevant evidence that would be required by proposed § 106.45(f)(4) would satisfy *Goss*'s requirement for an explanation of the evidence.

Under proposed § 106.45(i), a recipient may adopt additional provisions as part of its grievance procedures as long as they are applied equally to the parties. Accordingly, a recipient that would not be required by proposed § 106.46(e)(6) to provide access to the relevant evidence or to an investigative report would nevertheless have the discretion to do so.

Section 106.45(g) Evaluating Allegations and Assessing Credibility

Current regulations: Section 106.8(c) requires a recipient to adopt and publish grievance procedures for the prompt and equitable resolution of student and employee complaints alleging sex discrimination and a grievance process for formal complaints of sexual harassment under § 106.45. Current § 106.45(b)(6)(i) provides that for formal complaints of sexual harassment, postsecondary institutions must provide for a live hearing during which the decisionmaker must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

Proposed regulations: The Department proposes adding § 106.45(g), which would require a recipient to provide a process that enables the decisionmaker to adequately assess the credibility of the parties and witnesses to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination. For additional requirements regarding the application of this provision in grievance procedures for sex-based harassment complaints involving postsecondary students, see the discussion of proposed § 106.46(f).

Reasons: The current regulations require that a recipient have a process for assessing the credibility of the parties and witnesses to formal complaints of sexual harassment but do not have a similar requirement for other complaints of sex discrimination. The Department's current position is that to the extent credibility is relevant, as discussed in proposed § 106.46(f), a process for assessing credibility must be included in grievance procedures for complaints of other forms of sex discrimination as well.

In view of this, proposed § 106.45(g) would require a recipient to have a process in place to assess the credibility of the parties and witnesses, to the extent credibility is in dispute and relevant to evaluating one or more allegations of sex discrimination. A recipient would have the ability to structure this process in a way that is consistent with its obligation to have an equitable process for all parties and takes into account the recipient's administrative structure, education community, and any applicable State or local legal requirements. The Department notes the specific requirements for assessing credibility in proposed § 106.46(f) related to questioning by the decisionmaker or cross-examination are limited to complaints of sex-based harassment involving student complainants or student respondents at postsecondary institutions and would not apply under proposed § 106.45(g). However, and consistent with the discussion of proposed § 106.46(g), if as a part of its process for assessing credibility under proposed § 106.45(g), a recipient elects to include any of these additional provisions, including conducting a live hearing with both parties present, the Department's current view is that the recipient's grievance procedures would not be equitable if either party requested to participate in the live hearing in a separate room and the recipient denied the request. For additional discussion of the distinction between provisions under proposed §§ 106.45 and 106.46, see the discussion of the Framework for Grievance Procedures for Complaints of Sex Discrimination (Section II.F). Under proposed § 106.45(g) a recipient would be permitted to incorporate the methods for assessing credibility that would be required under proposed § 106.46(f) or may choose to incorporate other methods that the recipient believes are better suited to the nature of the allegations and the recipient's educational environment as long as they aid in fulfilling the recipient's obligation to provide an education program or activity free from sex discrimination. In situations in which

credibility is not in dispute or is not relevant to evaluating one or more allegations of sex discrimination, a recipient would not be required to implement its process required under proposed § 106.45(g) for assessing credibility.

Section 106.45(h) Determination of Whether Sex Discrimination Has Occurred

Current regulations: Section 106.45(b)(7) states that the decisionmaker(s) cannot be the same person(s) as the Title IX Coordinator or the investigator(s), and that the recipient must issue a written determination regarding responsibility. This written determination must be provided to the parties simultaneously. To reach this determination, the recipient must apply its chosen standard of evidence and the written determination must include several components: identification of the allegations potentially constituting sexual harassment; a description of the procedural steps taken from the receipt of the formal complaint through the determination; findings of fact supporting the determination; conclusions regarding the application of the recipient's code of conduct to the facts; a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies will be provided by the recipient to the complainant; and the recipient's procedures and permissible bases for the complainant and respondent to appeal.

This provision also states that the Title IX Coordinator is responsible for the effective implementation of any remedies, and that the determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Proposed regulations: Under proposed § 106.45(h), following an investigation as set out in proposed § 106.45(f) and (g), a recipient would have to determine whether sex discrimination occurred. The Department proposes reorganizing the requirements from the current regulatory provisions §§ 106.45(b)(1)(i), 106.45(b)(1)(vii), 106.45(b)(2), 106.45(b)(7), and 106.71(b)(2) into proposed § 106.45(h) with strengthened protections for the parties and other changes so that this provision is consistent with the other revisions proposed throughout the regulations.

Proposed § 106.45(h)(1) would require a recipient to use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred, unless the recipient uses the clear and convincing evidence standard of proof in all other comparable proceedings, including proceedings relating to other discrimination complaints. In those situations, proposed § 106.45(h)(1) would allow the recipient to elect to use the clear and convincing evidence standard of proof in determining whether sex discrimination occurred. Proposed § 106.45(h)(2) would require that a recipient notify the parties of the outcome of the complaint, including the determination of whether sex discrimination occurred, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable. Proposed § 106.45(h)(3) would require that, if there is a determination that sex discrimination occurred, the recipient must, as appropriate, require the Title IX Coordinator to provide and implement remedies to a complainant or other person the recipient identifies as having their equal access to the recipient's education program or activity limited or denied by sex discrimination, and require the Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity. Proposed § 106.45(h)(4) would preserve the requirement that the recipient must comply with this section, and if applicable § 106.46, before the imposition of any disciplinary sanctions against a respondent. Proposed § 106.45(h)(5) would prohibit a recipient from disciplining a party, witness, or others participating in the recipient's grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the recipient's determination of whether sex discrimination occurred.

Reasons: The Department's current view is that these provisions should be grouped together in the proposed regulations because all of them would govern a recipient's determination of whether sex discrimination occurred. Additional detailed explanation of the requirements of proposed § 106.45(h) is provided in the discussion of each provision, including proposed changes from current § 106.45. For additional requirements regarding the application of proposed § 106.45(h) in grievance procedures for sex-based harassment complaints involving postsecondary students, see the discussion of proposed § 106.46(h).

Section 106.45(h)(1) Standard of Proof

Current regulations: Section 106.45(b)(1)(vii) requires a recipient to state whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment.

Proposed regulations: Proposed § 106.45(h)(1) would require a recipient to use the preponderance of the evidence standard of proof when determining whether sex discrimination occurred except that the recipient could use the clear and convincing evidence standard if the recipient uses that standard of proof in all other comparable proceedings, including proceedings relating to other discrimination complaints. Under either standard of proof, proposed § 106.45(h)(1) would require the decisionmaker to evaluate the relevant evidence for its persuasiveness.

Reasons: Standard of proof. The Department proposes using the term ''standard of proof'' instead of ''standard of evidence'' to clarify that this would be the standard a recipient must use to determine whether sex discrimination occurred. This proposed change would also prevent confusion with the proposed definition of ''relevant,'' which sets out a standard that must be applied to all evidence. The term ''relevant'' is explained in greater detail in the discussion of the proposed definition of ''relevant'' (§ 106.2) and the discussion of proposed § 106.45(b)(6).

Requiring use of the preponderance of the evidence standard of proof unless the clear and convincing evidence standard is used for comparable proceedings. OCR heard from stakeholders during the June 2021 Title IX Public Hearing and in listening sessions regarding what standard of proof a recipient should be required to use in its Title IX grievance procedures, and similar comments were made by stakeholders in meetings held in 2022 under Executive Order 12866, after the NPRM was submitted to OMB. Some stakeholders said that the preponderance of the evidence standard ensures fairness to the parties, who have an equal stake in the outcome of the proceedings, by giving equal weight to

accounts of a complainant and respondent as to whether sexual harassment occurred. Some stakeholders made the point that the preponderance of the evidence standard is the typical standard applied to evidence in civil litigation, including in cases alleging discrimination under Title VII and Title VI, as well as under Title IX. Others said that because litigation is different from a recipient's administrative process, it is not appropriate to require recipients to use the same standard as would be applied in civil litigation. Some stakeholders also pointed to differences between the workplace and education contexts, while others noted that Title IX applies to both employees and students. Some stakeholders urged the Department to require recipients to use the clear and convincing standard, or at a minimum require it for sexual assault cases, because allegations related to sexual misconduct, especially including sexual assault, are of a serious nature, findings of responsibility may have long-term consequences for a respondent, and the Title IX grievance process does not afford all the same protections to the parties that are available in a court proceeding. Other stakeholders described the framework from the 2020 amendments—specifically, allowing recipients to choose between the preponderance of the evidence and the clear and convincing evidence standards of proof—as creating inequities in the grievance process because it allows schools to use a different standard of proof for sexual harassment allegations than it does for other misconduct complaints, including complaints that allege other types of discrimination.

When the Department promulgated the 2020 amendments and declined to mandate either the preponderance of the evidence standard or the clear and convincing evidence standard, the Department explained that ''either standard of evidence, in combination with the rights and protections required under § 106.45, creates a consistent, fair process under which recipients can reach accurate determinations regarding responsibility.'' 85 FR 30381. The Department further explained that ''it [was] not aware of a Federal appellate court holding that the clear and convincing evidence standard is required to satisfy constitutional due process or fundamental fairness in Title IX proceedings, and the Department [was] not aware of a Federal appellate court holding that the preponderance of the evidence standard is required under Title IX.'' *Id.* at 30384. This remains true as the Department is not aware of a Federal appellate court that has since held that a particular standard of proof is required to satisfy constitutional due process or fundamental fairness in Title IX proceedings.

Under the preponderance of the evidence standard of proof, a determination that sex discrimination occurred can be made only if the decisionmaker finds it is more likely than not that a respondent engaged in sex discrimination. A respondent would not be found responsible for sex discrimination if the evidence were in equipoise, meaning evenly balanced for and against a determination of responsibility. In such a case, there would not be sufficient evidence for the decisionmaker to find it more likely than not that sex discrimination occurred. The Department notes that several Federal courts, including appellate courts, have held that the preponderance of the evidence standard is constitutionally sound and sufficient to ensure due process to a respondent when a school evaluates allegations of sexual harassment. *See, e.g., Doe* v. *Univ. of Ark.-Fayetteville,* 974 F.3d 858, 868 (8th Cir. 2020) (''[W]e do not think a higher standard of proof [than preponderance of the evidence] is compelled by the Constitution. . . . A heightened burden of proof may lessen the risk of erroneous deprivations for an accused, but it also could frustrate legitimate governmental interests by increasing the chance that a true victim of sexual assault is unable to secure redress and a sexual predator is permitted to remain on campus.''); *Cummins,* 662 F. App'x at 449 (''Allocating the burden of proof [equally under the preponderance of the evidence standard]—in addition to having other procedural mechanisms in place that counterbalance the lower standard used (*e.g.,* an adequate appeals process)—is constitutionally sound and does not give rise to a due-process violation.''); *Lee* v. *Univ. of N.M.,* 449 F. Supp. 3d 1071, 1132 (D.N.M. 2020) (''[D]ue process permits state education institutions . . . to adjudicate sexual misconduct disciplinary proceedings according to a preponderance-of-the-evidence standard.''); *Messeri* v. *DiStefano,* 480 F. Supp. 3d 1157, 1167–68 (D. Colo. 2020) (''Increasing the evidentiary standard would undoubtedly make it less likely that the University erroneously sanctioned Plaintiff or others similarly situated. . . . [but] requiring a higher evidentiary standard would . . . detract from the University's 'strong interest in the educational process, including maintaining a safe learning environment for all its students.' . . . Balancing these interests, the Court concludes that it is beyond dispute that due process currently permits state educational institutions to adjudicate disciplinary proceedings relating to sexual misconduct using a preponderance of the evidence standard.'' (quoting *Plummer* v. *Univ. of Hous.,* 860 F.3d 767, 773 (5th Cir. 2017))); *Doe* v. *Haas,* 427 F. Supp. 3d 336, 350 (E.D.N.Y. 2019) (''The Court also rejects the contention that due process required that the university apply a standard more stringent than the preponderance of the evidence. Such a standard is the accepted standard in the vast majority of civil litigations and . . . courts have rejected the notion that the safeguards applicable to criminal proceedings should be applied in the school disciplinary context.''); *Marshall* v. *Ind. Univ.,* 170 F. Supp. 3d 1201, 1206–08 (S.D. Ind. 2016) (finding that, based on the law in Indiana and the Seventh Circuit, the university did not violate the plaintiff's due process rights when it applied the preponderance of the evidence standard at his disciplinary hearing before expelling him for sexual misconduct).

Other courts have refused to dismiss cases challenging the preponderance of the evidence standard or indicated that without other procedural safeguards, use of the preponderance of the evidence standard could violate due process. *See, e.g., Doe* v. *Univ. of Miss.,* 361 F. Supp. 3d 597, 614 (S.D. Miss. 2019) (refusing to dismiss a challenge to the use of the preponderance of the evidence standard, ''[g]iven the developing nature of the law, and the fact that other portions of this claim survive Defendants' Rule 12(b)(6) [motion]''); *Doe* v. *Univ. of Colo.,* 255 F. Supp. 3d 1064, 1082 n. 13 (D. Colo. 2017) (finding, on a motion to dismiss, that the plaintiff raised ''a viable procedural due process claim'' regarding ''whether preponderance of the evidence is the proper standard for disciplinary investigations''); *Doe* v. *Brandeis Univ.,* 177 F. Supp. 3d 561, 607 (D. Mass. 2016) (explaining that the use of the preponderance of the evidence standard ''is not problematic, standing alone; that standard is commonly used in civil proceedings, even to decide matters of great importance,'' but taking issue with its use in its use in this case because it ''appear[ed] to have been a deliberate choice by the university to make cases of sexual misconduct easier to prove'' and further noting that this was ''particularly troublesome in light of the

elimination of other basic rights of the accused,'' including the use of a single investigator model, no right to an effective appeal, and no right to examine evidence or witness statements).

The preponderance of the evidence standard is commonly used in civil litigation, including in cases involving alleged discrimination in violation of civil rights laws, and the Supreme Court has applied a preponderance of the evidence standard in litigation involving discrimination under Title VII. *See, e.g., Desert Palace, Inc.* v. *Costa,* 539 U.S. 90, 99 (2003) (declining to depart from the traditional rule of civil litigation, that the preponderance of the evidence standard generally applies in Title VII cases); *Price Waterhouse* v. *Hopkins,* 490 U.S. 228, 252–55 (1989) (approving preponderance standard in Title VII sex discrimination case) (plurality opinion); *id.* at 260 (White, J., concurring in the judgment); *id.* at 261 (O'Connor, J., concurring in the judgment). Further, numerous courts have held that the preponderance of the evidence standard is a constitutionally appropriate burden of proof in civil actions seeking to impose liability for sexual assault and rape in State court. *See, e.g., Ashmore* v. *Hilton,* 834 So. 2d 1131, 1134 (La. Ct. App. 2002) (holding that the preponderance of evidence standard is sufficient in civil rape case); *Jordan* v. *McKenna,* 573 So. 2d 1371, 1376 (Miss. 1990) (holding, in civil action for rape, that plaintiff's burden is ''by a preponderance of the evidence''); *Dean* v. *Raplee,* 39 NE 952, 954 (N.Y. 1895) (finding preponderance of evidence sufficient in civil case alleging sexual assault); *cf. Metz* v. *Dilley (In re Dilley),* 339 B.R. 1, 7 (B.A.P. 1st Cir. 2006) (''The crime of murder and the civil tort of wrongful death require proof of different elements judged against two different standards of proof.'' (citations omitted)); *Metro. Life Ins. Co.* v. *Kelley,* 890 F. Supp. 746, 749 (N.D. Ill. 1995) (stating that although criminal murder must be proven beyond reasonable doubt, proof of wrongful death by murder in civil case must be proven only by preponderance of evidence).

The Department acknowledges that in the civil litigation context, there are procedural safeguards, such as discovery, that help to ensure a fair process. In the preamble to the 2020 amendments, the Department noted that ''civil litigation generally uses the preponderance of the evidence standard'' and that Title IX grievance procedures ''are analogous to civil litigation in some ways,'' but the Department also stated that the Title IX grievance procedures as prescribed under the 2020 amendments ''do not have the same set of procedures available in civil litigation.'' 85 FR 30381. Although the procedures may not be the same, it is the Department's current view that the proposed regulations include a number of key safeguards to ensure that a recipient's grievance procedures provide a fair process for all involved. For example, under the proposed regulations, at both elementary schools and secondary schools as well as at postsecondary institutions, a recipient's grievance procedures would have to, among other things:

- Treat complainants and respondents equitably;
- Prohibit the Title IX Coordinator, the investigator, and the decisionmaker from having a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;
- Provide the recipient the discretion to dismiss a complaint in four different circumstances, including when the allegations, even if true, would not constitute sex discrimination under Title IX;
- Require notice to the parties of the allegations;
- State that the grievance procedures must be followed before determining whether sex discrimination occurred and before the imposition of any disciplinary sanctions against a respondent and that such sanctions may be imposed only if it is determined that the respondent violated the recipient's prohibition on sex discrimination;
- Require an objective evaluation of all relevant evidence and exclude certain types of evidence as impermissible;
- Place the burden on the recipient to conduct an investigation that gathers sufficient evidence to reach a determination;
- Provide an equal opportunity for the parties to present relevant fact witnesses and other inculpatory and exculpatory evidence;
- Provide each party with a description of the relevant and not otherwise impermissible evidence and a reasonable opportunity to respond to that evidence;
- Require the decisionmaker to adequately assess the credibility of the parties and witnesses to the extent credibility is in dispute and relevant to the allegations; and
- Include the right of appeal in complaint dismissals, and on certain bases for students in postsecondary institutions in cases of sex-based harassment.

Under the proposed regulations, a recipient would be permitted to adopt additional provisions as part of its grievance procedures, as long as such provisions are applied equally to the parties. Proposed § 106.45(i).

The Department's current view is that these procedural safeguards together would establish a strong framework for a fair process for all. It is also the Department's current view that the preponderance of the evidence is the standard of proof for complaints of sex discrimination that would best promote compliance with Title IX because it ensures that when a decisionmaker determines, based on evidence, that it is more likely than not that sex discrimination occurred in its program or activity, the recipient can take sufficient steps to deter the respondent from engaging in similar conduct and prevent future such violations. Use of a preponderance standard also equally balances the interests of the parties in the outcome of the proceedings by giving equal weight to the evidence of each party, and it begins proceedings without favoring the version of facts presented by either side. *See, e.g., Herman & MacLean* v. *Huddleston,* 459 U.S. 375, 390 (1983) (''A preponderance-of-the-evidence standard allows both parties to 'share the risk of error in roughly equal fashion' '' while ''[a]ny other standard expresses a preference for one side's interests.'' (quoting *Addington* v. *Texas,* 421 U.S. 418, 423 (1979))). The Department understands that there can be serious consequences for a respondent who is found to be responsible for sex-based harassment, including sexual assault, and for complainants who have been subjected to sex-based harassment. The Department further understands that all parties have an equal interest in the outcome of the proceedings.

In addition, the Department notes that, according to recent research, preponderance of the evidence is the standard of proof already commonly used by postsecondary institutions for evaluating evidence regarding all student conduct allegations, including sex-based harassment. *See* Foundation for Individual Rights in Education, *Spotlight on Due Process 2020–2021*, *https://www.thefire.org/resources/spotlight/due-process-reports/due-process-report-2020–2021* (last visited June 17, 2022) (analysis of disciplinary procedures at 53 top-ranked public and private postsecondary institutions nationwide). Stakeholders have confirmed for the Department that a very large majority of elementary schools and secondary schools use the

preponderance of the evidence standard for evaluating evidence as well.

Nevertheless, the Department recognizes that a relatively small number of recipients currently apply the clear and convincing evidence standard of proof to code of conduct violations, either for the code as a whole or for a subset of alleged violations of the code. Under the clear and convincing evidence standard of proof, a decisionmaker would be required to find, based on evidence it has gathered consistent with its grievance procedures, that it is highly probable that allegations of sex-based harassment or other sex discrimination are true before determining that sex discrimination occurred. This is a higher standard than proof by a preponderance of the evidence, but it would not require proof beyond a reasonable doubt, as is required in a criminal proceeding. The Department understands that these recipients have determined that the clear and convincing evidence standard advances certain other important institutional interests in a broad array of disciplinary cases, not limited to those involving sex discrimination. For some of these recipients, the use of a clear and convincing evidence standard, like the use of a preponderance standard, may reflect certain values of their educational community related to student discipline generally. For others, there may be historical or other factors that have guided their choice of standard of proof. The Department also notes that if a recipient uses a clear and convincing standard to evaluate evidence of other potential student conduct violations, a requirement that a recipient maintain a lower standard of proof for evaluating sex discrimination allegations may in some circumstances give rise to confusion, perceptions of unfairness, and resentment. *See, e.g., Brandeis,* 177 F. Supp. 3d at 607 (court stated that requiring a preponderance of the evidence standard for sexual misconduct cases may be seen ''as part of an effort to tilt the playing field against accused students'' where an institution applies the clear-and-convincing standard for ''virtually all other forms of student conduct''). These perceptions may complicate a recipient's administration of its student disciplinary codes in general, and in particular its grievance procedures for complaints of sex discrimination, in ways that are counterproductive to preventing and responding to sex discrimination in the recipient's education program or activity.

The Department notes that the American Law Institute (ALI) membership, at its May 2022 Annual Meeting, approved the following principle as part of its project on procedural frameworks for resolving campus sexual misconduct cases in postsecondary institutions:

§ 6.8. Standard of Proof

Colleges and universities should adopt the same standard of proof for resolving disciplinary claims of sexual misconduct by students as they use in resolving other comparably serious disciplinary complaints against students. Standards that require proof either by a ''preponderance of the evidence'' or by ''clear and convincing evidence'' can satisfy the requirements of procedural due process and fair treatment. Whatever standard of proof is adopted, decisions that the standard of proof is met should always rest on a sound evidentiary basis.

American Law Institute, *Black Letter of Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities,* Tentative Draft No. 1 (Apr. 2022) (as approved by the ALI membership, May 2022) at 12–13, *https://www.ali.org/media/filer_public/ce/1c/ce1ca6e7–557b-4f73-bba8-ef12d9ae56a2/student-misconduct-td1-black-letter.pdf.* The Department's proposed regulations would align with the ALI position, providing that for sex discrimination complaints a recipient can use either the preponderance of evidence or the clear and convincing evidence standard of proof but must not use a higher standard of proof for evaluating evidence of sex discrimination than for other forms of discrimination or other comparable proceedings.

The Department's current view is that the ''beyond a reasonable doubt'' standard from criminal law is never appropriate for evaluating evidence in a recipient's grievance procedures under Title IX. This position is consistent with the 2020 amendments, which do not permit application of the ''beyond a reasonable doubt'' standard in Title IX grievance proceedings. *See* 85 FR 30051 n.225. The criminal standard is designed specifically as a safeguard for proceedings in which an accused person may be deprived of their liberty or their life by the State or Federal government, which are not possible sanctions associated with a recipient's grievance procedures.

Reasonable limitations on recipients' choice of standard of proof for allegations of sex discrimination. In proposed § 106.45(h)(1), the Department proposes allowing recipients to use the clear and convincing evidence standard of proof for sex discrimination allegations only if the recipient uses the clear and convincing evidence standard of proof in all other comparable proceedings, including proceedings relating to other discrimination complaints. The Department's current view is that a recipient that used a clear and convincing evidence standard for sex discrimination allegations, but a preponderance standard for other comparable proceedings, would not effectuate Title IX's nondiscrimination mandate because applying a more demanding standard of proof for sex discrimination allegations than for allegations of other types of discrimination or other comparable proceedings would impose a uniquely heavy burden on complainants alleging sex discrimination.

Specifically, in light of recipients' substantially similar legal obligations under Federal laws that prohibit various types of discrimination, the Department believes it is appropriate to require a recipient to use a standard of proof for allegations of sex discrimination that is not higher than the standard of proof for allegations of other forms of discriminatory conduct that the recipient must address consistent with its obligations under Federal law. This means that a recipient that uses a preponderance of the evidence standard for evaluating allegations of harassment or other discrimination based on race, color, national origin disability, or age, for example, must use that standard for evaluating allegations of sex discrimination. Similarly, a recipient that uses a clear and convincing evidence standard for evaluating allegations of other forms of discrimination may choose to use that standard for evaluating alleged sex discrimination as well. Otherwise, a singular imposition of a higher standard on sex discrimination complaints would impermissibly discriminate based on sex.

Removing the requirement to use the same standard for complaints against students and employees. Proposed § 106.45(h)(1) would also differ from current § 106.45(b)(1)(vii) in that it would not require a recipient to use the same standard of proof for complaints against students as it would for complaints against employees. The Department's current view, informed by the input of stakeholders, is that allegations regarding sex discrimination by a student are comparable to allegations of other types of discrimination by a student, and that allegations of sex discrimination by an employee are comparable to allegations of other types of discrimination by an employee. Therefore, under the proposed regulations a recipient would

be able to apply a different standard of proof to allegations of student misconduct than it would to allegations of employee misconduct.

During the June 2021 Title IX Public Hearing and in listening sessions, OCR heard from stakeholders that requiring recipients to use the same standard of proof for complaints against students and employees hampered the recipients' flexibility to choose a standard that is responsive to the many differences in a recipient's interactions with and obligations to its students and its employees. After reevaluating the issue and taking into account factors relevant to a recipient's distinct, even if interrelated, functions and obligations as an educator and as an employer, the Department proposes removing the requirement for recipients to use the same standard of proof for sexual harassment complaints against students and employees. As discussed in the preamble to the 2020 amendments, recipients may have collective bargaining agreements or State laws mandating certain standards of proof for evaluating employee conduct allegations and may want to select a different standard of proof for student conduct allegations or may have State laws requiring them to use a different standard of proof for students. *Id.* at 30376, 30378. The Department now believes that requiring the same standard of proof for complaints against students and employees is not necessary because of the difference in the relationships and obligations recipients have vis-à-vis students as compared to employees. Requiring the same standard of proof to be used for student and employee complaints also is not necessary to ensure predictability for students (another concern raised by commenters in 2020, *id.* at 30375–76), because current § 106.45(b)(1)(vii) already requires recipients to state whether the standard of proof to be used to determine whether the respondent violated the recipient's prohibition on sexual harassment is the preponderance of the evidence standard or the clear and convincing evidence standard, and proposed § 106.45(h)(1) would preserve that requirement for all complaints of sex discrimination. Under the current regulations, recipients are already required and will continue to be required under the proposed regulations, to make their students and employees aware of what standard of proof they will apply to such allegations. For some recipients, this may require a statement that they will use one standard of proof for allegations of sex discrimination against employees, or against a certain subset of employees, and a different standard of proof for allegations of sex discrimination against students. Under proposed § 106.45(h)(1), the use of a clear and convincing evidence standard for any allegations of sex discrimination would be permitted only if the recipient used the same standard in all other comparable proceedings, including proceedings relating to other discrimination complaints, involving a given category of respondents.

For example, if a recipient is bound by a collective bargaining agreement to use the clear and convincing evidence standard for allegations that an employee engaged in race discrimination, as well as all other comparable allegations, it could elect to use the same standard for sex discrimination allegations against an employee. If the same recipient uses a clear and convincing evidence standard for allegations of race discrimination and other comparable offenses against a student, it could choose to use the clear and convincing evidence standard for allegations of student sex discrimination. However, if that recipient uses a preponderance of the evidence standard for allegations that a student engaged in race discrimination, it would have to use the preponderance of the evidence standard for allegations of student sex discrimination. The Department notes that it applies the preponderance of the evidence standard to evaluate allegations of discrimination under all of the laws it enforces and that it does so for the equity-related reasons explained in the discussion of its benefits.

In light of this discussion, the Department invites the public to comment on proposed § 106.45(h)(1). In particular, to the extent commenters take the position that the clear and convincing standard would be appropriate when used in all other comparable proceedings, the Department invites comments on steps that recipients implementing that standard have taken to ensure equitable treatment between the parties. The Department also invites comments on whether it is appropriate to allow a recipient to use a different standard of proof in employee-on-employee sex discrimination complaints, than it uses in sex discrimination complaints involving a student. Finally, the Department invites comments on whether it would be appropriate to mandate the use of only one standard of proof for sex discrimination complaints.

The decisionmaker must evaluate the relevant evidence for its persuasiveness. The Department recognizes that clarifying that relevant evidence must be evaluated for its persuasiveness will help inform decisionmakers of the appropriate way to evaluate evidence under either a preponderance of the evidence or clear and convincing evidence standard of proof. In particular, OCR has received comments and heard in listening sessions that this type of clarification may be especially useful for those without formal legal training to confirm that the evaluation of evidence involves an assessment of the persuasiveness of evidence rather than a weighing of the sheer quantity of evidence tending to support or disprove the allegations.

Section 106.45(h)(2) Notification of Outcome of Complaint

Current regulations: Section 106.45(b)(7) states that the recipient must issue a written determination regarding responsibility that is provided to the parties simultaneously. To reach this determination, the recipient must apply its chosen standard of evidence and the written determination must include several components: (A) identification of the allegations potentially constituting sexual harassment; (B) a description of the procedural steps taken from the receipt of the formal complaint through the determination; (C) findings of fact supporting the determination; (D) conclusions regarding the application of the recipient's code of conduct to the facts; (E) a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies will be provided by the recipient to the complainant; and (F) the recipient's procedures and permissible bases for the complainant and respondent to appeal.

Proposed regulations: Proposed § 106.45(h)(2) would require that a recipient notify the parties of the outcome of the complaint, including the determination of whether sex discrimination occurred, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable. Regarding the right to appeal, the Department proposes maintaining the existing language of § 106.45(b)(1)(viii) but proposes clarifying its applicability to all complaints of sex discrimination, not just complaints of sex-based harassment.

Reasons: Proposed § 106.45(h)(2) would preserve the requirement that a recipient notify the parties of the outcome of the complaint, but the

notification would not have to be in writing. The Department reconsidered the need to adopt a framework for the grievance procedures that a recipient must follow when responding to all complaints of sex discrimination in light of the recipient's obligations under Title IX to operate its education program or activity free from sex discrimination, not just sexual harassment. In light of that restructuring, all of the current requirements for sexual harassment complaints would not necessarily be appropriate or necessary for all sex discrimination complaints, or in all settings. The Department explained in the preamble to the 2020 amendments that the nature of the protections needed ''in the 'particular situation' of elementary and secondary schools may differ from protections necessitated by the 'particular situation' of postsecondary institutions.'' 85 FR 30052. The Department maintains this view and also believes that that the specific procedures necessary to afford prompt and equitable grievance procedures that are designed to ensure a fair and reliable process for sex discrimination complaints will differ based on the nature of the allegations (*e.g.,* sex-based harassment or other forms of sex discrimination such as prohibited different treatment or pregnancy discrimination), and the unique characteristics of the individuals involved (*e.g.,* age, level of independence, relationship to the recipient).

The Department also takes the tentative position that the provisions in proposed § 106.46, which contain requirements related to written communications with the parties, may not be necessary to ensure an equitable process for other types of sex discrimination complaints, and could have the unintended consequence of impeding effective enforcement of Title IX by delaying a recipient's prompt response to other forms of possible sex discrimination. The Department recognizes the requirements in current § 106.45 (many of which appear in proposed § 106.46) were applied in the 2020 amendments only to sexual harassment complaints, which may require greater participation by a complainant and respondent than other complaints of sex discrimination. With regard to the written determination requirement, the Department stated in the preamble to the 2020 amendments that requiring a written determination in sexual harassment complaints served the important function of ensuring the parties know the reasons for the outcome of the grievance procedure and help ensure independent judgment and decisionmaking free from bias. *Id.* at 30389. Although the Department continues to prioritize independent judgment and bias-free decisionmaking, it proposes that the written determination requirement would not be necessary in the broader context of all sex discrimination complaints and, in some educational environments, may function as an impediment to addressing sex discrimination in a recipient's program or activity.

It is the Department's current view that the requirement of proposed § 106.45(h)(2) that the recipient notify the parties of the outcome of the complaint is sufficient to fulfill Title IX's nondiscrimination requirement, coupled with the requirement that a recipient maintain a record of the outcome, as explained in greater detail in the discussion of proposed § 106.8(f)(1). Previously, the Department asserted that the burden created by the current written determination requirement was outweighed by the benefits of a reliable, consistent, transparent process for students in elementary and secondary schools, as well as students at postsecondary institutions, irrespective of the size of the institution's student body. *Id.* The Department has since reconsidered whether that burden is necessary, particularly for all sex discrimination complaints in the elementary school and secondary school setting. In the June 2021 Title IX Public Hearing, OCR heard from elementary school and secondary school recipients that the current regulations were not developed with their interests in mind, and that elementary school and secondary school recipients do not have the infrastructure to perform all the current requirements. Specifically, the written determination of responsibility was highlighted as one of the requirements that increases the length of time for an elementary school or secondary school recipient to resolve a complaint and makes the overall procedures more difficult.

It is the Department's tentative view that transparency and consistency would be achieved with the other proposed changes to the regulations, and that the burden of requiring all recipients to provide a written determination for all types of complaints may actually impede effective fulfillment of Title IX's nondiscrimination guarantee and should therefore not be required here. The Department also notes additional requirements in proposed § 106.45 that would ensure transparency and consistency in a recipient's grievance procedures, including requirements of notice of the allegations to the parties (proposed § 106.45(c)); equitable treatment of complainants and respondents (proposed § 106.45(b)(1)); prohibition on conflict of interest or bias for or against complainants or respondents (proposed § 106.45(b)(2)); presumption of non-responsibility (proposed § 106.45(b)(3)); objective evaluation of all relevant, and not otherwise impermissible, evidence (proposed § 106.45(b)(6) and (7)); allowing the parties an equal opportunity to present relevant witnesses and other inculpatory and exculpatory evidence (proposed § 106.45(f)(2)); providing each party with a description of the evidence that is relevant and not otherwise impermissible (proposed § 106.45(f)(4)); requiring adherence to these grievance procedures before imposition of any disciplinary sanctions (proposed § 106.45(h)(4)); and the right to appeal complaint dismissals (proposed § 106.45(d)(3)). In light of these protections, which together create the framework for an equitable process, the Department's current view is that a requirement of written communication of the outcome in all cases is not necessary to ensure effective implementation of Title IX. The Department recognizes that some recipients may determine that, for their educational environment, providing outcome determinations in writing for some or all types of complaints will be appropriate, particularly when students have the skills and maturity to understand the recipient's written communication or where such communications may be useful in providing outcome information to parents, guardians, or legally authorized representatives of students in elementary school or secondary school.

In addition, the Department recognizes that some recipients may provide detailed information to parties regarding the facts determined through an investigation while others may state only whether sex discrimination occurred under Title IX. Proposed § 106.45(h)(2) provides a recipient with flexibility to choose what information to share while setting a baseline requirement that recipients inform any parties of the outcome of the investigation and a determination as to whether sex discrimination occurred under Title IX. The purpose of this proposed change is to ensure consistency so that all parties to sex discrimination complaints, rather than only those involved in sex-based harassment complaints, receive information about the outcome and

determination. In addition, learning about the outcome of complaints and the recipient's determination would provide parties with confirmation that the grievance procedures were completed; without that confirmation, parties could be left unsure about whether the grievance procedures were completed or whether the recipient determined the alleged conduct to be sex discrimination.

Proposed § 106.45(h)(2) would also require a recipient to notify the parties of the procedures and permissible bases of appeal, if applicable. The proposed regulations would not require a recipient to provide a right to appeal, other than for complaint dismissals or in grievance procedures for a complaint of sex-based harassment involving a student at a postsecondary institution, but would require that information about appeals be provided, if any are available. It is the Department's current view that, for complaints of sex discrimination, other than complaint dismissals or complaints of sex-based harassment involving a student at a postsecondary institution, a recipient should have the discretion to decide whether a right to appeal a determination would be appropriate for a given type of complaint. For example, in some elementary school and secondary school settings involving complaints related to less serious conduct, the delay associated with an appeal could impair a recipient's ability to manage the school environment while sex-based harassment may be ongoing. In addition, a recipient's relationships with its employees vary significantly, ranging from temporary and at-will employees to those who are tenured. A right to an appeal may not be necessary or appropriate in all instances for a recipient to resolve, promptly and equitably, as required by Title IX, every complaint of employee-on-employee sex-based harassment. The same is true for complaints involving third parties. Further, with respect to employees, as explained in the discussion of the Overall Considerations and Framework (Section II.F.2.a), the Department recognizes that recipients have Federal law obligations to employees under Title VII as well as Title IX, and may also have obligations under other State or local laws, which may require processes that are specifically adapted to these types of complaints, and may or may not include a right to appeal.

The Department notes that, whatever a recipient decides, it must not be arbitrary in the exercise of its discretion to offer a right to appeal. That is, a recipient must treat similar complaints similarly, consistent with its obligations under Title IX and other applicable Federal nondiscrimination laws. If a recipient offers appeals, proposed §§ 106.45(d) and 106.46(i) would provide guidelines for how to provide those appeals. In particular, as explained in the discussion of proposed § 106.45(d)(3), any decisionmaker for an appeal must be trained on how to serve impartially, avoiding bias, conflicts of interest, and prejudgment of the facts.

Section 106.45(h)(3) Remedies to a Complainant and Other Appropriate Prompt and Effective Steps

Current regulations: Section 106.45(b)(7) states that the Title IX Coordinator is responsible for the effective implementation of any remedies.

Proposed regulations: Proposed § 106.45(h)(3) would require that, if there is a determination that sex discrimination occurred, the recipient must, as appropriate, require the Title IX Coordinator to provide and implement remedies to a complainant or other person the recipient identifies as having their equal access to the recipient's education program or activity limited or denied by sex discrimination, and require the Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity.

Reasons: The requirement in proposed § 106.45(h)(3) to provide and implement remedies to a complainant or other person the recipient identifies, as appropriate, is similar to the language in current § 106.45(b)(1)(i), but would apply to all forms of sex discrimination, not just sexual harassment, consistent with other proposed revisions to the regulations governing grievance procedures. In addition, proposed § 106.45(h)(3) would require a recipient to provide and implement those remedies as appropriate; the use of ''as appropriate'' accounts for the fact that in some situations, even when sex discrimination has occurred, it will not be appropriate to provide remedies to a complainant. For example, after investigating a student complaint alleging that a school district failed to adequately accommodate the athletic interests and abilities of girls, a school district determines that sex discrimination occurred. If the complainant since graduated, there may be no appropriate individual remedies for the recipient to provide to the complainant, in which case, the recipient's action to address the sex discrimination instead would include remedies as appropriate for current students who experienced the same sex discrimination and other remedies as necessary and appropriate to bring the athletic program into compliance with Title IX. Or, as another example, a recipient that provides a remedy to a complainant who experienced sex-based harassment might also need to provide training or other educational programming to address the educational environment for other participants in that environment who, while not harassed, may have witnessed the sex-based harassment. This additional step of providing training or other programming could help make clear what conduct is sex discrimination, and therefore mitigate the risk for future harassment if the harassment currently at issue is not addressed and recurs.

Section 106.45(h)(4) Comply With This Section Before Imposition of Disciplinary Sanctions

Current regulations: Section 106.45(b)(1)(i) requires a recipient to follow a grievance process that complies with § 106.45 before the imposition of any disciplinary sanctions or other actions that are not ''supportive measures'' as defined in § 106.30, against a respondent.

Proposed regulations: Proposed § 106.45(h)(4) would require a recipient to follow grievance procedures that comply with proposed § 106.45, and, if applicable, proposed § 106.46, before the imposition of any disciplinary sanctions against a respondent.

Reasons: Proposed § 106.45(h)(4) would maintain the same general requirement as in current § 106.45(b)(1)(i) that a recipient follow grievance procedures that comply with proposed § 106.45, and if applicable proposed § 106.46, before imposing disciplinary sanctions on a respondent. As explained in the discussion of proposed § 106.45(b)(1), the Department proposes moving this requirement from the requirement to treat complainants promptly and equitably so as not to imply that the only action a recipient must take to treat a respondent equitably is to follow grievance procedures that comply with proposed § 106.45, and if applicable proposed § 106.46, before the imposition of any disciplinary sanctions. Proposed § 106.45(h)(4) would also apply to all complaints of sex discrimination, not just sexual harassment. This change is necessary to be consistent with other proposed changes to the regulations as explained in the discussion of the Overall Considerations and Framework (Section II.F.2.a).

Section 106.45(h)(5) Prohibition on Discipline Based Solely on Determination

Current regulations: Section 106.71(b)(2) provides that when a recipient charges an individual with a code of conduct violation for making a materially false statement in bad faith during a Title IX grievance proceeding, such an action is not retaliatory as long as the recipient did not base its determination that a person made a materially false statement in bad faith solely on the outcome of the grievance proceeding.

Proposed regulations: Proposed § 106.45(h)(5) would prohibit a recipient from initiating a disciplinary process against a party, witness, or other participant in a recipient's grievance procedures under proposed § 106.45, and if applicable proposed § 106.46, for making a false statement or for engaging in consensual sexual conduct based solely on the recipient's determination of whether sex discrimination occurred. This proposed provision incorporates the relevant content of current § 106.71(b)(2), which the Department would fully remove.

Reasons: In order to provide an education program or activity free from sex discrimination, a recipient must implement grievance procedures under proposed § 106.45, and if applicable proposed § 106.46, in a way that does not impede parties, witnesses, and other participants from providing information to the recipient regarding sex discrimination that may have occurred in the recipient's program or activity. Allowing parties, witnesses, and other participants to participate fully in the recipient's grievance procedures is also integral to ensuring that a recipient's efforts to address sex discrimination are equitable. Proposed § 106.45(h)(5) would further these goals by providing parties, witnesses, and other participants in a recipient's grievance procedures with assurance that the recipient cannot discipline them for making a false statement or engaging in consensual sexual activity based solely on the determination of whether sex discrimination occurred.

The Department proposes changing the word ''person'' in current § 106.71(b)(2) to the phrase ''parties, witnesses, or other participants'' to make clear that this provision protects any form of participation in the recipient's grievance procedures under proposed § 106.45, and if applicable proposed § 106.46. In light of the Department's concern about chilling participation in these grievance procedures, the Department believes that providing protection for all participants would best ensures a thorough and equitable process.

The Department also notes that these prohibitions would apply regardless of whether the recipient intended use the disciplinary process to retaliate against a person. If a recipient were to engage in this type of discipline for the purpose of retaliating against a party, witness, or other participant in its grievance procedures, it would be in violation of both proposed §§ 106.45(h)(5) and 106.71(a).

False statements. As explained in greater detail in the discussion of proposed § 106.71, the Department proposes removing current § 106.71(b)(2). Current § 106.71(b)(2) provides that it is not retaliatory to charge an individual with a code of conduct violation for making a materially false statement if the determination that the statement was materially false was not based solely on the recipient's determination of responsibility in the underlying grievance proceeding. The Department proposes explicitly stating in proposed § 106.45(h)(5), which applies to all grievance procedures under Title IX, that a recipient must not discipline a person for making a false statement based solely on a determination from the recipient's grievance procedures that the person's allegations, arguments, or other statements were not supported by the evidence.

In the preamble to the 2020 amendments, the Department explained that it added current § 106.71(b)(2) in response to comments stating that ''lying should not be protected and that any retaliation provision should explicitly exclude from protection those who make false allegations or false statements during a grievance process.'' 85 FR 30537. During the June 2021 Title IX Public Hearing and in listening sessions with stakeholders, OCR received feedback expressing confusion generated by the wording of current § 106.71(b)(2). Stakeholders requested that the Department clarify that it would be retaliatory to discipline a student for making a false report of sex discrimination solely because the recipient found in favor of the respondent.

The Department acknowledges that the wording of this prohibition in current § 106.71(b)(2) as an exception to a general rule permitting discipline for false statements might have caused confusion. The Department is also concerned that current § 106.71(a) may have a chilling effect on a person's participation in a recipient's grievance procedures for fear of being disciplined. As a result, the Department proposes replacing the current provision with proposed § 106.45(h)(5), which would make clear that the recipient must not initiate its disciplinary process against a person for making a false statement based solely on a determination in the recipient's grievance procedures that sex discrimination did not occur including, for example, when the recipient found the person's statements were not supported by the evidence.

The Department also proposes removing the term ''materially'' from current § 106.71(b)(2) and referring simply to ''false'' statements. The Department now believes that allowing a recipient to discipline a person for making any false statement based solely on its determination in the underlying complaint of sex discrimination could chill participation in the grievance procedures. This proposed change would not only address concerns about adequate protection for those participating in the recipient's grievance procedures but also would maintain the recipient's discretion to discipline those who make false statements based on evidence other than the outcome of its grievance procedures.

Consensual sexual activity. Proposed § 106.45(h)(5) would also clarify that a recipient must not discipline a person for having engaged in consensual sexual activity when that determination is based solely on the findings of the recipient's grievance procedures. As noted in the discussion of proposed § 106.44(b), the Department recognizes that discipline for collateral conduct violations, including consensual sexual conduct, may create a barrier to participation in the recipient's grievance procedures.

The Department received comments as part of the June 2021 Title IX Public Hearing requesting a broader prohibition on discipline for collateral conduct violations such as consensual sexual conduct to ensure that the regulations address a broader range of situations in which a complainant may fear that discipline for disclosing information about sexual conduct in a sex-based harassment grievance procedure. In addition, the Department notes that this concern regarding discipline for consensual sexual conduct has been raised by plaintiffs in Title IX litigation as well as in OCR's enforcement practice. *See, e.g., Doe* v. *Gwinnett Cnty. Sch. Dist.,* Civil Action No. 1:18–CV–05278–SCJ, 2021 WL 4531082, at *6 (N.D. Ga. Sept. 21, 2021); OCR Case No. 06–11–1487, *Henderson Indep. Sch. Dist.* (June 14, 2012) (letter of finding), *https://www2.ed.gov/about/*

offices/list/ocr/docs/investigations/more/06111487-a.pdf.

The Department proposes responding to the concerns raised by stakeholders by including in proposed § 106.45(h)(5) a prohibition on disciplining a party, witness, or other participant for engaging in consensual sexual conduct when the recipient's only basis for the discipline is a determination that sex discrimination did not occur. The Department would refer specifically to *consensual* sexual conduct to make clear that an individual's disclosure of additional sex discrimination, including sex-based harassment, during the grievance procedures would not be entitled to the protection of proposed § 106.45(h)(5) to implement Title IX's guarantee. By providing protection from collateral discipline for consensual sexual conduct in proposed § 106.45(h)(5), the proposed regulations would remove this potential barrier to information sharing in the grievance procedures and, in turn, further promote a fair process in which parties, witnesses, and participants are not discouraged from fully and accurately relating necessary facts.

Section 106.45(i) Additional Provisions

Current regulations: Section 106.45(b) requires all recipients to use a grievance process for formal complaints of sexual harassment that complies with all of the requirements of § 106.45. It also states that any provisions, rules, or practices other than those required by this section that a recipient adopts as part of its grievance process for handling ''formal complaints of sexual harassment'' as defined in § 106.30 must apply equally to both parties.

Proposed regulations: The Department proposes moving the language in the current regulations regarding additional provisions of a recipient's grievance procedures to proposed § 106.45(i) and applying this requirement to grievance procedures for all forms of sex discrimination, not only sexual harassment. The Department also proposes removing the language from current § 106.45(b) requiring all recipients to use a grievance process for formal complaints of sexual harassment that complies with all of the requirements of § 106.45 to account for other proposed changes to the regulations regarding the grievance procedure requirements. Proposed § 106.45(i) would state that if a recipient adopts additional provisions as part of its grievance procedures for complaints of sex discrimination, including sex-based harassment, these additional provisions must apply equally to the parties.

Reasons: The proposed revisions are necessary to make the regulatory text consistent with the Department's proposed changes to apply the grievance procedures described in proposed § 106.45 to all forms of sex discrimination, including sex-based harassment, as explained in the discussion of the Framework for Grievance Procedures for Complaints of Sex Discrimination (Section II.F). The proposed revisions are also consistent with the statements that the Department made describing this provision in the preamble to the 2020 amendments and do not represent a shift in position.

The Department maintains its position, as stated in the preamble to the 2020 amendments, that under Title IX, ''recipients [have] discretion to adopt rules and practices not required under § 106.45.'' 85 FR 30209. The Department also continues to hold the view that Title IX requires that any ''grievance [procedure] rules a recipient chooses to adopt (that are not already required under § 106.45) must treat the parties equally.'' *Id.* at 30242.

The Department similarly affirms that under its proposed regulations, a recipient would be required to apply this provision to its handling of each sex discrimination complaint and that a recipient's equal treatment obligation would not necessarily require identical treatment of the parties to a complaint of sex discrimination. As the Department explained in the preamble to the 2020 amendments, ''[w]here parties are given 'equal' opportunity, for example, both parties must be treated the same,'' but this does not mean that they must be given the exact same practice or accommodation. *Id.* at 30186. The Department provided two examples in the preamble to the 2020 amendments that help to illustrate this principle: ''The equal opportunity for both parties to receive a disability accommodation does not mean that both parties must receive a disability accommodation or that they must receive the same disability accommodation. Similarly, both parties may not need [an interpreter], and a recipient need not provide [an interpreter] for a party who does not need one, even if it provides [an interpreter] for the party who needs one.'' *Id.* (emphasis omitted)

Likewise, consistent with the principle that equal treatment does not require identical treatment, a recipient's grievance procedures may recognize that employee parties may have distinct rights in a collective bargaining agreement with the recipient or by other means that are not applicable to parties who are not employees. This is recognized in current § 106.6(f), which states that ''[n]othing in this part may be read in derogation of any individual's rights under title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.,* or any regulations promulgated thereunder.'' Similarly, student parties may have rights or benefits associated with their student status.

Section 106.45(j) Informal Resolution

Current regulations: Current § 106.45(b)(2)(A) requires a recipient, upon receipt of a formal complaint, to provide written notice of any informal resolution process to the parties who are known. Current § 106.45(b)(9)(i) also requires a recipient to provide a written notice to the parties disclosing the allegations; the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

Proposed regulations: Proposed § 106.45(j) would state that, in lieu of resolving a complaint through the recipient's grievance procedures, the parties may instead elect to participate in an informal resolution process under § 106.44(k) if provided by the recipient consistent with that paragraph. Proposed § 106.44(f)(2)(ii) would require the Title IX Coordinator to notify the parties to any complaint of sex discrimination of any informal resolution process, if available and appropriate. For additional requirements regarding the application of this provision in grievance procedures for sex-based harassment complaints involving postsecondary students, see the discussion of proposed § 106.46(j).

Reasons: The Department's current view is that a recipient should continue to retain the discretion to offer the parties to a sex discrimination complaint an alternative option for resolving the complaint, subject to the process protections described in the proposed regulations. As explained in greater detail in the discussion of proposed § 106.44(k), the Department recognized in the preamble to the 2020 amendments that informal resolution ''empowers the parties by offering

alternative conflict resolution systems that may serve their unique needs and provides greater flexibility to recipients in serving their educational communities.'' 85 FR 30403. An informal resolution process is not a fact-finding, investigative process to reach a determination about whether sex discrimination occurred as set out in the grievance procedures under proposed § 106.45, and if applicable proposed § 106.46; instead, it is an alternative avenue through which parties may agree to a resolution of the complaint. The Department's view is that a recipient is in the best position to determine whether an informal resolution process would be a potential good fit for the facts and circumstances of a particular complaint, subject to the specific parameters described in the proposed regulation. The Department notes that, whatever a recipient decides, a recipient must treat similar complaints similarly, consistent with its obligations under Title IX and other applicable Federal nondiscrimination laws.

Section 106.45(k) Range of Supportive Measures and Disciplinary Sanctions and Remedies

Current regulations: Section 106.45(b)(1)(vi) requires a recipient's grievance process to describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that a recipient may implement following any determination of responsibility. Section 106.45(b)(1)(ix) requires a recipient to include a description of the range of supportive measures available to a complainant and respondent.

Proposed regulations: The Department proposes maintaining the requirement in the current regulations that a recipient include a description of the range of supportive measures available to a complainant and respondent but moving this requirement to proposed § 106.45(k)(1). The Department continues to recognize that the provision of supportive measures is fact-specific. Therefore, the Department emphasizes that proposed § 106.45(k)(1), like current § 106.45(b)(1)(ix), would require only that a recipient describe the range of supportive measures available ''rather than a list.'' 85 FR 30277. This requirement would ensure that a recipient continues to have the ability to offer a variety of supportive measures while continuing to require transparency for the recipient's educational community. The Department also proposes maintaining the requirement in the current regulations that a description of the range of supportive measures is required only for complaints alleging sex-based harassment. Although proposed § 106.44(g) would require a Title IX Coordinator to offer supportive measures upon being notified of any conduct that may constitute sex discrimination under Title IX, proposed § 106.45(k)(1), as with current § 106.45(b)(1)(ix), would require a recipient to describe the range of supportive measures available to a complainant and respondent only for grievance procedures addressing a complaint alleging sex-based harassment.

In proposed § 106.45(k)(2), the Department would also require a recipient's grievance procedures to either describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that a recipient may impose after it determines that sex-based harassment occurred.

The Department proposes clarifying that the phrase ''any determination of responsibility'' for which sanctions and remedies must be described or listed—as appears in current § 106.45(b)(1)(vi)—refers to a determination that sex-based harassment occurred. The Department also proposes removing one of the two references to possible disciplinary sanctions and remedies from this provision. As with the range of supportive measures, the Department proposes maintaining the requirement in the current regulations that a description of the range, or list, of possible disciplinary sanctions and remedies that a recipient may impose is necessary only with respect to complaints alleging sex-based harassment. Although the proposed definitions of ''disciplinary sanctions'' and ''remedies'' in proposed § 106.2 provides that disciplinary sanctions and remedies are available following a determination that sex discrimination occurred, proposed § 106.45(k)(2) would require a recipient to describe the range, or list, of possible disciplinary sanctions and remedies only for grievance procedures addressing a complaint alleging sex-based harassment.

Reasons: In proposed § 106.45(k)(2), the Department proposes replacing the reference to ''any determination of responsibility'' with ''a determination that sex-based harassment occurred.'' The Department proposes substituting this language to align with the language used in other provisions in the proposed regulations.

In addition, the Department proposes removing one of the references to ''possible disciplinary sanctions and remedies'' as a non-substantive edit to streamline the provision and avoid unnecessary duplication of this phrase in the current regulatory text.

Although proposed § 106.44(g) and the proposed definitions of ''disciplinary sanctions'' and ''remedies'' in proposed § 106.2 provide that supportive measures, disciplinary sanctions, and remedies may be utilized in response to any form of sex discrimination, not just sex-based harassment, the Department's current view is that the requirement to provide a range, or list, of such measures as part of a recipient's grievance procedures should be limited to complaints alleging sex-based harassment, consistent with the current regulations. Considering the wide range of conduct that may constitute alleged sex discrimination, the Department submits that it would be unduly burdensome to a recipient to attempt to anticipate all forms of alleged sex discrimination that may arise and the range of supportive measures and range, or list, of disciplinary sanctions and remedies that may be responsive to all sex discrimination. For this reason, the Department proposes continuing to limit this aspect of the grievance procedures to complaints of alleged sex-based harassment.

H. Grievance Procedures for the Prompt and Equitable Resolution of Complaints of Sex-Based Harassment Involving a Student Complainant or Student Respondent at Postsecondary Institutions

Section 106.46 Grievance Procedures for the Prompt and Equitable Resolution of Complaints of Sex-Based Harassment Involving a Student Complainant or Student Respondent at Postsecondary Institutions

Current regulations: None.

Proposed regulations: Proposed § 106.46(a) would state that a postsecondary institution's prompt and equitable written grievance procedures for complaints of sex-based harassment involving a student complainant or student respondent must include provisions that incorporate the requirements of proposed §§ 106.45 and 106.46. Proposed § 106.46(b) would provide factors for a recipient to apply where a complainant or respondent is both a student and employee to determine whether the requirements of proposed § 106.46 would apply. Proposed § 106.46 would also include provisions addressing the following aspects of a postsecondary institution's grievance procedures for postsecondary students: written notice of allegations and information about the recipient's grievance procedures (proposed

§ 106.46(c)); dismissal of a complaint (proposed § 106.46(d)); complaint investigation (proposed § 106.46(e)); evaluating allegations and assessing credibility (proposed § 106.46(f)); live hearing procedures (proposed § 106.46(g)); written determination (proposed § 106.46(h)); appeals (proposed § 106.46(i)); and informal resolution (proposed § 106.46(j)).

Additional detailed explanation of the requirements of proposed § 106.46 is provided in the discussion of each subsection, including proposed changes from current § 106.45.

Section 106.46(a) General

Current regulations: None.

Proposed regulations: The Department proposes adding § 106.46(a), which would provide that a postsecondary institution's written grievance procedures for complaints of sex-based harassment involving a student complainant or student respondent must include provisions that incorporate the requirements of proposed § 106.45 and this section.

Reasons: As explained in the discussion of the Framework for Grievance Procedures for Complaints of Sex Discrimination (Section II.F), the Department proposes a comprehensive framework for grievance procedures that builds upon the grievance procedures required under the 2020 amendments, with certain modifications to address the concerns noted above. Under the Department's proposed grievance procedures framework, proposed § 106.45 would contain requirements for written grievance procedures that would apply to all complaints of sex discrimination at any recipient and a new proposed § 106.46 would contain additional requirements that would apply only to complaints of sex-based harassment involving a student complainant or student respondent at postsecondary institutions.

The Department's current position is that the requirements in proposed § 106.46, which are incorporated from current § 106.45 with modifications as explained in the discussion of proposed § 106.46 (Section II.F.2.c) and in the discussion of each provision below, would afford protections that are appropriate to the age, maturity, independence, needs, and context of students in postsecondary institutions.

Section 106.46(b) Student-Employees

Current regulations: None

Proposed regulations: The Department proposes adding § 106.46(b), which would provide that when a complainant or respondent is both a student and an employee of a postsecondary institution, the postsecondary institution must make a fact-specific inquiry to determine whether the requirements of proposed § 106.46 apply. In making this determination, a postsecondary institution must, at a minimum, consider whether the party's primary relationship with the postsecondary institution is to receive an education and whether the alleged sex-based harassment occurred while the party was performing employment-related work.

Reasons: The Department recognizes that a person may be both a student and an employee of a postsecondary institution. When a postsecondary institution has initiated its grievance procedures in response to a complaint of sex-based harassment and a party is both a student and an employee, the postsecondary institution must determine whether that party is subject to the additional grievance procedures specified under proposed § 106.46 for investigating and resolving allegations of sex-based harassment involving postsecondary students. Determining whether a party is a student or employee is a fact-specific inquiry.

To guide a postsecondary institution in making this determination, proposed § 106.46(b) would set out two factors that a postsecondary institution must consider, at a minimum: whether the person's primary relationship with the postsecondary institution is to receive an education and whether the alleged sex-based harassment occurred while the person was performing employment-related work. The Department's tentative view is that a postsecondary institution must consider these factors because they appropriately focus the inquiry on the primary relationship between the complainant or respondent and the postsecondary institution (*e.g.,* whether the complainant or respondent is a full-time employee who enrolls in a class outside of work hours or a student who works part-time for the postsecondary institution as part of the student's overall financial aid package) and the student-employee's role or activities when the alleged sex-based harassment occurred (*e.g.,* whether they were in their work environment or elsewhere fulfilling work-related responsibilities, in class as a student, in the cafeteria with friends, or in an extracurricular activity). Nothing in proposed § 106.46(b) would prohibit a postsecondary institution from considering additional factors in determining whether a party is primarily a student or an employee.

Section 106.46(c) Written Notice of Allegations

Current regulations: Upon receipt of a formal complaint of sexual harassment, current § 106.45(b)(2) requires a recipient to provide parties who are known to the recipient with written notice of the allegations of sexual harassment and of the recipient's grievance process, including any informal resolution process. Sufficient detail must be provided in this notice, including the conduct allegedly constituting prohibited sexual harassment, the identities of the parties involved in the alleged incident, and the date and location of the alleged incident.

In addition, current § 106.45(b)(2) requires that the notice inform the parties that they may have an advisor of their choice, who may be an attorney, that they have a right to inspect and review certain evidence, and of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process. Section 106.45(b)(2) also provides that if, in the course of an investigation, the recipient decides to investigate allegations about the complainant or respondent that are not included in the initial notice, the recipient must provide notice of the additional allegations to the parties whose identities are known.

Proposed regulations: The Department proposes maintaining the core components of this provision while offering several important clarifications for postsecondary institutions when notifying the parties of allegations of sex-based harassment in a complaint involving a student complainant or a student respondent.

Because the proposed regulations do not include a formal complaint requirement, the proposed regulations would clarify that written notice of allegations must be provided upon initiation of the postsecondary institution's sex-based harassment grievance procedures as described in proposed § 106.46. Proposed § 106.46(c)(3) would include an allowance for a reasonable extension of time to provide this written notice of allegations to the extent a postsecondary institution has legitimate concerns for a party's safety or the safety of any other person as a result of the notification.

Proposed § 106.46(c) would also revise the required statements that a postsecondary institution must include in the written notice of allegations. Under proposed § 106.46(c), a postsecondary institution would be

required to include the information required under proposed § 106.45(c), including a statement that retaliation is prohibited. In addition, a postsecondary institution would still be required to include a statement that the respondent is presumed not responsible for the alleged conduct, as in current § 106.45(b)(2). Proposed § 106.46(c) would also retain the requirement that a postsecondary institution notify the parties of the right to review evidence, but the Department proposes revising the description of this right to reflect proposed changes to this right in proposed § 106.46(e)(6).

Reasons: It is the Department's tentative view that preserving the written notice requirement in the existing regulations, together with several proposed changes discussed here, would maintain and strengthen the regulations' protections for student complainants and student respondents involved in a postsecondary institution's resolution of a complaint of sex-based harassment. Although proposed § 106.45(c) would not apply the same written requirements to other recipients or to postsecondary institutions in other circumstances, the Department's proposed changes would better align the notice requirements with the purpose of Title IX and the other proposed changes to the regulations, as described below.

The Department proposes that the notice of allegations should be in writing and include more detail in sex-based harassment cases involving postsecondary students. As explained in the discussion of proposed § 106.46 (Section II.F.2.c), students at postsecondary institutions are distinct from both elementary and secondary students and from school employees in that postsecondary students are largely young adults who may be expected to self-advocate in grievance procedures and lack protections available to many employees under Title VII, collective bargaining agreements, and tenure. The Department therefore proposes that a written notice of allegations is particularly important to support postsecondary students' ability to understand the requirements of Title IX grievance procedures and to effectively advocate for themselves.

The Department proposes removing the requirement that a recipient's grievance procedures must be initiated by a formal complaint. As stated in the discussion of the proposed definition of ''complaint'' (§ 106.2), it is the Department's tentative view, and one expressed by stakeholders during the June 2021 Title IX Public Hearing, that this formal complaint requirement unduly narrows the scope of a recipient's responsibility not to discriminate based on sex in its education program or activity. Consequently, the Department proposes revising the definition of ''complaint'' to clarify that a complaint would be the mechanism by which an individual may request that a recipient initiate its grievance procedures in response to all forms of sex discrimination, and would permit individuals to make complaints in writing or orally to ensure that a recipient receives all complaints that would alert it to possible sex discrimination in violation of Title IX in its education program or activity.

Physical and emotional safety. The 2020 amendments did not address the timing needed for proper notice of the allegations to the respondent other than that notice be provided with sufficient time for the respondent to prepare a response before any initial interview. It is the Department's continuing view that the individual circumstances of each complaint may be relevant to the timing required for notifying the respondent of the allegations. 85 FR 30283, 30288. In particular, the Department recognizes that there may be situations in which a postsecondary institution may reasonably delay notice to another party to address legitimate concerns about the safety of either party or others, and the proposed notice requirement provides a postsecondary institution with discretion to account for these safety concerns. This need may arise particularly in circumstances in which a complainant has made allegations of dating violence or domestic violence and the safety of the complainant or others may be at heightened risk after notice is provided to the respondent.

Proposed § 106.46(c)(3) would specify that legitimate concerns for safety must be based on individualized considerations and not on mere speculation or stereotypes and also would clarify that any delay must be reasonable. Further, regardless of whether the timeframe is extended, the proposed provision would continue to require that a party receive notice ''with sufficient time . . . to prepare a response before any initial interview.''

Revisions to required statements. In proposed § 106.46(c), the Department proposes revising the required additional information that must be included in the written notice of allegations. The Department's tentative view is that a postsecondary institution should still be required to include a statement that the respondent will be presumed not responsible for the alleged conduct until the conclusion of the procedures. The Department also proposes retaining in proposed § 106.46(c) the requirement in current § 106.45(b)(2)(i)(B) that the written notice inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process. In the preamble to the 2020 amendments, the Department stated ''that both parties deserve to know that their school, college, or university has such a provision that could subject either party to potential school discipline as a result of participation in the Title IX grievance process.'' *Id.* at 30279. This proposed provision dovetails with the Department's recognition of the importance of truthfulness for those providing information in grievance procedures in proposed §§ 106.45(g) and 106.46(f), which would require a postsecondary institution to provide a process that adequately assesses the credibility of the parties and witnesses, to the extent credibility is in dispute and relevant to evaluating one or more of the allegations of sex discrimination.

OCR received feedback from the June 2021 Title IX Public Hearing indicating that requiring recipients to include disciplinary provisions related to false statements in a notification about allegations of sex-based harassment risks creating the misimpression that the recipient has reason to believe that the complainant may consider providing knowingly false statements, or that individuals are especially likely to knowingly make false statements in sex-based harassment matters. The Department recognizes this concern and seeks to clarify that the inclusion of such a statement is not meant to imply in any way that any party to a recipient's grievance procedures would be presumed to be making a false statement. Nor is it intended to suggest that it would be a false statement if a report or allegation of misconduct does not align in all respects with the statement of other witnesses or parties, or that it would be a false statement if a respondent or witness disagrees with the allegations, or an allegation contains unintentional inaccuracies. As generally understood, a false statement is one that a person makes knowing that the statement is false or that the person makes in bad faith. A good faith mistake would generally not constitute a false statement. Further, proposed § 106.45(h)(5) would, like the current regulations, specifically prohibit a recipient from disciplining a party, witness, or other participant in a

recipient's grievance procedures for making a false statement based solely on the recipient's determination of whether sex discrimination occurred.

As described in the discussion of proposed § 106.45(c), the Department also proposes requiring a postsecondary institution to include a statement in the notice of allegations that retaliation is prohibited. OCR received feedback from student complainants in the June 2021 Title IX Public Hearing and in listening sessions describing retaliation by respondents and respondents' friends that they experienced after coming forward with information about sex-based harassment. The proposed change would serve the purpose of alerting the parties early in the grievance procedures, at the first time they receive notice from the postsecondary institution regarding each other's identity and the specific allegations at issue, that retaliation based on participation in the grievance procedures is prohibited for parties and others.

Proposed § 106.46(c), by incorporating the requirements of proposed § 106.45(c), would preserve the requirement in the current regulations that a recipient provide written notice of additional allegations to the parties if, in the course of an investigation, the postsecondary institution decides to investigate additional allegations about the respondent that were not included in the initial notice. The reasons for maintaining and clarifying this requirement are explained in more detail in the discussion of proposed § 106.45(c).

Section 106.46(d) Dismissal of a Complaint

Current regulations: Current § 106.45(b)(3)(ii) states that a recipient may dismiss a formal complaint or any allegations therein if at any time during the investigation or hearing a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein. Current § 106.45(b)(3)(iii) states that upon a dismissal required or permitted pursuant to § 106.45(b)(3)(i) or (ii), the recipient must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

Proposed regulations: Proposed § 106.46(d)(1) would provide that when a postsecondary institution dismisses a complaint of sex-based harassment involving a student party under any of the bases in proposed § 106.45(d)(1), it must provide the parties with simultaneous written notice of the dismissal and the basis for the dismissal. Proposed § 106.46(d)(2) would provide that when a postsecondary institution dismisses a sex-based harassment complaint involving a student complainant or a student respondent based on the complainant's voluntary withdrawal of the complaint or allegations under proposed § 106.45(d)(1)(iii), a postsecondary institution must obtain the complainant's withdrawal in writing.

Reasons: Proposed § 106.46(d)(1) would maintain the requirement that a postsecondary institution, upon dismissing a sex-based harassment complaint involving a student complainant or student respondent, notify the parties simultaneously in writing of the dismissal and the basis for the dismissal. Although proposed § 106.45(d) would not apply the same written requirements to other recipients or to postsecondary institutions in other circumstances, the Department's tentative position is that it is important to require a postsecondary institution to notify the parties simultaneously in writing of the dismissal of a complaint or allegations, whether by electronic mail or other means. As noted in discussion of proposed § 106.46 (Section II.F.2.c), the Department's tentative view is that requiring in proposed § 106.46(d)(1) that notice of a dismissal be in writing is appropriate in light of the particular circumstances of postsecondary students and the requirement that a recipient not discriminate based on sex in its education program or activity, including in its handling of discrimination complaints.

In addition, proposed § 106.46(d)(2) would maintain the requirement from the 2020 amendments that a complainant's request for voluntary dismissal of a complaint or complaint allegations must be made in writing to the Title IX Coordinator, for postsecondary student complainants alleging sex-based harassment. The Department understands ''written request'' to include a request delivered to the Title IX Coordinator in person, by mail, by electronic mail, and by any additional method designated by the recipient, including an online portal that indicates that the complainant is the person requesting withdrawal of the allegations. This is consistent with current § 106.30, which requires a ''formal complaint'' to be in writing and filed with the Title IX Coordinator. *See* 85 FR 30137 (''We have further revised this provision [§ 106.30] to state that 'document filed by a complainant' means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that . . . indicates that the complainant is the person filing the formal complaint.''). As noted in the discussion of proposed § 106.46 (Section II.F.2.c), the Department's tentative view is that it is appropriate in light of the particular circumstances of postsecondary students and Title IX's nondiscrimination guarantee to preserve the requirements that postsecondary institutions communicate with parties in writing about withdrawals of allegations or complaints or about dismissals related to sex-based harassment involving a student party.

Section 106.46(e) Complaint Investigation

Current regulations: Section 106.45(b)(5) sets out seven requirements that apply during the investigation of a formal complaint and throughout the sexual harassment grievance process.

Proposed regulations: Proposed § 106.46(e) would set out six requirements that apply—in addition to the requirements set out in proposed § 106.45—in a postsecondary institution's grievance procedures for sex-based harassment complaints involving a student complainant or a student respondent.

Reasons: The proposed regulations would retain many of the specific requirements for grievance procedures that appear in the existing regulations at § 106.45(b)(5), although the proposed regulations would also move, modify, or add certain requirements. The Department proposes making minor adjustments to the introductory language to be consistent with changes made throughout the regulations, including by clarifying that the proposed requirements in § 106.46 would cover sex-based harassment rather than only sexual harassment and would apply only to complaints of sex-based harassment involving a student complainant or student respondent at a postsecondary institution. In addition, the Department proposes to refer to the proceedings described in § 106.46 as ''grievance procedures'' rather than ''grievance process,'' and would remove the reference to a ''formal complaint.''

Section 106.46(e)(1) Notice in Advance of Meetings

Current regulations: Section 106.45(b)(5)(v) requires a recipient to provide written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings. A recipient must provide this notice to any party whose

participation is invited or expected, and it must provide this notice with sufficient time for the party to prepare to participate.

Proposed regulations: Proposed § 106.46(e)(1) would require a postsecondary institution to provide written notice of the date, time, location, participants, and purpose of all meetings, investigative interviews, and hearings. A postsecondary institution would be required to provide this notice to any party whose participation is invited or expected at a meeting, interview, or hearing with sufficient time for the party to prepare to participate.

Reasons: The Department proposes moving the provision requiring written notice of any meetings from current § 106.45(b)(5)(v) to proposed § 106.46(e)(1) without any substantive changes to the text, other than the overall change in applicability only to complaints of sex-based harassment involving a student complainant or respondent at a postsecondary institution.

In the preamble to the 2020 amendments, the Department stated that ''the burden associated with providing this notice [required by current § 106.45(b)(5)(v)] is outweighed by the due process protections such notice provides.'' 85 FR 30299. The Department further noted that the parties should receive notice with sufficient time to prepare for meetings, interviews, or hearings ''[b]ecause the stakes are high for both parties in a grievance process.'' *Id.* As explained in the discussion of proposed § 106.46 (Section II.F.2.c), the Department recognizes the need to tailor the requirements for grievance procedures to the unique context of sex-based harassment complaints involving postsecondary student parties. In light of the age, maturity, and independence of postsecondary students, the Department currently views the detailed requirements related to advance notice of meetings, interviews, or hearings as necessary to provide a postsecondary student with time to prepare and possibly to consult others for help with preparation. The Department recognizes that many postsecondary students are only newly independent and typically have less experience with self-advocacy than parents, guardians, or other legally authorized representatives of students in elementary school and secondary school settings or than employees, who may also have additional rights under Title VII, collective bargaining agreements, or other employment-related agreements with the recipient. Finally, the Department recognizes that postsecondary institutions are separately required by the Clery Act to provide ''timely notice of meetings'' where one or more parties may be present in proceedings based on an allegation of dating violence, domestic violence, sexual assault, or stalking. *See* 34 CFR 668.46(k)(3)(i)(B)(2).

Section 106.46(e)(2) Role of Advisor

Current regulations: Section 106.45(b)(5)(iv) requires a recipient to provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. This subsection states that the advisor of choice may be, but is not required to be, an attorney. In addition, current § 106.45(b)(5)(iv) states that a recipient cannot limit the choice or presence of the advisor for either party in any meeting or grievance proceeding; however, the recipient may establish restrictions regarding the extent to which the advisor may participate, as long as the restrictions apply equally to both parties.

Proposed regulations: Proposed § 106.46(e)(2) would require a postsecondary institution to provide the parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice. This provision, like proposed § 106.46(c)(2)(ii) and (f)(1), would provide that the advisor may be, but is not required to be, an attorney. The proposed regulations would prohibit a postsecondary institution from limiting the choice or presence of the advisor in any meeting or grievance proceeding; however, the proposed regulations would permit the postsecondary institution to establish restrictions regarding the extent to which the advisor may participate in the grievance procedures, as long as the restrictions apply equally to the parties.

Reasons: Current § 106.45(b)(5)(iv) addresses the requirements for the parties' advisors, as well as the requirements for who may attend proceedings. The proposed regulations would retain both sets of requirements but divide them into separate provisions—proposed § 106.46(e)(2) and (3)—for clarity.

With respect to advisors, current § 106.45(b)(5)(iv) requires a recipient to provide parties with the opportunity to be accompanied to any meeting or proceeding by the advisor of their choice. The current provision also notes that the advisor may be, but is not required to be, an attorney. In addition, the current provision states that the recipient must not limit the choice or presence of the advisor for either the complainant or the respondent; however, the recipient may limit the extent to which the advisor may participate, as long as the restrictions apply equally to both parties. The Department proposes to retain these requirements in proposed § 106.46(e)(2). The Department proposes two non-substantive changes: removing the word ''either'' because it is unnecessary and replacing the term ''both parties'' with ''the parties'' since some proceedings may involve more than two parties.

As explained in the discussion of the Framework for Grievance Procedures for Complaints of Sex Discrimination (Section II.F), students at postsecondary institutions are, generally, differently situated from other participants in a recipient's grievance procedures in a way that the Department currently believes warrants the proposed right to an advisor under § 106.46(e)(2) when they are a party in a recipient's grievance procedures for complaints of sex-based harassment. For example, unlike elementary school and secondary school students, postsecondary students generally would not be entitled to a parent, guardian, or other authorized legal representative at meetings or proceedings, yet they may also not have sufficient experience with self-advocacy or maturity to participate in meetings or proceedings without the assistance of an advisor. And while employees may have access to a union representative or other employee-specific resources, postsecondary students do not generally have comparable resources available to them.

In addition, postsecondary students who are participating in grievance procedures for complaints of sex-based harassment are differently situated from postsecondary students who are participating in grievance procedures for complaints of sex discrimination other than sex-based harassment. Unlike many complaints of sex discrimination, complaints of sex-based harassment often involve multiple parties whose conduct and credibility are subjected to scrutiny. Investigations of complaints of sex-based harassment are more likely to involve sensitive material and to engender disputes over what evidence is relevant and what evidence is impermissible. Sex-based harassment complaints involving postsecondary students will often involve a student respondent who faces a potential disciplinary sanction. The Department currently believes that these features of the sex-based harassment grievance procedures support the proposed right to an advisor for postsecondary students

in grievance procedures for complaints of sex-based harassment but not for complaints of other types of sex discrimination.

The Department also emphasizes that in grievance procedures when one party is a postsecondary student and another party is not, proposed § 106.46(e)(2) would require a postsecondary institution to permit the non-student party the same opportunity for an advisor as the postsecondary student to ensure equitable opportunity to participate, as would be required by proposed § 106.45(b)(1). In addition, as explained in the discussion of proposed § 106.46(f)(1), for a postsecondary institution that exercises its discretion to conduct live hearings with advisor-conducted questioning under proposed § 106.46(f)(1), advisors would be a necessary component of that process. The Department also notes that in proceedings based on an allegation of dating violence, domestic violence, sexual assault, or stalking, postsecondary institutions are separately required by the Clery Act to provide the parties with the opportunity to be accompanied to any meeting or proceeding by an advisor of their choice. *See* 34 CFR 668.46(k)(2)(iii).

Section 106.46(e)(3) Individuals Present at Proceedings

Current regulations: Section 106.45(b)(5)(iv) requires a recipient to provide the parties with the same opportunities to have others present during any grievance proceeding.

Proposed regulations: Proposed § 106.46(e)(3) would require a postsecondary institution to provide the parties with the same opportunities, if any, to have persons other than the advisor of the parties' choice present during any meeting or proceeding.

Reasons: Current § 106.45(b)(5)(iv) requires a recipient to provide parties with the same opportunities to have individuals present during any grievance proceeding. The Department proposes retaining this requirement at proposed § 106.46(e)(3) with minor modifications.

Proposed § 106.46(e)(3) would clarify that a postsecondary institution may permit these individuals to attend any meeting or proceeding during the grievance procedures in matters of sex-based harassment involving a student complainant or student respondent.

The Department also proposes adding ''if any'' to this provision to make clear that a postsecondary institution generally would have the discretion not to permit parties to bring individuals other than their advisor of choice to meetings or proceedings. However, there are certain situations in which postsecondary institutions may need to permit a party to have another person, in addition to an advisor, present during any meeting or proceeding in order to ensure that all parties, witnesses, and others participating can engage fully in the grievance procedures as required by Title IX. In particular, a postsecondary institution must comply with its obligations to ensure effective communication for persons with disabilities through the provision of auxiliary aids and services (such as providing a sign language interpreter for a party who is deaf or hard of hearing) and by making reasonable modifications to policies, practices, and procedures to avoid discrimination on the basis of disability. In addition, a postsecondary institution may need to provide language assistance services, such as translations or interpretation for persons with limited English proficiency. In these circumstances, a postsecondary institution would need to provide the parties with the same opportunities to have necessary support persons, although this may mean that only one party (*e.g.,* the party with a disability) is permitted to have another person present. The Department also notes that when the allegation involves dating violence, domestic violence, sexual assault, or stalking, the Clery Act requires separately requires postsecondary institutions to provide the parties with the same opportunities to have individuals present during any disciplinary proceeding. *See* 34 CFR 668.46(k)(2)(iii).

Section 106.46(e)(4) Expert Witnesses

Current regulations: Section 106.45(b)(5)(ii) requires a recipient to provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and to present other inculpatory and exculpatory evidence.

Proposed regulations: The Department proposes modifying the requirement that a recipient provide an equal opportunity for parties to present expert witnesses. Proposed § 106.46(e)(4) would provide a postsecondary institution with the discretion to determine whether to allow the parties to present expert witnesses as long as the determination of whether to permit expert witnesses applies equally to the parties.

Reasons: The Department proposes revising the requirement in current § 106.45(b)(5)(ii) that a recipient must provide an equal opportunity for the parties to present expert witnesses by permitting a postsecondary institution discretion to determine whether the parties may present an expert witness—provided that this determination applies equally to the parties. Under proposed § 106.46(e)(4), the postsecondary institution would be permitted to exercise this discretion by deciding to allow each party to use experts, to not to allow any experts, or to use its own expert in lieu of experts presented by the parties.

Following the implementation of the 2020 amendments, stakeholders urged the Department to amend the regulations to provide recipients with discretion to determine whether parties may present expert witnesses, as long as the opportunity to present or not to present experts is provided equally to the parties. The Department recognizes that expert witnesses would not have observed the alleged conduct (unlike relevant fact witnesses, which a party has a right to present under current § 106.45(b)(5)(ii) and proposed § 106.45(f)(2)) and may not be necessary or helpful to the recipient in determining whether sex-based harassment occurred. Thus, the Department's current position is that a postsecondary institution would be in the best position to identify whether a particular case might benefit from expert witnesses. A postsecondary institution should also consider whether an expert witness would impede a prompt resolution to the grievance procedures due to the time that may be needed to hire an expert witness, for the expert witness to review the necessary information and formulate an opinion, and to arrange for the expert's attendance at any pertinent meetings or proceedings.

Although a postsecondary institution would have discretion on how to proceed in allowing expert witnesses under proposed § 106.46(e)(4), it would be required to apply any determination equally to the parties. When no experts are allowed or the postsecondary institution decides to use its own expert, this determination would have to be applied to all parties. When a postsecondary institution decides to permit parties to present expert witnesses, the postsecondary institution would need to apply the same standards to determinations about the expert's participation and scope of testimony to all parties. Proposed § 106.46(e)(4) would not preclude a postsecondary institution from determining that the expert testimony of one party is permissible while another party's expert testimony is not, but it would require that a postsecondary institution apply the same standards to all parties in determining what evidence is permissible. The postsecondary

institution would also need to comply with the requirements of proposed § 106.45(b)(6) and (7) in evaluating relevant and not otherwise impermissible evidence.

Section 106.46(e)(5) Timeframes

Current regulations: Section § 106.45(b)(1)(v) states that, with respect to a recipient's grievance process for formal complaints of sexual harassment, the recipient must include reasonably prompt timeframes for conclusion of the grievance process, including reasonably prompt timeframes for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of timeframes for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

Proposed regulations: The Department proposes adding a provision at proposed § 106.46(e)(5) to clarify that a postsecondary institution investigating and resolving a sex-based harassment complaint involving a student complainant or student respondent must allow for reasonable extension of timeframes in its grievance procedures on a case-by-case basis for good cause with written notice to the parties that includes the reason for delay.

Reasons: The Department's proposed regulations would clarify that a postsecondary institution's investigation and resolution of a sex-based harassment complaint involving a student complainant or student respondent would need to comply not only with the timeframe requirements set out in proposed § 106.45(b)(4) but also with the requirement in proposed § 106.46(e)(5) that it provide written notice for any reasonable extension of timeframes in its grievance procedures. The Department further proposes that any written notice from a postsecondary institution to the parties would need to include the reason for delay. These writing requirements are consistent with current § 106.45(b)(1)(v). It is the Department's tentative view that preserving the requirement that a postsecondary institution must provide notice of a reasonable extension of timeframes in writing is appropriate in light of the particular circumstances of postsecondary students and the requirement that a recipient not discriminate based on sex in its education program or activity.

The Department emphasizes that proposed § 106.46(e)(5) would not constitute an additional basis for granting extensions beyond proposed § 106.45(b)(4). A postsecondary institution would need to continue to evaluate any possible extension of timeframes on a case-by-case basis and such extensions must be allowed only for good cause, as required by proposed § 106.45(b)(4).

Section 106.46(e)(6) Access to Relevant and Not Otherwise Impermissible Evidence

Current regulations: Section 106.45(b)(5)(vi) requires a recipient to provide both parties with an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including evidence upon which the recipient does not intend to rely in reaching a responsibility determination and inculpatory or exculpatory evidence whether obtained from a party or other source. The provision indicates that this opportunity to review the evidence should enable each party to meaningfully respond to the evidence prior to conclusion of the investigation. In addition, current § 106.45(b)(5)(vi) requires a recipient to send this evidence in an electronic format or a hard copy to each party and the party's advisor prior to the completion of the investigative report. The current regulations specify that the parties must have at least ten days to submit a written response, which the investigator must consider prior to the completion of the investigative report. Current § 106.45(b)(5)(vi) also requires a recipient to make all of the evidence subject to the parties' inspection and review available at any hearing so that the parties have an equal opportunity to refer to the evidence during the hearing, including for purposes of cross-examination.

Current § 106.45(b)(5)(vii) requires a recipient to create an investigative report that fairly summarizes the relevant evidence. This provision specifies that a recipient must send the investigative report in an electronic format or a hard copy to the parties and their advisors for their review and written response. The recipient must provide the report at least ten days prior to a hearing (if one is required or otherwise provided) or prior to the time of the responsibility determination.

Proposed regulations: Proposed § 106.46(e)(6) would require a postsecondary institution to provide parties and their advisors, if any, with equitable access to evidence that is relevant to the allegations of sex-based harassment and not otherwise impermissible, as described in proposed §§ 106.2 and 106.45(b)(7). Under proposed § 106.46(e)(6)(i), a postsecondary institution must provide either equitable access to the relevant and not otherwise impermissible evidence, or it must provide the parties with the same written investigative report that accurately summarizes this evidence. If a postsecondary institution chooses to provide an investigative report and then a party requests access to the evidence, the institution would be required to provide all parties with equitable access to the relevant and not otherwise impermissible evidence.

Proposed § 106.46(e)(6)(ii) would require a postsecondary institution to provide the parties with a reasonable opportunity to review and respond to the evidence as described in the investigative report or as provided to the parties prior to the determination of whether sex-based harassment occurred. In addition, if a postsecondary institution conducts a live hearing as part of its grievance procedures, proposed § 106.46(e)(6)(ii) would require the institution to provide the opportunity to review the evidence in advance of the live hearing; however, the proposed regulations would allow the postsecondary institution to decide whether to provide the opportunity to respond to the evidence prior to the hearing, during the hearing, or both prior to and during the hearing.

Proposed § 106.46(e)(6)(iii) would require a postsecondary institution to take reasonable steps to prevent and address any unauthorized disclosures by the parties and their advisors of information and evidence obtained solely through the sex-based harassment grievance procedures.

Finally, proposed § 106.46(e)(6)(iv) would clarify that compliance with proposed § 106.46(e)(6) would satisfy the requirements of proposed § 106.45(f)(4).

Reasons: Current § 106.45(b)(5)(vi) requires a recipient to provide the parties with an equal opportunity to review and respond to evidence obtained during the investigation, and current § 106.45(b)(5)(vii) requires a recipient to create an investigative report summarizing the relevant evidence for the parties' review and response. The Department proposes modifying and merging these requirements in proposed § 106.46(e)(6).

Scope of evidence provided to the parties. Current § 106.45(b)(5)(vi) requires the recipient to provide the

parties with an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint. The current regulations distinguish between evidence that is directly related to the allegations, to which the recipient must provide the parties with access, and relevant evidence, which the recipient must evaluate (§ 106.45(b)(1)(ii)), include in the investigative report (§ 106.45(b)(5)(vii)), and permit questions about (§ 106.45(b)(6)). The current regulations require that if the recipient obtains evidence related to a complainant's sexual predisposition or prior sexual behavior that is directly related to the allegations, it should disclose it to both parties, *see* 85 FR 30428, even though evidence about a complainant's sexual predisposition ''would never be included in the investigative report and evidence about a complainant's prior sexual behavior would be included only if it meets one of the two narrow exceptions,'' *id.* at 30304. Similar restrictions on the use of evidence about a complainant's sexual predisposition or prior sexual behavior, as well as questions seeking this evidence, apply at a live hearing and to written questions (and their answers) at current § 106.45(b)(6)(ii).

In the preamble to the 2020 amendments, the Department stated that evidence should be disclosed to the extent it is ''directly related'' to the allegations and that ''directly related may sometimes encompass a broader universe of evidence than evidence that is 'relevant.' '' *Id.* OCR received feedback during the June 2021 Title IX Public Hearing that the distinction in the current regulations between evidence that is directly related to the allegations and relevant evidence is confusing and not well-delineated. One stakeholder expressed confusion as to why a recipient should provide access to evidence that is not relevant to the incident, and another commenter noted that discovery rules do not require production of irrelevant and confidential materials in court. OCR also received feedback in connection with the June 2021 Title IX Public Hearing urging the Department to use a relevance standard for the provision of evidence to the parties. The Department's tentative view is that these comments highlight significant issues associated with the current regulations on access to evidence that may interfere with a recipient's ability to comply with their Title IX obligations.

To assist recipients (and parties) in determining the scope of permissible evidence, the Department proposes merging the ''directly related'' and ''relevant'' evidentiary standards by defining ''relevant'' in proposed § 106.2 as evidence related to the allegations of sex discrimination. Because relevant evidence includes all evidence related to the allegations of sex discrimination under investigation, any evidence that is directly related to the allegations would necessarily be considered evidence that is related to the allegations. Therefore, it is the Department's tentative view that once the term ''relevant'' is properly defined within the regulations, the proposed regulations would require a similar universe of evidence to be made available to the parties with one exception: unlike the current regulations, the proposed regulations would prohibit a postsecondary institution from disclosing evidence of the complainant's sexual interests and prior sexual conduct, except as narrowly permitted by proposed § 106.45(b)(7).

In the preamble to the 2020 amendments, the Department explained that using the ''[directly related] approach balances the recipient's obligation to impartially gather and objectively evaluate all relevant evidence . . . with the parties' equal right to participate in furthering each party's own interests by identifying evidence overlooked by the investigator and evidence the investigator erroneously deemed relevant or irrelevant and making arguments to the decision-maker regarding the relevance of evidence and the weight or credibility of relevant evidence.'' *Id.* at 30303. The Department also stated in the preamble that ''[t]he parties should have the opportunity to argue that evidence directly related to the allegations is in fact relevant (and not otherwise barred from use under § 106.45), and parties will not have a robust opportunity to do this if evidence related to the allegations is withheld from the parties by the investigator.'' *Id.* at 30304. The Department further explained that the use of the ''directly related'' standard provides the parties with access to ''the universe of relevant and potentially relevant evidence'' with enough time for them to offer additional relevant facts and witnesses. *Id.* at 30303. The Department stated that it was ''sensitive to commenters' concerns regarding the parties sharing irrelevant information, as well as relevant information that is relevant but also highly sensitive and personal, as part of the investigative process''; however, the Department stated that such concerns ''must be weighed against the demands of due process and fundamental fairness, which require procedures designed to promote accuracy through meaningful participation of the parties.'' *Id.* Nevertheless, the Department noted that ''it may be true in some respects that this provision affords parties greater protection than some courts have determined is required under constitutional due process or concepts of fundamental fairness.'' *Id.*

By defining ''relevant'' evidence in proposed § 106.2 to encompass all evidence related to the allegations of sex discrimination, the Department would address the concern previously expressed by the Department that an investigator might erroneously screen out evidence related to the allegations that the investigator believed to be related but not relevant. In addition, in response to the concern previously expressed by the Department that the parties must have the opportunity to offer additional relevant evidence after reviewing the universe of evidence directly related to the allegations, the Department would require a postsecondary institution to give the parties an opportunity to respond to the evidence prior to the determination of whether sex-based harassment occurred.

After considering the issue, including views expressed by a wide array of stakeholders to OCR in connection with the June 2021 Title IX Public Hearing and in listening sessions, the Department thus proposes clarifying the scope of evidence that a postsecondary institution must disclose. Under proposed § 106.46(e)(6), a postsecondary institution would be required to provide equitable access to evidence that is ''relevant,'' as defined by proposed § 106.2, to the allegations of sex-based harassment, and not otherwise deemed impermissible regardless of relevance, as set out in proposed § 106.45(b)(7). The proposed provision would prohibit a postsecondary institution from disclosing information that is not relevant and evidence that is impermissible, including evidence of the complainant's sexual interests and prior sexual conduct, except as narrowly permitted by § 106.45(b)(7).

In addition, the Department has reweighed the facts and circumstances in light of the concerns expressed by stakeholders regarding the disclosure of information related to the complainant's sexual interests and prior sexual conduct. Considering the significant concerns that the current provision may incentivize the introduction of prejudicial information, chill reporting, and unnecessarily harm the parties, the Department does not view the requirements to disclose irrelevant evidence, as well as relevant but

impermissible evidence, as furthering the fairness and accuracy of the process.

Method of providing evidence to the parties. Current § 106.45(b)(5)(vi) requires a recipient to provide the parties with the opportunity to inspect and review evidence directly related to the allegations, and current § 106.45(b)(5)(vii) requires a recipient to provide the parties with an investigative report summarizing the relevant evidence. In contrast, proposed § 106.46(e)(6)(i) would require a postsecondary institution to provide the parties and their advisors, if any, either with access to the relevant and not otherwise impermissible evidence, or with the same written investigative report that accurately summarizes the relevant and not otherwise impermissible evidence. If the postsecondary institution chooses to provide an investigative report and a party requests access to the evidence, the institution would be required to provide access to the relevant and not otherwise impermissible evidence to all parties. Accordingly, parties would retain under the proposed regulations the right set out under current § 106.45(b)(5)(vi) subject to the limitation on access to evidence that is not relevant or is otherwise impermissible as discussed above.

In the preamble to the 2020 amendments, the Department recognized the concerns expressed by many stakeholders about the burden and costs that current § 106.45(b)(5)(vi) and (vii) may place on a recipient. In the preamble, the Department agreed that ''these provisions have the potential to generate modest burden and costs, but believe[d] that the financial costs and administrative burdens resulting from the provisions are far outweighed by the due process protections ensured by these provisions.'' *Id.* at 30307. The Department stated that disclosing evidence to the parties is not an ''unacceptable burden[ ] . . . because reviewing the universe of evidence that is, or may be, relevant represents a critical part of enabling parties to have a meaningful opportunity to be heard, which is an essential component of due process and fundamental fairness.'' *Id.*

After considering the issue and reweighing the facts and circumstances, the Department proposes giving a postsecondary institution the discretion to decide whether to provide access to the relevant and not otherwise impermissible evidence or to provide an investigative report that accurately summarizes the relevant and not otherwise impermissible evidence and then provide access to the evidence if requested by one or more parties. Postsecondary institutions vary greatly in terms of size, resources, and expertise, and complaints of sex-based harassment also vary greatly in terms of the nature of the conduct alleged, the volume and format of the evidence, and in other ways. Proposed § 106.46(e)(6)(i) would give more flexibility to a postsecondary institution than the current regulations in the manner of presenting the evidence to the parties while ensuring that grievance procedures remain equitable and that the institution can meet its Title IX obligation to provide its program or activity free from sex discrimination.

Either option under proposed § 106.46(e)(6)—providing an investigative report or the evidence itself—would enable the parties to access the universe of evidence relevant to the allegations of sex-based harassment. In turn, this would enable the parties to meaningfully prepare arguments, contest the relevance of evidence, and present additional evidence for consideration. The Department tentatively views the requirement to convey the same universe of evidence in two different formats (an investigative report and access to the evidence) as unnecessary for ensuring that grievance procedures are implemented equitably and effectively, and as increasing costs, burden, and delay without providing a meaningful benefit to the parties.

Finally, proposed § 106.46(e)(6)(iv) would clarify that compliance with proposed § 106.46(e)(6) would satisfy the requirements of proposed § 106.45(f)(4). Proposed § 106.45(f)(4) requires recipients to provide the parties with a description of the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, as well as a reasonable opportunity to respond.

Equitable access to the evidence. Proposed § 106.46(e)(6) would require a postsecondary institution to provide equitable access to the relevant and not otherwise impermissible evidence. This would mean, for example, that a postsecondary institution could not choose to provide access to the evidence to one party and an investigative report to the other party or parties. The requirement to provide equitable access would also extend to the mode of delivery. Under proposed § 106.46(e), if a postsecondary institution provides an electronic copy of the relevant evidence to one party, the institution would be required to do the same for all parties. If a postsecondary institution permits a party only to inspect and review the evidence without providing that party their own copy, the institution would not be permitted to provide a physical copy to another party. If, however, a party needs to access the evidence in a particular mode due to a disability, a postsecondary institution would be required to comply with its obligations to ensure effective communication through the provision of auxiliary aids and services. For persons with limited English proficiency, a postsecondary institution may need to provide language assistance services, such as translations or interpretation. To comply with the requirement under proposed § 106.46(e)(6) to provide equitable access to the evidence, a postsecondary institution would also be required to be mindful of any extenuating circumstances (*e.g.,* one party is studying abroad) that affect a party's ability to access the evidence in a particular manner.

Beyond the general requirement for equitable access to the relevant evidence, the Department is not proposing specific requirements for the manner of providing the investigative report or the evidence to the parties. A postsecondary institution would have the discretion to determine how to provide this information, as long as the parties and their advisors have a meaningful opportunity to review the information. As discussed below, proposed § 106.46(e)(6)(iii) would require a postsecondary institution to take reasonable steps to prevent unauthorized disclosure of information and evidence. The manner of providing the information to the parties may vary depending on the available resources to the institution, the location of the parties, the type of evidence, and other case-specific circumstances. The Department seeks to provide this flexibility to postsecondary institutions while ensuring meaningful review and protection of the information.

Timeframe for receiving and responding to the evidence. The current regulations set out very specific timeframes for providing the parties with access to the evidence and a copy of the investigative report. Current § 106.45(b)(5)(vi) requires the recipient to give the parties at least 10 days to submit a response after reviewing the evidence. The investigator must then consider any response and then create an investigative report. The recipient must provide the investigative report to the parties at least 10 days prior to a hearing (if one is required under current § 106.45) or other time of determination regarding responsibility.

Following the implementation of the 2020 amendments, OCR received feedback from stakeholders in listening sessions and in comments provided in

connection with the June 2021 Title IX Public Hearing that the rigid timeframes in the current regulations prolong the process and impede prompt resolutions. One organization urged the Department to make the process simpler and more streamlined, noting that the current provisions could add a delay of nearly one month between the close of interviews and the start of a hearing. A comment from a coalition of organizations urged the Department to permit greater flexibility for recipients and to permit ''simplified procedures with shorter timelines'' in certain cases, such as those involving detentions and brief suspensions. OCR has also received comments indicating that the ten-day timelines are reasonable timeframes or even too short. In the preamble to the 2020 amendments, the Department stated that ''the time frame is appropriate for the parties to read and respond to the evidence subject to inspection and review, and then to the investigative report.'' 85 FR 30306.

After considering the issue and reweighing the facts and circumstances, including feedback received in connection with the June 2021 Title IX Public Hearing, the Department proposes in § 106.46(e)(6)(ii) to remove the specific timeframes and instead permit a postsecondary institution flexibility to set reasonable timeframes for ensuring that parties have a reasonable opportunity to review and respond to evidence. When the grievance procedures do not involve a live hearing, proposed § 106.46(e)(6)(ii) would require a postsecondary institution to provide the parties with a reasonable opportunity to review and respond to the evidence prior to the determination of whether sex-based harassment occurred. When a postsecondary institution conducts a live hearing as part of its grievance procedures, proposed § 106.46(e)(6)(ii) would require the institution to provide the parties with the opportunity to review the evidence in advance of the live hearing. This provision would allow the postsecondary institution to decide whether to provide the opportunity to respond to the evidence prior to the hearing, during the hearing, or both prior to and during the hearing.

The nature and volume of evidence varies greatly based on the allegations in a complaint and the surrounding circumstances. The Department is proposing a reasonable timeframe to accommodate this variation. Parties may need more time to meaningfully review hundreds of pages of evidence and dozens of witness statements than they would need to review a much smaller evidentiary file. Proposed § 106.46(e)(6)(ii) would increase discretion for a postsecondary institution while still ensuring that the parties would be able to meaningfully review and respond to the relevant and not otherwise impermissible evidence prior to the live hearing or other determination of whether sex-based harassment occurred.

Protections against unauthorized disclosures. Current § 106.45(b)(5)(vi) and (vii) do not expressly require a recipient to take measures to safeguard the evidence and investigative report that they share with the parties and their advisors. Nevertheless, the Department recognized in the preamble to the 2020 amendments that a recipient may adopt additional practices to protect privacy, such as digital encryption or sharing evidence in a way that prevents copying or saving the records. *See id.* at 30307–08, 30435. The Department also stated in the preamble that ''[r]ecipients may require parties and advisors to refrain from disseminating the evidence (for instance, by requiring parties and advisors to sign a non-disclosure agreement that permits review and use of the evidence only for purposes of the Title IX grievance process).'' *Id.* at 30304. Following the implementation of the 2020 amendments, OCR received feedback urging the Department to specify that recipients can and should impose reasonable limitations on the sharing of evidence by the parties to protect privacy and prevent the spread of sensitive information that could compromise the fairness of the proceedings or harm a party or witness.

In light of the important privacy considerations related to allegations and evidence in sex-based harassment grievance procedures, the Department proposes, at § 106.46(e)(6)(iii), to require a postsecondary institution to take reasonable steps to prevent and address any unauthorized disclosures by the parties and their advisors of information and evidence obtained through the sex-based harassment grievance procedures. As noted above, unauthorized disclosure of sensitive information could threaten the fairness of the process by deterring parties or witnesses from participating, affecting the reliability of witness testimony, leading to retaliatory harassment, and other consequences. The Department is not proposing specific steps that a postsecondary institution must take, as what is reasonable to prevent unauthorized disclosure may vary depending on the circumstances. In some circumstances, it may be sufficient to inform the parties of the institution's expectations for how the parties should safeguard the evidence and the consequences for unauthorized disclosures. A postsecondary institution may also use software that restricts further distribution of any reports or records. A postsecondary institution would have the discretion to define for the parties what types of further disclosures are permissible; however, they would not be able to prohibit disclosures to confidential resources, such as a party's doctor or mental health counselor.

Section 106.46(f) Evaluating Allegations and Assessing Credibility and 106.46(g) Live Hearings

Current regulations: Section 106.45(b)(6)(i) requires a postsecondary institution to provide for a live hearing as part of its grievance process for formal complaints of sexual harassment. Live hearings may be conducted with all parties physically present in the same geographic location or, at the request of either party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decisionmaker and parties to simultaneously to see and hear the party or witness answering questions. The recipient must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

At the live hearing, the decisionmaker is required to permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. At the request of either party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decisionmaker and parties to simultaneously see and hear the party or the witness answering questions.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decisionmaker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. Questions and

evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

If a party or witness does not submit to cross-examination at the live hearing, the decisionmaker must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decisionmaker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Current § 106.45(b)(6)(ii) permits, but does not require, elementary and secondary school recipients, and other recipients that are not postsecondary institutions, to provide for a hearing as part of their Title IX grievance process for formal complaints of sexual harassment.

With or without a hearing, after the recipient has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decisionmaker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

With or without a hearing, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decisionmaker must explain to the party proposing the questions any decision to exclude a question as not relevant.

Proposed regulations: The Department proposes adding § 106.46(f) to address the requirements for evaluating allegations and assessing credibility and moving the provision regarding procedures for live hearings to proposed § 106.46(g). Proposed § 106.46(f)(1) would require a postsecondary institution to provide a process as specified in this subpart that enables the decisionmaker to adequately assess the credibility of the parties and witnesses to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment. This assessment of credibility would include either: (i) allowing the decisionmaker to ask the parties and witnesses relevant and not otherwise impermissible questions and follow-up questions, including those challenging credibility, during individual meetings with the parties or at a live hearing before determining whether sex-based harassment occurred and allowing each party to propose to the decisionmaker or investigator relevant and not otherwise impermissible questions and follow-up questions, including questions challenging credibility that the party wants asked of any party or witness and have those questions asked during individual meetings with the parties or at a live hearing subject to the requirements in proposed § 106.46(f)(3); or (ii) when a postsecondary institution chooses to conduct a live hearing, allowing each party's advisor to ask any party and any witnesses all relevant and not otherwise impermissible questions under proposed §§ 106.2 and 106.45(b)(7) and follow-up questions, including those challenging credibility, subject to the requirements in proposed § 106.46(f)(3). Proposed § 106.46(f)(1)(ii) would retain the language from current § 106.45(b)(6)(i) that questioning at a live hearing must never be conducted by a party personally. In addition, under proposed § 106.46(f)(1)(ii), if a postsecondary institution permits advisor-conducted questioning and a party does not have an advisor who can ask questions on their behalf, the postsecondary institution must provide the party with an advisor of the postsecondary institution's choice, without charge to the party, for the purpose of advisor-conducting questioning, which is the same as the requirement in current § 106.45(b)(6)(i). The advisor may be, but is not required to be, an attorney.

Proposed § 106.46(f)(2) would state that compliance with proposed § 106.46(f)(1)(i) or (ii) satisfies the requirements of § 106.45(g) to provide a process that enables the decisionmaker to adequately assess the credibility of the parties and witnesses to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.

Proposed § 106.46(f)(3) would require the decisionmaker to determine whether a proposed question is relevant and not otherwise impermissible under proposed §§ 106.2 and 106.45(b)(7) prior to the question being posed and explain any decision to exclude a question as not relevant, which is the same as the requirement in current § 106.45(b)(6)(i) and (ii). If a decisionmaker determines that a party's question is relevant and not otherwise impermissible, then it must be asked, with the exception that a postsecondary institution must not permit questions that are unclear, such that they are vague or ambiguous, or harassing of the party being questioned. A postsecondary institution would also be permitted to impose other rules regarding decorum, provided they apply equally to the parties.

Although proposed § 106.46(f)(1) and (3) do not include the specific language from current § 106.45(b)(6)(i) and (ii) regarding questions and evidence about the complainant's sexual predisposition or prior sexual behavior, the concepts from the current regulations would be included in proposed § 106.45(b)(7) on evidence that is impermissible regardless of relevance and would be cross-referenced in proposed § 106.46(f)(1) and (3).

The Department proposes revising the language in current § 106.45(b)(6)(i) that prohibits the decisionmaker from relying on any statement of a party or witness who does not submit to cross-examination at the live hearing in reaching a determination regarding responsibility. Instead of prohibiting the decisionmaker from considering all prior statements in these cases, proposed § 106.46(f)(4) would provide that if a party does not respond to questions related to their credibility, the decisionmaker must not rely on any statement of that party that supports that party's position. The Department also proposes maintaining, with minor revisions, the general principle from current § 106.45(b)(6)(i) regarding drawing an inference based solely on a hearing participant's decision not to respond to questions. Proposed § 106.46(f)(4) would prohibit the decisionmaker from drawing an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to questions related to credibility, including a refusal to answer such questions during a live hearing.

Proposed § 106.46(g) would eliminate the requirement in current § 106.45(b)(6)(i) that a postsecondary institution must provide for a live hearing with cross-examination in its grievance procedures for complaints of sex-based harassment. Instead, proposed § 106.46(g) would permit, but not

require, a postsecondary institution to hold live hearings. If a postsecondary institution chooses to conduct a live hearing, it would be permitted to conduct the live hearing with the parties physically present in the same geographic location but at the postsecondary institution's discretion or upon the request of either party, it would conduct the live hearing with the parties physically present in separate locations with technology enabling the decisionmaker and parties to simultaneously see and hear the party or the witness while that person is speaking or communicating in another format, which is the same as the requirement in current § 106.45(b)(6)(i). The Department also proposes maintaining the requirement in current § 106.45(b)(6)(i) that a postsecondary institution create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

For information regarding proposed requirements related to evaluating allegations and assessing credibility for complaints of sex discrimination other than sex-based harassment complaints involving a student complainant or student respondent at a postsecondary institution, see the discussion of proposed § 106.45(g).

Reasons: Live hearings, advisor-conducted questioning, process to assess credibility and evaluate allegations. The Department proposes eliminating the requirement that all postsecondary institutions must hold a live hearing with advisor-conducted cross-examination. Under the proposed regulations, a postsecondary institution would be permitted, but not required, to hold a live hearing and to use advisor-conducted questioning when credibility is at issue and relevant to evaluating one or more allegations of sex-based harassment. The Department recognizes the importance of a postsecondary institution having procedures in place to assess credibility when necessary and to provide a meaningful opportunity for the parties to be heard, regardless of whether it chooses to hold a live hearing. The proposed regulations would require a postsecondary institution to provide a process that enables the decisionmaker, prior to determining whether sex-based harassment occurred, to adequately assess the credibility of the parties and witnesses to the extent credibility is in dispute and relevant to evaluating one or more allegations of sex-based harassment. This would include allowing the decisionmaker to ask the parties and witnesses relevant questions and follow-up questions, including questions challenging credibility, at a live hearing or during individual meetings with the parties. It would also include allowing each party to propose to the postsecondary institution's decisionmaker or investigator relevant questions and follow-up questions, including questions challenging credibility, that they want asked of any party or witness and have those questions asked during individual meetings with the parties or at a live hearing subject to certain requirements. In addition, when a postsecondary institution chooses to conduct a live hearing, it would be permitted to use advisor-conducted cross-examination to satisfy the requirement to have a process to assess credibility. The Department provides an overview of the relevant preamble discussions from the 2018 NPRM and 2020 amendments for requiring live hearings and cross-examination in the grievance procedures of postsecondary institution recipients and provides the reasons for changing these requirements.

Explanation in the 2018 NPRM. In the 2018 NPRM, the Department described cross-examination as '' 'the greatest legal engine ever invented for the discovery of truth,' '' 83 FR 61476 (quoting *California* v. *Green,* 399 U.S. 149, 158 (1970) (quoting 5 John H. Wigmore, *Evidence* § 1367, at 29 (3d ed. 1940))), and noted that at least one Federal circuit court has held that cross-examination is a constitutional requirement of due process in the Title IX context involving a public institution, *id.* (citing *Doe* v. *Baum,* 903 F.3d 575, 581 (6th Cir. 2018)). The Department added that after careful consideration regarding how to best to incorporate cross-examination for proceedings at both the postsecondary level and the elementary and secondary school level, it had determined that issues related to age and developmental ability may outweigh the benefits of cross-examination at a live hearing in the elementary and secondary school context. *See id.* The Department determined that because these same issues do not exist at postsecondary institutions since most parties and witnesses are adults, grievance procedures at postsecondary institutions must include live cross-examination at a hearing. *Id.* The Department explained that requiring the party advisors to conduct the cross-examination provides the benefits of cross-examination while avoiding any unnecessary trauma that could arise from personal confrontation between the complainant and the respondent. *See id.* (citing *Baum,* 903 F.3d at 583).

Discussion of balancing the rights of the parties in the preamble to the 2020 amendments. In response to stakeholders' support for the proposal to require a postsecondary institution to hold live hearings with advisor-conducted cross-examination, the Department recognized that several appellate courts had recently considered the value of cross-examination in student misconduct proceedings in postsecondary institutions and concluded that a meaningful opportunity to be heard includes the ability to challenge the testimony of parties and witnesses. *See* 85 FR 30313. The Department also agreed with stakeholders that cross-examination serves the interests of parties and recipients because, in their view, it allows the decisionmaker to observe parties and witnesses answer questions, including those challenging credibility, which serves the truth-seeking function. *See id.*

The Department further stated that cross-examination is a necessary part of a fair, truth-seeking grievance process in postsecondary institutions, and that the 2020 amendments include appropriate safeguards that minimize the traumatic effect on complainants. *See id.* at 30315. In response to concerns raised by stakeholders regarding the traumatic effect of live hearings and cross-examination, the Department explained that any re-traumatization of complainants can be mitigated because cross-examination is conducted only by party advisors and the 2020 amendments contain other protections regarding the types of questions and evidence permitted and the ability to request that the live hearing occur with the parties in separate rooms. *See id.* at 30313–14.

Discussion of cross-examination and reporting in the preamble to the 2020 amendments. In response to concerns that requiring live hearings with cross-examination would have a chilling effect on reporting, the Department acknowledged in the preamble to the 2020 amendments that complainants may be dissuaded from pursuing a formal complaint out of fear of undergoing aggressive questioning, but noted that recipients may educate their students and employees regarding what cross-examination will look like and may also develop rules and practices that ensure that questioning during cross-examination is relevant, respectful, and non-abusive. *See id.* at 30316. In addition, in response to concerns that requiring cross-examination would discourage many students, including complainants, respondents, and witnesses, from

participating in a Title IX grievance process, *see id.* at 30331, the Department stated that live hearings and cross-examination at postsecondary institutions, constitutes a serious, formal process'' and noted that the 2020 amendments ensured that a recipient's students and employees are ''aware of that process'' and ''each party has the right to assistance from an attorney or non-attorney advisor throughout the process,'' *id.* at 30332. The Department explained sexual harassment is a serious matter that warrants a predictable, fair grievance process with strong procedural protections for both parties'' to ensure reliable determinations regarding responsibility. *Id.*

Case law discussion regarding cross-examination and due process in the preamble to the 2020 amendments. As noted in the discussion of the Framework for Grievance Procedures for Complaints of Sex Discrimination (Section II.F), the Department acknowledged in the preamble to the 2020 amendments that ''the Supreme Court has not ruled on what procedures satisfy due process of law under the U.S. Constitution in the specific context of a Title IX sexual harassment grievance process held by a postsecondary institution, and that Federal appellate courts that have considered this particular issue in recent years have taken different approaches.'' *Id.* at 30327. The Department explained that the procedures required under current § 106.45 ''are consistent with constitutional requirements'' and best effectuate both parties' rights to meaningfully be heard regarding the allegations in a formal complaint of sexual harassment. *Id.* The Department recognized that what constitutes a meaningful opportunity to be heard may depend on specific circumstances and explained that a live hearing with cross-examination is required in the postsecondary context but not in elementary schools and secondary schools. *See id.*

The Department stated that ''the Sixth Circuit has held that cross-examination, at least conducted through a party's advisor, is necessary to satisfy due process in sexual misconduct cases that turn on party credibility.'' *Id.* at 30327–28 (citing *Baum,* 903 F.3d at 581). The Department agreed with the reasoning of the U.S. Court of Appeals for the Sixth Circuit in *Baum* that allowing the respondent's advisor to conduct cross-examination on behalf of the respondent provides the benefits of cross-examination without the ''emotional trauma of directly confronting the complainant's alleged attacker.'' *Id.* at 30328. Based on this view, the Department explained that current § 106.45(b)(6)(i) is consistent with the Sixth Circuit's reasoning because it requires that both parties have the opportunity for cross-examination, allows either party to request that cross-examination (and the entire live hearing) be conducted with the parties in separate rooms, permits only party advisors to conduct cross-examination, forbids personal confrontation between parties, and requires the decisionmaker to determine the relevance of a cross-examination question before a party or witness answers. *See id.*

The Department noted that the *Baum* opinion involved certain circumstances that justified cross-examination: it involved a public university that was required to comply with constitutional due process requirements; a sexual harassment case that turned on credibility and involved serious consequences; and a postsecondary institution that already provided hearings for other types of misconduct and could not argue that it faced more than a minimal burden to provide a live hearing for sexual harassment cases. *See id.* The Department asserted, however, that even though some recipients ''are private institutions that do not owe constitutional protections,'' it is equally important to consistently apply a grievance process to accurately resolve allegations of sexual harassment under Title IX in private and public institutions. *Id.* The Department agreed with stakeholders that not every formal complaint of sexual harassment ''turns on party or witness credibility'' but noted that ''most of these complaints do involve plausible, competing narratives of the alleged incident, making party participation in the process vital for a thorough evaluation of the available, relevant evidence.'' *Id.*

The Department also acknowledged in the preamble to the 2020 amendments that following the public comment period on the 2018 NPRM, the U.S. Court of Appeals for the First Circuit reached a different holding regarding cross-examination than the Sixth Circuit in a Title IX sexual misconduct case. *Id.* at 30329 (citing *Haidak* v. *Univ. of Mass.-Amherst,* 933 F.3d 56, 68–70 (1st Cir. 2019)). The Department explained that the First Circuit held that a postsecondary institution could satisfy due process ''by using inquisitorial rather than adversarial method of cross-examination, by having a neutral school official pose probing questions of parties and witnesses in real-time, designed to ferret out the truth about the allegations at issue.'' *Id.* (citing *Haidak,* 933 F.3d at 69–70). The Department further acknowledged that after the public comment period on the 2018 NPRM closed, the First Circuit also decided a case under Massachusetts State law involving discipline of a student by a private college for sexual misconduct, holding that the college ''owed no constitutional due process to the student and that State law did not require any form of real-time cross-examination as part of [the college's] contractual [obligation of] basic fairness.'' *Id.* (citing *Doe* v. *Trustees of Bos. Coll.,* 942 F.3d 527 (1st Cir. 2019)). The Department declined to make any changes to current § 106.45(b)(6)(i) in response to these decisions.

Discussion of alternatives to advisor-conducted cross-examination in the preamble to the 2020 amendments. In response to suggestions from stakeholders that the Department allow postsecondary institutions to use cross-examination conducted by a neutral college administrator, or questions submitted by the parties as permitted for elementary and secondary school recipients under the 2020 amendments, the Department stated that those procedures cannot ensure a fair process and reliable outcomes in postsecondary institutions. *See id.* at 30330. The Department explained that regardless of whether those practices are consistent with the requirements of constitutional due process it believed that current § 106.45 ''appropriately and reasonably balances the truth-seeking function of live, real-time, adversarial cross-examination in the postsecondary institution context with protections against personal confrontation between the parties.'' *Id.* The Department further stated that ''regardless of whether the provisions in [current] § 106.45(b)(6)(i) are required under constitutional due process of law, the Department believes that these procedures meet or exceed the due process required under *Mathews* v. *Eldridge,* 424 U.S. 319, 321 (1976),'' and that the Department has the regulatory authority under Title IX to adopt provisions ''the Department has determined best effectuate the purpose of Title IX.'' *Id.* (footnotes omitted). Finally, the Department stated that adversarial questioning must be conducted by persons who need not be impartial to the parties and the recipient's neutral, impartial decisionmaker benefits from observing the questions and answers of each party and witness posed by a party's advisor advocating for that party's interests. *See id.* at 30330–31.

Feedback received after implementation of the 2020 amendments. According to feedback received from stakeholders in

connection with the June 2021 Title IX Public Hearing and listening sessions, although recipients had a limited amount of time to assess the impact of the 2020 amendments' live hearing and cross-examination requirement, some postsecondary institutions reported that they experienced a decrease in the number of complaints filed as well as an increase in the number of individuals who report sexual harassment but decline to move forward with the grievance process once they are provided with information about the grievance process. These postsecondary institutions expressed the belief that based on their experiences, the reduction in complaints filed and in complainants willing to move forward with the grievance process is likely due to the live hearing and advisor-conducted cross-examination requirements in the 2020 amendments. Other stakeholders questioned the utility of live hearings, asserting that many of the questions that arise during the hearings have already been asked and answered during the investigation. In addition, a number of postsecondary institutions pointed to the live hearing and cross-examination requirements as examples of provisions in the current regulations that are overly burdensome and prescriptive for recipients and have the effect of interfering with recipients' ability to meet their Title IX obligations. In the 2021 Title IX Public Hearing and in listening sessions, OCR also heard from stakeholders who supported an alternative approach to live hearings with cross-examination; these stakeholders favored giving the flexibility the current regulations provide for non-postsecondary institutions to all recipients by permitting the parties to submit questions to the decisionmaker to ask, providing each party with the answers, and allowing for additional, limited follow-up questions from each party. OCR also received comments from several non-recipient stakeholders expressing support for the current requirements regarding live hearings and cross-examination and noting that they provide a means for a respondent to challenge credibility or inconsistencies.

After considering the issue and reweighing the facts and circumstances, including views expressed by a wide array of stakeholders, particularly those with experience in implementing or participating in a recipient's process that included the live hearing and cross-examination requirements, and reviewing the applicable case law and academic writing on the topic of cross-examination and alternatives to cross-examination, the Department proposes eliminating the requirement for postsecondary institutions to hold a live hearing with advisor-conducted cross examination while still permitting them to hold such a hearing if the postsecondary institution deems it appropriate in a particular sex-based harassment case. The Department's tentative view is that the requirement for all postsecondary institutions to hold a live hearing with advisor-conducted cross-examination exceeds what is required in order to provide equitable procedures to the parties and is not necessary to provide a respondent with a meaningful opportunity to be heard. The Department's view is also that this requirement in the current regulations does not adequately account for the diversity of postsecondary institutions subject to Title IX. This proposed approach would provide a recipient with reasonable options for how to structure its grievance procedures to ensure that they are equitable for the parties while accommodating each recipient's administrative structure, education community, the applicable Federal and State case law, and State or local legal requirements by still permitting any postsecondary institution that so chooses to hold a live hearing with advisor-conducted cross-examination.

The Department's tentative view is that neither Title IX nor due process and fundamental fairness require postsecondary institutions to hold a live hearing with advisor-conducted cross-examination in all cases. The Department currently believes, however, that a postsecondary institution should be required to provide a live-questioning process that enables the decisionmaker to adequately assess the credibility of the parties and witnesses to the extent credibility is in dispute and is relevant to evaluating one or more allegations of sex-based harassment in its grievance procedures for sex-based harassment involving a student complainant or student respondent. Further, the Department currently believes that the procedures described in proposed § 106.46(f) and (g) would appropriately protect the right of all parties to have a meaningful opportunity to respond to allegations and the postsecondary institution's interest in grievance procedures that enable the decisionmaker to seek the truth and minimize chilling effects on the reporting of sex-based harassment and on participation in the recipient's grievance procedures by a complainant or respondent.

The Department's tentative position is that the procedures described in proposed § 106.46(f) and (g) appropriately recognize that although all postsecondary institutions, regardless of their size, type, administrative structure, and location, must comply with the requirements of Title IX, promulgating regulations that take into account the diversity of postsecondary institutions subject to Title IX would best ensure effective implementation of Title IX. In view of this, proposed § 106.46(g) would permit, but not require, all postsecondary institutions to hold a live hearing and proposed § 106.46(f)(1) would permit, but not require, postsecondary institutions to use advisor-conducted questioning at a live hearing when the decisionmaker determines that credibility is in dispute and relevant to evaluating one or more allegations of sex-based harassment. Under this approach, a postsecondary institution would still be able to hold live hearings if it chose to do so and a postsecondary institution, including a public postsecondary institution located within the jurisdiction of the Sixth Circuit where, as described above, advisor-conducted cross-examination is currently required, may use advisor-conducted questioning at a live hearing under the circumstances articulated by the court in *Baum.* A postsecondary institution that opted to hold live hearings would, at the request of either party, be required to conduct the live hearings with the parties in separate locations with technology enabling the decisionmaker and parties to simultaneously see and hear the party or the witness while that person is speaking or communicating in another format.

Review of relevant case law on cross-examination. As the Department stated in the preamble to the 2020 amendments and as explained in the discussion of the Framework for Grievance Procedures for Complaints of Sex Discrimination (Section II.F), the Supreme Court has not ruled on what elements are necessary for a public postsecondary institution's Title IX sexual harassment grievance procedures to satisfy due process of law under the U.S. Constitution, and Federal appellate courts have taken different approaches on this issue in recent years. *See* 85 FR 30327. It is important to recognize that academic disciplinary proceedings are not co-extensive with civil or criminal trials. *See, e.g., Nash,* 812 F.2d at 664 (''Due process requires that appellants have the right to respond, but their rights in the academic disciplinary

process are not co-extensive with the rights of litigants in a civil trial or with those of defendants in a criminal trial.''). The Supreme Court and other Federal courts have held that there is no general right to cross-examine witnesses in disciplinary proceedings against students at the postsecondary school level, even in public institutions. *See, e.g., Horowitz,* 435 U.S. at 86 n.3 (declining to recognize a right to a hearing with the opportunity for cross-examination during student disciplinary proceedings considering factors in *Matthews*); *Butler* v. *Rector & Bd. of Visitors of Coll. of William & Mary,* 121 F. App'x 515, 520 (4th Cir. 2005) (finding ''no basis in law'' to import the right to cross-examine witnesses into the academic context); *Gorman,* 837 F.2d at 16 (holding that the right to unlimited cross-examination is not ''an essential requirement of due process in school disciplinary cases''); *Nash,* 812 F.2d at 664 (finding that the inability to question adverse witnesses in the usual, adversarial manner did not result in a denial of appellants' constitutional rights to due process).

Even absent a general right to cross-examination, some courts have held, in both public and private postsecondary settings, that some method of live cross-examination is required by due process and basic fairness when a disciplinary charge rests on a witness's or complainant's credibility. *See, e.g., Doe* v. *Univ. of Scis.,* 961 F.3d 203, 215 (3d Cir. 2020) (holding that in a sexual assault case that hinges on credibility, basic fairness requires the chance to test witnesses' credibility through some method of cross-examination, but declining ''to prescribe the exact method by which a college or university must implement these procedures''); *Doe* v. *Univ. of Cincinnati,* 872 F.3d 393, 401 (6th Cir. 2017) (holding that accused students must have the right to cross-examine adverse witnesses in the most serious of cases, such as those depending on witness credibility); *Winnick* v. *Manning,* 460 F.2d 545, 549–50 (2d Cir. 1972) (holding that although unlimited cross-examination is not an essential element of due process in college discipline cases, it may be required when the resolution of the case turns on credibility assessments); *Doe* v. *Allee,* 30 Cal. App. 5th 1036, 1039 (Ct. App. 2019) (holding that in a case in which a student faces serious discipline for alleged sexual misconduct, and the credibility of witnesses is central to the adjudication of the charge, fundamental fairness requires, at a minimum, that the university provide a way for the accused to cross-examine those witnesses, directly or indirectly, at a hearing where the witnesses appear in person or by other means). As explained in the discussion of the case law regarding cross-examination and due process and in the preamble to the 2020 amendments, the Sixth Circuit held in *Baum* that when a student is accused of misconduct, the university must hold some sort of hearing before imposing a sanction as serious as expulsion or suspension and if credibility is in dispute and material to the outcome, the hearing must include an opportunity for cross-examination. 903 F.3d at 581–84. The Department notes, however, that the Sixth Circuit did not consider whether examination by a neutral party (at either a live hearing or in separate meetings with the parties) would be sufficient to satisfy its view of constitutional due process. *See Haidak,* 933 F.3d at 69–70.

Following the Sixth Circuit's decision in *Baum,* courts outside of the Sixth Circuit have generally held that even if there is a right to cross-examination in certain disciplinary cases, that right can be satisfied through indirect questioning—such as allowing parties to propose questions to be asked by a neutral actor—in both the public and private university setting. *See, e.g., Univ. of Ark.-Fayetteville,* 974 F.3d at 867–68 (rejecting due process challenge when the accused student was permitted to submit questions to the hearing panel and the hearing panel had discretion about whether to pose the questions to witnesses); *Haidak,* 933 F.3d at 69 (holding that in the university disciplinary setting, due process may require some opportunity to confront the complaining witness, but that this confrontation need not be done by the accused student or that student's representative); *Lee* v. *Univ. of N.M.,* 500 F. Supp. 3d 1181, 1241–42 (D.N.M. 2020) (finding that the Due Process Clause does not require postsecondary institutions to permit respondents to personally confront complainants even when credibility is at issue); *Gendia* v. *Drexel Univ.,* No. 20–1104, 2020 WL 5258315, at *5 (E.D. Pa. Sept. 2, 2020) (finding that the university satisfied the requirements for fundamental fairness when it allowed the parties to submit cross-examination questions to the adjudicator); *Haas,* 427 F. Supp. 3d at 350–51 (declining to find a due process violation when the plaintiff was not allowed to personally cross-examine his accuser and noting that the Sixth Circuit's holding in *Baum* was not binding on the court). In addition, in *Doe* v. *Trustees of Boston College,* 942 F.3d 527, 535 (1st Cir. 2019), the U.S. Court of Appeals for the First Circuit rejected a fundamental fairness challenge to a one-year suspension for sexual assault imposed upon a student without the use of any form of live questioning. The First Circuit held that the private college's basic fairness obligation did not require the school to provide an adjudicatory hearing process or even a process at which both parties are present and have the opportunity to suggest questions to be asked of the other in real time. *Id.* at 534.

The Department notes that a few district courts outside of the Sixth Circuit recently have cited *Baum* to support their holdings, but it is unclear from these decisions whether these courts would have held that such a right could be satisfied by indirect cross-examination at a live hearing or in separate meetings with the parties. *See, e.g., Doe* v. *Univ. of Conn.,* No. 3:20cv92, 2020 WL 406356, at *5 (D. Conn. Jan. 23, 2020) (noting that courts have reached different conclusions as to whether the accused has a right to cross-examine witnesses in the traditional manner, referencing *Baum,* and holding that in this credibility case involving a severe sanction, the plaintiff was likely to succeed on his due process claim because he did not have the opportunity to question or confront two of the witnesses on whose statements the hearing officers relied); *Norris* v. *Univ. of Colo., Boulder,* 362 F. Supp. 3d 1001, 1020 (D. Colo. 2019) (referring to the holding in *Baum,* noting that the Tenth Circuit has not so opined, but finding that the absence of a full hearing with cross-examination supports a claim for a violation of plaintiff's due process rights); *Univ. of Miss.,* 361 F. Supp. at 611–13 (in refusing to grant the university's motion to dismiss and thus declining to reject the Sixth Circuit's approach to cross-examination in *Baum,* the court found that plaintiff pleaded enough facts to permit discovery as to whether there was a procedural due process violation because, inter alia, the plaintiff was not permitted to cross-examine his accuser or other witnesses either directly or through written questions because none of them appeared at the hearing). District courts in the Sixth Circuit have also extended the holding in *Baum* from student disciplinary proceedings to the employment context. *See, e.g., Smock* v. *Bd. of Regents of Univ. of Mich.,* 353 F. Supp. 3d 651, 657 (E.D. Mich. 2018) (applying *Baum*'s cross-examination requirement to a university professor's pre-deprivation hearing for alleged misconduct); *Frost* v. *Univ. of Louisville,*

392 F. Supp. 3d 793, 804–06 (W.D. Ky. 2019) (same).

After reevaluating this issue, including cases decided both before and after the promulgation of the 2020 amendments, it is the Department's tentative position that the relevant case law does not require a postsecondary institution to provide for a live hearing with advisor-conducted cross-examination in all cases, at least as long as it provides another live method of determining credibility. As noted, the proposed regulations would permit a postsecondary institution to employ live, advisor-conducted cross-examination when applicable case law or other sources of law require that approach or the postsecondary institution uses its discretion to choose that approach. The Department further notes that each permissible option for evaluating the allegations and assessing credibility under the proposed regulations would require that the questions posed be answered live, whether in individual meetings with the decisionmaker or investigator or at a live hearing.

Scholarship on cross-examination. The preamble to the 2018 NPRM and 2020 amendments, as well as the *Baum* court, referred to case law describing cross-examination as the greatest legal engine ever invented for the discovery of truth. The Department recognizes, however, that while that statement is oft-repeated, notable research from the last several decades has called into question whether adversarial cross-examination is the most effective tool for truth-seeking in the context of sex-based harassment complaints involving students at postsecondary institutions.

In particular, there is growing evidence to suggest that ''adults who have been sexually victimized may be a particularly vulnerable group of witnesses overall,'' especially during cross-examination. Rachel Zajac & Paula Cannan, *Cross-Examination of Sexual Assault Complainants: A Developmental Comparison,* 16 Psychiatry, Psych., & L. S36, S38 (2009) (citations omitted). For example, sexual assault has been associated with low self-esteem and low self-confidence, which have been shown to increase a person's vulnerability to suggestion. *Id.* Adults who have been sexually victimized are also least likely to exhibit confidence, powerful speech, and perseverance in maintaining control of a verbal exchange, which are the attributes most favorable to adult witnesses. *Id.* (citations omitted).

In addition, studies have found that information-gathering approaches such as questions asked in individual meetings instead of during a live hearing (sometimes described as inquisitorial procedures) are more likely to produce the truth than adversarial methods like cross-examination. These studies ''suggested that inquisitorial procedures may result in the presentation of more accurate and less biased information.'' Mark R. Fodacaro et al., *Reconceptualizing Due Process in Juvenile Justice: Contributions from Law and Social Science,* 57 Hastings L.J. 955, 982, 982 n.165 (2006) (citing E. Allan Lind & Tom R. Tyler, *The Social Psychology of Procedural Justice* 25 (1988)); *see also* Christopher Slobogin, *Lessons from Inquisitorialism,* 87 S. Cal. L. Rev. 699, 711 (2014). Because non-adversarial information gathering approaches tend to reduce opportunities for bias, researchers have found that such methods are ''most likely to produce truth.'' John Thibaut & Laurens Walker, *A Theory of Procedure,* 66 Calif. L. Rev. 541, 547 (1978).

The Department recognizes that some courts, advocates, and legal scholars believe that advisor-conducted cross-examination is the most effective way, and in the view of some, the only way, to ensure the accuracy of witness testimony, especially in cases that hinge on credibility. After reevaluating the issue, however, including the case law and research discussed above, the Department's tentative position is that methods that require parties and witnesses to answer questions in a live format, other than advisor-conducted cross-examination during a live hearing, can provide an effective way to seek the truth in sex-based harassment cases involving postsecondary students and ensure that the parties have a meaningful opportunity to be heard. For this reason, to the extent credibility is in dispute and relevant to evaluating one or more allegations of sex-based harassment, proposed § 106.46(f)(1) would permit a postsecondary institution to have the decisionmaker ask the parties and witnesses relevant questions and follow-up questions, including questions challenging credibility. Proposed § 106.46(f)(1) would permit the decisionmaker to do this during individual meetings with the parties or at a live hearing. Proposed § 106.46(f)(1) would also allow each party to propose to the decisionmaker or investigator relevant questions and follow-up questions, including those challenging credibility that they want asked of any party or witness and have those questions asked, subject to the requirement in proposed § 106.46(f)(3), during individual meetings with the parties or at a live hearing, in addition to permitting any postsecondary institution that so chooses, to use advisor-conducted cross-examination. The Department's tentative view is that any benefit that adversarial cross-examination may have over other methods of live questioning is not sufficient to justify mandating that all postsecondary institutions permit adversarial cross-examination in every case, either as a matter of due process or fundamental fairness or of effectuating Title IX's nondiscrimination mandate, in light of the considerable costs imposed by adversarial cross-examination, particularly in the context of allegations of sex-based harassment.

As explained in the discussion of proposed § 106.46(f)(1), regardless of format, this credibility assessment, if needed to evaluate one or more allegations of sex-based harassment, would have to take place prior to the decisionmaker determining whether sex-based harassment occurred. The decisionmaker must determine whether a proposed question is relevant prior to the question being posed and explain any decision to exclude a question as not relevant. If a decisionmaker determines that a party's question is relevant and not otherwise impermissible, then the question must be asked; however, a postsecondary institution must not permit questions that are unclear or harassing of the party being questioned. A postsecondary institution would also retain discretion to impose other reasonable rules regarding decorum, provided they apply equally to the parties. The Department anticipates that the requirements in proposed § 106.46(f)(1) would provide an effective means for assessing credibility and seeking the truth while avoiding some of the deficiencies or drawbacks that may be associated with requiring advisor-conducted cross-examination in all sex-based harassment cases and for all types of postsecondary institutions. The Department notes that proposed § 106.46(e)(6)(i) would require a postsecondary institution to either provide the parties with equitable access to the relevant and not otherwise impermissible evidence or to the same investigative report that accurately summarizes this evidence. This evidence or investigative report would include a discussion of the evidence obtained through questioning of the parties and witnesses by the decisionmaker. In addition, although not required to do so, nothing in proposed § 106.46(f) would prohibit a postsecondary institution from compiling a transcript of questioning of

the parties and witnesses by the decisionmaker and providing a copy of the transcript to the parties.

Under proposed § 106.46(f)(1), a postsecondary institution would have discretion to structure its processes for enabling the decisionmaker to adequately assess the credibility of the parties and witnesses to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment as long as the process complies with the requirements set out in proposed § 106.46(f)(1) and (3). For example, some postsecondary institutions may decide to have the decisionmaker ask their questions and the parties' questions of any party and witnesses during individual meetings. Other postsecondary institutions may decide to hold a live hearing in which a decisionmaker poses their own questions and follow-up questions to the parties and also asks questions and follow-up questions of each party and witnesses that were proposed by the other party. In all instances, a postsecondary institution would not be permitted to have grievance procedures in which the questions and answers would be provided in writing. Although the discussion here refers to witnesses, the Department recognizes that not all grievance procedures will involve witnesses in addition to the parties.

Notwithstanding the research discussed above regarding the potential deficiencies of advisor-conducted cross-examination as a truth-seeking tool, some postsecondary institutions may view it as the most effective means to assess credibility in certain cases and may choose to use it or may be required to use it based on the jurisdiction in which they are located. To accommodate these postsecondary institutions, proposed § 106.46(f)(1) would permit a postsecondary institution to use advisor-conducted questioning at a live hearing to satisfy the requirement in proposed § 106.46(f)(1) regarding a process for assessing credibility. During this questioning, the party's advisor would be permitted to ask any party and any witnesses all relevant questions and follow-up questions, including those challenging credibility, subject to the requirements in proposed § 106.46(f)(3), which are discussed above.

When credibility is not in dispute. Courts, including the Sixth Circuit in *Baum,* have held that there are situations in which cross-examination is unwarranted. These include, for example, situations in which the respondent admits to engaging in the misconduct, in which a recipient reaches a decision based on evidence other than the complainant's statements, and in which the respondent waives their right to a hearing. *See, e.g., Doe* v. *Case W. Rsrv. Univ.,* 809 F. App'x 276, 281–82 (6th Cir. 2020) (noting that the Sixth Circuit has yet to decide whether the right to cross-examination exists in Title IX proceedings conducted by a private university when credibility is at issue and holding that the plaintiff waived any right to cross-examination when he stated that he did not want any witnesses and selected the sole administrator hearing that did not allow for the presentation of evidence or cross-examination of witnesses); *Baum,* 903 F.3d at 584 (explaining that if a student admits to engaging in misconduct cross-examination is unnecessary because there is little to be gained by adversarial questioning when the accused student has already confessed); *Plummer,* 860 F.3d at 775–76 (holding that accused students had no right to cross-examination when the defendant university did not rely on testimonial evidence from the alleged victim); *Winnick,* 460 F.2d at 549–50 (even assuming the right to confront witnesses may be essential in some disciplinary hearings, due process did not require cross-examination in this case, because, inter alia, credibility was not at issue because the plaintiff admitted to the crucial fact at issue in the case); *Doe* v. *Univ. of Neb.,* 451 F. Supp. 3d 1062, 1123 (D. Neb. 2020) (holding that while some courts have recently held that a state-college student facing expulsion for alleged sexual misconduct has the right under the Fourteenth Amendment to confront and cross-examine their accuser when credibility is material to the outcome, no such right exists when the accused admits to engaging in the misconduct); *Flor* v. *Univ. of N.M.,* 469 F. Supp. 3d 1143, 1153–54 (D.N.M. 2020) (holding that no right to cross-examination existed in this case because the university did not rely on the accuser's statements in concluding that the plaintiff violated university policy and instead relied on communications between the plaintiff and the accuser and plaintiff did not challenge the authenticity of those communications). In these situations, a recipient would not be required to implement its process required under proposed § 106.46(f)(1) for enabling the decisionmaker to adequately assess the credibility of the parties and witnesses because credibility is not in dispute and is not relevant to evaluating the allegations.

Removing the prohibition on statements not subject to cross-examination. On July 28, 2021, the United States District Court for the District of Massachusetts issued a decision in *Victim Rights Law Center et al.* v. *Cardona* vacating the language in current § 106.45(b)(6)(i) prohibiting a decisionmaker from relying on any statement of a party or witness who does not submit to cross-examination at a live hearing in reaching a determination regarding responsibility. 552 F. Supp. 3d 104, 134 (D. Mass. 2021), order clarified, No. 20–11104–WGY, 2021 WL 3516475, at *1 (D. Mass. Aug. 10, 2021), *appeals filed,* Nos. 21–1773, 21–1777, 21–1782, 21–1783, 21–1784, 21–1853 (1st Cir. 2021). The court found that the vacated language was arbitrary and capricious, concluding that the Department ''failed to consider the consequences of § 106.45(b)(6)(i)'s prohibition on statements not subject to cross-examination in conjunction with other challenged provisions.'' 552 F. Supp. 3d at 132. The court discussed that nothing in the 2020 amendments would prevent a respondent from working with the school to schedule the live hearing at an inconvenient time for third-party witnesses and the respondent may choose not to attend the hearing to avoid the possibility of self-incrimination, and the respondent may speak freely about the investigation to collect evidence or persuade other witnesses not to attend the hearing as long as this is not done in a ''tortious or retaliatory manner.'' *Id.* at 132–33. The court explained that when the prohibition on statements not subject to cross-examination is applied under such circumstances and a recipient applies the clear and convincing evidence standard, it is hard to ''imagine how a complainant reasonably could overcome the presumption of non-responsibility [in the current regulations] to attain anything beyond the supportive measures that he or she is offered when they first file the formal complaint.'' *Id.* at 133. The court further explained that it was striking down this prohibition not because this result is manifestly unreasonable, but because ''nothing in the administrative record demonstrates that the Department was aware of this result, considered its possibility, or intended this effect'' and ''the construction of the [2020 amendments] suggests that the Department failed even implicitly to recognize this result.'' *Id.* A party that the court gave leave to intervene has appealed the court's judgment vacating the language in current § 106.45(b)(6)(i) and plaintiffs have also appealed the court's judgment. Those appeals are currently

pending with the U.S. Court of Appeals for the First Circuit.

The Department proposes revisions to the language in current § 106.45(b)(6)(i) that was vacated by the U.S. District Court of Massachusetts. The Department recognizes that the language in current § 106.45(b)(6)(i) placing limitations on the decisionmaker's ability to consider statements not subject to cross-examination was vacated by the district court and is thus no longer part of the current regulations. The Department is concerned, however, that placing no limitations on the decisionmaker's ability to consider statements made by a party who does not submit to a credibility assessment could lead to manipulation by the parties. For example, if there were no limitations placed on the decisionmaker's ability to consider prior statements from parties who do not submit to a credibility assessment, a complainant could write an email to a friend and leave a voicemail for another friend detailing the events related to the alleged sex-based harassment. If the complainant refused to submit to a credibility assessment, the decisionmaker would be permitted to consider the email and voicemail for their truth, but the respondent would not have an opportunity to question the complainant, including to assess credibility. This same result could also occur if a respondent writes an email to a friend and leaves a voicemail for another friend detailing the events in question and then refuses to submit to a credibility assessment. Under proposed § 106.46(f)(4), if a party does not respond to questions related to their own credibility, the decisionmaker would be prohibited from relying on any statement of that party that supports that party's position. The Department's proposed language is intended to avoid situations like that described above in which a party could avoid responding to questions related to their own credibility and the decisionmaker would have to consider prior statements made by that party that support that party's position. It would apply when a party refuses to answer questions related to their own credibility either during the investigation in individual meetings with the decisionmaker or investigator or during the live hearing, if the postsecondary institution holds a live hearing. The Department would propose this change regardless of whether the district court's vacatur is ultimately upheld on appeal.

The Department also proposes incorporating language similar to current § 106.45(b)(6)(i) regarding inferences based on a party's or witness's absence from a live hearing or refusal to answer questions related to credibility into proposed § 106.46(f)(4). Under proposed § 106.46(f)(4), the decisionmaker would be prohibited from drawing an inference about whether sex-based harassment occurred based solely on a party's or witness's absence from a live hearing or refusal to respond to questions related to credibility, including a refusal to answer such questions during a live hearing.

Incorporation of Requirements From the 2020 Amendments

Live hearing logistics. As explained in the summary of proposed § 106.46(g), the Department proposes incorporating the requirement from current § 106.45(b)(6)(i) into proposed § 106.46(g) so that if a postsecondary institution chooses to conduct a live hearing under proposed § 106.46(g), it may conduct the live hearing with the parties physically present in the same geographic location, but at the postsecondary institution's discretion or upon the request of either party, it would conduct the live hearing with the parties physically present in separate locations with technology enabling the decisionmaker and parties to simultaneously see and hear the party or the witness while that person is speaking or communicating in another format. Participating from separate locations would include virtually participating from separate locations or participating while physically present but in separate rooms on the postsecondary institution's campus. The Department also proposes incorporating into proposed § 106.46(g) the requirement in current § 106.45(b)(6)(i) that a postsecondary institution create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. Nothing in the proposed regulations would prohibit a recipient from imposing rules that restrict the parties from creating their own recording. Proposed § 106.46(g) would not impose specific requirements regarding how a recipient provides the recording or transcript to the parties for inspection and review and it is up to each recipient to determine how to fulfill this requirement and whether to also provide a copy of the recording or transcript to the parties. As explained in the discussion of proposed § 106.45(b)(1), a recipient's grievance procedures must treat complainants promptly and equitably, which may require certain considerations when the parties, witnesses, or other hearing participants are persons with disabilities or persons with limited English proficiency. When conducting a live hearing, it may be necessary for a recipient to provide auxiliary aids and services to persons with disabilities who are participating in the hearing. In addition, it may be necessary for a recipient to provide language assistance services, such as translations or interpretation, for persons with limited English proficiency who are participating in the hearing.

Ability of the parties to propose questions and the recipient's obligation to make relevance determinations. Current § 106.45(b)(6)(ii) requires recipients that are elementary and secondary schools, and other recipients that are not postsecondary institutions to afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. As explained in the summary of proposed § 106.45(f)(3), proposed § 106.46(f)(3) would impose a similar obligation on postsecondary institutions by requiring them to allow each party to propose to the decisionmaker or investigator relevant and not otherwise impermissible questions that they want asked of any party or witness and have those questions subject to the requirements in proposed § 106.46(f)(3). Proposed § 106.46(f)(3) would include the requirement from current § 106.45(b)(6)(i) and (ii) that the decisionmaker determine whether a proposed question is relevant prior to the question being posed and explain any decision to exclude a question as not relevant.

Advisor-conducted questioning. When a postsecondary institution chooses to use advisor-conducted questioning at a live hearing, proposed § 106.46(f)(1)(ii) would incorporate the language from current § 106.45(b)(6)(i) requiring: (1) the recipient to permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility; (2) the decisionmaker to determine whether the proposed question is relevant and explain any decision to exclude a question as not relevant before a party or witness answers a question; and (3) the postsecondary institution to provide the party with an advisor of the postsecondary institution's choice, who may be but is not required to be an attorney, without charge to the party, for the purpose of advisor-conducted questioning if a party does not have an advisor who can ask questions on their behalf.

Relevance. Current § 106.45(b)(6)(i) and (ii) limit questions during advisor-conducted cross-examination and written cross-examination to those that are relevant and state that questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. Although the language in proposed § 106.46(f)(1) and (3) would not explicitly refer to the complainant's sexual predisposition or prior sexual behavior, the same limitations regarding those concepts would be incorporated into those proposed provisions. These limitations are explained in greater detail in the discussion of the proposed definition of ''relevant'' (§ 106.2) and the discussion of relevant evidence and evidence that is impermissible regardless of relevance in proposed § 106.45(b)(7).

Additional Clarifications in the Proposed Regulations

Questions that are unclear or harassing and other rules regarding decorum. Although the 2020 amendments do not address unclear or harassing questions, or rules of decorum in the regulatory text, the Department stated in the preamble to the 2020 amendments that a recipient may adopt rules of decorum and noted that a recipient is better positioned than the Department to adopt rules of decorum that are tailored to its educational community. *See* 85 FR 30319. The Department also stated that a recipient may prohibit advisors from questioning parties or witnesses in an abusive, intimidating, or disrespectful manner and may require a party to use a different advisor if the party's advisor refuses to comply with the school's rules of decorum. *See, e.g., id.* at 30319–20, 30324, 30331, 30342, 30361. For example, the Department explained that if a party's advisor of choice yells at others in violation of a school's rules of decorum, the school may remove the advisor and require a replacement. *See, e.g., id.* at 30320, 30324, 30342. The school has this authority even when the advisor is asking a question that is relevant to the hearing. If the manner in which an advisor attempts to ask the question is harassing, intimidating, or abusive (*e.g.,* advisor yells, screams, or approaches a witness in an intimidating manner), the preamble explained that a school may enforce a rule requiring that relevant questions must be asked in a respectful, non-abusive manner. *See id.* The Department further stated that nothing in the 2020 amendments prohibits a recipient from applying a rule that duplicative questions are irrelevant, or from imposing rules of decorum that require questions to be asked in a respectful manner as long as it applies those rules clearly, consistently, and equally to the parties. *See id.* at 30331.

The Department's tentative position is that it is important to explicitly require in the regulatory text that a postsecondary institution prohibit questions that are unclear or harassing of the party being questioned because a proceeding in which questions are unclear or harassing is not an equitable proceeding and not one likely to produce accurate information needed for evaluating the allegations of sex-based harassment and assessing credibility which impacts the postsecondary institution's ability to determine whether sex-based harassment occurred and effectuate Title IX's nondiscrimination mandate. A question would be unclear if it is vague or ambiguous such that it would be difficult for the decisionmaker or the party being asked to answer the question to discern what the question is about. For example, some of the key words in the question may have more than one meaning, or the period of time to which the question refers to may be unclear. Under the proposed regulations, a postsecondary institution would be permitted to request that the party or party's advisor rephrase any questions that do not comply with these requirements. Permitting a postsecondary institution to impose other reasonable rules of decorum as long as it applies them equally to the parties and their advisors is consistent with current § 106.45(b) and proposed § 106.45(i), which would permit a postsecondary institution to adopt additional provisions as part of its grievance procedures as long as they apply equally to the parties, and would also assist it in crafting procedures that are designed to accurately assess credibility and are also equitable for the parties. For these reasons, the Department included language in proposed § 106.46(f)(3) to make clear that a postsecondary institution must prohibit questions that are unclear or harassing of the party being questioned and to permit a postsecondary institution to impose other reasonable rules regarding decorum. In addition, when considering what other reasonable rules of decorum to impose, if any, a postsecondary institution should be aware of current § 106.6(d), which the Department is not proposing to revise. Current § 106.6(d) states that nothing in the Title IX regulations require a recipient to restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution.

Section 106.46(h) Determination of Whether Sex-Based Harassment Has Occurred

Current regulations: Section 106.45(b)(7) requires a recipient to issue a written determination regarding responsibility, applying the standard of evidence described in current § 106.45(b)(1)(vii). In this written determination, a recipient must include: identification of the allegations potentially constituting sexual harassment; a description of the procedural steps taken from the receipt of the formal complaint through the determination; findings of fact supporting the determination; conclusions regarding the application of the recipient's code of conduct to the facts; a statement of, and rationale for, the result as to each allegation including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies will be provided by the recipient to the complainant; and the recipient's procedures and permissible bases for appeal. Current § 106.45(b)(7) also requires that the recipient provide this written determination to the parties simultaneously; that the Title IX Coordinator is responsible for effective implementation of any remedies; and provides information about when the determination regarding responsibility becomes final.

Proposed regulations: The Department proposes reorganizing the requirements from the current regulatory provision at § 106.45(b)(7) into §§ 106.45(b)(2), 106.45(h) and 106.46(h), with strengthened protections for the parties and additional changes so that this provision is consistent with other revisions proposed throughout the regulations.

In addition to the requirements of proposed § 106.45(h), which would apply to all complaints of sex discrimination, postsecondary institutions would have to comply with proposed § 106.46(h) in the context of complaints of sex-based harassment involving a student complainant or student respondent. Proposed § 106.46(h) would remove the current

reference to the postsecondary institution's code of conduct and impose additional requirements regarding written communications with the parties. A postsecondary institution would have to provide a written determination simultaneously to the parties. The written determination would have to include a description of the alleged sex-based harassment; information about the policies and procedures the postsecondary institution used to evaluate the allegations; the decisionmaker's evaluation of the relevant evidence and determination as to whether sex-based harassment occurred; whether the decisionmaker has found that sex-based harassment occurred; any disciplinary sanctions to be imposed on the respondent; whether remedies other than the imposition of disciplinary sanctions will be provided to the complainant, and, to the extent appropriate, other students identified to or by the postsecondary institution to be experiencing the effects of the sex-based harassment; and the postsecondary institution's procedures for an appeal.

Reasons: Following an investigation as set out in proposed § 106.46(e), (f), and (g), a postsecondary institution would have to provide the determination of whether sex-based harassment occurred in writing to the parties simultaneously.

The Department also proposes revisions to improve overall clarity and to make § 106.46(h) consistent with other changes in the regulations. Proposed § 106.46(h)(1)(ii) would clarify that a postsecondary institution must include information about the policies and procedures that it used to evaluate the allegations in the complaint. The proposed regulations also would clarify at § 106.46(h)(1)(iii) that the written determination must provide the decisionmaker's evaluation of relevant evidence and determination as to whether sex-based harassment occurred. This would consolidate and simplify the current regulations' separate requirements at § 106.45(b)(7)(ii)(C) and (E) that the postsecondary institution provide findings of fact supporting its determination and provide a statement of, and the rationale for, the result as to each allegation, including the postsecondary institution's determination regarding responsibility. The Department anticipates that this consolidated requirement would provide the parties with a more useful explanation of how a recipient reached its determination than as required under the current regulations, and would render unnecessary the current requirement to provide the ''conclusions regarding the application of the recipient's code of conduct to the facts,'' at § 106.45(b)(7)(ii)(D).

Further, the Department proposes that providing this determination in writing regarding sex-based harassment is appropriate in light of the particular circumstances of postsecondary students, as explained in the discussion of proposed § 106.46 (Section II.F.2.c), and the requirement that a recipient not discriminate based on sex in its education program or activity.

Section 106.46(i) Appeals

Current regulations: Section 106.45(b)(8) requires a recipient to offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein on the bases of procedural irregularity, new evidence not reasonably available at the time, or conflict of interest or bias on the part of the Title IX Coordinator, investigator, or decisionmaker.

Proposed regulations: The Department proposes preserving current § 106.45(b)(8) at proposed § 106.46(i), including the clarification that an appeal must be offered from a postsecondary institution's dismissal of any complaint or any allegations in a complaint. Proposed § 106.46(i) would state that, in addition to complying with the requirements in proposed § 106.45(d)(3), a postsecondary institution must offer the parties an appeal from a determination that sex-based harassment occurred, and from a postsecondary institution's dismissal of a complaint or any allegations therein. Proposed § 106.46(i) would provide required grounds for appeal: (i) procedural irregularity that would change the determination in the matter; (ii) new evidence that would change the outcome of the matter and was not reasonably available at the time the recipient dismissed the complaint or determined that sex-based harassment occurred; and (iii) conflict of interest or bias for or against complainants or respondents or the individual complainant or respondent by the Title IX Coordinator, investigator, or decisionmaker that would change the outcome of the matter. Consistent with the current regulations, if a postsecondary institution were to offer an appeal on additional bases, proposed § 106.46(i)(2) would require that postsecondary institution to offer that right to appeal equally to the parties and ensure those additional bases are available to all parties. In addition, the Department proposes to require the postsecondary institution to comply in writing with the requirements in proposed § 106.45(d)(3)(i), (iv), and (v).

Reasons: It is the Department's tentative view that the current regulatory text should be retained concerning postsecondary institutions in grievance procedures involving postsecondary students and concerning the required bases for appeal, with a small number of revisions that reflect other proposed changes to the Title IX regulations. Further, as discussed in proposed § 106.45(d)(3), this right to appeal also requires robust protections such as training for appeal decisionmakers on how to serve impartially, including by avoiding bias, conflicts of interest, and prejudgment of the facts at issue; strict separation of the appeal decisionmakers from those who investigated and adjudicated the underlying case to reinforce independence and neutrality; and a reasonable, equivalent opportunity for the parties to participate in the appeals process.

The proposed regulations would also maintain, for postsecondary students in proposed § 106.46(i), the right to appeal to a different decisionmaker as an additional safeguard designed to protect the integrity of the process. It is the Department's current position that appeals can be an ''important mechanism to reduce the possibility of unfairness or to correct potential errors made in the initial responsibility determination.'' 85 FR 30397. Proposed § 106.46(i) would provide the same grounds for appeal in cases involving postsecondary students as are set out in the current regulations on appeals. More specifically, under the proposed regulations, postsecondary institutions in cases involving one or more students must offer the right to appeal on any of the following bases that may have affected the postsecondary institution's determination: (i) a procedural irregularity that would have altered the determination of whether sex-based harassment occurred; [8] (ii) new evidence that was not reasonably available at the time the determination of whether sex-based harassment occurred or dismissal was made; or (iii) if the Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally, or for or against the individual complainant or respondent. Nothing in these proposed

[8] As discussed in the 2020 amendments, ''if a party disagrees with a decisionmaker's relevance determination, the party has the opportunity to challenge the relevance determination on appeal'' on the basis of procedural irregularity if the relevance determination affected the outcome. 85 FR 30349 n.1340.

regulations would preclude a recipient from offering additional grounds for appeal, as long as they are offered equally to all the parties.

The Department proposes substituting ''complaint'' for ''formal complaint'' because the proposed Title IX regulations no longer use the term ''formal complaint,'' as explained in the discussion of the proposed definition of ''complaint'' (§ 106.2).

The Department also proposes referring to ''the parties'' rather than ''both parties'' because there may be instances in which complaints are consolidated and there is more than one complainant or respondent in a single investigation and hearing.

Lastly, the Department proposes requiring that postsecondary institutions fulfill the following requirements by communicating with the parties in writing: notifying the parties when an appeal is filed; providing the parties with a reasonable and equivalent opportunity to make a statement supporting or challenging the outcome; and notifying all parties of the result of the appeal, and the rationale for the result. It is the Department's tentative view that preserving the requirements that a postsecondary institution must comply with these provisions in writing is appropriate in light of the particular circumstances of postsecondary students, as explained in the discussion of proposed § 106.46 (Section II.F.2.c), and the requirement that a recipient not discriminate based on sex in its education program or activity.

Section 106.46(j) Informal Resolution

Current regulations: Section 106.45(b)(2)(A) requires a recipient, upon receipt of a formal complaint, to provide written notice of any informal resolution process to the parties who are known. Current § 106.45(b)(9) also requires a recipient to provide a written notice to the parties disclosing the following: the allegations; the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; the fact that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process procedures with respect to the formal complaint; and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

Proposed regulations: The Department proposes preserving the requirements currently in § 106.45(b)(9). Proposed § 106.44(k) would set out the requirements a recipient would have to follow if it chooses to offer an informal resolution process. Proposed § 106.46(j) would state that if a postsecondary institution offers or provides the parties to the grievance procedures in proposed §§ 106.45 and 106.46, with an informal resolution process under proposed § 106.44(k), the postsecondary institution must inform the parties in writing of the offer and of their rights and responsibilities in the informal resolution process, and must provide the information required under proposed § 106.44(k)(3) in writing.

Reasons: The Department's tentative view is that a recipient should continue to retain the discretion to offer the parties to a sex discrimination complaint, including sex-based harassment complaints, an alternative option for resolving such complaints. As explained in greater detail in the discussion of proposed § 106.44(k), the Department recognized in the preamble to the 2020 amendments that an informal resolution process could provide greater flexibility to recipients in serving their educational communities. 85 FR 30403. Further, the Department's current view continues to be that a recipient is in the best position to determine whether an informal resolution process would be a potential good fit for the facts and circumstances of a particular complaint.

Finally, the Department proposes that preserving the requirements that postsecondary institutions must comply with these provisions in writing is appropriate in light of the particular circumstances of postsecondary students, as explained in the discussion of proposed § 106.46 (Section II.F.2.c), and the requirement that a recipient not discriminate based on sex it its education program or activity.

I. Assistant Secretary Review

Section 106.47 Assistant Secretary

Current regulations: Section 106.44(b)(2) states that the Assistant Secretary will not deem a recipient's determination regarding responsibility to be evidence of deliberate indifference by the recipient, or otherwise evidence of discrimination under Title IX, solely because the Assistant Secretary would have reached a different determination based on an independent weighing of the evidence.

Proposed regulations: The Department proposes making minor revisions to the language in current § 106.44(b)(2) and moving it to proposed § 106.47.

Reasons: For clarity, the Department proposes moving the language in current § 106.44(b)(2), which concerns the Assistant Secretary's review of a recipient's determination of whether sex-based harassment occurred, to proposed § 106.47. Proposed § 106.44 would set out actions that a recipient must take to operate its education program or activity free from sex discrimination. Because proposed § 106.47 would describe the Assistant Secretary's approach to reviewing sex-based harassment complaints rather than describe requirements for a recipient, the Department proposes to move current § 106.44(b)(2) to proposed § 106.47. Current § 106.44(b)(2) is limited to formal complaints of sexual harassment and the Department similarly proposes limiting the application of proposed § 106.47 to complaints of sex-based harassment. The Department continues to believe that as stated in the preamble to the 2020 amendments, limiting this provision to sex-based harassment complaints ''serves the interests of complainants and respondents in resolving [sex-based] harassment allegations, by limiting the circumstances under which a 'final' determination reached by the recipient may be subject to being set[ ] aside and requiring the parties to go through the grievance process for a second time.'' 85 FR 30221. In addition, the Department notes that as explained in the preamble to the 2020 amendments, violations of these proposed regulations may result in a recipient's determination whether sex-based harassment occurred being set aside by OCR, but determinations will not be overturned ''solely'' because OCR would have weighed the evidence differently. *Id.*

III. Pregnancy and Parental Status

Statute: Title IX states that ''[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance,'' 20 U.S.C. 1681(a), but does not specifically address discrimination related to pregnancy or parental status. The Department has the authority to ''effectuate the provisions'' of the Title IX prohibition on discrimination on the basis of sex in education programs or activities receiving Federal financial assistance, specifically under 20 U.S.C. 1682 and generally under 20 U.S.C. 1221e–3 and 3474.

A. The 1975 Title IX Regulations Related to Pregnancy and Parental Status

As explained in the Background discussion of the History of Title IX's Nondiscrimination Mandate and Related Regulations, the regulations pertaining to pregnancy and parental status for students and employees have remained consistent since HEW first promulgated them in 1975. The regulations give effect to Title IX's prohibition on sex discrimination in a recipient's education program or activity in two ways. First, the Department's Title IX regulations prohibit sex discrimination based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, as well as sex-based distinctions based on parental, family, or marital status. 34 CFR 106.21(c)(1) and (2), 106.40(a), 106.40(b)(1), 106.57(a)(1), and 106.57(b). This prohibition ensures that persons are not denied or limited in their access to a recipient's program or activity because of sex-based stereotypes associated with pregnancy, parenting, or marital status. Second, current §§ 106.21(c)(3), 106.40(b)(4), and 106.57(c) require that a recipient treat a student or employee's pregnancy or related conditions in the same manner with respect to certain matters as any other temporary disability. The regulations also require a recipient to take proactive steps, such as providing for leave and reinstatement for pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, without the need to show comparable treatment with persons with temporary disabilities. 34 CFR 106.40(b)(5), 106.57(d). These provisions in the current regulations underscore that Title IX requires a variety of implementation strategies if it is to serve as a ''strong and comprehensive measure,'' 118 Cong. Rec. at 5804 (statement of Sen. Bayh), to ''achieve[ ] . . . the objective[ ]'' of eliminating sex discrimination in federally subsidized education programs and activities under 20 U.S.C. 1682, *id.* at 5803.

B. Need for Clarification Regarding Protections Because of Pregnancy and Parental Status

The Title IX regulations regarding pregnancy and related conditions have remained static for nearly a half century. In that time, much has been learned about what appropriate standards are necessary to afford students and employees the ability to learn and work while pregnant or experiencing pregnancy-related conditions, and about what is necessary to ensure that such persons are not subject to discrimination on the basis of these conditions. As explained in greater detail in the discussion of the specific proposed regulations, the Department heard feedback from stakeholders through the June 2021 Title IX Public Hearing and in meetings held in 2022 under Executive Order 12866, after the NPRM was submitted to OMB, that revisions to the Department's Title IX pregnancy regulations are necessary to give effect to the statute's nondiscrimination mandate in the contemporary educational context. Several stakeholders told the Department that the regulations are not sufficient to ensure full access to educational and employment opportunities for students and employees who are pregnant, experiencing pregnancy-related conditions, or who have been pregnant. They requested that the Department address forms of discrimination based on pregnancy and related conditions that are not currently covered explicitly by the regulations, such as discrimination based on past pregnancy and medical conditions related to pregnancy and childbirth, including lactation, and clarifying a recipient's obligation to provide reasonable modifications to students because of pregnancy or related conditions. Stakeholders argued that students generally may not be aware of their rights and urged therefore that employees need better training in how to support students who are pregnant or experiencing pregnancy-related conditions. Further, stakeholders stressed that when simple modifications such as leave for childbirth and recovery or intermittent absences for lactation were not provided, students could face partial or total exclusion from education and a loss of future economic stability. They also asked that the Department strengthen its overall nondiscrimination protections for discrimination related to parental status, which is a particular issue at the postsecondary and graduate level, where education involves the provision of research projects, teaching assistance opportunities, and professional development opportunities often denied to mothers. Overall, stakeholders asked that the Department take steps to ensure that students are not denied access to a recipient's education program or activity because of pregnancy or a related condition, or due to sex discrimination based on parental status, to prevent students from being forced to choose between their children and their education.

Discrimination against students and employees who are pregnant or experiencing pregnancy-related conditions, in the Department's experience, often reflects sex discrimination, whether based on ''mutually reinforcing stereotypes'' about the roles of men and women, *Nevada Dep't of Hum. Res.* v. *Hibbs,* 538 U.S. 721, 736 (2003), the failure to accommodate conditions associated with women as effectively as those associated with men, *see id.* at 730–34, or otherwise. Importantly, this sort of discrimination can result not only from animus, but also from sex-based indifference to the needs of this student and employee population. *Cf. Alexander* v. *Choate,* 469 U.S. 287, 295–97 (1985) (stating that disability-based discrimination is ''most often the product, not of invidious animus, but rather of thoughtlessness and indifference—of benign neglect'' and thus that discrimination can include a failure to accommodate). In the Department's view, a policy that presents obstacles to the ability of a student or employee who is pregnant, lactating, or experiencing other pregnancy-related conditions to access a recipient's educational program or activity may constitute such discrimination under Title IX. Moreover, precisely because it is difficult to specify the counterfactual—how accommodating would the school have been if the person requesting an accommodation had done so for a condition associated with men rather than women—sex-based discrimination regarding pregnancy and related conditions will often take the form of ''subtle discrimination that may be difficult to detect on a case-by-case basis.'' *Hibbs,* 538 U.S. at 736. To prevent such discrimination and to ensure that pregnancy and related conditions are not the vector through which sex becomes a barrier to a student's or employee's participation in a recipient's education program or activity, proactive measures are necessary to ensure that a recipient affords students and employees who are pregnant or experiencing pregnancy related conditions full access throughout their pregnancy and recovery. To address these concerns, the Department now believes that its proposed regulations are necessary and appropriate to fully effectuate Title IX's nondiscrimination guarantee for both students and employees. *See* 20 U.S.C. 1682.

C. Other Relevant Statutes and Agency Interpretations

Although the proposed regulations are exclusively for the purpose of implementing Title IX, the Department notes that the treatment of pregnancy-related discrimination under other statutes enacted since 1975 confirms a general understanding by Congress that pregnancy-based discrimination is a form of sex discrimination and provides additional context for understanding how to eliminate discrimination based on pregnancy or related conditions. For example, in 1978, three years after the Department published its Title IX regulations, Congress passed the Pregnancy Discrimination Act (PDA), which amended Title VII's prohibition on sex discrimination to prohibit employers from discriminating against employees on the basis of pregnancy, childbirth, or related medical conditions. 42 U.S.C. 2000e(k). The PDA also requires that women affected by pregnancy, childbirth, or related medical conditions be treated the same as other persons not so affected but similar in their ability or inability to work. *Id.*

The fact that Congress did not amend Title IX's definition of ''sex'' to explicitly include pregnancy, as it did for Title VII in 1978, does not signal Congress's intent to exclude pregnancy coverage under Title IX. As articulated by the district court in *Conley* after recounting the relevant legislative history, ''Congress passed the Pregnancy Discrimination Act in direct response to a Supreme Court opinion, [*General Electric Co.* v. *Gilbert,* 429 U.S. 125 (1976),] that had substantively misinterpreted Title VII.'' *Conley,* 145 F. Supp. 3d at 1084–85 (''Although it is true that Congress has never amended Title IX's definition of sex to explicitly include pregnancy, the Court is not persuaded that this fact signals Congress's intent on the matter.''). In contrast, there was no corresponding Title IX-related Supreme Court opinion that required Congress to respond. *Id.* at 1083–85 (stating that Congress delegated much less authority to the EEOC to promulgate the regulation considered in *Gilbert* than it did to the Department to promulgate 34 CFR 106.40, and holding that the Department's interpretation was entitled to deference under the standard set out in *Chevron, U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837, 844 (1984)).

Courts have considered the scope of the term ''related medical conditions'' under the PDA, particularly in connection with the issue of lactation. In 2013, for example, the U.S. Court of Appeals for the Fifth Circuit held that under the PDA, lactation is a medical condition related to pregnancy, explaining that ''[i]t is undisputed . . . that lactation is a physiological result of being pregnant and bearing a child'' and the definition of ''medical conditions'' includes physiological conditions. *Equal Emp. Opportunity Comm'n* v. *Hous. Funding II, Ltd.,* 717 F.3d 425, 428–29 (5th Cir. 2013). In 2017, the U.S. Court of Appeals for the Eleventh Circuit followed suit, holding that ''lactation is a related medical condition and therefore covered under the PDA.'' *Hicks* v. *City of Tuscaloosa,* 870 F.3d 1253, 1259 (11th Cir. 2017).

In June 2015, the EEOC issued enforcement guidance on pregnancy discrimination and related issues, which clarified that Title VII, as amended by the PDA, prohibits discrimination based on current pregnancy, past pregnancy, potential or intended pregnancy, and medical conditions related to pregnancy or childbirth. 2015 EEOC Pregnancy Guidance. The 2015 EEOC Pregnancy Guidance further emphasized that ''[b]ecause lactation is a pregnancy-related medical condition, less favorable treatment of a lactating employee may raise an inference of unlawful discrimination.'' *Id.* The 2015 EEOC Pregnancy Guidance stated that:

> To continue producing an adequate milk supply and to avoid painful complications associated with delays in expressing milk, a nursing mother will typically need to breastfeed or express breast milk using a pump two or three times over the duration of an eight-hour workday. An employee must have the same freedom to address such lactation-related needs that she and her co-workers would have to address other similarly limiting medical conditions. For example, if an employer allows employees to change their schedules or use sick leave for routine doctor appointments and to address non-incapacitating medical conditions, then it must allow female employees to change their schedules or use sick leave for lactation-related needs under similar circumstances.

Id. Although the 2015 EEOC Pregnancy Guidance and related court cases interpreting the PDA are based on Title VII, not Title IX, the Department believes that they provide relevant background because both statutes long have been understood to prohibit pregnancy discrimination. Thus, Title VII and its application, including by the EEOC, provide a persuasive perspective for the Department's understanding of what may constitute pregnancy discrimination in modern society. Moreover, courts often rely on interpretations of Title VII to inform interpretations of Title IX, and both laws apply to employees in the educational context. *See, e.g., Franklin,* 503 U.S. at 75; *Jennings,* 482 F.3d at 695; *Frazier,* 276 F.3d at 66; *Gossett,* 245 F.3d at 1176.

Like the PDA, protections in the Affordable Care Act (ACA) also reflect the types of supports breastfeeding employees need to participate fully in their employment. The ACA amended Section 7 of the Fair Labor Standards Act (FLSA) to require employers to provide reasonable break times and a private place, other than a bathroom, for employees covered under Section 7 of the FLSA who are breastfeeding to express milk for one year after a child's birth. 29 U.S.C. 207(r)(1). The space must be ''shielded from view and free from intrusion from coworkers and the public.'' *Id.* DOL explained in a fact sheet that the space must be ''functional'' and ''available when needed'' because ''[t]he frequency of breaks needed to express milk as well as the duration of each break will likely vary.'' U.S. Dep't of Labor, Fact Sheet #73: Break Time for Nursing Mothers under the FLSA (Apr. 2018), *https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers.* Under the ACA/FLSA, a temporary or converted space is sufficient provided that the space is available when needed, shielded from view, and free from any intrusion from co-workers and the public. *Id.* The Department finds these statutes informative of how a recipient can ensure that students and employees can continue to access the recipient's education program or activity while experiencing a pregnancy-related condition such as lactation. In addition, the nondiscrimination regulatory provisions of the WIOA, which are enforced by DOL,[9] include a section obligating WIOA, Title I-financially assisted programs, activities, training, and services to refrain from discrimination based on pregnancy, childbirth, or related medical conditions, including childbearing capacity, as a form of sex discrimination. 81 FR 87130, 87221–22 (Dec. 2, 2016) (codified at 29 CFR 38.8), *https://www.govinfo.gov/content/pkg/FR-2016-12-02/pdf/2016-27737.pdf.* The WIOA nondiscrimination regulations contain a non-exhaustive list of examples of related medical conditions, including but not limited to lactation; disorders directly related to pregnancy (for example, preeclampsia, placenta previa, and gestational diabetes) and

[9] DOL's Civil Rights Center enforces Section 188 of WIOA. Section 188 of WIOA in pertinent part, incorporates the prohibitions on discrimination in programs and activities that receive Federal financial assistance under certain civil rights laws, including Title VI, Title IX, and Section 504.

other symptoms such as back pain; complications that require bed rest; and the after-effects of a delivery. *Id.* at 87222. In the preamble to the final rule, DOL explained that the regulations set out the standards that it will apply in enforcing the prohibition on pregnancy discrimination, and that these standards are consistent with Title IX, as well as with Title VII as amended by the PDA. *Id.* at 87134.

Finally, with respect to parental status, Executive Order 13152 states that to provide for a uniform policy for the Federal government's efforts to prohibit discrimination based on a person's parental status, ''status as a parent'' should be understood to refer to ''the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is: (a) a biological parent, (b) an adoptive parent, (c) a foster parent, (d) a stepparent, (e) a custodian of a legal ward, (f) in loco parentis over such individual, or (g) actively seeking legal custody or adoption of such an individual.'' *Executive Order 13152 on Further Amendment to Executive Order 11478, Equal Employment Opportunity in Federal Government,* E.O. 13152, 65 FR 26115 (May 2, 2000), *http://govinfo.gov/content/pkg/WCPD-2000-05-08/pdf/WCPD-2000-05-08-Pg977.pdf*. Executive Order 13152 authorized the U.S. Office of Personnel Management to develop guidance on its provisions. *Id.* The scope of the Executive Order's definition of ''status of a parent'' is informative for interpreting the Department's longstanding Title IX regulations regarding sex discrimination based on parental status, as it illuminates the Federal government's recognition of the many types of parents beyond biological parents.

Against this backdrop, and after reweighing the relevant facts and circumstances, including a review of other civil rights laws that prohibit discrimination based on sex, the Department proposes revising its Title IX regulations related to pregnancy and related conditions, as well as sex discrimination related to marital, parental, and family status, to give greater effect to Title IX's nondiscrimination mandate within the educational context. The Department's current view is that in light of Title IX's focus on eliminating sex discrimination for all students and employees, it is necessary to strengthen and clarify the Department's regulatory protections for students and employees who are pregnant or experiencing pregnancy-related conditions, as well as those that prevent sex discrimination related to marital, parental, and family status.

D. Revised Definitions

Section 106.2 Definition of ''pregnancy or related conditions''

Current regulations: The current regulations do not define the term ''pregnancy and related conditions.'' However, with respect to students, current § 106.40(b) uses that term as a section title. Current § 106.21(c)(2) prohibits discrimination against applicants for admission on the basis of ''pregnancy, childbirth, termination of pregnancy, or recovery therefrom'' and states that a recipient must treat ''disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom'' in the same manner and under the same policies as any other temporary disability. Current § 106.40(b)(1) also prohibits discrimination against a student on the basis of ''pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.'' With respect to employees, current § 106.57(b) and (d) prohibits discrimination against an employee on the basis of ''pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom''; states that ''any temporary disability resulting therefrom'' must be treated as any other temporary disability; and specifies that those situations must be used as a justification for leave. Finally, current § 106.51(b)(6) states that the subpart regarding employees applies to ''granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave.''

Proposed regulations: The Department proposes adding a definition of the term ''pregnancy or related conditions'' at proposed § 106.2. The Department proposes defining ''pregnancy or related conditions'' as:

(1) Pregnancy, childbirth, termination of pregnancy, or lactation;

(2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or their related medical conditions.

Reasons: The Department's tentative view is that the current regulations may be misconstrued as leaving gaps in coverage of discrimination based on ''pregnancy,'' ''related conditions,'' or ''recovery therefrom'' because the regulations do not clearly define those terms. The proposed changes would clarify a recipient's obligations under Title IX to students and employees who are pregnant or experiencing pregnancy-related conditions to ensure full implementation of Title IX's nondiscrimination requirement. For example, the current regulations do not specify the status of medical conditions that are related to or caused by pregnancy, childbirth, termination of pregnancy, loss of pregnancy, or lactation but that are not necessarily related to ''recovery'' from pregnancy. These include a variety of common conditions including, for example, gestational diabetes, preeclampsia, hyperemesis gravidarum (*i.e.,* severe nausea and vomiting), mastitis, and many others. The proposed definition would explicitly include related medical conditions. Finally, the proposed regulations would clarify that discrimination based on lactation is covered by Title IX's prohibition on discrimination based on pregnancy-related conditions.

Discrimination based on any of these conditions and situations may present serious impediments to, and can lead to loss of, learning or employment for students and employees seeking to access a recipient's education program or activity while at the same time managing health impacts of pregnancy or related conditions. The proposed definition would more fully implement Title IX by clarifying that Title IX covers discrimination based on medical conditions related to or caused by pregnancy, childbirth, termination of pregnancy, or lactation, even if they are not related to ''recovery from pregnancy.''

Because the Department's Title IX regulations have provided important protections for students and applicants against discrimination in access to educational opportunities based on recovery from pregnancy, childbirth, and termination of pregnancy since they were first promulgated in 1975, the Department proposes clarifying that Title IX's scope of coverage includes discrimination based on recovery from related medical conditions as well.

The Department's proposed definition would remove the term ''false pregnancy,'' which appears in current §§ 106.40(b)(1), 106.40(b)(4) and (5), 106.51(b)(6), and 106.57(b) through (d). The Department's current view is that the meaning of this term is unclear in the contemporary context and could bear multiple interpretations, including a pregnancy that is suspected, but not confirmed; a pregnancy that is falsely confirmed; or another medical condition that is clinically similar to pregnancy. To eliminate confusion and uncertainty,

the Department proposes interpreting ''pregnancy'' in proposed § 106.2 to encompass a student's or employee's belief about either the student's or employee's own pregnancy or someone else's. For example, if a student takes a pregnancy test that shows a positive test result, tells the recipient about the pregnancy, and the recipient then refuses to allow the student to participate in the student council based on the student's pregnancy, the student would be protected from discrimination under this proposed definition even if, later, the student learned that the pregnancy test result was a false positive. Likewise, if an administrator believes—based on external physical indicators and a report from a colleague—that a professor is pregnant and assigns the professor fewer classes because of this, the professor would also be protected from discrimination under this proposed definition regardless of whether the professor was pregnant.

Section 106.2 Definition of ''Parental Status''

Current regulations: None. Current §§ 106.21(c)(1), 106.37(a)(3), 106.40(a), and 106.57(a)(1) prohibit sex-based distinctions on the basis of ''parental status'' pertaining to students and applicants for admission, but do not define that term.

Proposed regulations: The Department proposes adding a definition of the term ''parental status'' at § 106.2, as used in proposed §§ 106.21(c)(2)(i), 106.40(a), and 106.57(a)(1), and current § 106.37(a)(3). The Department proposes defining ''parental status'' as the status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

(1) A biological parent;

(2) An adoptive parent;

(3) A foster parent;

(4) A stepparent;

(5) A legal custodian or guardian;

(6) In loco parentis with respect to such a person; or

(7) Actively seeking legal custody, guardianship, visitation, or adoption of such a person.

Reasons: As explained in the Background discussion of the History of Title IX's Nondiscrimination Mandate and Related Regulations, the Department has prohibited sex discrimination related to parental status since 1975. The Department recognizes that sex stereotypes about who bears responsibility for raising children are still common and may affect student- and employee-parents in accessing educational opportunities even though TitleIX has long prohibited sex discrimination based on parental status. To provide clarity regarding this protection for recipients and others given the absence of a definition in the current regulations, the Department proposes adding a definition of ''parental status'' that would apply to proposed §§ 106.21(c)(2)(i), 106.40(a), and 106.57(a)(1), and current § 106.37(a)(3), the only four provisions of the proposed regulations that reference different treatment based on sex related to the parental status of applicants for admission or employment, students, and employees. The proposed definition would specify that a recipient must not discriminate against students, employees, or applicants for admission or employment who have caregiving responsibilities for others based on the status of being a biological or adoptive parent, guardian, foster parent, stepparent, legal custodian, or in loco parentis, or those who are actively seeking legal custody, adoption, visitation, or guardianship. This proposed change is informed by the definition of ''status as a parent'' in Executive Order 13152, which prohibits discrimination in Federal employment based on an individual's status as a parent. As noted in the discussion of Other Relevant Statutes and Agency Interpretations (Section III.C), that Executive Order is informative background as to how Federal agencies should understand the concept of parental status in light of the various configurations of families.

E. Admissions

Section 106.21 Admissions

Current regulations: The section heading is ''Admission.''

Proposed regulations: The Department proposes changing this section heading to ''Admissions.''

Reasons: The proposed section heading would align with the section heading at current § 106.15.

Section 106.21(a) Admissions—Status Generally

Current regulations: The section heading is ''General.''

Proposed regulations: The Department proposes changing this section heading to ''Status generally.'' As described in the discussion of Outdated Regulatory Provisions (Section VI), the Department also proposes removing references to §§ 106.16 and 106.17 from this paragraph because those sections are no longer operative.

Reasons: The proposed section heading would more accurately describe the content of the section and would align with proposed §§ 106.40(a) and 106.57(a).

Section 106.21(c) Parental, Family, or Marital Status; Pregnancy or Related Conditions

Current regulations: Section 106.21(c)(1) prohibits a recipient from treating students or applicants for admission differently based on sex in relation to their ''actual or potential parental, family, or marital status.'' It also prohibits discrimination and exclusion on the basis of ''pregnancy, childbirth, termination of pregnancy, or recovery therefrom,'' and requires pregnancy-related disabilities to be treated in the same manner as other temporary disabilities or conditions. Finally, current § 106.21(c)(4) prohibits pre-admission inquiries regarding marital status and limits inquiries as to sex.

Proposed regulations: The Department proposes revisions to clarify the scope of current § 106.21(c), make this section consistent with related provisions at proposed § 106.40, and enhance readability. Specifically, the Department proposes to:

- Revise the section heading to ''Parental, family, or marital status; pregnancy or related conditions'';
- Reorganize the section by separating items that require or prohibit certain actions by recipients;
- Replace the term ''disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom'' with ''pregnancy or related conditions or any temporary disability resulting therefrom'';
- Clarify that the scope of coverage includes ''past'' parental, family, or marital status;
- Clarify that the scope of coverage includes ''current, potential, or past pregnancy or related conditions'';
- Replace ''rule'' with ''policy, practice, or procedure'';
- Replace ''apply'' with ''adopt or apply'';
- Replace ''actual'' with ''current'';
- Delete ''exclude'' and ''excludes''; and
- Replace ''A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part'' with ''A recipient may ask an applicant to self-identify their sex, but only if this question is asked of all applicants and if the response is not used as a basis for discrimination prohibited by this part.''

Reasons: Changes for clarity, consistency, and readability. The Department proposes revising the section heading for proposed § 106.21(c) to better reflect the content of the subsection. The Department also proposes replacing ''shall'' with ''must'' and reorganizing the section by dividing the ''must'' from the ''must not'' provisions for better readability. In addition, the Department proposes replacing the term ''pregnancy, childbirth, termination of pregnancy, or recovery therefrom'' with ''pregnancy or related conditions'' to align with the proposed definition of ''pregnancy or related conditions'' in proposed § 106.2.

Changes to scope of coverage. The Department proposes replacing ''actual'' with ''current'' in proposed § 106.21(c)(2)(ii). The Department proposes making this minor change throughout the regulations at proposed §§ 106.21(c) and 106.40 to add clarity and consistency to the regulations. Because the Department's proposed regulations would cover perceived pregnancy under the definition of ''pregnancy or related conditions'' in proposed § 106.2, the Department now believes that ''actual'' may cause confusion and be unduly limiting. ''Current'' would include the period of reasonable belief of pregnancy or related conditions. The Department further proposes clarifying that the scope of coverage in proposed § 106.21(c)(2)(ii) includes ''current, potential, or past pregnancy or related conditions'' to more fully address sex discrimination facing applicants at various points. This change would be consistent with similar proposed revisions to scope of coverage at proposed §§ 106.40(b)(1) and 106.57(b) pertaining to students and employees, respectively. Likewise, the Department proposes adding § 106.21(c)(2)(i) to clarify that the scope of coverage includes past parental, family, or marital status. This addition would make clear that prohibited sex discrimination includes discrimination based on sex related to a previously held parental, family, or marital status. For example, if a recipient refused to admit a woman to a graduate program because she was previously married, but admitted a previously married man with similar qualifications, this would be a prohibited form of sex discrimination under the proposed regulations.

The proposed regulations also would clarify that covered actions include a recipient's policies, practices, and procedures. The purpose of this change would be to encompass a broader range of recipient actions that could be forms of sex discrimination based on parental, family, or marital status and to prevent circumvention by reliance on policies, practices, or procedures not reflected in the recipient's formal or informal rules. Likewise, the addition of ''adopt'' would indicate that a policy, practice, or procedure that is formally or informally decided upon would be subject to the proposed regulations, as well as those that are passed or otherwise announced formally but not yet applied in an individual case, and those that have been acted upon. For example, if a recipient announced a policy that student fathers, but not student mothers, could be admitted to a law enforcement training program, this policy would potentially violate proposed § 106.21(c)(2)(i) even if the recipient had not yet applied it to any student. Both changes mentioned in this paragraph would be consistent with changes proposed in a similar section related to parental, familial, and marital status at proposed § 106.40(a).

The Department proposes replacing the term ''disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom'' with ''pregnancy or related conditions or any temporary disability resulting therefrom'' in proposed § 106.21(c)(1). ''Disabilities related to pregnancy'' could be interpreted to suggest that applicants would not be covered under the provision unless they had a disability under Section 504 or the ADA, something that could be difficult for a recipient or an applicant to ascertain during the admissions process. It also leaves unclear whether a pregnant student who is not experiencing any additional pregnancy-related conditions would be protected under the current regulations. The proposed change would clarify that an applicant who is pregnant or experiencing pregnancy-related conditions or a temporary disability resulting therefrom must be treated in the same manner and under the same policies as those who have other temporary disabilities or physical conditions, simplifying the analysis both for the recipient and applicants. The proposed change would also align with the language the Department suggests in proposed §§ 106.40(b)(5) and 106.57(c).

The Department proposes deleting ''exclude'' and ''excludes'' in proposed § 106.21(c)(2)(ii) because they are used only occasionally in the current regulations to refer to discrimination and such intermittent use may cause confusion. Throughout the current and proposed regulations, the Department interprets ''discriminate'' to encompass exclusion.

Pre-admission inquiries. In proposed § 106.21(c)(2)(iii), the Department proposes replacing the term ''in connection with discrimination'' with ''as a basis for discrimination'' to enhance clarity and consistency with usage elsewhere in the proposed regulations but does not intend this as a substantive change in meaning. In addition, the Department proposes revising the last sentence in § 106.21(c)(2)(iii) to use the term ''all applicants'' instead of the term ''both sexes'' in recognition of the fact that some applicants may have a nonbinary gender identity. For the same reason, if a recipient asks applicants to self-identify their sex and provides options from which applicants may choose, nothing in the current or proposed regulations would prohibit a recipient from offering nonbinary options in addition to male and female options.

F. Discrimination Based on a Student's Parental, Family, Marital Status, Pregnancy, or Related Conditions

Section 106.40 Parental, Family, or Marital Status; Pregnancy or Related Conditions

Current regulations: The section heading is ''Marital or parental status.''

Proposed regulations: The Department proposes changing this section heading to ''Parental, family, or marital status; pregnancy or related conditions.''

Reasons: The proposed section heading would more accurately describe the content of the section.

Section 106.40(a) Status Generally

Current regulations: Section 106.40(a) states that a ''recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.''

Proposed regulations: The Department proposes the following edits to current § 106.40(a):

- Replacing ''rule'' with ''policy, practice, or procedure'';
- Changing ''apply'' to ''adopt or apply''; and
- Changing ''actual or potential'' to ''current, potential, or past.''

Reasons: The Department proposes several changes to clarify the scope of conduct prohibited by this section. First, as explained in greater detail in the discussion of proposed § 106.21(c), the proposed regulations would add to the types of actions that are subject to the prohibition to prevent circumvention by reliance on policies, practices, or procedures not reflected in the recipient's express rules. For

example, if a high school had an informal practice of not inviting pregnant students to join the honor society, this action would violate proposed § 106.40(a) even if the practice was not written into any rule formally governing the activity. Likewise, if a recipient passed a policy that student mothers could not participate in class field trips, this policy would violate proposed § 106.40(a) even if the recipient had not yet applied it to any student.

Second, the proposed regulations would clarify that a recipient is not permitted to adopt policies, practices, or procedures that treat students differently on the basis of sex; current § 106.40(a) references only the application of such a rule. Use of the term ''adopted'' would indicate that the proposed regulations would cover a policy, practice, or procedure that is formally or informally decided upon; those that are passed or otherwise announced formally but not yet applied in an individual case; and those that have been acted upon. The proposed regulations would therefore cover policies, practices, and procedures without requiring an analysis of whether they had been applied to a student.

Finally, to clarify coverage and maintain consistency with a similar provision at proposed § 106.21(c) regarding admissions, the Department proposes replacing the terms ''actual or potential'' with the terms ''current, potential, or past.'' As explained in the discussion of proposed § 106.21(c), this revision would help ensure that students are more fully protected from discrimination, recognizing that a person can be subject to sex stereotypes due to past status as well as present status.

Section 106.40(b) Pregnancy or Related Conditions

Current regulations: The section heading is ''Pregnancy and related conditions.''

Proposed regulations: The Department proposes changing this section heading to ''Pregnancy or related conditions.''

Reasons: The proposed section heading would more accurately describe the content of the section and would be consistent with the proposed definition of ''pregnancy or related conditions'' at § 106.2.

Section 106.40(b)(1) Pregnancy or Related Conditions—Nondiscrimination

Current regulations: Section 106.40(b)(1) prohibits a recipient from discriminating against or excluding a student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

Current § 106.40(b)(3) states that a recipient that operates a portion of its education program or activity separately for pregnant students to which students may voluntarily admit themselves must ensure that the separate portion is comparable to that offered to non-pregnant students.

Proposed regulations: Proposed § 106.40(b)(1) would prohibit a recipient from discriminating against any student based on current, potential, or past pregnancy or related conditions. The Department also proposes revising this provision to incorporate the requirement in current § 106.40(b)(3) that a recipient may permit a student based on pregnancy or related conditions to participate voluntarily in a separate portion of its education program or activity provided the recipient ensures that the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions.

Reasons: Proposed § 106.40(b)(1) would merge related and overlapping aspects of current § 106.40(b)(1) and (3), which prohibit discrimination based on pregnancy or related conditions and permit a recipient to allow a pregnant student or a student experiencing pregnancy-related conditions to voluntarily opt into separate portions of the recipient's education program or activity provided the recipient ensures comparability with the standard education program or activity.

The Department proposes clarifying the scope of the nondiscrimination provision to cover current, potential, or past pregnancy or related conditions because protecting students from discrimination on these bases helps to achieve Title IX's objective of eradicating sex discrimination in federally funded education programs or activities. Title IX was enacted in large part because women were being denied educational access due to views that they were less capable and less committed to academic demands given their pregnancy and childrearing obligations. *See* 118 Cong. Rec. at 5804 (statement of Sen. Bayh, sponsor of Title IX, explaining the widespread but false perception that women are disinterested in education or professional achievement because the duty or desire to marry and bear children has led to sex discrimination in education). Clarifying Title IX's protections to cover current, potential, or past pregnancy or related conditions would ensure that a student is not treated unfairly in the educational context due to, for example, a likelihood of having children in the future, having had children in the past or experienced pregnancy-related medical conditions. Although not the basis for this proposal, the Department notes that this scope of coverage would be like that provided by the PDA, which the EEOC has recognized covers current, potential, and past pregnancy. 2015 EEOC Pregnancy Guidance. This scope of coverage has contributed to addressing barriers to employment and professional achievement, and it is the Department's current view that, fundamental to the purpose of Title IX, it would help address the barriers to educational access arising from false perceptions about pregnancy and childbearing plans.

Section 106.40(b)(2) Pregnancy or Related Conditions—Requirement for Recipient to Provide Information

Current regulations: Section 106.40(b)(1) addresses pregnancy-related nondiscrimination requirements. Current § 106.8(a) requires a recipient to designate a Title IX Coordinator to coordinate its efforts to comply with Title IX. Current § 106.8(b) requires that a recipient notify its students of the recipient's nondiscrimination policy and that inquiries about a recipient's Title IX obligations may be referred to the Title IX Coordinator.

Proposed regulations: Proposed § 106.40(b)(2) would require a recipient to ensure that when any employee is informed of a student's pregnancy or related conditions by the student or a person who has a legal right to act on behalf of the student, the employee promptly informs that person of how to notify the Title IX Coordinator of the student's pregnancy or related conditions for assistance and provides contact information for the Title IX Coordinator, unless the employee reasonably believes the Title IX Coordinator has already been notified.

Reasons: The Department's proposed provision seeks to effectuate Title IX's goal of preventing sex discrimination by ensuring that when an employee of a recipient is informed of a student's pregnancy or related conditions by the student or a person who has a legal right to act on behalf of the student, the employee is required to inform that person how they may contact the Title IX Coordinator for assistance. In doing so, the Department's proposed provision takes into account the student's interest

in being free from sex discrimination and accessing necessary support and the right of the student and the student's legal representatives to control what information is shared with a recipient regarding a student's pregnancy or related health status, as well as when the information is shared. The Department also seeks to consider the administrative burden to recipients in carrying out this critical informational function.

Under the proposed regulations, only when a student informs an employee of the student's pregnancy would the employee be required to provide the student with information about how to notify the Title IX Coordinator. Similarly, only when a person who has a legal right to act on behalf of the student informs an employee of the student's pregnancy would the employee be required to provide that person information about accessing to the Title IX Coordinator. In either case, unless the employee reasonably believes the Title IX Coordinator has already been notified, the employee would be responsible for telling the person who contacted them only two things: (1) how the person may notify the Title IX Coordinator of the student's pregnancy or related conditions for assistance; and (2) contact information for the Title IX Coordinator. The Department expects that providing this information will be sufficient to inform the person of their option to contact the Title IX Coordinator as they see fit. The proposed regulations would also ensure that if a student or a person who has a legal right to act on behalf of the student preferred not to report the student's pregnancy to the Title IX Coordinator, the person would have no obligation to do so.

The Department intends the term ''a person who has a legal right to act on behalf of the student'' to be interpreted consistent with proposed § 106.6(g), which would not impose limitations on ''any legal right of a parent, guardian, or other authorized legal representative to act on behalf of'' a student, subject to the FERPA statute, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99. Although a recipient would need to make a fact-specific determination, for purposes of proposed § 106.40(b)(2), ''a person who has a legal right to act on behalf of the student'' would typically include the parents or legal guardians of minor students, legal guardians of adult students (for example, in the case of a student with significant disabilities), and authorized legal representatives of youth in out-of-home care. For example, under proposed § 106.40(b)(2), if the parent of a minor student informs a high school teacher of a student's pregnancy, the teacher would have to tell the parent how to notify the Title IX Coordinator and provide contact information. However, if the parent of an adult student in graduate school who does not have a legal right to act on behalf of the student contacted the student's advisor to inform the advisor of the student's pregnancy, the advisor would not be required to inform the parent of how to notify the Title IX Coordinator. The Department anticipates this approach would support the rights of parents of younger students while respecting the privacy interests of older students.

The Department is mindful of recipient resources and submits that the proposed regulations are appropriately tailored and straightforward to implement. For example, an employee would not be required to act under this provision when the employee only suspects that a student is pregnant based on observation of physical indicators or rumor, or when told by a third party who is not a person with a legal right to act on behalf of the student. The proposed regulations would not require a recipient's employees to inquire whether a student is pregnant based on physical indicators often associated with pregnancy.[10] And under the proposed regulations, the employee would not have a duty to provide the student, or a person who has a legal right to act on behalf of the student, with information about the Title IX Coordinator if the employee reasonably believes the Title IX Coordinator has already been notified. For example, if a student tells her professor that she is pregnant, but the professor has already been informed of this fact by the Title IX Coordinator who notified the professor about the student's upcoming parental leave, the professor would not be required to tell the student how to contact the Title IX Coordinator.

The Department expects the proposed regulations would also be easily understood by employees because there is little ambiguity as to when they are required to act: if a student, or a person who has a legal right to act on behalf of the student, informs an employee that the student is pregnant or experiencing pregnancy-related conditions, the employee would have to provide the two pieces of basic information (how to notify the Title IX Coordinator and contact information for the Title IX Coordinator) to the student or the person who has a legal right to act on behalf of the student unless the employee knew or reasonably believed that the Title IX Coordinator was already informed. In addition, the provision would be helpful to students and their families because it would not require them to have any advance knowledge of a recipient's available supports or to invoke specific words or requests for the employee to be required to provide them with information about the Title IX Coordinator. The standard also would afford recipients flexibility based on a student's age and maturity level. Providing information as to how to notify the Title IX Coordinator would differ depending on the student's age and maturity level. Nothing would prohibit an employee from offering to go with a student to the Title IX Coordinator or, at the student's option, contacting the Title IX Coordinator on the student's behalf; however, this is likely more appropriate at the elementary school or secondary school level and may not be necessary for a college student. Overall, the Department's current view is that this provision would empower students and their families to decide whether they wish to obtain school-based supports at a potentially vulnerable time, thereby avoiding sex discrimination to the greatest extent possible.

Section 106.40(b)(3) Pregnancy or Related Conditions—Specific Actions To Prevent Discrimination and Ensure Equal Access

Current regulations: Section 106.40(b)(1) addresses pregnancy-related nondiscrimination requirements. Current § 106.40(b)(4) requires a recipient to treat ''pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery'' similarly to any other temporary disability in certain contexts. Current § 106.40(b)(5) addresses leaves of absence. Current § 106.40(b)(5) states that if a recipient does not maintain a leave policy for its

[10] The Department notes, however, that in elementary schools and secondary schools, Section 504 imposes a continuing duty on school districts to identify any student who needs or is believed to need special education or related services because of a disability and seek parental consent to evaluate the student to determine, in part, what, if any, special education or related services are appropriate. 34 CFR 104.35; U.S. Dep't of Educ., Office for Civil Rights, Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools at 12, 19 (Dec. 2016), *http://www.ed.gov/ocr/docs/504-resource-guide-201612.pdf.* Depending on the specific circumstances, information about pregnancy-related conditions may initiate such a duty. For example, if Student A tells her high school teacher that a classmate, Student B, is home on bed rest due to pregnancy-related high blood pressure, this may be sufficient to trigger the school's obligation to evaluate the student for areas of suspected physical disability. In addition, a recipient and its employees may have obligations under State and local laws requiring notification or reporting of child abuse, child molestation, sexual abuse, rape, or incest.

students, or a student does not otherwise qualify for leave under such a policy, a recipient will treat ''pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom'' as a justification for a leave of absence ''for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.''

Proposed regulations: Proposed § 106.40(b)(3) would combine aspects of the current regulations with specific actions the Title IX Coordinator would be required to take to ensure that a student who is pregnant or experiencing pregnancy-related conditions is not subject to discrimination and has equal access to the recipient's education program or activity. Once the student, or a person who has a legal right to act on behalf of the student, notifies the Title IX Coordinator of a student's pregnancy or related conditions, the Title IX Coordinator or appropriate designee would be required to promptly take four steps:

(i) Inform the student, and if applicable the person who notified the Title IX Coordinator, of the recipient's obligations to: (A) prohibit sex discrimination, including sex-based harassment; (B) provide the student with the option of reasonable modifications to the recipient's policies, practices, or procedures because of pregnancy or related conditions; (C) allow access, on a voluntary basis, to any separate and comparable portion of the recipient's education program or activity; (D) allow a voluntary leave of absence; (E) ensure the availability of lactation space; and (F) maintain grievance procedures that provide for the prompt and equitable resolution of complaints of sex discrimination, including sex-based harassment;

(ii) Provide the student with the option of reasonable modifications to the recipient's policies, practices, or procedures, as described in proposed § 106.40(b)(4), because of pregnancy or related conditions;

(iii) Allow the student to take a voluntary leave of absence from the recipient's education program or activity to cover, at minimum, the period of time deemed medically necessary by the student's physician or other licensed healthcare provider. To the extent that a recipient maintains a leave policy for students that allows a greater period of time than the medically necessary period, the recipient must permit the student to take leave under that policy instead if the student so chooses. Upon the student's return to the recipient's education program or activity, the student must be reinstated to the academic status and, as practicable, extracurricular status held when the leave began; and

(iv) Ensure the availability of a lactation space, which must be a space other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed.

Reasons: As noted in the discussion of the 1975 Title IX Regulations Related to Pregnancy and Parental Status (Section III.A), although the Title IX regulations have long recognized that proactive steps such as leave and reinstatement may be necessary to help to prevent discrimination based on pregnancy or related conditions and other forms of sex discrimination and to ensure that students are not denied equal access on the basis of pregnancy or related conditions, the Department proposes this new provision to clarify how a recipient must ensure nondiscrimination when notified about a student's pregnancy or related condition and provide recipients with a simplified framework for compliance.

Notice. The Title IX Coordinator's responsibilities under this provision would be initiated upon notice to the Title IX Coordinator from the student—or a person who has a legal right to act on behalf of the student—of the student's pregnancy or related conditions. At that point, the Title IX Coordinator would be required to take the specific actions set out in proposed § 106.40(b)(3) to ensure that the recipient takes steps to prevent inadvertent discrimination and ensure that the student is not excluded from the recipient's education program or activity. As explained in the discussion of proposed § 106.40(b)(2), the Department interprets the term ''a person who has a legal right to act on behalf of the student'' to be consistent with proposed § 106.6(g), which does not impose limitations on ''any legal right of a parent, guardian, or other authorized legal representative to act on behalf of'' a student, subject to the FERPA statute, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99. Although a recipient would be required to make a fact-specific determination as to who constitutes ''a person who has a legal right to act on behalf of the student'' for purposes of proposed § 106.40(b)(3), this group would typically include the parents or legal guardians of minor students, legal guardians of adult students (for example, in the case of a student with significant disabilities), and authorized legal representatives of youth in out-of-home care. Under proposed § 106.40(b)(3), if the parent of a minor student were to inform the Title IX Coordinator of a student's pregnancy, the Title IX Coordinator would be obligated to take the steps set forth in proposed § 106.40(b)(3), including providing information regarding the recipient's obligations to both the parent and the student. However, if the parent of an adult student in graduate school who does not have a legal right to act on behalf of the student contacted the Title IX Coordinator to inform the Title IX Coordinator of the student's pregnancy, the Title IX Coordinator would not be obligated to take the steps set forth in § 106.40(b)(3) because parent does not have a legal right to act on behalf of the student. The Department believes this approach would account for the rights of parents of younger students, while respecting the privacy interests of older students. A student would also have the right to directly inform the Title IX Coordinator of the student's pregnancy or related conditions, which would require the Title IX Coordinator to take the steps set out in proposed § 106.40(b)(3).

The Department's current view is that the proposed notice standard would aid students, their families and representatives, and recipients because it would clarify that the student and those with legal rights to act on behalf of the student are the appropriate persons for sharing information about a student's pregnancy or related conditions with the Title IX Coordinator. As explained in the discussion of the requirement for recipient to provide information in proposed § 106.40(b)(2), neither a student nor a person who has a legal right to act on behalf of the student would be obligated to disclose the student's pregnancy to the recipient. And, cognizant both of student privacy and recipient resources, the Title IX Coordinator would not be required to take the steps described in proposed § 106.40(b)(3) based only on observation of physical characteristics, rumors, or information from a third party who does not have a legal right to act on behalf of the student.

Informing of the recipient's obligations. The Title IX Coordinator would be required, after receiving notice of a student's pregnancy or related conditions to inform the student—and if applicable any person who has the legal right to act on behalf of the student to the extent that person notified the Title IX Coordinator—of the recipient's obligations under Title IX. This

information would inform the student and a person who has a legal right to act on behalf of the student of the recipient's duties and the student's options. It would enable the student to voluntarily request reasonable modifications because of pregnancy or related conditions that would prevent discrimination, ensure continuing access to the recipient's education program or activity, and assist the student in understanding the recipient's obligations to the student going forward. The recipient would also need to consider whether the student's pregnancy or related conditions separately require a determination of whether a student is covered under Section 504. Depending on the precise facts, certain pregnancy-related conditions—including, for example, preeclampsia, gestational diabetes, and postpartum depression, among others—could be considered disabilities under Section 504.

Reasonable modifications for students because of pregnancy or related conditions. The Department believes that providing a student with the option of reasonable modifications to the recipient's policies, practices, or procedures because of pregnancy or related conditions is essential to preventing pregnancy-based discrimination and to ensuring equal access to a recipient's education program or activity. Proposed § 106.40(b)(3)(ii) would require the Title IX Coordinator to provide the student with the option of such modifications. The standards for these proposed voluntary reasonable modifications are explained in greater detail in the discussion of proposed § 106.40(b)(4).

Voluntary leave of absence. Current § 106.40(b)(5) states that ''in the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy'' or related conditions ''as justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician.'' It is the Department's tentative view that, in the case of a recipient that maintains a leave policy, it may be unclear whether the appropriate length of leave is determined by the recipient's policy or the period of medical necessity, and which trumps if those two periods differ. Also, some recipients, particularly elementary schools and secondary schools, may not maintain such policies for students.

To increase clarity for recipients and students, proposed § 106.40(b)(3)(iii) would preserve the right of a student who is pregnant or experiencing related conditions to take a leave of absence from the recipient's education program or activity for at least a medically necessary period, and to be reinstated to the same academic and, as practicable, extracurricular status upon return. The Department proposes revisions to clarify that any leave of absence must be voluntary and that the medically necessary period is only a minimum requirement. A recipient would be free to provide additional time if requested by the student and appropriate to the situation. For example, if a student's medically necessary period concludes in the middle of a college semester, the student and recipient may both find it advantageous to extend the period of leave until the end of the semester. However, for a college student in a self-paced independent study course who takes a voluntary leave of absence because of the student's pregnancy or related conditions, that student and college may find it more helpful not to extend the period of leave in light of the flexibility of the independent study and the possibility that additional time off could put the student behind in the program. In addition, proposed § 106.40(b)(3)(iii) would clarify that to the extent a recipient maintains a leave policy for students that allows a greater period of time than the medically necessary period, the recipient must permit the student to take leave under that policy instead if the student chooses. As explained in greater detail in the Background discussion of the History of Title IX's Nondiscrimination Mandate and Related Regulations, a student's right to take leave for pregnancy or related conditions, regardless of whether the recipient offers leave to students generally for other types of purposes, has been included in the Title IX regulations since 1975 and is designed to help achieve Title IX's underlying objective of eliminating sex-based discrimination and barriers to equal access to education programs or activities.

The Department also proposes revising this requirement to state that the period of medical necessity may be determined either by a physician (as in the current regulations) or another licensed healthcare provider. This change would provide additional flexibility to students and recipients, and would take into account that some students may be under the care of a midwife, nurse practitioner, or other licensed healthcare provider who is not a physician.

The Department proposes revisions to clarify that a student must be reinstated to the same ''academic and, as practicable, extracurricular'' status upon return. OCR has long interpreted ''same status upon return'' under current § 106.40(b)(5) as referring to ''academic and extracurricular'' status. *See, e.g.,* U.S. Dep't of Educ., Office for Civil Rights, Teenage Pregnancy and Parenthood Issues under Title IX of the Education Amendments of 1972 at 6 (July 1991), *https://files.eric.ed.gov/fulltext/ED345152.pdf*; U.S. Dep't of Educ., Office for Civil Rights, Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972 at 5 (June 2013) (2013 Pregnancy Pamphlet), *https://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf*. This proposed revision would make clear that upon return to school, a student must be restored to the student's previous academic status, as well as to, as much as practicable, any extracurricular status the student may have held prior to the student's leave. The Department acknowledges that in OCR's previous guidance on pregnancy, OCR stated that a pregnant student who takes a voluntary leave of absence must be reinstated to the extracurricular status that the student held when the leave began. The Department recognizes, however, that in some instances, an extracurricular activity, event, or program will have ended by the time a student returns from leave or the student may not, due to timing or other logistical reasons, be able to participate. For example, if a particular school play in which a student was cast has ended its performance run before the student's return, it will not be practicable to reinstate a student in that role and play. Likewise, if a student's pregnancy leave resulted in the student's absence during a qualifying event for an individual diving competition, it would not be practicable for the student to participate in that competition. These considerations would not, however, prevent the student in either situation from participating in plays with the drama club or competitions with the diving team in the future. Therefore, although the presumption is that a student returning from leave should be reinstated to the same extracurricular status, it is the Department's current view that there may be some limited instances when exact reinstatement would not be administratively possible or practicable under the circumstances.

Lactation space. As explained in the discussion in Need for Clarification Regarding Protections Because of Pregnancy and Parental Status (III.B)

and the explanation of the proposed definition of the term ''pregnancy or related conditions'' (§ 106.2), the Department proposes explicitly recognizing lactation as a basis for protection from discrimination. The Department currently believes that without appropriate modifications to ensure that schools prevent and end sex discrimination, a student who is lactating may face significant barriers to participating in and benefiting from a recipient's education program or activity because of a recipient's lack of awareness about the significant adverse health consequences that can result from delays in lactation. This lack of awareness can easily lead to adverse educational consequences as well, causing a student to miss or drop out of school and lose access to a recipient's education program or activity due to their lactation needs.

A student who is lactating would typically need breaks every few hours of the school day to express breast milk or breastfeed and an appropriate, sanitary space in which to do so. Many school settings lack appropriate spaces for a student to engage in these activities with adequate privacy and cleanliness. Secondary school students may require such spaces if their daily schedules allow limited flexibility and would not ordinarily allow for leaving school grounds two to three times each day to express milk or breastfeed. Consequently, lactation space on school grounds is necessary to enable students who are lactating to access their classes and extracurricular activities. Likewise, although postsecondary students often have more flexible class schedules than secondary school students, these students also need lactation space on campus so that they can have equal access to their courses and other campus activities. For students who do not have housing on or near campus, this need is heightened. Lack of access to lactation space in any of these scenarios could cause the student to miss school, quit school, or be unable to express breast milk or breast feed and, as a result, experience potentially painful physical side effects that prevents the student from fully accessing and obtaining the benefits of the recipient's education program or activity.

Proposed § 106.40(b)(3)(iv) would set out the requirements for a recipient's lactation space, specifically that the recipient provide a place, other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding. The Department anticipates that these requirements will provide the minimum acceptable standards for privacy, sanitation, and functionality necessary for students to attend to their lactation needs at school, be free from discrimination, and maintain equal access to the school's education program or and activity. The Department expects that a bathroom would not be appropriate because in most cases, the only option for the student would be to sit on a toilet while expressing breast milk, which would not be sanitary or acceptable for the purpose of producing nutrition for a child. Likewise, privacy is critical to ensure that lactating students do not have to expose themselves to classmates or strangers.

Nearly all recipients under Title IX are already required to provide a virtually identical physical space to certain employees under the FLSA. 29 U.S.C. 207(r)(1). The only additional component added under the Department's proposed regulations would be that the space be ''clean.'' Because most recipients already maintain janitorial services, the Department anticipates that the additional burden of cleaning a lactation space would not be significant.

Proposed § 106.40(b)(3)(iv) would set minimum standards for a recipient's student lactation space. The proposed regulations would not prohibit a recipient from using an employee lactation space for students as well, provided the space meets the requirements of proposed § 106.40(b)(3)(iv). Likewise, there would be no prohibition on a recipient from offering additional features in their lactation spaces to increase functionality and comfort. With respect to the location of the lactation space, if necessary to address individualized concerns about distance from the student's class or activity, the recipient may provide an alternative space or solution consistent with the student's needs as a reasonable modification to prevent discrimination and ensure equal access based on pregnancy or related conditions under proposed § 106.40(b)(3)(ii) and (4).

Finally, nothing in the Department's proposed regulations would preempt a State or local law that provides greater protections to students, as explained in the discussion of proposed § 106.6(b). This would ensure that if a State or local law goes further than the Department's proposed regulations, for example by requiring more features in the lactation space (such as refrigeration, an outlet, a table, etc.), the Department's proposed regulations would not interfere with those enhanced requirements.

Section 106.40(b)(4) Pregnancy or Related Conditions—Reasonable Modifications for Students Because of Pregnancy or Related Conditions

Current regulations: Section 106.40(b)(1) prohibits discrimination on the basis of ''pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom'' and current § 106.40(b)(4), which requires a recipient to treat ''pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery'' in the ''same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.''

Proposed regulations: The Department proposes adding § 106.40(b)(4), which includes protections from current § 106.40(b)(1) and (4). Proposed § 106.40(b)(4) would explain that, for purposes of this section, reasonable modifications to a recipient's policies, practices, or procedures for a student who is pregnant or is experiencing pregnancy-related conditions:

(i) Must be provided on an individualized and voluntary basis depending on the student's needs resulting from pregnancy or related conditions when necessary to prevent discrimination and ensure equal access to the recipient's education program or activity, unless the recipient can demonstrate that making the modification would fundamentally alter the recipient's education program or activity, when a ''fundamental alteration'' would be a change that is so significant that it alters the essential nature of the recipient's education program or activity;

(ii) Must be effectively implemented, coordinated, and documented by the Title IX Coordinator; and

(iii) May include but are not limited to, breaks during class to attend to related health needs, breastfeeding, or expressing breast milk; intermittent absences to attend medical appointments; access to online or other homebound education; changes in schedule or course sequence; extension of time for coursework and rescheduling of tests and examinations; counseling; changes in physical space or supplies (for example, access to a larger desk or a footrest); elevator access; or other appropriate changes to policies, practices, or procedures.

Reasons: Reasonable modification for pregnancy or related conditions

standard. The Department proposes adding § 106.40(b)(4) to require a recipient to offer a student reasonable modifications to its policies, practices, and procedures to prevent pregnancy-related discrimination and to ensure equal access to a student who is pregnant or experiencing pregnancy-related conditions, unless the recipient can demonstrate that making the modification would fundamentally alter the recipient's education program or activity.

As noted in the discussion of the 1975 Title IX Regulations Related to Pregnancy and Parental Status (Section III.A), the Department's Title IX regulations require a recipient to take a variety of steps to ensure equal treatment and access for students who are pregnant or experiencing pregnancy-related conditions. Current § 106.40(b)(1) prohibits discrimination based on pregnancy or related conditions. Current § 106.40(b)(4) requires a recipient to treat pregnancy or related conditions similarly to other temporary disabilities with respect to, inter alia, medical or hospital benefits. And current § 106.40(b)(5) requires a recipient to take specific, tailored steps necessary to support students who are pregnant or experiencing pregnancy-related conditions to enable them to access its education program or activity—regardless of whether the recipient takes similar steps for all students. The Department now believes that the current regulations may not sufficiently achieve the objectives of Title IX. For example, some recipients do not maintain policies related to temporary disabilities of students, leaving their responsibilities to pregnant students under current § 106.40(b)(4) unclear. Likewise, the wording of current § 106.40(b)(4) may suggest that a recipient's responsibility extends only to ''medical or hospital'' benefits, services, plans or policies—for example, student health insurance plans—rather than requiring day-to-day modifications of the education program or activity that would be necessary to prevent discrimination and ensure equal access for pregnant students and students who are experiencing pregnancy-related conditions in a modern context.

The Department anticipates that recipients would benefit from increased clarity as to what proactive steps they must take to prevent intentional or inadvertent discrimination under Title IX. Measures designed to eliminate subtle and even unconscious forms of discrimination are particularly useful to ensure that students who are pregnant or experiencing pregnancy-related conditions have access to the recipient's education program or activity. It is the Department's current view that the proposed regulations provide clear and functional requirements for recipients to ensure that pregnant students and students experiencing pregnancy-related conditions are not discriminated against, and that these requirements are necessary to protect the rights of these students and help effectuate Title IX's nondiscrimination goal.

Recognizing the varied language used in different laws, regulations, and guidance, the Department proposes the reasonable modifications framework set out in proposed § 106.40(b)(4) as the appropriate framework to achieve Title IX's nondiscrimination objective in the educational context. The Department notes that this is similar to the framework under Title II of the ADA for determining necessary different treatment to meet the disability-related needs of a qualified individual with a disability. Specifically, under Title II, a public entity must reasonably modify its policies, practices, or procedures to avoid discrimination unless the modifications would fundamentally alter the nature of its service, program, or activity. 28 CFR 35.130(b)(7). Although a pregnancy would not be in and of itself a disability under Title II, the reasonable modification framework of Title II applies to disabilities related to pregnancy, as well as all other disabilities. 28 CFR part 35, app. C (citing 2015 EEOC Pregnancy Guidance). It is the Department's current view that this framework would achieve Title IX's nondiscrimination mandate and account for both student and recipient needs. For example, it would require a recipient to act when necessary to prevent sex discrimination but would allow flexibility for the recipient to choose from among a range of options appropriate to the student's individualized needs under the circumstances. This approach would also invite collaboration between the student and the recipient to determine appropriate reasonable modifications in a situation as the recipient seeks to determine what is needed. As the recipient prevents discriminatory barriers in its education program or activity through the provision of reasonable modifications because of pregnancy or related conditions, over time, this process would benefit not only the students who receive reasonable modifications, but also subsequent students who may be in need of modifications as the recipient becomes more efficient and effective at providing them. The Department expects that this framework not only will be most effective in ensuring against sex discrimination as required by Title IX but also will be familiar to most schools and thus, would be relatively straightforward to adopt and implement in order to prevent discrimination and ensure equal access for students who are pregnant or experiencing related conditions. Moreover, Title II's treatment of pregnancy-related conditions informs the Department's understanding of what constitutes discrimination against students with those conditions.

The fundamental alteration standard would not compromise the integrity of a recipient's education program or activity. Proposed § 106.40(b)(4)(i) would clarify that a fundamental alteration is a change so significant that it alters the essential nature of the recipient's education program or activity. Determining whether a change constitutes a fundamental alteration would necessarily be fact-specific. Proposed § 106.40(b)(4)(i) provides that it would be the recipient's burden to demonstrate that a proposed modification would fundamentally alter its education program or activity. To the extent a recipient determines that a requested modification would require a fundamental alteration under the proposed regulations, it would have to provide other modifications that would not result in a fundamental alteration but would nevertheless ensure that, to the maximum extent possible, the student who made the request is not discriminated against and receives equal access to the recipient's education program or activity. The recipient would also be required to document those efforts as part of the requirement under proposed § 106.40(b)(4)(ii) that the Title IX Coordinator effectively implement, coordinate, and document reasonable modifications for students because of pregnancy and related conditions, and retain such records under proposed § 106.8(f)(4).

Individualized and voluntary basis. Proposed § 106.40(b)(4)(i) would require a recipient to consider a student's needs on an individualized and voluntary basis as situations will vary widely based on many unique factors such as the age of student, the type of education program or activity, the student's health, and other circumstances. Under the proposed regulations, a recipient would be required to consider all reasonable modifications based on pregnancy or related conditions necessary to ensure equal access in each student's case rather than adopt a generalized approach for all students who are pregnant or experiencing related conditions. The recipient's actions

under the Department's proposed regulations would be initiated by notice from the student or the student's family to the Title IX Coordinator; however, it would not be incumbent on the student or their family to identify or request a specific possible reasonable modification. For example, a recipient may engage in an interactive process with the student and, when appropriate, the student's parent, guardian, or other authorized legal representative, to discuss the student's needs and options that would best ensure equal access. The identification of reasonable modifications would likely be a collaborative effort between the student and the recipient, but it would be the recipient's duty to select a reasonable modification, offer it, and—if accepted by the student on a voluntary basis—effectively implement it. As noted, the Department's proposed regulations would ensure that a student would receive a modification only on a voluntary basis, meaning that a student could not be required to accept a particular modification. The student would have the right to choose a reasonable modification or to remain in their program under the status quo.

Role of Title IX Coordinator. Proposed § 106.40(b)(4)(ii) would require that the Title IX Coordinator effectively implement, coordinate, and document reasonable modifications provided to students because of individual needs related to pregnancy or related conditions. The steps involved with implementation and coordination would vary depending on the circumstances but would generally include determining what modifications are appropriate with input from the student and any other necessary individuals, communicating approved modifications to the student and any relevant staff members, ensuring that all other staff members involved in carrying out the modifications were performing their roles, and documenting when and how modifications took place. For example, if a student were entitled to breaks from class for lactation, the Title IX Coordinator may need to take actions such as ensuring that the student's instructors were aware of their obligation to allow breaks, that the instructors met that obligation, that there was a plan for enabling the student to make up any time missed, and that the student knew how to report if there were any problem with implementation. The Title IX Coordinator would be required to document any modifications because of pregnancy or related conditions provided under proposed § 106.40(b)(4)(ii) and maintain such records under proposed § 106.8(f)(4).

Types of modifications. Proposed § 106.40(b)(4)(iii) would explain that reasonable modifications for a student based on pregnancy or related conditions may include a wide array of supports. The Department notes that a student's options for reasonable modifications because of pregnancy or related conditions are in no way affected by reasonable modifications for students with disabilities (or vice versa). In addition, a student's options for reasonable modifications because of pregnancy or related conditions would not be limited by the fact that the recipient has never had occasion to provide a particular modification to any student in the past.

For example, if a student were to request intermittent absences to attend morning prenatal medical appointments and the opportunity to make up lost class time without penalty within a reasonable amount of time, that could be an appropriate reasonable modification for a pregnant student even if the recipient had not provided similar breaks to any other student (for example, because none had requested or needed them), as long as this arrangement was appropriate to the pregnant student's individualized need and did not require a fundamental alteration of the recipient's education program or activity. Likewise, if the recipient felt it could prevent discrimination through some alternative modification, such as offering the student the opportunity to switch to a comparable course that met in the afternoon, that could be reasonable as well.

Alternatively, depending on the facts and circumstances, if a student requested that her school waive her entire senior year and allow her to graduate without those credits as a reasonable modification because of pregnancy, this would likely present a fundamental alteration of the recipient's program under this section. In this case, the recipient would be obligated to offer alternative modifications sufficient to prevent sex discrimination, such as allowing the student to complete her required number of credits at a slower pace or granting her extensions of time to complete certain tests or assignments. The proposed regulations would include several additional examples of potential reasonable modifications because of pregnancy or related conditions to inform both students and recipients of their broad range of options.

Section 106.40(b)(5) Pregnancy or Related Conditions—Comparable Treatment to Temporary Disabilities or Conditions

Current regulations: Section 106.40(b)(4) requires a recipient to treat ''pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery'' in the ''same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.''

Proposed regulations: Proposed § 106.40(b)(5) would add a heading to the section, would replace ''pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery'' with ''pregnancy or related conditions or any temporary disability resulting therefrom,'' and would add a limitation to make clear that this provision would apply only when the issue is not otherwise addressed under proposed § 106.40(b)(3).

Reasons: The Department proposes minor edits to increase readability and align this section with the definition of ''pregnancy or related conditions'' in proposed § 106.2. In light of the proposed addition of a new provision on reasonable modifications because of pregnancy or related conditions, leave, and lactation space at proposed § 106.40(b)(3), the Department proposes clarifying that proposed § 106.40(b)(5) would apply only to issues not already resolved under the process set out in proposed § 106.40(b)(3). The Department anticipates that this clarification would dispel confusion for recipients and students, but at the same time retain the protection of current § 106.40(b)(4). In addition, the inclusion of ''temporary disability therefrom'' would align this provision with proposed §§ 106.21(c)(1) and 106.57(c), creating consistency and comprehensibility for recipients, students, and employees.

Section 106.40(b)(6) Pregnancy or Related Conditions—Certification To Participate

Current regulations: Section 106.40(b)(2) allows a recipient to require a student, based on pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, to obtain the certification of a physician that the student is physically and emotionally able to continue participation so long as such a certification is required of all students

for other physical or emotional conditions requiring the attention of a physician.

Proposed regulations: The Department proposes § 106.40(b)(6) to clarify that a recipient may not require a student who is pregnant or experiencing pregnancy-related conditions to provide certification from a physician or other licensed healthcare provider that the student is physically able to participate in the recipient's class, program, or extracurricular activity unless: (i) the certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity; (ii) the recipient requires such certification of all students participating in the class, program, or extracurricular activity; and (iii) the information obtained is not used as a basis for discrimination prohibited by the regulations. It would also remove ''emotionally.''

Reasons: Under the current regulations, a recipient can require a student who is pregnant or experiencing pregnancy-related conditions to obtain certification of physical and emotional ability to participate if it requires students with other physical or emotional conditions to obtain the same certification. Although the Department acknowledges that there may be reasons that this certification could be necessary in narrow circumstances, the Department now believes that current § 106.40(b)(2)—a provision that exists solely to guide recipients on how and on what basis to exclude students who are pregnant or have pregnancy-related conditions—is too broad and permissive as written.

For example, under the current regulations, it would be difficult, or even impossible, for a student who is pregnant or experiencing pregnancy-related conditions to know whether an ability-certification requirement was being applied to the student appropriately because that student would not necessarily know whether or which other students had been asked for the same certification, especially in light of the privacy protections applicable to the health conditions of other students. The current regulations also may lead to different treatment of pregnant students from students who are not pregnant and do not have pregnancy-related conditions because they allow recipients to single out pregnant students, and students with ''physical and emotional conditions,'' for ability-certification requirements. In addition, the current regulations lack any requirement that the certified level of physical ability or health be necessary to the activity for which a recipient seeks medical certification prior to permitting participation by a student who is pregnant or experiencing pregnancy-related conditions.

To address these concerns and to prevent and minimize the possibility of sex-based discrimination, the Department proposes clarifying that a recipient may not require a student who is pregnant or experiencing pregnancy-related conditions to provide a certification of physical ability or health unless (i) a certain level of physical ability or health is necessary for participation in a specific class, program, or extracurricular activity; (ii) it requires such certification of all students in the same class, program, or extracurricular activity; and (iii) the information obtained is not used as a basis for sex discrimination. The Department proposes allowing certification from licensed healthcare providers in addition to physicians to allow greater flexibility and decrease burden to students being treated by these providers. Finally, the Department also proposes deleting ''emotionally'' from current § 106.40(b)(2), as it is unnecessary and suggests a stereotypical assumption regarding the mental health of students who are pregnant or recovering from childbirth. With these changes, the Department aims to ensure that pregnant students and students who are experiencing pregnancy-related conditions would not face different burdens than other students regarding certification to participate in the recipient's education program or activity.

In proposing these revisions, the Department notes several points. First, nothing in proposed § 106.40(b)(6) would bear in any way on the rights of a student experiencing, for example, postpartum depression. That student would be protected from discrimination based on pregnancy or related conditions under proposed § 106.40(b)(1), particularly considering the clarified definition of ''pregnancy or related conditions'' at proposed § 106.2, which would extend to medical conditions related to pregnancy. The recipient would also be required to provide the student reasonable modifications, leave, and the other steps set out in proposed § 106.40(b)(3). Likewise, nothing in proposed § 106.40(b)(6) would limit a student's rights or a recipient's obligations under Section 504, which prohibits discrimination on the basis of disability, whether physical or mental in nature. Depending on the nature of the impairment, the student would also likely qualify for protection as a person with a disability under Section 504. To the extent a recipient has a specific concern about the mental health of a student who is pregnant or experiencing pregnancy-related conditions, the proposed provision would not preclude the recipient from making an inquiry, provided that such inquiry did not subject the student to discrimination on the basis of sex or disability.

Second, proposed § 106.40(b)(6) would pertain only to limited situations in which physical ability or health is necessary for a specific class, program, or extracurricular activity. Examples when this situation might arise include school sports, a vocational course (*e.g.,* firefighting) that includes physical-ability requirements to perform specific tasks, or a class that will expose students to hazardous chemicals. Outside of these limited situations, the Department does not anticipate that most recipients would have any reason to request a certification of physical ability or health prior to allowing any students to participate in most classes, programs, or extracurricular activities.

Third, a recipient may not forbid participation as a general matter by students who are pregnant or experiencing pregnancy-related conditions. For example, if a high school requires certification of physical ability or health from all students who wish to join its track team, it may require that certification from a pregnant student. The school may not, however, require that a student certify prior to participation that the student is not pregnant or require only pregnant students to provide a certification of physical ability or health. Likewise, a recipient would be prohibited under proposed § 106.40(b)(6)(iii) from using any information obtained through its request for certification of physical ability or health to discriminate based on sex.

Fourth, a recipient's default assumption should be that a student who is pregnant or experiencing pregnancy-related conditions may participate, unless there is a specific, documented medical reason tied to the physical ability or health requirements of the class, program, or extracurricular activity that cannot be overcome with reasonable modifications for a student who is pregnant or experiencing pregnancy-related conditions under proposed § 106.40(b)(4). If reasonable modifications because of a student's pregnancy or related conditions would prevent discrimination by ensuring participation, the recipient must provide these modifications and allow participation.

Finally, this provision would not be intended to address how or when a

recipient may request that a student provide medical documentation to support the need for certain reasonable modifications because of pregnancy or related conditions under proposed § 106.40(b)(4) or to determine a minimum amount of leave to which a student would be entitled under proposed § 106.40(b)(3)(iii). Although the Department anticipates that such documentation will be unnecessary in most cases, it could be appropriate in limited situations depending on the circumstances of a student's needs, the education program or activity, and the modification at issue.

G. Discrimination Based on an Employee's Parental, Family, Marital Status, Pregnancy, or Related Conditions

Section 106.51(b)(6) Employment

Current regulations: Section 106.51 describes certain prohibitions on sex discrimination in a recipient's employment actions. Specifically, current § 106.51(b)(6) states that the subpart applies to ''[g]ranting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave.''

Proposed regulations: The Department proposes replacing ''pregnancy, childbirth, false pregnancy, termination of pregnancy'' with ''pregnancy or related conditions.''

Reasons: As explained in greater detail in the Department's discussion of the proposed definition of ''pregnancy or related conditions'' (§ 106.2), the Department's tentative view is that using this term will add clarity and consistency regarding which individuals each provision covers.

Section 106.57 Parental, Family, or Marital Status; Pregnancy or Related Conditions

Current regulations: The section heading is ''Marital or parental status.''

Proposed regulations: The Department proposes changing this section heading to ''Parental, family, or marital status; pregnancy or related conditions.''

Reasons: The proposed section heading would more accurately describe the content of the section.

Section 106.57(a)(1) General

Current regulations: Section 106.57(a)(1) states that a recipient shall not apply any policy or take any employment action ''[c]oncerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex.''

Proposed regulations: The Department proposes the following edits to current § 106.57(a) and (a)(1):

- Changing the heading of § 106.57(a) from ''General'' to ''Status generally'';
- Changing ''apply'' to ''adopt or apply'' in proposed § 106.57(a); and
- Changing ''potential'' to ''current, potential, or past'' in proposed § 106.57(a)(1).

Reasons: The Department proposes these three changes for the reasons set out in the discussion of proposed § 106.40(a), which applies a similar prohibition on discrimination to students. The Department's tentative view is also that using the same terms throughout the regulations would better enable recipients, students, and employees to understand and apply them. Specifically, with respect to the change from ''apply'' to ''adopt or apply,'' the Department's tentative view is that a recipient should be prohibited from adopting discriminatory policies based on pregnancy or related conditions. Adding ''adopt'' is intended to enable persons to understand that they may challenge a rule as being discriminatory even before it has been applied and caused harm. For example, if a recipient adopted a rule that it would not hire pregnant individuals, this rule would raise compliance concerns even if the recipient had not yet applied it to exclude an individual applicant. Likewise, the Department's tentative view is that clarifying that Title IX's coverage includes current and past parental, family, or marital status would more fully implement Title IX's guarantee against sex discrimination. For example, the proposed regulations would address a situation in which a recipient disciplined employees who are mothers for excessive absences more harshly than employees who are fathers because the recipient assumed that the mothers were less committed employees due to family obligations.

Section 106.57(b) Pregnancy or Related Conditions

Current regulations: Section 106.57(b) states that a recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

Proposed regulations: The Department proposes the following edits to current § 106.57(b):

- Changing the heading of § 106.57(b) from ''Pregnancy'' to ''Pregnancy or related conditions''; and
- Replacing ''pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom'' with ''current, potential, or past pregnancy or related conditions.''

Reasons: The Department proposes these two changes for the reasons set out in the discussion of proposed § 106.40(b), which would apply a similar prohibition on discrimination to students. The Department's tentative view is also that using the same terms throughout the regulations will better enable recipients and those covered to understand and apply them. In this section, adding ''lactation'' and ''related medical conditions'' to the bases already explicitly covered would be consistent with Title IX's goal of preventing discrimination and eliminating barriers to equal access based on sex. For the reasons explained in the discussion of the proposed definition of the term ''pregnancy or related conditions'' (§ 106.2), this change would address more types of sex discrimination in employment in the educational context. For example, this proposed formulation would make clear that a recipient could not take an adverse employment action against an employee because the employee needed to miss work to receive treatment for mastitis, a medical condition related to lactation. It would also clarify that a recipient could not discriminate based on current, potential, and past pregnancy or related conditions. Proposed § 106.57(b) would also prohibit a recipient from terminating an employee for a past complication due to pregnancy, for example, out of concern that if the employee became pregnant again, the employee would require a long leave time to recover. *See* 2015 EEOC Pregnancy Guidance (''[I]f an employee was discharged during her pregnancy-related medical leave (*i.e.,* leave provided for pregnancy or recovery from pregnancy) or her parental leave (*i.e.,* leave provided to bond with and/or care for a newborn or adopted child), and if the employer's explanation for the discharge is not believable, a violation of Title VII may be found.'')

Section 106.57(c) Comparable Treatment to Temporary Disabilities or Conditions

Current regulations: Section 106.57(c) states that a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of

seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

Proposed regulations: The Department proposes the following revisions to current § 106.57(c):

- Changing the heading from ''Pregnancy as temporary disability'' to ''Comparable treatment to temporary disabilities or conditions''; and
- Replacing ''pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom and'' with ''pregnancy or related conditions or.''

Reasons: The Department proposes these two changes for the reasons set out in the discussion of proposed § 106.40(b)(5), which applies to students. The Department's current view is also that using the same terms throughout the regulations will better enable recipients and those covered to understand and apply them. Adding ''lactation'' and ''related medical conditions'' to the bases already explicitly covered in current § 106.57(c) would be consistent with Title IX's goal of preventing discrimination and eliminating barriers to equal access based on sex. For the reasons explained in the discussion of the proposed definition of the term ''pregnancy or related conditions'' (§ 106.2), this change will address a more comprehensive range of circumstances that could be the subject of sex discrimination in employment in the educational context. For example, under the proposed regulations, if a recipient provided paid leave time under a temporary disability policy for an employee to receive physical therapy to recovery from a broken leg, it would have to allow comparable paid time for an employee who needed to attend physical therapy to address a pelvic injury due to childbirth.

Section 106.57(d) Pregnancy Leave

Current regulations: Section 106.57(d) states that in the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

Proposed regulations: The Department proposes the following edits to current § 106.57(d):

- Replacing ''pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom'' with ''pregnancy or related conditions'';
- Revising ''leave of absence'' to ''voluntary leave of absence''; and
- Replacing ''the status which she held'' with ''the status held.''

Reasons: The Department proposes these three changes for the reasons set out in the discussion of proposed § 106.40(b)(3)(iii), which applies to students. The Department's tentative view is also that using the same terms throughout the regulations would better enable recipients, students, and employees to understand and apply them. Adding ''lactation'' and ''related medical conditions'' to the bases already explicitly covered is consistent with Title IX's goal of preventing discrimination and eliminating barriers to equal access based on sex. For the reasons explained in the discussion of the proposed definition of the term ''pregnancy or related conditions'' (§ 106.2), this change would address a more comprehensive range of circumstances that could be the subject of sex discrimination in employment in the educational context. The Department proposes adding ''voluntary'' to clarify that an employee must not be forced to take leave due to pregnancy or related conditions, but rather must have the right to choose whether to take leave. Finally, the Department proposes clarifying the text of the provision for readability to replace ''the status which she held'' with ''the status held.''

Section 106.57(e) Lactation Time and Space

Current regulations: None.

Proposed regulations: The Department proposes adding requirements in proposed § 106.57(e) that a recipient must: (1) provide reasonable break time for an employee to express breast milk or breastfeed as needed; and (2) ensure the availability of a lactation space, which must be a space other than a bathroom that is clean, shielded from view, free from intrusion from others, and may be used by an employee for expressing breast milk or breastfeeding as needed.

Reasons: Overview. Ensuring equal access to employment in the education sector regardless of sex was a central purpose of Title IX at the time of its passage. *See* 118 Cong. Rec. at 5810 (statement of Dr. Bernice Sandler explaining that employers in the education sector often refused to hire women because of concerns about absenteeism due to family obligations, despite the fact that the Women's Bureau of the Department of Labor found that ''men lose more time off the job because of hernias than do women because of childbirth and pregnancy''). OCR and the Department received feedback from stakeholders during the June 2021 Title IX Public Hearing and in meetings held in 2022 under Executive Order 12866, after the NPRM was submitted to OMB, that civil rights protections based on pregnancy or related conditions are critical in the educational context. The Department now believes that clearly defined rights to lactation time and space are essential to prevent different treatment on the basis of sex and exclusion from recipient workplaces.

For employees in the education sector, lactation needs may present different challenges depending on the nature of the employment. Employees, particularly in elementary schools and secondary schools, may lack an appropriate place to express breast milk and instead resort to expressing milk in an unsanitary environment, such as a restroom stall, a supply closet, or even a car. If appropriate space is not provided, these employees may have little choice but to attend to their lactation needs in a space that is open and, in doing so, risk exposing themselves to colleagues and students. Or these employees may be denied the reasonable break time necessary to express milk, leading to painful health complications. If an employee is unable to access appropriate time and space for lactation, the employee may have no choice but to leave their employment in order to continue to care for their child's nutritional needs in the way the employee thinks best. To prevent subtle forms of sex discrimination and ensure equal access regardless of sex, the Department would require that a recipient: (1) provide reasonable break time for an employee to express breast milk or breastfeed as needed; and (2) ensure the availability of a lactation space, which must be a space other than a bathroom that is clean, shielded from view, free from intrusion from others, and may be used by an employee for expressing breast milk or breastfeeding as needed.

Overall, it is the Department's current view that requiring a recipient to provide its employees with reasonable break time and space for lactation would prevent discrimination and address sex-based barriers to equal access in employment by allowing

employees to attend to lactation needs while at work. Absent this rule, and depending on the circumstances, an employee could face discipline or job loss for absenteeism if the employee needed reasonable break time or space to express breast milk. An employee could also face harassment or retaliation because the current regulations do not clearly address lactation, including lactation time and space. Proposed § 106.57(e) would clearly set out a recipient's obligation, so both recipients and employees would have clear information about their obligations and rights consistent with Title IX.

Reasonable break time. Reasonable break time is necessary to ensure that a lactating employee can successfully access their school-based employment. As noted by the EEOC, ''a nursing mother will typically need to breastfeed or express breast milk using a pump two or three times over the duration of an eight-hour workday.'' 2015 EEOC Pregnancy Guidance. Because the physical needs and employment scenarios may vary by individual, proposed § 106.57(e)(1) would provide flexibility for a recipient to adapt to a range of situations. The time must be sufficient for the employee—every few hours—to travel to the lactation space, express breast milk or breastfeed, wash their lactation supplies if any, store the milk, and return to the work area.

Lactation space. Proposed § 106.57(e)(2) would also require a recipient to ensure the availability of a lactation space, which must be a space other than a bathroom that is clean, shielded from view, free from intrusion from others, and may be used by an employee for expressing breast milk or breastfeeding as needed. This requirement would be like the lactation space that the Department would require a recipient to provide to a student under proposed § 106.40(b)(3)(iv). As explained in greater detail in the discussion of proposed § 106.40(b)(3)(iv), the Department expects that these are also the appropriate minimum standards to prevent discrimination and create equal access for lactating employees. Specifically, these standards would allow an employee to express breast milk in a private, clean, and appropriate location as needed. Because the standards for both students and employee spaces would be the same, a recipient could choose to offer a common space for both students and employees, thereby minimizing cost while ensuring civil rights compliance.

The Department further notes that nothing in proposed § 106.57(e)(1) or (2) would preempt State or local laws that do not conflict with Title IX and may afford greater protection to employees regarding lactation time and space, as explained in greater detail in the discussion of proposed § 106.6(b).

Section 106.60 Pre-Employment Inquiries

Current regulations: Section 106.60 prohibits pre-employment inquiries regarding marital status and limits permissible inquiries as to sex.

Proposed regulations: The Department proposes revisions to make this section consistent with related provisions at proposed § 106.21(c) regarding pre-admission inquiries and to enhance readability. Specifically, the Department proposes to replace ''[a] recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part'' with ''[a] recipient may ask an applicant for employment to self-identify their sex, but only if this question is asked of all applicants and if the response is not used as a basis for discrimination prohibited by this part'' in proposed § 106.60(b).

Reasons: As explained in the discussion of proposed § 106.21(c), the Department proposes replacing the term ''in connection with discrimination'' with ''as a basis for discrimination'' to enhance clarity and consistency with usage elsewhere in the proposed regulations but does not intend this as a substantive change in meaning. In addition, the Department proposes revising § 106.60(b) to refer to ''all applicants'' instead of to ''both sexes'' in recognition of the fact that some applicants may have a nonbinary gender identity. For the same reason, if a recipient asks applicants to self-identify their sex and provides options from which an applicant may choose, nothing in the current or proposed regulations would prohibit a recipient from offering nonbinary options in addition to male and female options.

IV. Title IX's Coverage of All Forms of Sex Discrimination

Statute: Title IX states that ''[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.'' 20 U.S.C. 1681(a). Title IX includes several statutory exemptions and exceptions from its coverage, including for the membership practices of certain organizations, admissions to private undergraduate colleges, educational institutions that train individuals for the military services or merchant marine, and educational institutions that are controlled by a religious organization to the extent that application of Title IX would be inconsistent with the religious tenets of the controlling organization. 20 U.S.C. 1681(a)(1)–(9). Title IX also includes a provision concerning the discrete context of ''living facilities for the different sexes.'' 20 U.S.C. 1686. The Department has the authority to regulate with regard to discrimination on the basis of sex in education programs or activities receiving Federal financial assistance, specifically under 20 U.S.C. 1682 and generally under 20 U.S.C. 1221e–3 and 3474.

The statute does not explicitly reference distinct forms of sex discrimination, such as discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity, or discrimination taking the form of sex-based harassment. Although it does not address these specific applications, the Supreme Court made clear in 1982 that ''if we are to give Title IX the scope that its origins dictate, we must accord it a sweep as broad as its language.'' *N. Haven Bd. of Educ.,* 456 U.S. at 521.

A. History of the Department's Interpretation of Title IX's Coverage

The Department's Title IX regulations have long included provisions explaining Title IX's coverage of discrimination based on pregnancy or related conditions and sex stereotypes. *See, e.g.,* 34 CFR 106.21(c)(2) and (3), 106.40(b), 106.51(b)(6), 106.57(b) through (d), 106.61. In 2006 and 2020, the Department amended the regulations to address additional specific applications of Title IX's coverage of discrimination based on sex stereotypes. *See* 34 CFR 106.34(b)(4)(i), 106.45(b)(1)(iii). Although the Department has not previously used its rulemaking authority to clarify Title IX's specific application to discrimination based on sex characteristics, sexual orientation, or gender identity, OCR has previously addressed these applications of Title IX through guidance and administrative enforcement.

OCR first issued guidance on Title IX's application to sexual orientation discrimination and the rights of gay and lesbian students in its 1997 Sexual Harassment Guidance, which stated: ''Although Title IX does not prohibit discrimination on the basis of sexual orientation, sexual harassment directed at gay or lesbian students may constitute

sexual harassment prohibited by Title IX.'' 62 FR 12039 (footnote omitted). In 2001, OCR revised and reissued this guidance after the Supreme Court issued decisions in *Gebser* and *Davis,* two cases that addressed sexual harassment in educational settings, and *Oncale,* a case involving same-sex sexual harassment in the workplace. 2001 Revised Sexual Harassment Guidance at i-ii. This revised guidance added a few clarifications, including that ''sufficiently serious sexual harassment is covered by Title IX even if the hostile environment also includes taunts based on sexual orientation,'' *id.* at 27 n.15, that ''it can be discrimination on the basis of sex to harass a student on the basis of the victim's failure to conform to stereotyped notions of masculinity and femininity,'' *id.* at v, and that ''Title IX prohibits sexual harassment regardless of the sex of the harasser, *i.e.,* even if the harasser and the person being harassed are members of the same sex,'' *id.* at 3. The 1997 Sexual Harassment Guidance and 2001 Revised Sexual Harassment Guidance thus addressed some specific forms of sex discrimination against gay, lesbian, and gender-nonconforming students. They did not specifically address other forms of sex discrimination, such as discrimination based on gender identity. In October 2010, OCR issued a Dear Colleague Letter on Harassment and Bullying, which discussed Title IX's application to LGBT students:

> Although Title IX does not prohibit discrimination based solely on sexual orientation, Title IX does protect all students, including lesbian, gay, bisexual, and transgender (LGBT) students, from sex discrimination. When students are subjected to harassment on the basis of their LGBT status, they may also . . . be subjected to forms of sex discrimination prohibited under Title IX. The fact that the harassment includes anti-LGBT comments or is partly based on the target's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy overlapping sexual harassment or gender-based harassment.

2010 Dear Colleague Letter on Harassment and Bullying at 8

In July 2013, the Federal government resolved its first administrative enforcement case finding compliance concerns under Title IX regarding a school's denial of a transgender student's access to sex-separate facilities and accommodations during an overnight school trip. In their resolution letter, OCR and the Civil Rights Division of the U.S. Department of Justice (DOJ) emphasized the district's failure to contemplate any reasonable alternative arrangements that would have been less burdensome on the student. OCR Case No. 09–12–1020, *Arcadia Unified Sch. Dist.* (July 24, 2013) (resolution letter and agreement) (Arcadia Resolution Letter and Agreement), *www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadialetter.pdf; www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf.* In the resolution agreement, the district agreed to, among other things, treat the transgender male student ''the same as other male students in all respects.''

In 2014, OCR issued two more guidance documents that further clarified Title IX's coverage of gender identity discrimination. In April 2014, OCR issued the 2014 Q&A on Sexual Violence, which stated for the first time in a guidance document that Title IX's prohibition on sex discrimination extends to claims of discrimination based on gender identity. 2014 Q&A on Sexual Violence at 5. Then in December 2014, OCR issued a Question-and-Answer document on single-sex classes and extracurricular activities, which stated that ''[u]nder Title IX, a recipient generally must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes.'' U.S. Dep't of Educ., Office for Civil Rights, Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities at 25 (Dec. 1, 2014) (2014 Q&A on Single-Sex Elementary and Secondary Classes and Activities), *www.ed.gov/ocr/docs/faqs-title-ix-single-sex-201412.pdf.* Although the 2014 Q&A on Sexual Violence was rescinded and replaced with new guidance in September 2017, the 2014 Q&A on Single-Sex Elementary and Secondary Classes and Activities is still in effect.

In May 2016, OCR and DOJ's Civil Rights Division issued a joint Dear Colleague Letter addressing the rights of transgender students under Title IX, stating that ''the Departments treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations.'' 2016 Dear Colleague Letter on Title IX and Transgender Students at 2. The 2016 Dear Colleague Letter then explained that ''[t]his means that a school must not treat a transgender student differently from the way it treats other students of the same gender identity.'' *Id.* The letter addressed the application of Title IX with respect to harassment and issues related to identification documents, names and pronouns, sex-separate activities and facilities, and privacy and education records. It also included an extensive set of citations to examples of OCR's resolutions of past Title IX complaints and similar interpretations by courts and other agencies of Federal laws prohibiting sex discrimination. After the 2016 Dear Colleague Letter on Title IX and Transgender Students was issued, the Departments of Education and Labor revised regulations implementing other Federal laws to adopt similar interpretations that prohibitions on sex discrimination include discrimination based on gender identity, as well as many aspects of discrimination based on sexual orientation.[11]

In August 2016, a Federal district court issued an order finding that the interpretation set out in the 2016 Dear Colleague Letter on Title IX and Transgender Students was contrary to law and should not have been issued without undergoing the notice-and-comment process required by the Administrative Procedure Act and granted a nationwide preliminary injunction barring OCR and DOJ from relying on the 2016 Dear Colleague Letter on Title IX and Transgender Students in their enforcement of Title IX. *Texas* v. *United States,* 201 F. Supp. 3d 810 (N.D. Tex. 2016). Other Federal courts that reviewed the Department's interpretation found it to be reasonable. *See, e.g., G.G. ex rel. Grimm* v.

[11] In August 2016, the Department adopted regulations governing Equity Assistance Centers under Title IV of the Civil Rights Act of 1964 defining ''sex desegregation'' to mean ''assignment of students to public schools and within those schools without regard to their sex (including transgender status; gender identity; sex stereotypes, such as treating a person differently because he or she does not conform to sex-role expectations because he or she is attracted to or is in a relationship with a person of the same sex; and pregnancy and related conditions), including providing students with a full opportunity for participation in all educational programs regardless of their sex.'' *See* 34 CFR 270.7; U.S. Dep't of Educ., Office of Elementary and Secondary Educ., Final Regulations, Equity Assistance Centers (Formerly Desegregation Assistance Centers (DAC)), 81 FR 46807, 46816 (July 18, 2016), *https://www.govinfo.gov/content/pkg/FR-2016-07-18/pdf/2016-16811.pdf.* This interpretation of the term ''sex'' is relevant to the interpretation of Title IX because Title IX amended Title IV in 1972 to add sex segregation to the types of segregation that could be addressed by technical assistance. Similarly, in December 2016, DOL adopted regulations under Section 188 of WIOA, which incorporates Title IX's prohibition on sex discrimination. These regulations provide that unlawful sex-based discriminatory practices include ''[t]reating an individual adversely because the individual identifies with a gender different from that individual's sex assigned at birth.'' *See* 29 CFR 38.7; U.S. Dep't of Labor, Office of the Sec'y, Final Rule, Implementation of the Nondiscrimination and Equal Opportunity Provisions of WIOA, 81 FR 87130, 87221 (Dec. 2, 2016), *https://www.govinfo.gov/content/pkg/FR-2016-12-02/pdf/2016-27737.pdf.* Neither of these regulatory provisions has been altered or challenged since 2016.

Gloucester Cnty. Sch. Bd., 822 F.3d 709, 723 (4th Cir. 2016) (according controlling weight to the ''Department's interpretation of its own regulation, § 106.33), *vacated and remanded,* 137 S. Ct. 1239, 197 L. Ed. 2d 460 (2017); *Bd. of Educ. of the Highland Loc. Sch. Dist.* v. *U.S. Dep't of Educ.,* 208 F. Supp. 3d 850, 870 (S.D. Ohio 2016) (same); *Whitaker* v. *Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.,* No. 16–CV–943–PP, 2016 WL 5239829, at *3 (E.D. Wis. Sept. 22, 2016) (same), *aff'd sub nom. Whitaker By Whitaker* v. *Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.,* 858 F.3d 1034 (7th Cir. 2017), *abrogated on other grounds as recognized by Ill. Republican Party* v. *Pritzker,* 973 F.3d 760, 762 (7th Cir. 2020).

In February 2017, DOJ and OCR issued a letter withdrawing the statements of policy and guidance reflected in the 2016 Dear Colleague Letter on Title IX and Transgender Students ''in order to further and more completely consider the legal issues involved.'' U.S. Dep't of Justice and U.S. Dep't of Educ., Office for Civil Rights, Dear Colleague Letter on Transgender Students at 1 (Feb. 22, 2017) (2017 Dear Colleague Letter on Transgender Students), *https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf.* On March 3, 2017, the court dissolved the preliminary injunction when the plaintiffs voluntarily dismissed the lawsuit. Plaintiff's Notice of Voluntary Dismissal, *Texas* v. *United States,* No. 7:16–cv–00054 (N.D. Tex. Mar. 3, 2017), ECF No. 128.

When the Department amended the Title IX regulations in May 2020, it declined to address Title IX's coverage of discrimination on the basis of gender identity or sexual orientation, but noted in the preamble to the 2020 amendments that the most recent position of the United States in then-pending Supreme Court cases was ''(1) that the ordinary public meaning of 'sex' at the time of Title VII's passage was biological sex and thus the appropriate construction of the word 'sex' does not extend to a person's sexual orientation or transgender status, and (2) that discrimination based on transgender status does not constitute sex stereotyping but a transgender plaintiff may use sex stereotyping as evidence to prove a sex discrimination claim if members of one sex (*e.g.,* males) are treated less favorably than members of the other sex (*e.g.,* females).'' 85 FR 30178. The Department also declined to define the term ''sex'' because it determined that doing so was not necessary: Sexual harassment ''does not depend on whether the definition of 'sex' involves solely the person's biological characteristics (as at least one commenter urged) or whether a person's 'sex' is defined to include a person's gender identity (as other commenters urged).'' *Id.* The Department asserted, however, that ''Title IX and its implementing regulations include provisions that presuppose sex as a binary classification'' and that the Department has previously acknowledged ''physiological differences between the male and female sexes.'' *Id.*

Subsequently in June 2020, the Supreme Court held in *Bostock* that sex discrimination, as prohibited by Title VII, encompasses discrimination based on sexual orientation and gender identity, 140 S. Ct. at 1737, even on the assumption (which the Court accepted for sake of argument) that ''sex'' refers ''only to biological distinctions between male and female,'' *id.* at 1739. The Court stated that to discriminate on the basis of sexual orientation or gender identity ''requires an employer to intentionally treat individual employees differently because of their sex.'' *Id.* at 1742. The Court explained that when an employer fires a person for being gay or transgender, the employer necessarily fires that person for ''traits or actions it would not have questioned in members of a different sex.'' *Id.* at 1737. The Court in *Bostock* found that ''no ambiguity exists about how Title VII's terms apply to the facts before [it]''—*i.e.,* allegations of discrimination in employment against several individuals based on sexual orientation and gender identity. *Id.* at 1749. Indeed, the Court stated that ''it is impossible to discriminate against a person'' because of their sexual orientation or gender identity ''without discriminating against that individual based on sex.'' *Id.* at 1741. In the months immediately following the Supreme Court's decision in *Bostock,* OCR took steps to clarify its position on *Bostock*'s application to Title IX. On August 31, 2020, OCR opened an investigation of a complaint of sexual orientation discrimination. OCR Case No. 04–20–1409, *Shelby Cnty. Sch. Dist.* (Aug. 31, 2020) (letter of notification), *http://www.ed.gov/ocr/letters/20200831-letter-of-notification.pdf.* In its notification letter, OCR noted that although there are differences between workplaces and schools, *Bostock* ''guides OCR's understanding that discriminating against a person based on their homosexuality or identification as transgender generally involves discrimination on the basis of their biological sex.'' *Id.* at 2. OCR indicated that it would investigate allegations that the complainant had been subjected to '' 'homophobic bigot[ry]' '' because she '' 'didn't date guys' '' and '' 'likes girls' '' and that she had been denied an opportunity because of her sexual orientation. *Id.* at 1.

On the same day, OCR issued a revised Letter of Impending Enforcement Action in its investigation of the Connecticut Interscholastic Athletic Conference (CIAC) and six school districts, in which it denied that *Bostock* or its reasoning should alter its analysis of Title IX's application to student participation on sex-separate athletics teams. OCR Case No. 01–19–4025, *Conn. Interscholastic Athletic Conf. et al.* (Aug. 31, 2020) (revised letter of impending enforcement action) (Rev. CIAC Letter), *http://www.ed.gov/ocr/docs/investigations/more/01194025-a2.pdf.* The letter stated that when a recipient provides ''separate teams for members of each sex'' under 34 CFR 106.41(b), ''the recipient must separate those teams on the basis of biological sex'' and not on the basis of gender identity. *Id.* at 36. The letter also departed from OCR's typical practice concerning enforcement letters by stating that this letter ''constitutes a formal statement of OCR's interpretation of Title IX and its implementing regulations and should be relied upon, cited, and construed as such.'' *Id.* at 49. In 2021, however, OCR closed the investigation after archiving and marking the letter ''not for reliance,'' citing its inconsistency with Executive Order 13988 (describing *Bostock*) and the fact that it was issued without having followed the appropriate procedures required for issuing guidance.

In January 2021, the Department posted a memorandum signed by the Principal Deputy General Counsel in its Office of the General Counsel, which commented on *Bostock*'s application to Title IX. U.S. Dep't of Educ., Office for Civil Rights, Memorandum from Principal Deputy General Counsel delegated the authority and duties of the General Counsel Reed D. Rubinstein to Kimberly M. Richey, Acting Assistant Secretary of the Office for Civil Rights re *Bostock* v. *Clayton Cnty.* (Jan. 8, 2021) (archived and marked not for reliance 2021) (Rubinstein Memorandum), *https://www2.ed.gov/about/offices/list/ocr/correspondence/other/ogc-memorandum-01082021.pdf.* The Rubinstein Memorandum stated that the *Bostock* Court's ''assumption that the ordinary public meaning of the term 'sex' in Title VII means biological distinctions between male and female . . . is consistent with and further supports the Department's long-standing

construction of the term 'sex' in Title IX to mean biological sex, male or female.'' Rubinstein Memorandum at 2. The Rubinstein Memorandum also pointed to the preamble to the 2020 amendments, specifically the statement that '' '[i]n promulgating regulations to implement Title IX, the Department expressly acknowledged physiological differences between the male and female sexes,' '' to bolster its interpretation. *Id.* at 3. The Rubinstein Memorandum stated that ''[c]onsistent with *Bostock,* harassment on the basis of a person's transgender status or homosexuality may implicate that person's biological sex and, thus, may at least in part constitute 'conduct on the basis of sex,' '' such that it ''constitute[s] sexual harassment prohibited by Title IX.'' *Id.* at 6. However, the Rubinstein Memorandum also argued that ''*Bostock*'s holding and reasoning, to the extent relevant, support the Department's position that Title IX's statutory and regulatory provisions permit, and in some cases require, biological sex, male or female, to be taken into account in an education program or activity.'' *Id.* Thus, the Rubinstein Memorandum concluded, a recipient is required to separate athletic participants ''solely based on their biological sex,'' to restrict access to sex-separate facilities ''based on biological sex,'' and to rely on a student's ''biological'' sex in other circumstances in which sex separation is permitted by Title IX. *Id.* at 7, 9, 12–13. The Rubinstein Memorandum did not, however, explain how a school should determine a student's ''biological'' sex. The Rubinstein Memorandum stated that the Department's Office of the General Counsel was not persuaded to follow the recent appellate cases to the contrary. *Id.* at 9–11 (discussing *Grimm* v. *Gloucester Cnty. Sch. Bd.,* 972 F.3d 586 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *cert. denied,* 141 S. Ct. 2878 (2021); *Adams* v. *Sch. Bd. of St. Johns Cnty.,* 968 F.3d 1286 (11th Cir. 2020), *vacated and superseded,* 3 F.4th 1299 (11th Cir. 2021), *reh'g en banc pending,* 9 F.4th 1369 (11th Cir. 2021)).

In 2021, OCR archived the Rubinstein Memorandum and marked it ''not for reliance,'' citing its inconsistency with Executive Order 13988 (describing *Bostock*) and its issuance without having followed the procedures required for issuing guidance. In June 2021, after reviewing the text of Title IX in light of the Supreme Court's decision in *Bostock* and other Federal courts' decisions in Title IX cases, OCR published a Notice of Interpretation in the **Federal Register** discussing those cases and clarifying that Title IX's prohibition on sex discrimination encompasses discrimination on the basis of sexual orientation and gender identity. 2021 Bostock Notice of Interpretation, 86 FR 32637. In the Notice of Interpretation, OCR discussed the text of Title IX and Federal courts' interpretation of Title IX and concluded that the Supreme Court's reasoning in *Bostock* applies to Title IX. *Id.* at 32638. OCR underscored the similarity of the relevant text of Title VII and Title IX and recognized the harm these forms of discrimination can cause to students, citing numerous court rulings recognizing harm in individual students' cases. *Id.* at 32638–39. OCR made clear that this interpretation would inform OCR's evaluation and investigation of complaints but that it would not dictate the outcome in any particular case or set of facts. *Id.* at 32639. The Notice of Interpretation did not address how coverage of sexual orientation and gender identity discrimination affects obligations under the current Title IX regulations.

B. Proposed Regulations

Section 106.10 Scope

Current regulations: None.

Proposed regulations: The Department proposes adding this provision to the regulations to clarify the scope of Title IX's prohibition on discrimination on the basis of sex.

Reasons: The Department proposes adding a new section, § 106.10, titled Scope, to its Title IX regulations to clarify Title IX's coverage of specific forms of sex discrimination, including some that are already addressed in the current regulations, such as discrimination based on pregnancy or related conditions, and others that are consistent with decisions of Federal courts and the Department's identification of sex-based barriers to equal educational opportunity. This new section would state that discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

As summarized above, the Department has at times articulated a narrower interpretation of the scope of Title IX's prohibition on sex discrimination. For example, the Department previously stated that Title IX does not fully encompass discrimination on the basis of sexual orientation or gender identity. *See, e.g.,* 2001 Revised Sexual Harassment Guidance at 3; 2010 Dear Colleague Letter on Harassment and Bullying at 8; Preamble to the 2020 Amendments, 85 FR 30178–79. After the Supreme Court decided *Bostock,* however, Department officials acknowledged that Title IX covers sexual orientation and gender identity discrimination, albeit only so far as the discrimination impermissibly takes ''biological'' sex into account. *See, e.g.,* Rubinstein Memorandum at 4.

The Department now believes that its prior position (*i.e.,* that Title IX's prohibition on sex discrimination does not encompass discrimination based on sexual orientation and gender identity) is at odds with Title IX's text and purpose and the reasoning of the *Bostock* Court and other courts to have considered the issue in recent years—both before and after *Bostock.*

Title IX and its implementing regulations do not use the term ''on the basis of sex'' in a restrictive way. For example, consistent with judicial interpretations, OCR has long recognized that Title IX prohibits sexual harassment and discrimination based on sex stereotypes. The specific forms of sex discrimination that the Department proposes to add to the express prohibitions in § 106.10 do not depend on resolving the question of whether the term ''sex'' is limited to physiological or ''biological'' characteristics. As noted, in certain documents in August 2020 and January 2021, the Department indicated that Title IX's scope should be limited to discrimination rooted in ''biological sex,'' but as *Bostock* demonstrated with respect to Title VII, even accepting that definition of ''sex'' would not preclude Title IX's coverage of these forms of discrimination. Given that, and following the approach reflected in the 2020 regulations, the Department does not propose adding a definition of ''sex'' here because sex can encompass many traits and because it is not necessary for the regulations to define the term for all circumstances. *See* 85 FR 30178; *cf. Schroer* v. *Billington,* 424 F. Supp. 2d 203, 212–13 (D.D.C. 2006) (construing the phrase ''because of . . . sex'' broadly is ''a straightforward way to deal with the factual complexities that . . . stem from real variations . . . in the different components'' of sexuality, including ''chromosomal, gonadal, hormonal, and neurological'' variations); *Students & Parents for Priv.* v. *U.S. Dep't of Educ.,* No. 16–CV–4945, 2017 WL 6629520, at *3 (N.D. Ill. Dec. 29, 2017) (''As the Magistrate Judge correctly recognized, however, and as the Seventh Circuit has since conclusively held, federal protections against sex discrimination are substantially broader than based only on genitalia or chromosome.''); *Rentos* v. *Oce-Office Sys.,* No. 95-cv-7908, 1996

WL 737215, at *6 (S.D.N.Y. Dec. 24, 1996) (recognizing the many different factors the medical community has determined to be pertinent in identifying someone's gender).

The Supreme Court in *Bostock* similarly declined to resolve the parties' dispute concerning the definition of ''sex'' under a civil rights law prohibiting discrimination on the basis of sex. The Court acknowledged the parties' competing definitions of ''sex'': the employers' definition of the term as ''status as either male or female [as] determined by reproductive biology,'' and the employees' definition as ''capturing more than anatomy and reaching at least some norms concerning gender identity and sexual orientation.'' 140 S. Ct. at 1739. The Court declined to resolve that dispute because ''nothing in our approach . . . turns on the outcome of the parties' debate'' about definitions. *Id.* The Court explained that, even if one assumes ''for argument's sake'' the employers' narrower definition of sex as referring ''only to biological distinctions between male and female,'' discrimination ''because of sex'' occurs whenever an employer discriminates against a person for being gay or transgender: In such a circumstance, the Court explained, the employer ''intentionally treats a person worse because of sex—such as by firing the person for actions or attributes it would tolerate in an individual of another sex.'' *Id.* at 1739–40; *see also id.* at 1741 (''If the employer intentionally relies in part on an individual employee's sex when deciding to discharge the employee—put differently, if changing the employee's sex would have yielded a different choice by the employer—a statutory violation has occurred.''). And, the Court explained, this is so whether or not ''other factors besides the plaintiff's sex contributed to the decision'' and regardless of whether ''the employer treated women as a group the same when compared to men as a group.'' *Id.* at 1741. *Bostock* thus makes clear that it is ''impossible to discriminate against a person'' on the basis of sexual orientation or gender identity without ''discriminating against that individual based on sex,'' even assuming that sex refers only to certain ''biological distinctions.'' *Id.* at 1739, 1741.

The Department does not intend that the specific categories of discrimination listed in proposed § 106.10 would be exhaustive, as evidenced by the use of the word ''includes.'' Title IX's broad prohibition on discrimination ''on the basis of sex'' under a recipient's education program or activity encompasses, at a minimum, discrimination against an individual because, for example, they are or are perceived to be male, female, or nonbinary; transgender or cisgender; intersex; currently or previously pregnant; lesbian, gay, bisexual, queer, heterosexual, or asexual; or gender-conforming or gender-nonconforming. All such classifications depend, at least in part, on consideration of a person's sex. The Department therefore proposes to clarify in this section that, consistent with *Bostock* and other Supreme Court precedent, Title IX bars all forms of sex discrimination, including discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Sex characteristics. Proposed § 106.10 would also specifically recognize that Title IX prohibits discrimination on the basis of sex characteristics. These include a person's physiological sex characteristics and other inherently sex-based traits. *See Grimm,* 972 F.3d at 608 (quoting *Whitaker,* 858 F.3d at 1051). The prohibition on discrimination based on sex characteristics would cover, among other things, discrimination based on intersex traits. The term ''intersex'' generally describes people with variations in physical sex characteristics. These variations may involve anatomy, hormones, chromosomes, and other traits that differ from expectations generally associated with male and female bodies. Intersex traits are typically a result of medical conditions, including but not limited to congenital adrenal hyperplasia, Klinefelter syndrome, and androgen insensitivity syndrome. Consortium on the Management of Disorders of Sex Development, *Clinical Guidelines for the Management of Disorders of Sex Development in Childhood* at 2–7 (2006), *https://dsdguidelines.org/files/clinical.pdf*.

Discrimination based on intersex traits is rooted in perceived differences between an individual's specific sex characteristics and those that are considered typical for their sex assigned at birth. As discussed above, discrimination based on anatomical or physiological sex characteristics (such as genitals, gonads, chromosomes, and hormone function) is inherently sex-based. Thus, intersex traits are ''inextricably bound up with'' sex. *Cf. Bostock,* 140 S. Ct. at 1742; *id.* at 1746 (discrimination against ''persons with one sex identified at birth and another today'' is sex discrimination). The Department therefore proposes to clarify that sex discrimination under Title IX includes discrimination on the basis of sex characteristics, including intersex traits.

Sexual orientation. Proposed § 106.10 would clarify that the regulations prohibit discrimination on the basis of sexual orientation. Although the Department has previously stated that Title IX does not prohibit discrimination based solely on sexual orientation, the Department has long maintained that Title IX prohibits discrimination and harassment based on sex stereotypes. *See, e.g.,* 85 FR 30179; 2010 Dear Colleague Letter on Harassment and Bullying at 8; 2001 Revised Sexual Harassment Guidance at 3. In June 2021, OCR published a notice clarifying that, in light of the Supreme Court's decision in *Bostock,* OCR interprets Title IX's prohibition on sex discrimination to encompass discrimination on the basis of sexual orientation. 2021 Bostock Notice of Interpretation, 86 FR 32637. The Supreme Court in *Bostock* provided examples to illustrate how sexual orientation discrimination is necessarily a form of sex discrimination. In one example, the Court stated:

> Consider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer's mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. Put differently, the employer intentionally singles out an employee to fire based in part on the employee's sex, and the affected employee's sex is a but-for cause of his discharge.

Bostock, 140 S. Ct. at 1741. As OCR explained in the 2021 Bostock Notice of Interpretation, it carefully reviewed the *Bostock* decision, the similarities in the text of Title VII and Title IX, the way other Federal courts have analyzed Title IX's application to sexual orientation discrimination and the sex-based harms that sexual orientation discrimination causes and concluded that OCR's interpretation of Title IX should be consistent with the Supreme Court's reasoning in *Bostock.* Other Federal courts have likewise recognized that Title IX covers sexual orientation discrimination. *See, e.g., Koenke* v. *Saint Joseph's Univ.,* No. CV 19–4731, 2021 WL 75778, at *2 (E.D. Pa. Jan. 8, 2021); *Doe* v. *Univ. of Scranton,* No. 3:19–CV–01486, 2020 WL 5993766, at *5 n.61 (M.D. Pa. Oct. 9, 2020); *Videckis* v. *Pepperdine Univ.,* 150 F. Supp. 3d 1151, 1159–60 (C.D. Cal. 2015).

Gender identity. Proposed § 106.10 would also clarify that Title IX prohibits

discrimination on the basis of an individual's gender identity. The Department has previously described its jurisdiction over gender identity discrimination in guidance documents and in filings in Federal court. *See, e.g.,* 2016 Dear Colleague Letter on Title IX and Transgender Students; 2014 Q&A on Sexual Violence at 5; Brief for the United States as Amicus Curiae Supporting Plaintiff-Appellant, *Grimm,* 822 F.3d 709 (No. 15–2056), *https://www.justice.gov/crt/file/788971/download*; Statement of Interest of the United States, *Tooley* v. *Van Buren Pub. Schs.,* No. 2:14-cv-13466–AC–DRG (E.D. Mich. Feb. 24, 2015), *https://www.justice.gov/sites/default/files/crt/legacy/2015/02/27/tooleysoi.pdf.* Federal courts had likewise recognized that Title IX covers gender identity discrimination. *See, e.g., Grimm,* 972 F.3d at 616–19; *Whitaker,* 858 F.3d at 1049–50. However, the Department subsequently rescinded the 2016 Dear Colleague Letter on Title IX and Transgender Students and declined to assert in the 2020 amendments that Title IX prohibits discrimination on the basis of a person's gender identity. *See, e.g.,* 85 FR 30177–79. Then, following the Supreme Court's decision in *Bostock,* the Department once again acknowledged that complaints of discrimination on the basis of transgender status ''might fall within the scope of Title IX's non-discrimination mandate because they allege sex discrimination.'' Rubinstein Memo at 4 (citing *Bostock,* 140 S. Ct. at 1741, 1737). More recently OCR affirmed that discrimination on the basis of sex under Title IX should align with the Supreme Court's reasoning in *Bostock.* Thus, in its 2021 Bostock Notice of Interpretation, OCR made clear that, consistent with *Bostock,* it interprets Title IX's prohibition on sex discrimination to cover discrimination on the basis of gender identity. 86 FR 32637 (citing *Bostock*'s holding that when an employer discriminates against a person for being transgender, ''the employer necessarily discriminates against that person for 'traits or actions it would not have questioned in members of a different sex''). The proposed regulations are consistent with OCR's 2021 Bostock Notice of Interpretation and the interpretation of Federal courts that have applied *Bostock* to Title IX.

Sex stereotypes. Proposed § 106.10 would clarify that discrimination based on sex stereotypes, *i.e.,* fixed or generalized expectations regarding a person's aptitudes, behavior, self-presentation, or other attributes based on sex, is prohibited under Title IX. The proposed regulations would codify the long-recognized principle that Title IX and other sex discrimination laws prohibit harassment and other forms of discrimination based on a person's conformity or nonconformity to stereotypical notions of masculinity and femininity. As the Supreme Court explained in *Price Waterhouse* v. *Hopkins,* the assumption that persons must act and dress in a particular way based on expectations related to a person's sex is a form of discrimination on the basis of sex. *See* 490 U.S. at 235 (plurality opinion) (''[T]he man who . . . bore responsibility for explaining to Hopkins the reasons for the Policy Board's decision to place her candidacy on hold [advised her that] in order to improve her chances for partnership . . . Hopkins should 'walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry.' ''); *accord id.* at 272 (O'Connor, J., concurring in the judgment). ''[W]e are beyond the day,'' wrote the Court, ''when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for '[i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.' '' *Id.* at 251 (plurality opinion) (internal citations omitted); *see also Bostock,* 140 S. Ct. at 1742–43 (''[A]n employer who fires both Hannah and Bob for failing to fulfill traditional sex stereotypes doubles rather than eliminates Title VII liability . . . .''). Many Federal courts have applied this principle and recognized the ways that sex stereotyping can deprive students of equal access to education in violation of Title IX. *See, e.g., Whitaker,* 858 F.3d at 1049 (''A policy that . . . punishes [an] individual for his or her gender non-conformance . . . violates Title IX.''); *Pederson* v. *La. State Univ.,* 213 F.3d 858, 880 (5th Cir. 2000) (recognizing that a university violated Title IX when its funding decisions in athletics were based on ''paternalism and stereotypical assumptions about [women's] interests and abilities,'' and a ''remarkably outdated view of women and athletics''); *Videckis,* 150 F. Supp. 3d at 1160 (''It is undisputed that Title IX forbids discrimination on the basis of gender stereotypes.''); *Pratt* v. *Indian River Cent. Sch. Dist.,* 803 F. Supp. 2d 135, 152 (N.D.N.Y. 2011) (holding that allegations of peer harassment based on nonconformity or perceived nonconformity with sex stereotypes state a claim under Title IX); *Seiwert* v. *Spencer-Owen Cmty. Sch. Corp.,* 497 F. Supp. 2d 942, 953 (S.D. Ind. 2007) (holding that harassment for ''acting in a manner that did not adhere to the traditional male stereotypes'' states a Title IX claim); *Riccio* v. *New Haven Bd. of Educ.,* 467 F. Supp. 2d 219, 226 (D. Conn. 2006) (''The language set forth in the [2001] OCR Guidance and the holding in *Oncale* clearly support the conclusion that a female student, subjected to pejorative, female homosexual names by other female students, can bring a claim of sexual harassment under Title IX.''); *Theno* v. *Tonganoxie Unified Sch. Dist. No. 464,* 377 F. Supp. 2d 952, 965, 973 (D. Kansas 2005) (''[A] rational trier of fact could conclude that plaintiff was harassed because his harassers perceived that he did not act as they believed a man (or perhaps more accurately a teenage boy) should act'' when he was harassed for failing ''to satisfy his peers' stereotyped expectations for his gender''); *Montgomery* v. *Indep. Sch. Dist. No. 709,* 109 F. Supp. 2d 1081, 1092 (D. Minn. 2000) (stating that a reasonable factfinder ''could infer that [plaintiff] suffered harassment due to his failure to meet masculine stereotypes''); *cf. United States* v. *Virginia,* 518 U.S. 515, 533 (1996) (stating that in making classifications based on sex, the State ''must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females'').

Title IX's prohibition on discrimination on the basis of sex stereotypes is also embedded in the current regulations and OCR's historical guidance documents. *See, e.g.,* 34 CFR 106.34(b)(4) (prohibiting single-sex classes that rely on ''overly broad generalizations about the different talents, capacities, or preferences of either sex''); 34 CFR 106.45(b)(1)(iii) (''Any materials used to train Title IX Coordinators, investigators, decisionmakers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.''); 2001 Revised Sexual Harassment Guidance at 3 (''[G]ender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, but not involving conduct of a sexual nature, is also a form of sex discrimination to which a school must respond . . . .''

(footnote omitted)). The proposed addition of this new section would be consistent with these provisions and increase clarity of Title IX's coverage of discrimination based on sex stereotypes.

Pregnancy or related conditions. Proposed § 106.10 would also clarify that the regulations prohibit discrimination based on pregnancy or related conditions, consistent with the Department's longstanding interpretation of Title IX and as explained in more detail in the discussion of proposed amendments to §§ 106.2, 106.21, 106.40, 106.51, and 106.57 in Pregnancy and Parental Status (Section III).

In sum, the Department proposes to clarify Title IX's scope in proposed § 106.10 to more closely align with Title IX's text, purpose, and principles articulated in Federal case law and to more effectively protect people from all forms of sex discrimination under federally funded education programs and activities.

Section 106.31(a) Education Programs or Activities—General

Current regulations: Section 106.31(a) describes generally the conduct prohibited by Title IX and notes the limited application of this subpart to admissions to certain classes of institutions.

Proposed regulations: The Department proposes adding the word ''otherwise'' in redesignated paragraph (a)(1) and renumbering the paragraph accordingly. The Department also proposes adding a new paragraph (a)(2) to clarify that in the limited circumstances in which Title IX or the regulations permit different treatment or separation on the basis of sex, a recipient must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, unless otherwise permitted by Title IX or the regulations. Proposed § 106.31(a)(2) would clarify that adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with their gender identity subjects a person to more than de minimis harm on the basis of sex.

Reasons: Adding the word ''otherwise'' before ''be subjected to discrimination under'' would clarify that denial of benefits based on sex and exclusion from participation based on sex are themselves forms of prohibited sex discrimination. The statute and current regulations generally use the term ''discrimination'' to describe any form of prohibited conduct under Title IX or the regulations—including when a person is, on the basis of sex, excluded from participation in or denied the benefits of an education program or activity receiving Federal financial assistance. *See, e.g.,* 20 U.S.C. 1681(a) (titled ''Prohibition against discrimination''); 34 CFR part 106 (titled ''Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance''); 34 CFR 106.1 (Title IX is ''designed to eliminate (with certain exceptions) discrimination on the basis of sex''). Regulations implementing other civil rights laws with similar statutory language also use the term ''otherwise'' in this context to make clear that ''discrimination'' is an umbrella term describing all conduct prohibited by the statute. *See, e.g.,* 34 CFR 100.1, 100.3(a) (Title VI); 34 CFR 104.4(a), 104.4(b)(5), 104.21, 104.43(a), 104.44(d) (Section 504).

Proposed § 106.31(a)(2) would clarify that in the discrete circumstances when Title IX or the regulations permits a recipient to separate or treat persons differently on the basis of sex, a recipient must not do so in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm unless otherwise permitted by Title IX or the regulations.

When a recipient separates girls and boys, or women and men, or applies different rules to them, it treats such persons ''on the basis of [sex].'' This understanding of sex-based different treatment does not depend on any particular definition of the term ''sex.'' A recipient's action is based on sex, for example, if it relies upon ''biological distinctions between male and female.'' *Cf. Bostock,* 140 S. Ct. at 1739.

Since 1975, the Department's regulations have specified that such separate or differential treatment on the basis of sex is presumptively a form of prohibited sex discrimination. *See, e.g.,* 34 CFR 106.31(b)(4), (7) (''Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex . . . [s]ubject any person to separate or different rules of behavior, sanctions, or other treatment; [or] [o]therwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.''); *see also id.* at 106.34(a) (''Except as provided for in this section or otherwise in this part, a recipient shall not provide or otherwise carry out any of its education programs or activities separately on the basis of sex . . . .''); *id.* at 106.41(a) (''No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.''). These regulations, which were the subject of a congressional hearing before they took effect and which Congress did not take steps to disapprove,[12] reflect the understanding that subjecting students to differential treatment on the basis of their sex in the education context is presumptively harmful, including because such differential treatment is often based upon, and thus perpetuates, ''overbroad generalizations about the different talents, capacities, or preferences'' of the sexes. *Virginia,* 518 U.S. at 533.

Nevertheless, the Department has never treated all distinctions based on sex as impermissible discrimination. The Department's regulations have recognized limited contexts in which recipients are permitted to employ sex-specific rules or to separate students on the basis of sex because the Department has determined that in those contexts such treatment does *not* generally impose harm on students. *See, e.g.,* 34 CFR 106.33 (toilet, locker room, and shower facilities); *id.* at 106.34(a)(3) (human sexuality classes).

Although the Department has the authority to interpret the statute and promulgate regulations, its regulations must not contradict the express provisions of the statute. Rather, those regulatory provisions are premised on the understanding that in certain situations, the fact that a recipient employs a sex-based distinction or separation does not, as such, amount to ''discrimination'' that Title IX forbids in the first place. In particular, to the extent separation or different treatment based on sex imposes no harm or only de minimis harm, it will not amount to discrimination on the basis of sex under Title IX. *Cf. Oncale,* 523 U.S. at 81 (Title VII does not reach non-harmful ''differences in the ways men and

[12] In 1974, HEW proposed regulations that contained earlier, materially identical versions of these general, presumptive prohibitions on sex-based separation and differential treatment. *See* 39 FR 22228, 22235–36 (1974) (proposing 45 CFR 86.31(b)(4) & (8), 86.34(a), 86.38(a)). President Ford approved those regulations and submitted them to the Speaker of the House and the President of the Senate for review pursuant to Section 431(d)(1) of the GEPA, under which Congress had 45 days in which to assess whether the rule was ''inconsistent with the Act from which it derives its authority, and disapprove such final regulation.'' Public Law 93–380, 88 Stat. 567, § 431(d)(1), previously codified at 20 U.S.C. 1232(d)(1). Congress did not take any steps to disapprove the regulations because of these provisions, and the final regulations, which included the same provisions, were published on June 4, 1975, and went into effect on July 21, 1975. *See* 40 FR 24128, 24141–42 (1975).

women routinely interact with'' each other.)

There may be, however, circumstances in which even generally permissible sex-based treatment would cause more than de minimis harm to protected individuals. Proposed § 106.31(a)(2) would clarify that in these circumstances, the harmful treatment would be discriminatory and therefore prohibited by Title IX, unless otherwise permitted by the statute or regulations. *See Peltier* v. *Charter Day Sch., Inc.,* Nos. 20–1001, 20–1023, 2022 WL 2128579, at *16 (4th Cir. June 14, 2022) (en banc) (''for the plaintiffs to prevail under Title IX, they must show that . . . the challenged action caused them harm, which may include 'emotional and dignitary harm' '' (internal citation omitted)); *cf. Burlington N. & Santa Fe Ry. Co.* v. *White,* 548 U.S. 53, 59–60 (2006) (''No one doubts that the term 'discriminate against' refers to distinctions or differences in treatment that injure protected individuals.''); *see also Threat* v. *City of Cleveland,* 6 F.4th 672, 678 (6th Cir. 2021) (''To 'discriminate' reasonably sweeps in some form of an adversity and a materiality threshold.'').

Such harm may result, for example, if the sex separation or differential treatment is based upon, and thus perpetuates, ''overbroad generalizations about the different talents, capacities, or preferences'' of the sexes, *Virginia,* 518 U.S. at 533, or upon other harmful sex stereotypes. *See* 34 CFR 106.34(b)(4)(i) (requiring recipients to ensure that single-sex classes and activities permitted under the regulations do not rely upon ''overly broad generalizations about the different talents, capacities, or preferences of either sex'').

In addition, prohibited harm may result when a recipient applies a generally permissible sex-based policy, or makes an otherwise permissible sex-based distinction, in a manner that discriminates against one or more protected individuals by subjecting them to more than de minimis harm on the basis of sex. In these situations, even when a recipient's sex-specific treatment or separation does not materially harm *most* students to whom it applies, and therefore may generally be maintained by a recipient, Title IX prohibits its application to those individual students who would suffer more than de minimis harm on the basis of sex. *See, e.g., Grimm,* 972 F.3d at 617–18 (applying Title IX's statutory prohibition against discrimination on the basis of sex when sex-based separation caused harm). This is because the statute specifies that ''no person'' shall be subjected to discrimination on the basis of sex in a federally funded education program or activity unless otherwise permitted by the statute. In *Bostock,* the Court explained that Title VII's prohibition on discrimination against an ''individual'' means that the ''focus should be on individuals, not groups.'' 140 S. Ct. at 1740. Use of the term ''person'' in Title IX compels the same conclusion. *See Jackson,* 544 U.S. at 180 (''Congress enacted Title IX not only to prevent the use of federal dollars to support discriminatory practices, but also 'to provide individual citizens effective protection against those practices.' '' (quoting *Cannon,* 441 U.S. at 704 (stating that, in enacting Title IX, Congress ''wanted to provide individual citizens effective protection against those [discriminatory] practices'')).

In particular, courts have recognized that a recipient subjects students to such harm when it bars them from accessing otherwise permissible sex-separate facilities or activities consistent with their gender identity. *See, e.g., Whitaker,* 858 F.3d at 1045–46 (discussing district court's findings, based on expert testimony, that denying transgender student's access to a sex-separate education program or activity consistent with his gender identity imposed significant harm on his mental health and overall well-being); *Grimm,* 972 F.3d at 617–18 (holding that evidence that a transgender boy suffered physical, emotional, and dignitary harms as a result of being denied access to a sex-separate program or activity consistent with his gender identity was sufficient to constitute harm under Title IX); *B.P.J.* v. *W. Va. State Bd. of Educ.,* 550 F. Supp. 3d 347, 356 (S.D. W. Va. 2021) (finding a likelihood of success on middle school student's Title IX claim challenging a State law excluding her from a sex-separate education program or activity because she alleged that the law ''both stigmatizes and isolates'' her); *Bd. of Educ. of the Highland Loc. Sch. Dist.,* 208 F. Supp. 3d at 870–71 (describing stigma and isolation caused by district's exclusion of transgender girl from a sex-separate education program or activity consistent with her gender identity).[13]

For these reasons, proposed § 106.31(a)(2) would make clear that preventing any person from participating in an education program or activity consistent with their gender identity would subject them to more than de minimis harm on the basis of sex and therefore be prohibited, unless otherwise permitted by Title IX or the regulations.

Some members of the public have urged the Department that Title IX does not prohibit harms that result when a student is separated or treated differently based on sex in a way that is inconsistent with their gender identity. These members of the public have argued that preventing transgender students from accessing sex-separate spaces and programs consistent with their gender identity will serve to protect other students from harms to their safety, privacy, and comfort. The Department recognizes schools' legitimate interest in protecting the safety and privacy of all students. Yet schools can and do protect those interests without also causing harm to other students by excluding them from sex-separate spaces and programs. *See, e.g.,* Rehearing Amicus Brief of School Administrators from Twenty-Nine States and the District of Columbia in Support of Plaintiff-Appellee Gavin Grimm, *Grimm,* 972 F.3d 586 (No. 19–1952), 2019 WL 6341095. Indeed, Federal courts have rejected claims that treating students consistent with their gender identity harms cisgender students in violation of Title IX, and have specifically addressed and dismissed unsubstantiated concerns about privacy and safety associated with treating people consistent with their gender identity. *See, e.g., Grimm,* 972 F.3d at 626 (Wynn, J., concurring) (describing and debunking ''transgender predator'' myth); *Whitaker,* 858 F.3d at 1052 (holding that transgender student's presence provides no more of a risk to other students' privacy rights than does the presence of any other student in a sex-separate space); *Doe* v. *Boyertown Area School District,* 897 F.3d 518, 521 (3d Cir. 2018) (same); *Parents for Priv.* v. *Barr,* 949 F.3d 1210, 1228–29 (9th Cir.), *cert. denied,* 141 S. Ct. 894 (2020) (holding that ''[t]he use of facilities for their intended purpose, without more, does not constitute an act of harassment simply because a person is transgender''); *Cruzan* v. *Special Sch. Dist.* # 1, 294 F.3d 981, 984 (8th Cir. 2002) (per curiam) (holding that transgender woman's mere presence in a sex-separate space did not constitute actionable sexual harassment of her female co-workers). The Supreme Court

[13] Research suggests that school policies that permit students to participate consistent with their gender identity may be associated with better mental health. *See, e.g.,* Stephen T. Russell et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior among Transgender Youth,* 63 J. Adolescent Health 503, 505 (2018), *https://pubmed.ncbi.nlm.nih.gov/29609917* (describing gender-affirming policies that ''likely enhance safety and reduce physical and mental health disparities for transgender populations'').

has also rejected the notion that the preferences or discomfort of some can justify otherwise unconstitutional discrimination against others. *See City of Cleburne* v. *Cleburne Living Ctr.,* 473 U.S. 432, 450 (1985).

Proposed § 106.31(a)(2) would also recognize that, despite Title IX's general prohibition on sex discrimination against an individual, there are circumscribed situations in which Title IX or the regulations permit a recipient to separate students on the basis of sex, even where doing so may cause some students more than de minimis harm. For example, 20 U.S.C. 1681 specifically exempts certain sex-specific practices of certain designated entities from coverage by Title IX's antidiscrimination mandate. *See, e.g.,* 20 U.S.C. 1681(a)(5) (stating that 20 U.S.C. 1681 shall not apply to the admissions practices of traditionally single sex public institutions of undergraduate higher education); 20 U.S.C. 1681(a)(6) (stating that 20 U.S.C. 1681 shall not apply to the membership practices of social fraternities or sororities or certain voluntary youth organizations). Congress also enacted a specific, separate provision of Title IX with respect to living facilities, which provides that ''[n]otwithstanding anything to the contrary contained in [Title IX],'' including Title IX's general prohibition on sex discrimination by recipients of federal funds in 20 U.S.C. 1681, nothing in Title IX ''shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.'' 20 U.S.C. 1686. Of Title IX's voluminous legislative history, the debate over 20 U.S.C. 1686 fills only a few pages, all of which focus on the narrow question of whether Title IX should be understood to mandate coeducational living in all instances in light of the then-growing prevalence of coeducational dormitories. Rep. Standish Thompson of Georgia introduced an amendment that ''simply would state that nothing contained herein shall preclude any educational institution from maintaining separate living facilities because of sex.'' 117 Cong. Rec. 39260 (1971) (statement of Rep. Standish Thompson). Rep. Thompson further stated that ''[a]ll this amendment does is to allow for different living accommodations for the sexes,'' and urged his colleagues to support it—as they did, without recorded opposition. *Id.* at 39263.

The Department's current view is thus that regardless of whether some students might experience more than de minimis harm if excluded from a particular sex-separate living facility on the basis of sex, Congress has nonetheless permitted that exclusion. Congress's choice to specify limited circumstances where harm resulting from sex separation is permitted illustrates that, outside of those contexts, Title IX's general prohibition on sex discrimination prohibits such harm.

Moreover, 20 U.S.C. 1686 itself affects only one aspect of Title IX's nondiscrimination mandate, even within the context of ''living facilities.'' Schools may maintain ''separate living facilities for the different sexes.'' 20 U.S.C. 1686. The Department's regulations, however, have long provided that housing offered for students of one sex must ''as a whole'' be ''[c]omparable in quality and cost'' to the housing offered to students of the other sex. 34 CFR 106.32(b)(2)(ii). The Supreme Court's observation that Title IX's protection against discrimination must be construed broadly reinforces that view. *N. Haven Bd. of Educ.,* 456 U.S. at 521 (''[I]f we are to give Title IX the scope that its origins dictate, we must accord it a sweep as broad as its language.'' (citations and internal alterations omitted)).

The Department also recognizes that exclusion from a particular male or female athletics team may cause some students more than de minimis harm, and yet that possibility is allowed under current § 106.41(b). The Department's authority to permit such different treatment in the context of athletics is described in the discussion of § 106.41.

In addition, the regulations also specify circumstances in which a recipient may not afford students of one sex preferential benefits or treatment that it denies to students of the other sex—another form of prohibited sex discrimination. *See, e.g.,* 34 CFR 106.33 (providing that a recipient ''may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex''); *id.* at 106.34(b) (providing that nonvocational coeducational elementary or secondary schools may provide nonvocational single-sex classes or extracurricular activities if doing so is ''substantially related to achieving'' an ''important'' objective, but only if, inter alia, ''[t]he recipient provides to all other students, including students of the excluded sex, a substantially equal coeducational class or extracurricular activity in the same subject or activity'').

* * * * *

The Department has previously articulated inconsistent interpretations with respect to how a recipient must treat a student's gender identity when the recipient is otherwise permitted to separate or treat students differently on the basis of sex. Between 2013 and 2016, the Department investigated and resolved complaints to address noncompliance with Title IX regarding schools' denial of transgender students' access to education programs or activities consistent with their gender identity and issued policy guidance explaining how Title IX bars gender identity discrimination. *See, e.g.,* Arcadia Resolution Letter and Agreement; 2016 Dear Colleague Letter on Title IX and Transgender Students.

In 2017, however, the Department withdrew the 2016 Dear Colleague Letter on Title IX and Transgender Students to ''further and more completely consider the legal issues involved.'' *See* 2017 Dear Colleague Letter on Transgender Students. In 2020, in a letter subsequently archived and marked not for reliance, the Department asserted in the context of an enforcement case that permitting transgender girls to participate on a girls' athletics team denied cisgender girls athletic benefits and opportunities in violation of Title IX. *See* Revised CIAC Letter at 3–4. Then, in January 2021, in a memorandum subsequently archived and marked not for reliance, the Department interpreted its Title IX regulations to require that a recipient rely on a student's ''biological'' sex in circumstances in which sex separation or sex-specific treatment is permitted under Title IX and these regulations, based on the argument that this was ''the ordinary public meaning of the term 'sex' at the time of Title IX's enactment,'' that the original implementing regulations included provisions acknowledging ''physiological differences between the male and female sexes,'' and that this has been ''OCR's longstanding construction'' of the term. Rubinstein Memorandum at 2, 3 (quoting 85 FR 30178), 7, 9, 12–13. The Department also stated that refusing to treat a student consistent with their gender identity generally would not violate Title IX. *See* Rubinstein Memorandum at 4; *see also* U.S. Dep't of Educ., Office for Civil Rights, Letter from Assistant Secretary Kenneth L. Marcus to Representative Mark E. Green (Mar. 9, 2020), *http://www.ed.gov/ocr/correspondence/congress/20200309-title-ix-and-use-of-preferred-pronouns.pdf.* The Rubinstein Memorandum explained that the

Department was not persuaded by the decisions of Federal appellate courts to the contrary. Rubinstein Memorandum at 10–11.

In the June 2021 Title IX Public Hearing, in listening sessions, and during meetings held under Executive Order 12866 in 2022, stakeholders urged the Department to clarify that Title IX's prohibition on sex discrimination includes discrimination based on gender identity following the Supreme Court's ruling in *Bostock* and that it also prohibits recipients from treating transgender students based upon their actual or perceived physiological characteristics rather than their gender identity. Stakeholders specifically expressed concern about how regulatory provisions that permit sex separation and sex-specific norms have been implemented in ways that harm transgender students and explained how barriers to participating in school consistent with those students' gender identity cause a range of serious dignitary, academic, social, psychological, and physical harms.

The Department has reevaluated its approach to Title IX's application to discrimination based on gender identity after reviewing and considering the scope of Title IX's nondiscrimination mandate, interpretations of Federal courts, public feedback, and the standards OCR has long applied to evaluate compliance with current § 106.41. The Department's further review confirms that the interpretations articulated in statements such as the Rubinstein Memorandum and Revised CIAC Letter are inconsistent with the text and purpose of the Title IX statute and regulations.

Contrary to assertions made in 2020 and January 2021, the Department does not have a ''long-standing construction'' of the term ''sex'' in Title IX to mean ''biological sex.'' The text of the statute and current regulations do not resolve this issue; neither the statute nor the regulations define ''sex,'' purport to restrict the scope of sex discrimination to biological considerations, or even use the term ''biological.'' The Department does not construe the term ''sex'' to necessarily be limited to a single component of an individual's anatomy or physiology. Further, the Department need not define ''sex,'' as explained in more detail above in the discussion of proposed § 106.10. Just as the Supreme Court in *Bostock* declined to engage in the parties' debate over dictionary definitions, the Department also focuses in its proposed regulations on ''what [the law] says about'' sex in context. 140 S. Ct. at 1739. As the regulations have stated since they were first issued in 1975, the purpose of the Department's Title IX regulations is to effectuate the statute, ''which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.'' 34 CFR 106.1. In any event, and as *Bostock* demonstrates, treating individuals in a particular way on the basis of ''biological distinctions between male and female,'' 140 S. Ct. at 1739, is action taken ''on the basis of'' sex, however else the term ''sex'' might also be defined. And, as discussed above, if such sex-based action results in more than de minimis harm to an individual, it constitutes prohibited sex discrimination unless permitted by the statute or the regulations. When a person is denied access to education programs or activities consistent with their gender identity, it causes them more than de minimis harm on the basis of sex. Therefore, such treatment generally violates Title IX's prohibition on discrimination to the extent it causes more than de minimis harm and unless otherwise permitted by Title IX or the regulations, and the Department's regulations should effectuate that prohibition. 20 U.S.C. 1682.

Section 106.41 Athletics

Current regulations: Although paragraph (a) of current § 106.41 establishes a baseline rule that ''[n]o person shall, on the basis of sex, be . . . treated differently from another person . . . in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis,'' paragraph (b) authorizes a recipient to offer male and female athletic teams when selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, when a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the excluded sex, and athletics opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. Paragraph (b) also lists examples of contact sports. Paragraph (c), in turn, establishes that even where a recipient does offer male and female teams, ''[a] recipient . . . shall provide equal athletic opportunity'' for the sexes.

Proposed regulations: None. The Department does not propose any particular changes to § 106.41 at this time. The Department instead plans to issue a separate notice of proposed rulemaking to address whether and how the Department should amend § 106.41 in the context of sex-separate athletics, pursuant to the special authority Congress has conferred upon the Secretary to promulgate reasonable regulations with respect to the unique circumstances of particular sports. Specifically, the Department plans to address by separate notice of proposed rulemaking the question of what criteria, if any, recipients should be permitted to use to establish students' eligibility to participate on a particular male or female athletics team. The scope of public comment on this notice of proposed rulemaking therefore does not include comments on that issue; those comments should be made in response to that separate rulemaking.

Reasons: Athletics has long been recognized by Federal courts, Congress, and the Department as an integral part of a recipient's education program or activity subject to Federal civil rights requirements. *See, e.g.,* U.S. Dep't of Health, Educ., and Welfare, *Final Rule: Nondiscrimination on the Basis of Sex In Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance,* 40 FR 24128, 24134 (June 4, 1975) (citing cases); U.S. Dep't of Health, Educ., and Welfare, Office for Civil Rights, A Policy Interpretation: Title IX and Intercollegiate Athletics, 44 FR 71413 (Dec. 11, 1979), *https://www.govinfo.gov/content/pkg/FR-1979-12-11/pdf/FR-1979-12-11.pdf; N. Haven Bd. of Educ.,* 456 U.S. at 516, 531–32 (noting that the Title IX regulations cover athletics and describing congressional review of those regulations). School-based athletic programs have been associated with many physical, emotional, academic, and interpersonal benefits for students, and athletics participation has the potential to help students develop skills that benefit them in school and throughout life, including teamwork, discipline, resilience, leadership, confidence, social skills, and physical fitness. *See, e.g.,* Scott L. Zuckerman et al., *The Behavioral, Psychological, and Social Impacts of Team Sports: A Systematic Review and Meta-analysis,* 49 Physician & Sports Med. 246 (2021); Ryan D. Burns et al., *Sports Participation Correlates With Academic Achievement: Results From a Large Adolescent Sample Within the 2017 U.S. National Youth Risk Behavior Survey,* 127 Perceptual & Motor Skills 448 (2020); *Parker* v. *Franklin Cnty. Cmty. Sch. Corp.,* 667 F.3d 910, 916 (7th Cir. 2012) (''The impact of Title IX on student athletes is significant and

extends long beyond high school and college; in fact, numerous studies have shown that the benefits of participating in team sports can have life-long positive effects on women.'' (citations omitted)).

Despite the general principle that differential treatment or separation based on sex presumptively results in prohibited sex-based discrimination, Congress has authorized the Department to approach athletics in a distinct manner. In 1974, responding to concerns that Title IX would disrupt intercollegiate athletics, Congress enacted the Javits Amendment as part of the Education Amendments of 1974 to specifically authorize the Department to promulgate reasonable regulations in the context of athletics in light of ''the nature of particular sports.'' Education Amendments of 1974, Public Law 93–380, 844, 88 Stat. 484, 612 (1974). The Javits Amendment states:

> The [HEW] Secretary shall prepare and publish, not later than 30 days after the date of enactment of this Act, proposed regulations implementing the provisions of title IX of the Education Amendments of 1972 relating to the prohibition of sex discrimination in federally assisted education programs which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports.

Id.; see also S. Conf. Rep. 93–1026, 1974 U.S.C.C.A.N. 4206, 4271. The Secretary responded to this congressional direction by promulgating a regulation permitting sex separation in athletics in certain circumstances in ''any interscholastic, intercollegiate, club or intramural athletics offered by a recipient.'' 45 CFR 86.41(a) (1975); *see also* U.S. Dep't of Health, Educ., and Welfare, Sex Discrimination in Athletic Programs, 40 FR 52655 (Nov. 11, 1975). Under Section 431(d)(1) of GEPA, Congress had forty-five days to find that HEW's ''final regulation is inconsistent with the Act from which it derives its authority, and disapprove such final regulation.'' Congress did not take any steps to disapprove the regulation, and the regulation went into effect on July 21, 1975.

The 1975 athletics regulation, still in effect today, provides that when selection for athletic teams is based upon competitive skill or the activity involved is a contact sport, a recipient may offer teams either separately by sex or on a coeducational basis. The Department made clear that, in some instances, individual students may be denied access to particular teams as a result of such decisions, so long as ''equal opportunity'' is ensured across ''the totality of the athletic program of the institution rather than each sport offered.'' 40 FR 52656. As one court explained, the regulations grant some ''flexibility to the recipient of federal funds to organize its athletic program as it wishes, so long as the goal of equal athletic opportunity is met.'' *Williams* v. *Sch. Dist. of Bethlehem,* 998 F.2d 168, 171 (3d Cir. 1993).

Thus, the Education Amendments of 1974 established that, as to intercollegiate athletics, Congress contemplated that the Department might promulgate regulations that permit sex separation in contexts and in a manner that Title IX might otherwise prohibit, as long as such regulations are ''reasonable'' and result in overall equality in athletic opportunities for the sexes. Congress's effective approval of the 1975 HEW regulation reflects a further legislative understanding that, even apart from the intercollegiate setting, the Department's regulations could allow recipients to adopt rules for male and female teams that may result in a denial of participation for individual students. These developments embody a longstanding congressional view that athletics presents unique considerations, and that therefore the Department may promulgate regulations to account for those considerations in ways that may sometimes deprive individual students, based on sex, of opportunities to fully participate on particular athletic teams, as long as the regulations are otherwise reasonable and require a recipient to provide equal athletics opportunities in its program as a whole.

Consistent with Title IX and with Congress's decision to afford the Secretary special discretion to promulgate regulations in the unique context of athletics, the Department will consider, in a separate notice of proposed rulemaking, amendments to § 106.41 to address whether and how the Department should amend § 106.41 in the context of sex-separate athletics, pursuant to the special authority Congress has conferred upon the Secretary to promulgate reasonable regulations with respect to the unique circumstances of particular sports, including what criteria, if any, recipients should be permitted to use to establish students' eligibility to participate on a particular male or female athletics team.

V. Retaliation

Statute: Title IX states that ''[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance,'' 20 U.S.C. 1681(a), but does not specifically mention retaliation for the exercise of rights under Title IX. Although it is not explicit in the statutory language of Title IX, the Supreme Court and the Department have long interpreted Title IX to prohibit retaliation. The Department has the authority to regulate with regard to discrimination on the basis of sex in education programs or activities receiving Federal financial assistance, specifically under 20 U.S.C. 1682 and generally under 20 U.S.C. 1221e–3 and 3474.

Section 106.2 Definitions of ''Retaliation'' and ''Peer Retaliation''

Current regulations: The current regulations do not define ''retaliation,'' however, current § 106.71(a) specifies the conduct that constitutes prohibited retaliation. Current § 106.71(a) states in part that ''[n]o recipient or other person may intimidate, threaten, coerce, or discriminate against another individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or refused to participate in any manner in an investigation, proceeding, or hearing under this part.''

The current regulations do not include a definition of ''peer retaliation,'' or use the term ''peer retaliation,'' however, current § 106.71(a) prohibits a ''recipient or other person'' from retaliating against ''any individual.''

Proposed regulations: The Department proposes defining the term ''retaliation'' in § 106.2 to mean intimidation, threats, coercion, or discrimination against any person by the recipient or by a specific individual affiliated with the recipient, including a student, an employee, or a person who provides aid, benefit, or service on behalf of the recipient.

The proposed definition would encompass both retaliation by the recipient, including through its employees or others who are authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity, and retaliation by students against other students. For clarity, the Department proposes defining the term ''peer retaliation'' separately in proposed § 106.2.

The proposed definition would further clarify that these actions would constitute retaliation if they are taken for the purpose of interfering with any right or privilege secured by Title IX or the Department's Title IX regulations, or

because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the regulations, including in an informal resolution process under proposed § 106.44(k), in grievance procedures under proposed § 106.45, and if applicable proposed § 106.46, and in any other appropriate steps taken by a recipient under proposed § 106.44(f)(6) in response to sex discrimination.

Reasons: Retaliation generally. Although the current regulations do not define the term ''retaliation,'' retaliatory conduct is prohibited under the current regulations in § 106.71. Retaliation was also prohibited prior to the 2020 amendments, also in § 106.71, which had been included in the initial 1975 implementing regulations under Title IX. This initial version of § 106.71 incorporated the Title VI regulations' procedural provisions, including Title VI's prohibition on retaliation at § 100.7(e). The Supreme Court has also recognized Title IX's prohibition on retaliation, holding in *Jackson* that retaliation against a person for complaining of sex discrimination is ''discrimination 'on the basis of sex' '' in violation of Title IX. 544 U.S. at 173–74 (''Retaliation against a person because that person has complained of sex discrimination . . . is discrimination 'on the basis of sex' because it is an intentional response to the nature of the complaint: an allegation of sex discrimination.''). The Court also explained that retaliation by an employee against a person who complains of sex discrimination can be attributed to a recipient. *See, e.g., id.* at 171–74 (considering the plaintiff's supervisors' negative performance evaluations and the school board's decision to remove the plaintiff as a coach to be conduct by the recipient for purposes of the plaintiff's retaliation claim); *id.* at 183 (stating that retaliation ''is easily attributable to the funding recipient, and it is always—by definition—intentional'').

The Department did not propose amending the Title IX regulations to address retaliation more specifically in the 2018 NPRM. However, in response to the 2018 NPRM, the Department received comments regarding the prevalence of retaliation in the context of complaints of sexual harassment. These comments stated that the existing protections against retaliation were inadequate to protect participants in a recipient's grievance procedures, and commenters urged the Department to adopt an explicit prohibition on retaliation in its regulations implementing Title IX. In response, the Department codified current § 106.71 as part of the 2020 amendments to explicitly prohibit retaliation, 85 FR 30535–38, and moved the incorporation of the remaining Title VI procedural protections to current § 106.81. The Department explained in the preamble to the 2020 amendments that it added the explicit prohibition on retaliation because otherwise ''reporting may be chilled.'' *Id.* at 30536.

The Department now proposes separating the prohibition on retaliation in current § 106.71(a) into three distinct but related provisions: a definition of ''retaliation'' in proposed § 106.2, a definition of ''peer retaliation'' in proposed § 106.2, and a prohibition on retaliation in proposed § 106.71. The Department proposes this revision to enhance clarity for recipients regarding their obligations related to retaliation under Title IX, which may differ from their obligations under other Federal statutes that also prohibit retaliation. *See, e.g., Peters* v. *Jenney,* 327 F.3d 307, 320–21 (4th Cir. 2003) (stating that retaliation is prohibited under Title VI); *Weeks* v. *Harden Mfg. Corp.,* 291 F.3d 1307, 1311 (11th Cir. 2002) (stating that retaliation is prohibited under the ADA, the Age Discrimination in Employment Act, and Title VII); *Lozman* v. *City of Riviera Beach,* 138 S. Ct. 1945, 1949 (2018) (stating that retaliation for exercising First Amendment rights is prohibited under 42 U.S.C. 1983); 42 U.S.C. 2000e–3(a) (prohibiting retaliation in employment under Title VII).[14] In order to ensure that the prohibition on retaliation in the Department's Title IX regulations adequately identifies retaliatory conduct prohibited by Title IX's statutory and regulatory framework, the Department proposes defining ''retaliation'' and ''peer retaliation'' in proposed § 106.2 in a manner that would identify the scope of the retaliatory conduct under Title IX.

Substantively, the proposed definitions of ''retaliation'' and ''peer retaliation'' in proposed § 106.2 would encompass the same conduct as current § 106.71(a), but would clarify that such conduct is retaliatory when undertaken against a student, employee, or third party participating or attempting to participate in the recipient's program or activity by a student, employee, or person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity. This clarification would align with the Department's proposed definitions of ''complainant'' and ''sex-based harassment'' in § 106.2, which also refer to students, employees, or persons authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity, or third persons participating or attempting to participate in a recipient's education program or activity.

In its proposed definitions of ''retaliation'' and ''peer retaliation'' in § 106.2, the Department would maintain the requirement in current § 106.71(a) that conduct that meets the definition of ''retaliation'' is undertaken for the purpose of interfering with a right or privilege under Title IX or because someone participated or refused to participate in an investigation, proceeding, or hearing under Title IX. Participating or refusing to participate in a Title IX investigation, proceeding, or hearing includes an informal resolution process under proposed § 106.44(k), grievance procedures under proposed § 106.45, and if applicable proposed § 106.46, and any other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity under proposed § 106.44(f)(6). The Department proposes these changes after considering comments received during the June 2021 Title IX Public Hearing and feedback received from stakeholders during listening sessions that additional protections from retaliation for those participating in grievance procedures are necessary to ensure full protection from prohibited retaliation. The Department does not intend, by specifying the proceedings just described, to exclude other Title IX processes in the current or proposed regulations.

Peer retaliation. In addition to the definition of ''retaliation,'' the Department proposes including a definition of ''peer retaliation'' in proposed § 106.2. Although the

[14] The regulations implementing each of the Federal civil rights laws enforced by the Department contain prohibitions on retaliation. 34 CFR 100.7(e) (Title VI); 34 CFR 104.61 (Section 504) (incorporating 34 CFR 100.7(e) by reference); 34 CFR 108.9 (Boy Scouts of America Equal Access Act) (incorporating 34 CFR 100.7(e) by reference); 28 CFR 35.134 (Title II); 34 CFR 110.34 (Age Discrimination Act of 1975). Although the Department's implementing regulations for Section 504 and the Boy Scouts of America Equal Access Act incorporate Title VI's prohibition on retaliation wholesale, its implementing regulations for the Age Discrimination Act and the Department of Justice's implementing regulations for Title II include their own prohibitions on retaliation, which differ from the Title VI regulation to address issues unique to those statutes. *See, e.g.,* 34 CFR 110.34 (expressly prohibiting retaliation in mediation and conciliation processes, which are required under the Age Discrimination Act).

prohibition in current § 106.71(a) applies to retaliation by a recipient or other person against any individual, the regulations do not specifically address retaliation by a student against another student. In proposed § 106.71(b), the Department would explicitly state that a recipient has an obligation to prohibit and respond to peer retaliation. In response to feedback received during the June 2021 Title IX Public Hearing highlighting the pervasiveness of peer retaliation against those who participate in a recipient's grievance procedures for sexual harassment, the Department proposes specifically defining ''peer retaliation'' in proposed § 106.2 to make clear that it would be a form of retaliation under Title IX. Proposed § 106.71(b) would clarify a recipient's responsibility to address peer retaliation, and this responsibility is explained in greater detail in the discussion of proposed § 106.71. It is the Department's current view that adding a specific definition of ''peer retaliation'' would enhance clarity for both recipients and students regarding a recipient's responsibility to respond to all forms of retaliatory conduct. The Department proposes defining ''peer retaliation'' as retaliation by and against students. The retaliatory conduct covered under this proposed definition would be the same as the conduct set out in the proposed definition of ''retaliation,'' but it would cover only conduct engaged in by students against other students. For example, if a student's locker is vandalized by his teammates because the student complained to the administration that his high school is not providing substantially proportional athletics participation opportunities for girls, that conduct would constitute peer retaliation. Similarly, if a student council president threatens to remove a student council member from a student council committee close in time to the student council member's participation as a witness in sex-based harassment grievance procedures in which the student council president's friend is the respondent, that conduct would constitute peer retaliation. As this example shows, retaliation by the friends of a student party against another party and conduct intended to threaten, punish, or deter a student from participating in a Title IX process could constitute peer retaliation. Peer retaliation can also constitute sex-based harassment or other adverse actions that do not meet the definition of ''sex-based harassment,'' but still meet the definition of ''retaliation'' in proposed § 106.2.

Section 106.71 Retaliation

Current regulations: Current § 106.71(a) prohibits intimidation, threats, coercion, or discrimination ''against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.'' Current § 106.71(a) further states that intimidation, threats, coercion, or discrimination, including imposing discipline for code of conduct violations, arising out of the same facts or circumstances as a report or complaint of sex discrimination is prohibited retaliation when it is done ''for the purpose of interfering with an individual's Title IX rights.'' Under current § 106.71(a), a recipient must keep confidential the identities of ''any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness,'' unless disclosure is permitted by FERPA, required by law, or is made to carry out Title IX obligations. All complaints alleging retaliation must be filed according to the grievance procedures under current § 106.8(c) for complaints of sex discrimination.

Current § 106.71(b) clarifies that two specific circumstances do not constitute retaliation: the exercise of rights protected under the First Amendment and charging an individual with a code of conduct violation for making a materially false statement in bad faith during a Title IX grievance proceeding. With respect to the latter circumstance, current § 106.71(b)(2) clarifies that a determination of responsibility alone is not sufficient to conclude that any party made a materially false statement in bad faith.

Proposed regulations: In proposed § 106.71, the Department would require that a recipient prohibit retaliation, as defined in proposed § 106.2, in its education program or activity. The Department proposes moving the language describing the conduct that constitutes retaliation from current § 106.71(a) to new proposed definitions of ''retaliation'' and ''peer retaliation'' in § 106.2 and moving the prohibition in current § 106.71(a) on recipients disclosing the identities of those involved in the recipient's Title IX process to proposed § 106.44(j).

Proposed § 106.71 would specify the recipient's obligation to prohibit and address retaliation. Proposed § 106.71 states that when a recipient receives information about possible retaliation, it would have to comply with proposed § 106.44, and when a recipient receives a complaint alleging retaliation, it would have to initiate its grievance procedures under proposed § 106.45. When a complaint of retaliation is consolidated under proposed § 106.45(e) with a complaint of sex-based harassment involving a student complainant or student respondent at a postsecondary institution, the Department proposes that the grievance procedures for investigating and resolving the consolidated complaint would have to comply with the requirements of proposed §§ 106.45 and 106.46.

Proposed § 106.71 would identify two examples of prohibited retaliation. Proposed § 106.71(a) would prohibit a recipient from initiating its disciplinary process against a person for a code of conduct violation that does not involve sex discrimination but arises out of the same facts and circumstances as a complaint or information reported about possible sex discrimination, for the purpose of interfering with the person's exercise of their Title IX rights. The Department proposes removing the references to ''intimidation, threats, coercion, or discrimination'' in current § 106.71(a) because they are duplicative of the definition of ''retaliation'' in proposed § 106.2, and proposes replacing ''charges'' in current § 106.71(a) with ''initiating a disciplinary process'' in proposed § 106.71(a). The Department also proposes identifying peer retaliation in proposed § 106.71(b) as a form of retaliation a recipient would have to prohibit and address. The Department also proposes limited changes to current § 106.71(a) for consistency and clarity in proposed § 106.71(a).

Finally, the Department proposes changing ''individual'' to ''person'' throughout proposed § 106.71 for consistency throughout this section. This change also would better align this section with other sections of the proposed regulations and the Title IX statute, all of which use ''person.''

Reasons: The Department affirms that retaliation is a form of sex discrimination prohibited by Title IX, *Jackson,* 544 U.S. at 173–74, and that robust protection against retaliation is necessary to ensure fulfillment of Title IX's requirement that a recipient operates its education program or activity free from sex discrimination. The Department agrees with the

Supreme Court that ''if recipients were permitted to retaliate freely, individuals who witness [sex] discrimination would be loath to report it and all manner of Title IX violations might go unremedied as a result.'' *Id.* at 180. To fulfill Title IX's guarantee, and consistent with the new definitions of ''retaliation'' and ''peer retaliation'' in proposed § 106.2, the Department proposes revising current § 106.71 to ensure that a recipient would prohibit all forms of retaliation in its education program or activity.

As explained in greater detail in the discussion of the proposed definitions of ''retaliation'' and ''peer retaliation'' (proposed § 106.2), the Department has consistently prohibited retaliation against any person for the purpose of interfering with a right or privilege under Title IX or for participating or refusing to participate in a recipient's Title IX processes, including its grievance procedures. Prior to the 2020 amendments, the Department prohibited retaliation by incorporating the prohibition on retaliation from the procedural protections in § 100.7(e) of the Department's Title VI regulations. As part of the 2020 amendments, the Department revised § 106.71 to expressly prohibit retaliation. The Title IX regulations have always extended the prohibition on retaliation to all participants in a recipient's Title IX processes, including complainants, respondents, witnesses, and others participating in these processes, regardless of whether the participant provided information or otherwise participated in the process in support of the complainant, respondent, or the recipient.

The Department notes that in *DuBois* v. *Board of Regents of the University of Minnesota,* 987 F.3d 1199 (8th Cir. 2021), the U.S. Court of Appeals for the Eighth Circuit stated that the Department's regulations do not ''prohibit discrimination because of participation in an investigation,'' in contrast to the Title VI regulations. *Id.* at 1205 (citing 34 CFR 100.7(e)). The Department also notes, however, that in the 47 years since HEW first promulgated regulations under Title IX, those regulations have always prohibited retaliation against participants in Title IX processes and OCR has consistently relied on this interpretation in its enforcement practice. *See* 45 CFR 86.71; *see* U.S. Dep't of Educ., Office for Civil Rights, Case Resolutions Regarding Sex Discrimination, *https://www2.ed.gov/about/offices/list/ocr/frontpage/caseresolutions/sex-cr.html*; *see also* U.S. Dep't of Educ., Office for Civil Rights, Dear Colleague Letter: Retaliation at 1–2 (Apr. 24, 2013), *https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201304.pdf.* Therefore, the Department does not follow the Eighth Circuit's decision in enforcing the prohibition on retaliation in current § 106.71(a), or in proposing revisions to § 106.71(a).

Changes to current § 106.71(a). The Department seeks to restructure proposed § 106.71 to clarify the prohibition on retaliation and to move the language defining the term ''retaliation'' to proposed § 106.2. The Department would also move the requirement that a recipient keep confidential the identities of those involved in Title IX processes from current § 106.71(a) to proposed § 106.44(j). The Department proposes moving this provision because, as explained in the discussion of proposed § 106.44(j), current § 106.71(a)'s prohibition on the recipient's disclosure is not limited to circumstances in which the disclosure would be retaliatory. This prohibition would help ensure that persons involved in Title IX processes are able to participate freely in the recipient's efforts to address sex discrimination. To the extent that a recipient discloses the identities of those involved in Title IX processes for the purpose of interfering with a Title IX right, that disclosure would violate proposed § 106.44(j) and constitute retaliation under proposed § 106.71(a).

Proposed § 106.71 would require a recipient to prohibit retaliation, set out a recipient's required response to prohibited retaliation, and identify two examples of common retaliatory conduct. The Department proposes revising § 106.71 to provide clarity regarding a recipient's obligations to prohibit and respond to retaliation, in response to concerns from stakeholders raised with OCR during the June 2021 Title IX Public Hearing and in listening sessions, that additional protections from retaliation for participants in Title IX grievance procedures are necessary to ensure full protection from prohibited retaliation.

Proposed § 106.71. In view of the Department's continued interest in ensuring full implementation of Title IX's prohibition on retaliation, the Department proposes requiring a recipient to prohibit retaliation against any person by students, employees, and other persons authorized by the recipient to provide an aid, benefit, or service to the recipient's education program or activity. In addition, in proposed § 106.71, the Department would specify the recipient's obligation to address retaliation and set out the specific ways that a recipient must address information regarding possible retaliation under proposed § 106.44 or a complaint of retaliation using its grievance procedures under proposed § 106.45.

Under proposed § 106.71, all complaints alleging retaliation as defined in proposed § 106.2, including complaints alleging retaliation that arise from the same facts or circumstances as a complaint or information reported about possible sex discrimination, would require the recipient to initiate its grievance procedures under proposed § 106.45. It bears noting that although retaliation may arise in connection with sex-based harassment and some instances of retaliation may also constitute sex-based harassment, retaliatory conduct is not necessarily conduct that would constitute sex-based harassment; instead, it is a distinct form of sex discrimination as discussed above. Therefore, it is the Department's current position that retaliation complaints may be made by any of the persons specified in proposed § 106.45(a)(2) as entitled to make a complaint of sex discrimination, including: the complainant; anyone who has the right to act on behalf of the complainant under proposed § 106.6(g); the Title IX Coordinator; or any student, employee, or third party who is participating or attempting to participate in the recipient's education program or activity when the alleged sex discrimination occurred.

When a complaint alleging retaliation arises from the same facts or circumstances as another complaint or information reported about possible sex discrimination, such as when a person experiences retaliation for participating in the recipient's grievance procedures under Title IX, the recipient would be permitted to consolidate the retaliation complaint with the other complaint of sex discrimination under proposed § 106.45(e). When the complaint of retaliation is consolidated with a complaint of sex-based harassment involving a student complainant or student respondent at a postsecondary institution, the grievance procedures for the consolidated complaint would be required to comply with proposed §§ 106.45 and 106.46. By providing a recipient the discretion to consolidate retaliation complaints with complaints alleging other forms of sex discrimination, the proposed regulations would allow the recipient to respond to allegations of such retaliation more efficiently and effectively than under the current regulations.

Proposed § 106.71(a). The Department recognizes that a recipient's use of its disciplinary process to interfere with the ability of members of its community to exercise their rights under Title IX is a form of retaliation. In view of this, the Department proposes maintaining this portion of current § 106.71(a), clarifying the application of this portion of current § 106.71(a), and making limited edits for consistency with other provisions in the proposed regulations.

Through the June 2021 Title IX Public Hearing, OCR received feedback requesting that the Department find ways to ensure that a recipient implements its grievance procedures in a manner that does not intimidate those seeking to provide information regarding sex discrimination or to participate fully in the recipient's grievance procedures. Stakeholders stated that complainants who reported sex-based harassment to their schools have been threatened with or faced disciplinary sanctions for reporting sex-based harassment. These stakeholders also expressed concern that retaliatory implementation of a recipient's code of conduct would deter students from reporting sex-based harassment and accessing supportive measures or other forms of support that may be provided by the recipient. The Department shares these concerns and proposes maintaining current § 106.71(a) but wishes to clarify the application of this provision.

In the preamble to the 2020 amendments, the Department explained that ''[i]f a recipient always takes a zero tolerance approach to underage drinking in its code of conduct and always imposes the same punishment for underage drinking, irrespective of the circumstances, then imposing such a punishment would not be 'for the purpose of interfering with any right or privilege secured by' Title IX or these final regulations and thus would not constitute retaliation under these final regulations.'' 85 FR 30536. After reweighing the facts and circumstances, including but not limited to feedback from stakeholders regarding the impact of such conduct on participation in the Title IX process, the Department submits that it is appropriate to clarify its interpretation of current § 106.71(a). The Department recognizes that when alleging that a recipient has engaged in retaliatory enforcement of its code of conduct, a complainant will not typically have access to the information necessary to definitively allege that the recipient did not consistently implement its zero-tolerance approach in order to demonstrate that enforcement of the code of conduct was, in that instance, retaliatory. The Department's current view is that the position taken in the preamble to the 2020 amendments did not fully account for this imbalance in access to information. Under these proposed regulations, a recipient that implements a zero-tolerance approach would be required to comply with its obligations under proposed § 106.71(a). Moreover, as explained in greater detail in the discussion of proposed § 106.44(b), a recipient would have to ensure that, through its Title IX Coordinator, it is monitoring potential barriers to those seeking to provide information regarding conduct that may constitute sex discrimination under Title IX, including retaliation.

The Department also proposes a nonsubstantive change to the regulatory text for proposed § 106.71(a) to replace ''charges'' with ''initiating a disciplinary process.''

Proposed § 106.71(b). The Department proposes explicitly identifying peer retaliation as prohibited retaliatory conduct in proposed § 106.71(b) to ensure that a recipient prohibits and addresses any conduct that meets the definition of ''peer retaliation'' in proposed § 106.2.

The Department's 2018 NPRM did not propose amending the Title IX regulations to specifically address peer retaliation or retaliation more generally, as discussed above. Commenters on the 2018 NPRM, recognizing that the Title IX regulations have long prohibited retaliation, sought clarity about the standards that would apply to a recipient's obligation to respond to a complaint of peer retaliation and, in particular, whether the Department's proposed requirement of actual knowledge and proposed deliberate indifference standard for a recipient's response to sexual harassment would apply to retaliation as well. 85 FR 30277, 30535. In response to these comments, the Department declined to apply an actual knowledge requirement to retaliation, explaining in the preamble to the 2020 amendments that the ''actual knowledge requirement in [the current regulations] applies to sexual harassment and does not apply to a claim of retaliation'' because ''the Supreme Court has not applied an actual knowledge requirement to a claim of retaliation,'' unlike with respect to sexual harassment, as set out in *Gebser* and *Davis. Id.* at 30537. The Department amended § 106.71 to explicitly prohibit retaliation without adding language regarding a recipient's obligation to respond to information about peer retaliation in its education program or activity.

OCR received feedback from stakeholders during listening sessions and through the June 2021 Title IX Public Hearing requesting that the Department review the 2020 amendments and take further steps to address a recipient's obligation to respond to peer retaliation. Stakeholders stated that peer retaliation continues to be a problem that chills reporting for potential complainants and affects both complainants and respondents going through a recipient's grievance procedures. These stakeholders requested that the Department strengthen its anti-retaliation protections and ensure that recipients address peer retaliation beyond the steps taken in the 2020 amendments.

The Department notes that courts have recognized that a recipient has a responsibility to address peer retaliation. *See Hurley,* 911 F.3d at 695 (''[A]n educational institution can be liable for acting with deliberate indifference toward known instances of student-on-student retaliatory harassment.''); *Doe* v. *Sch. Dist. No. 1,* 970 F.3d 1300, 1311 (10th Cir. 2020) (holding that peer retaliation for reporting a sexual assault is a form of retaliation to which a school must respond).[15] In these cases, the courts recognize that a recipient must address peer retaliation under Title IX as a form of prohibited retaliation consistent with *Jackson.*

The Department is aware that some courts have recognized a recipient's obligation to respond to retaliatory peer harassment as part of its obligation to respond to sex-based harassment. *See, e.g., Doe* v. *Ohio Univ.,* No. 2:21–cv–858, 2022 WL 899687, *5 (S.D. Ohio Mar. 28, 2022). It is the Department's current view that Title IX requires the recipient to address this conduct whether it constitutes sex-based harassment or peer retaliation. *See Hurley,* 911 F.3d at 696 (holding that the

[15] The Department views the case law as instructive for explaining that a recipient has an obligation to respond to peer retaliation. At the same time, as explained in the discussion of OCR's Guidance and Supreme Court Precedent on Title IX's Application to Sexual Harassment (Section II.B.1), the Department recognizes that its administrative enforcement of Title IX differs in significant ways from private lawsuits for monetary damages and proposes that the applicable standards for a recipient's response to peer retaliation in the administrative enforcement context should likewise differ from those imposed by courts in private litigation. In particular, as explained in the discussion of proposed § 106.44(a), the Department's role in implementing Title IX is to ensure that a recipient complies with its legal duty to operate its education program or activity free from sex discrimination, including retaliation against a student for seeking to enforce their right to be free from sex discrimination in the recipient's education program or activity.

plaintiffs may assert separate claims for both retaliation and sexual harassment against the university based on the same underlying facts).

After considering recent case law as well as the feedback received following the implementation of the 2020 amendments, it is the Department's current position that, to fully implement Title IX, the proposed regulations must require recipients to address sex discrimination in the form of peer retaliation. The Department also recognizes that the 2020 amendments did not specify the steps a recipient must take in response to peer retaliation, and that this lack of specificity may cause confusion for recipients and others. Therefore, the Department proposes specifically requiring a recipient to address information about possible peer retaliation consistent with its obligation to address conduct that may constitute sex discrimination under proposed § 106.44.

The Department notes that the items described in proposed § 106.71 as examples of prohibited retaliation do not represent an exhaustive list. For example, in connection with the June 2021 Title IX Public Hearing and during listening sessions with stakeholders, OCR heard from individuals who identified instances in which respondents or others made complaints accusing a complainant of sex-based harassment for the purpose of intimidating a complainant or coercing a complainant to withdraw the complainant's original complaint of sex-based harassment. If a complainant alleges that another person made a complaint in retaliation for their original complaint, the recipient would be required to determine whether that other person's complaint constituted prohibited retaliation under proposed § 106.71.

The Department also recognizes that a recipient may be engaging in prohibited retaliation when it disciplines an individual for discussing conduct that would constitute sex discrimination under Title IX if the recipient takes that disciplinary action for the purpose of retaliating against the individual rather than for another reason, such as taking reasonable steps to protect the privacy of parties, witnesses, and others participating in the recipient's grievance procedures in proposed § 106.45(b)(5). OCR received comments during the June 2021 Title IX Public Hearing requesting clarification that discipline for engaging in these discussions is prohibited. Whether this action constitutes retaliation would be a fact-specific inquiry to determine whether the recipient disciplined the individual for the purpose of interfering with that individual's Title IX rights.

Removal of current § 106.71(b). The Department proposes removing current § 106.71(b)(1) as redundant because of the protections afforded in current § 106.6(d)(1). The Department stated in the preamble to the 2020 amendments that it added current § 106.71(b)(1) to address concerns that anti-retaliation efforts, when applied erroneously, may affect speech protected under the First Amendment. *Id.* at 30537. As explained in the discussion of the definition of prohibited ''sex-based harassment'' (proposed § 106.2), the Department has long made clear that it enforces Title IX consistent with the requirements of the First Amendment. The Department has explained that the Department's ''regulations and policies do not require or prescribe speech, conduct or harassment codes that impair the exercise of rights protected under the First Amendment.'' 2003 First Amendment Dear Colleague Letter. In addition, current § 106.6(d)(1) states that nothing in the regulations requires a recipient to ''restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution.'' Therefore, the Department submits that current § 106.71(b)(1) is redundant and its removal would be appropriate.

VI. Outdated Regulatory Provisions

Section 106.3(c) and (d) Self-Evaluation

Current regulations: Section 106.3(c) required that each recipient educational institution, within one year of the effective date of the original regulations, conduct a self-evaluation of its policies and practices and make modifications as necessary to comply with the regulations. Current § 106.3(d) required the recipient to maintain records of the self-evaluation for three years.

Proposed regulations: The Department proposes removing these paragraphs in their entirety.

Reasons: These provisions described requirements that expired in June 1979. The Department proposes to remove these provisions because they are no longer operative.

Sections 106.16 and 106.17 Transition Plans

Current regulations: Section 106.16 required certain educational institutions that had admitted students of only one sex prior to the passage of Title IX to carry out a transition plan described in current § 106.17.

Proposed regulations: The Department proposes removing these provisions from the regulations in their entirety.

Reasons: These provisions described the process for certain educational institutions to submit transition plans to convert their single-sex admissions processes to nondiscriminatory processes before June 1979. The Department proposes to remove these provisions because they are no longer operative.

Section 106.2(s) Definition of ''Transition Plan''

Current regulations: Section 106.2(s) defines the term ''transition plan,'' which is used in current §§ 106.16 and 106.17.

Proposed regulations: The Department proposes removing this definition from § 106.2.

Reasons: The term ''transition plan'' is used in provisions that the Department proposes to remove because they are no longer operative.

Section 106.15(b) Admissions

Current regulations: Section 106.15(b) provides that, for purposes of §§ 106.15, 106.16, and 106.17, and subpart C, each administratively separate unit shall be deemed to be an educational institution.

Proposed regulations: The Department proposes removing the reference to §§ 106.16 and 106.17.

Reasons: The Department proposes removing current §§ 106.16 and 106.17 in their entirety, which makes the references to those sections in § 106.15(b) moot.

Section 106.21(a) Admission

Current regulations: Section 106.21(a) provides that no person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§ 106.16 and 106.17.

Proposed regulations: The Department proposes removing the reference to §§ 106.16 and 106.17.

Reasons: The Department proposes removing current §§ 106.16 and 106.17 in their entirety, which makes the references to those sections in § 106.21(a) moot.

Section 106.41(d) Adjustment Period

Current regulations: Section 106.41(d) specified the timeframe for recipients to come into compliance with the Title IX regulations after they were originally issued in 1975.

Proposed regulations: The Department proposes removing this subsection of the regulations in its entirety.

Reasons: This provision required recipients to come into compliance with

§ 106.41 no later than June 1978. The Department proposes to remove this provision because it is no longer operative.

VII. Directed Questions

The Department invites you to submit comments on all aspects of the proposed regulations, as well as the Regulatory Impact Analysis. The Department is particularly interested in comments on questions posed throughout the Preamble, which are collected here for the convenience of commenters, with a reference to the section in which they appear. The Department is also interested in comments on questions posed in the Regulatory Impact Analysis.

1. *Interaction with Family Educational Rights and Privacy Act (FERPA) (proposed § 106.6(e))* Some aspects of the proposed regulations address areas in which recipients may also have obligations under FERPA, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99, including, for example, provisions regarding the exercise of rights by parents, guardians, or other authorized legal representatives at proposed § 106.6(g); disclosure of supportive measures at proposed § 106.44(g)(5); consolidation of complaints at proposed § 106.45(e); description of the relevant evidence at proposed § 106.45(f)(4); access to an investigative report or relevant and not otherwise impermissible evidence at proposed § 106.46(e)(6); and notification of the determination of a sex discrimination complaint at proposed §§ 106.45(h)(2) and 106.46(h)(1). The Department is seeking comments on the intersection between the proposed Title IX regulations and FERPA, any challenges that recipients may face as a result of the intersection between the two laws, and any steps the Department might take to address those challenges in the Title IX regulations.

2. Recipient's Obligation To Provide an Educational Environment Free From Sex Discrimination (Proposed §§ 106.44–106.46)

The proposed regulations at §§ 106.44, 106.45, and 106.46 clarify the obligation of a recipient to respond promptly and effectively to information and complaints about sex discrimination in its education program or activity in a way that ensures full implementation of Title IX. The Department invites comments on whether there are additional requirements that should be included in, or removed from, the current and proposed regulations to assist recipients in meeting their obligation under Title IX to provide an educational environment free from discrimination based on sex. The Department also seeks comment on whether and how any of the proposed grievance procedures (or any proposed additions from commenters) should apply differently to various subgroups of complainants or respondents, such as students or employees, or students at varying educational levels.

3. Single Investigator (Proposed § 106.45(b)(2))

The Department is aware that, prior to August 2020, some recipients used a single investigator or team of investigators to investigate complaints of sex-based harassment and make determinations whether sex-based harassment occurred. The Department invites comments on recipients' experiences using that model to comply with Title IX and the steps taken, if any, to ensure adequate, reliable, and impartial investigation and resolution of complaints, including equitable treatment of the parties and reliable grievance procedures that are free from bias. The Department also invites comments on these issues from persons who were parties or served as an advisor to a party to a complaint that was investigated and resolved by a recipient using a single investigator model.

4. Standard of Proof (Proposed § 106.45(h)(1))

a. To the extent commenters take the position that the clear and convincing standard would be appropriate when used in all other comparable proceedings, the Department invites comments on steps that recipients implementing that standard have taken to ensure equitable treatment between the parties.

b. The Department invites comments on whether it is appropriate to allow a recipient to use a different standard of proof in employee-on-employee sex discrimination complaints, than it uses in sex discrimination complaints involving a student.

c. The Department invites comments on whether it would be appropriate to mandate the use of only one standard of proof for sex discrimination complaints.

Regulatory Impact Analysis (RIA)

Under Executive Order 12866,[16] the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in regulations that may—

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

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

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

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

This proposed action is ''significant'' and therefore subject to review by OMB under section 3(f)(4) of this Executive Order because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

The Department has also reviewed the proposed regulations under Executive Order 13563,[17] 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

[16] *Executive Order on Regulatory Planning and Review,* Exec. Order. No. 12866, 58 FR 51735 (Oct. 4, 1993), *https://www.govinfo.gov/content/pkg/FR-1993-10-04/pdf/FR-1993-10-04.pdf.*

[17] *Executive Order on Improving Regulation and Regulatory Review,* Exec. Order No. 13563, 76 FR 3821 (Jan. 18, 2011), *https://www.govinfo.gov/content/pkg/FR-2011-01-21/pdf/2011-1385.pdf.*

(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.''

Under Executive Order 13563, the Department believes that the benefits of these proposed regulations justify their costs. In choosing among alternative regulatory approaches, the Department selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that the proposed regulations are consistent with the principles in Executive Order 13563.

The Department has also preliminarily determined that this regulatory action would not unduly interfere with State, local, or Tribal governments in the exercise of their governmental functions.

This RIA discusses the need for regulatory action, the potential costs and benefits, assumptions, limitations, and data sources, as well as regulatory alternatives considered. Although most of the costs related to information collection are discussed within this RIA, under Paperwork Reduction Act of 1995, this notice also identifies and further explains burdens specifically associated with information collection requirements.

1. Need for Regulatory Action

In 2021, the President directed the Department in both Executive Order 13988 [18] and Executive Order 14021 [19] to review its current regulations implementing Title IX for consistency with Title IX's statutory prohibition on sex discrimination by a recipient of Federal financial assistance in its education program or activity. Consistent with those Executive Orders, the Department reviewed the current regulations based on Federal case law under Title IX, its experience in enforcement, and feedback received by OCR from stakeholders during the June 2021 Title IX Public Hearing,[20] listening sessions, and the meetings held in 2022 under Executive Order 12866. Over 280 students, parents, teachers, faculty members, school staff, administrators, and other members of the public provided live comments during the June 2021 Title IX Public Hearing, and OCR also received over 30,000 written comments [21] in connection with the hearing. In addition, a wide variety of stakeholders participated in the listening sessions with OCR, including survivors of sexual violence, students accused of sexual misconduct, LGBTQI+ students, and advocates representing these groups of students; organizations focused on Title IX and athletics; organizations focused on free speech and due process; organizations representing elementary schools and secondary schools (or local educational agencies (LEAs)), as well as postsecondary institutions (or institutions of higher education (IHEs)), teachers, administrators, and parents; attorneys representing survivors, accused students, and schools; State attorneys general offices; Title IX Coordinators and other school administrators; individuals who provide training on Title IX to schools; individuals who work in campus law enforcement; and individuals who have participated in school-level Title IX proceedings. The meetings under Executive Order 12866 in 2022 included individuals and representatives of the same types of groups, organizations, and offices as those who participated in the listening sessions with OCR. Based on this review, the Department proposes amending its regulations to ensure that all aspects of its regulatory framework under Title IX are well-suited to implementing Title IX's prohibition on sex discrimination in education programs or activities that receive Federal financial assistance. The Department also proposes amendments intended to improve and promote educational environments free of sex discrimination in a manner that recognizes fairness and safety concerns.

Among the considerations was feedback received from many stakeholders during the June 2021 Title IX Public Hearing, listening sessions, and meetings held under Executive Order 12866, stating that the current regulations include onerous requirements for sexual harassment grievance procedures that are unnecessarily adversarial in nature—potentially resulting in a decrease in students' willingness to file complaints or fully participate in the grievance process. These stakeholders also stated that the current requirements for sexual harassment grievance procedures unduly increase administrative burden and intrude on a recipient's professional judgment and expertise regarding how best to respond to allegations of student misconduct without improving the recipient's ability to address sex discrimination within their education environments. During the June 2021 Title IX Public Hearing, some stakeholders expressed support for the current regulations, remarking that the requirements governing a recipient's sexual harassment grievance procedures should remain in place without change, while other stakeholders suggested the Department amend various provisions in the regulations that they deemed important (including the deliberate indifference standard, the actual knowledge requirement, and specific requirements related to grievance procedures for formal complaints of sexual harassment). Many stakeholders expressed concerns regarding the scope of the current regulatory definition of ''sexual harassment,'' the requirement that a recipient need only respond to sexual harassment when it has actual knowledge, and that it need only respond in a manner that is not deliberately indifferent. Apart from addressing sexual harassment, many stakeholders asked the Department to clarify protections related to discrimination based on sexual orientation and gender identity, presenting a variety of positions that they urged the Department to adopt, while other stakeholders asked the Department to clarify Title IX's protections against discrimination based on pregnancy or related conditions.

The Department proposes amending its Title IX regulations to address the concerns raised by stakeholders and anticipates that the proposed regulations would result in many benefits to recipients, students, employees, and others, including by:

- Requiring recipients to adopt grievance procedures that provide for the prompt and equitable resolution of complaints of sex discrimination and

[18] *Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation,* Exec. Order No. 13988, 86 FR 7023 (Jan. 25, 2021), *https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01761.pdf.*

[19] *Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation and Gender Identity,* Exec. Order No. 14021, 86 FR 13803 (Mar. 11, 2021), *https://www.govinfo.gov/content/pkg/FR-2021-03-11/pdf/2021-05200.pdf.*

[20] The transcript from the June 2021 Title IX Public Hearing is available at *https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-publichearing-complete.pdf.*

[21] The written comments that OCR received as part of the June 2021 Title IX Public Hearing are available at *https://www2.ed.gov/about/offices/list/ocr/public-hearing.html.*

take other necessary steps to provide an educational environment free from sex discrimination;

- Clarifying the Department's view of the scope of Title IX's prohibition on sex discrimination, including related to a hostile environment under the recipient's education program or activity, as well as discrimination on the basis of sex stereotypes, sex characteristics, sexual orientation, pregnancy or related conditions, and gender identity;
- Clarifying a recipient's obligations to students and employees who are pregnant or experiencing pregnancy-related conditions.

As discussed in more detail in the following sections, it is the Department's belief that the proposed regulatory changes will fulfill Title IX's overarching goal: to ensure that no person experiences sex discrimination in education. To that end, the Department aims to ensure that all recipients can implement Title IX's nondiscrimination mandate fully and fairly in their educational environments.

2. Discussion of Costs, Benefits, and Transfers

The Department has analyzed the costs and benefits of complying with the proposed regulations. Although many of the associated costs and benefits are not easily quantifiable, the Department currently believes that the benefits derived from the proposed regulations outweigh the associated costs given that the objectives of the rulemaking are to ensure: (1) that sex discrimination does not take place in any education program or activity receiving Federal financial assistance, and (2) that sex discrimination is redressed promptly and effectively if it occurs.

Title IX, which applies to approximately 18,000 LEAs, over 6,000 IHEs, and numerous other recipients such as libraries and museums, requires a recipient to provide an education program or activity that is free from sex discrimination. The proposed regulations would introduce new obligations and clarify existing obligations of entities subject to the regulations in order to promote an educational environment free from sex discrimination. The Department expects that the proposed regulations would benefit recipients, as well as students, employees, and others by ensuring that students, employees, and others understand their rights and recipients understand their responsibilities under Title IX; clarifying the scope and application of Title IX including but not limited to the obligation of recipients to address all forms of sex discrimination; ensuring that supportive measures will be provided, as appropriate, to a complainant and respondent to restore or preserve that party's access to the recipient's education program or activity; clarifying that remedies are available, as appropriate, to anyone subjected to sex discrimination while participating in or attempting to participate in a recipient's education program or activity; requiring recipients to provide training for employees regarding their obligations under Title IX; revising the requirements for grievance procedures to provide for the prompt and equitable resolution of complaints of any form of sex discrimination; allowing a recipient the ability to adapt its grievance procedures to its size, population served, and administrative structure while ensuring equitable treatment of all parties; clarifying the responsibilities of Title IX Coordinators; and ensuring nondiscriminatory access to a recipient's education program or activity for students and employees who are pregnant or experiencing related conditions. The Department believes that the proposed regulations would provide numerous important benefits and also recognizes that it is not able to quantify each of these benefits at this time. Still, it is the Department's tentative view that the proposed changes just described, in addition to others discussed more fully throughout the RIA, would reduce the occurrence of sex discrimination in a recipient's education program or activity and facilitate a prompt and equitable resolution when sex discrimination occurs, thereby supporting a recipient's efforts to provide an educational environment free from sex discrimination. Although there are limited data quantifying the economic impacts of sex discrimination, including sex-based harassment, on individuals, studies suggest that there is a cost associated with being subjected to sex discrimination. *See, e.g.,* Centers for Disease Control and Prevention, *Fast Facts: Preventing Sexual Violence, https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html* (last visited June 16, 2022) (describing the economic burden of sexual violence involving physical contact on victims within their lifetimes); Cora Peterson et al., *Lifetime Economic Burden of Intimate Partner Violence Among U.S. Adults,* 55 Am. J. Preventive Med. 433 (2018) (estimating the cost of intimate partner violence on victims within their lifetimes). The Department recognizes that sex discrimination in all forms, including sex-based harassment and prohibited retaliation, may have both qualitative and quantitative costs for educational institutions, their students and employees, applicants for admission and employment, their families, and the American educational system and workforce in general, although the Department is unable to quantify reductions in these costs resulting from the proposed regulations.

Due to the large number of affected recipients (over 24,000, as discussed more fully in the discussion of Developing the Model (Section 4.B)), the variation in likely responses to any regulatory change, and the limited information available about current practices, particularly at the LEA level, the Department is not able to precisely estimate the likely costs, benefits, and other effects of the proposed regulations. The Department specifically invites comment on data sources that would provide comprehensive information regarding current practices used in providing an educational environment free from sex discrimination as required by Title IX, information regarding the number of recipients in each group described in the discussion of Developing the Model (Section 4.B), and time estimates for the activities described in the discussion of Cost Estimates (Section 4.C) disaggregated by type of recipient. Despite these limitations and based on the best available evidence as explained in the discussion of Establishing a Baseline (Section 4.A), the Department estimates that the regulations would result in a discounted net cost savings to recipients of between $9.8 million to $28.2 million over ten years. These estimated cost savings arise largely from the additional flexibility that recipients would have to design and implement grievance procedures consistent with Title IX under proposed § 106.45, and if applicable proposed § 106.46.

The assumptions, data, methodology, and other relevant materials, as applicable, on which the Department relied in developing its estimates are described throughout this RIA.

3. Benefits of the Proposed Regulations

The Department submits that this proposed regulatory action would address the potential gaps in coverage within the current regulatory framework that have been raised by stakeholders and observed by the Department, including but not limited to areas such as the steps a recipient must take with respect to sex discrimination, the requirements for a recipient's grievance procedures for sex discrimination other than sexual harassment, a recipient's

obligations toward students and employees who are pregnant or experiencing related conditions, the scope of coverage related to discrimination based on gender identity and sexual orientation, and a recipient's obligation to address prohibited retaliation.

Although the Department cannot quantify in monetary terms the ancillary benefits the proposed regulations may provide to those who have been subjected to sex discrimination in an educational setting, the Department recognizes that sex discrimination, including sex-based harassment, can have profound and long-lasting economic costs for students, employees, their families, and others who seek to participate in the recipient's education program or activity. Being subjected to sex discrimination in a recipient's program or activity can affect an applicant's opportunity to enroll in a recipient's education program or activity, a student's ability to learn and thrive in and outside of the classroom, a prospective or current employee's ability to contribute their talents to the recipient's educational mission, and the opportunity of all participants to benefit, on an equal basis, from the recipient's education program or activity. Likewise, barriers to reporting sex discrimination within a recipient's program or activity could undermine the recipient's education environment for the entire community. The Department believes that the proposed regulations would offer a clear and fair framework for fulfilling Title IX's prohibition on sex discrimination in any education program or activity receiving Federal financial assistance.

The Department's current view is that the proposed regulations would reduce the long-term costs associated with providing an educational environment free from sex discrimination, thereby producing a demonstrable benefit for students, employees, and others participating or attempting to participate in the recipient's education program or activity. The Department anticipates those benefits would be realized based on several proposed changes to the current regulations. First, the proposed regulations would clarify the scope of Title IX's protection from sex discrimination for students and others participating or attempting to participate in a federally funded education program or activity and define terms integral to a recipient's obligations under Title IX. Second, the proposed regulations would set out the contours of a recipient's obligation to take action to address all forms of sex discrimination, including requiring a recipient's Title IX Coordinator to monitor its education program or activity for barriers to reporting sex discrimination and requiring the recipient to take steps reasonably calculated to address those barriers. Third, the proposed regulations would modify and strengthen existing training requirements by specifying the range of relevant persons that a recipient must train regarding the recipient's obligations under Title IX. Fourth, the proposed regulations would revise the notification requirements for a recipient, ensuring that specific employees notify the Title IX Coordinator when they have information about conduct that may constitute sex discrimination under Title IX in the recipient's education program or activity. Fifth, the proposed regulations would ensure the effective provision and implementation of supportive measures, as appropriate, to all complainants or respondents and clarify that when a recipient determines that sex discrimination has occurred, the recipient must provide remedies, as appropriate, to a complainant or any person the recipient identifies as having their equal access to the recipient's education program or activity limited or denied by sex discrimination, and take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity. Sixth, the proposed regulations would revise the requirements for grievance procedures to provide for the prompt and equitable resolution of complaints of any form of sex discrimination and allow a recipient the ability to adapt its grievance procedures to its size, population served, and administrative structure while ensuring equitable treatment of all parties. Finally, the proposed regulations would provide clarity on the rights of students and employees who are pregnant or experiencing related conditions including, for example, by requiring a recipient to inform students of the recipient's obligations, providing students with the option of reasonable modifications necessary to prevent discrimination and to ensure equal access to its education program or activity, requiring a recipient to provide employees with reasonable break time to express breast milk or breastfeed as needed and, with respect to both students and employees, ensuring the availability of an appropriate space for lactation.

The Department expects that the proposed regulations, when reviewed in their totality, would reduce the likelihood of sex discrimination and the overall prevalence of sex discrimination in recipients' educational settings. Although the Department cannot, at this time, entirely quantify the economic impacts of these benefits, the Department believes that the benefits are substantial and far outweigh the estimated costs of the proposed regulations.

4. Costs of the Proposed Regulations

The Department's analysis reviews the Department's data sources, describes the model used for estimating the likely costs associated with the proposed regulations, and sets out those estimated costs. Due to limited quantitative data, the Department emphasizes that the monetary estimates reflect only the likely costs of this regulatory action for recipients and do not seek to quantify, in monetary terms, the costs of sex discrimination, including sex-based harassment and prohibited retaliation.

As described in the Discussion of Costs, Benefits, and Transfers (Section 2), there are limited data quantifying the economic impacts of sex discrimination, including sex-based harassment, on individuals, and studies suggest that there is a cost associated with being subjected to sex discrimination. *See* Centers for Disease Control and Prevention, *Fast Facts: Preventing Sexual Violence;* Peterson et al., *Lifetime Economic Burden of Intimate Partner Violence Among U.S. Adults,* 55 Am. J. Preventive Med. 433. Nonetheless, the Department believes that the proposed regulations would reduce the harms of sex discrimination in multiple ways.

First, proposed § 106.44 would clarify a recipient's obligation to take action to end all forms of sex discrimination, including sex-based harassment, expressly covering more forms of conduct than current § 106.44. Specifically, the proposed regulations would require a recipient to take prompt and effective action to end any sex discrimination that has occurred in its program or activity, prevent its recurrence, and remedy its effects, regardless of whether a complaint is made. Current § 106.44 prescribes only how a recipient must respond to allegations of sexual harassment in its education program or activity when a report is made to certain employees; the current regulations at § 106.44 are silent with respect to a recipient's obligation to respond to other forms of sex discrimination. By prescribing the actions a recipient must take to operate its education program or activity free from sex discrimination, the Department's current view is that the proposed changes would aid the

recipient in reducing—and ultimately eliminating— all forms of sex discrimination in its education program or activity. Any initial, short-term costs associated with the proposed change are expected to be both minimal and offset in the longer term by reduced incidence of sex discrimination. The Department submits that the proposed requirements would increase recipient responsiveness to all reports and complaints of sex discrimination and are also likely to deter or prevent some incidents of sex-based harassment and its associated harms; however, the Department cannot quantify the potential reduction in incidents of sex-based harassment or other forms of discrimination.

Second, proposed § 106.44(g) would make clear that upon being notified of conduct that may constitute sex discrimination under Title IX, including sex-based harassment and prohibited retaliation, a Title IX Coordinator must offer supportive measures, as appropriate, to the complainant or respondent to the extent necessary to restore or preserve that party's access to the recipient's education program or activity. Proposed § 106.44(g) would also clarify that for allegations of sex discrimination other than sex-based harassment or retaliation, a recipient's provision of supportive measures would not require the recipient, its employee, or other person authorized to provide aid, benefit, or service on the recipient's behalf to alter the conduct that is alleged to be sex discrimination for the purpose of providing a supportive measure. As the proposed requirement regarding supportive measures would cover prohibited retaliation as well as other forms of sex discrimination not currently addressed by the current regulations, the Department recognizes that the number of incidents in which the parties would be provided supportive measures would likely increase compared to the current regulations, as would any related costs in providing those supportive measures. The Department estimates that this provision would incur a negligible monetary cost per incident and that the cumulative annual costs to the recipient would therefore be at a de minimis level. The Department also anticipates that these costs will either be reduced in the long-term or be offset by other savings. Those savings may come from other proposed changes (*e.g.,* changes to the grievance procedure requirements) or from the anticipated reduction in instances of sex discrimination.

The Department expects that the proposed regulations would increase the use of a recipient's grievance procedures by students and others, thereby resulting in an increase in the prompt and equitable resolution of complaints of sex discrimination in a recipient's program or activity. If this assumption is correct, it is also reasonable to believe that the proposed regulations may reduce the prevalence of sex discrimination, including sex-based harassment, as well as the adverse academic, social, emotional, and economic effects of sex discrimination on individuals and recipient communities. Again, the Department recognizes that it does not currently have data to form a reliable estimate of these effects as related to associated costs and requests comment on the extent to which implementation costs would be offset by such effects and how both the costs and long-term benefits may be reliably estimated, including any evidence that may be used to inform such estimates.

4.A. Establishing a Baseline

4.A.1. Data Sources

As discussed in the preamble to the Department's 2020 amendments to its Title IX regulations, the primary challenge associated with estimating the effects of any new regulatory action under Title IX is the lack of comprehensive data on the actions recipients are taking to comply with their current obligations. As part of the comment process on the 2020 amendments, the Department requested information about data sources that would provide this information and which the Department could use to inform its estimates. The Department did not receive such sources at that time and again requests comment to help identify high quality data sources on the actions currently being taken by recipients to comply with Title IX.

In the absence of a recent, high quality, and comprehensive data source, the Department relies, as it did for the 2020 amendments, on a 2014 report titled Sexual Violence on Campus (2014 Senate Subcommittee Report) issued by the U.S. Senate Subcommittee on Financial and Contracting Oversight.[22] The report included survey data from 440 four-year IHEs regarding the number of investigations of sexual violence that had been conducted during the previous five-year period; however, this report did not address the prevalence of other forms of sex discrimination, including discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. As described in the discussion of Estimates of Annual Investigations of Sexual Harassment Prior to the 2020 Amendments to the Title IX Regulations (Section 4.A.2), the Department adjusted these data to account for these exclusions. For LEAs, the Department continues to rely on the most recent publicly available data from OCR's Civil Rights Data Collection (CRDC) regarding sexual harassment incidents to estimate the annual number of investigations in those settings.

4.A.2. Estimates of Annual Investigations of Sexual Harassment Prior to the 2020 Amendments to the Title IX Regulations

To estimate the likely impact of the proposed regulations, the Department must consider the policies and practices of recipients in responding to sexual harassment prior to the promulgation of the 2020 amendments. This consideration is necessary because the 2020 amendments specified in the Department's Title IX regulations, for the first time, the definition of ''sexual harassment'' and the obligation of a recipient to respond to sexual harassment under Title IX. The proposed regulations would require a recipient to take prompt and effective steps to ensure that sex discrimination, including sex-based harassment that creates a hostile environment based on sex, does not continue or recur in the recipient's education program or activity. This proposed use of a hostile environment standard encompasses conduct that was addressed in enforcement practice prior to the current regulations; as a result, data regarding recipients' actions regarding sexual harassment prior to the 2020 amendments would assist in estimating the likely effects of the proposed regulations. Note that the Department is not assuming that information relating to recipient behavior prior to the effective date of the 2020 amendments would impact the baseline (that is, behavior and burdens in the absence of the proposed regulations), but rather, that a number of the proposed changes would remove some of the restrictions on recipient responses to sexual harassment imposed by the 2020 amendments. However, the Department notes that the proposed regulations would create different requirements from those established in its enforcement practices prior to the 2020 amendments. As a result, recipient behavior prior to the effective date of

[22] Claire McCaskill, *S. Subcomm. on Financial Contracting Oversight—Majority Staff, Sexual Violence on Campus, 113th Cong. (2014), https://www.hsgac.senate.gov/imo/media/doc/2014-07-09 Sexual Violence on Campus Survey Report with Appendix.pdf.*

the 2020 amendments, in the Department's view, provides some, but not complete, insight into what recipient behavior would be if the proposed regulations were promulgated.

In the 2020 amendments, the Department assumed that the number of incidents reported under the Clery Act could be used as an instrument to estimate total incidents of sexual harassment, including those not captured in the 2014 Senate Subcommittee Report; as a result, the Department estimated that, prior to the issuance of those amendments, IHEs conducted approximately 5.7 Title IX investigations of sexual harassment per year.[23] The Department based this estimate on an analysis of the 2014 Senate Subcommittee Report and data submitted by IHEs under the Clery Act.

At the LEA level, the Department does not have publicly reported data on the average number of investigations of sexual harassment occurring each year. The most recent publicly available data from the CRDC indicates an average of 3.23 incidents of sexual harassment per LEA per year.[24] The Department, therefore, assumes that this was the number of investigations of sexual harassment occurring, on average, each year in each LEA.

4.A.3. Lack of Data Following the Promulgation of the 2020 Amendments

The Department has not been able to identify reliable data sources about actions taken by recipients following the promulgation of the 2020 amendments. As a result, it is difficult for the Department to estimate the number of investigations that have occurred since issuance of the 2020 amendments or the number that would likely occur in later years in the absence of the Department's proposed regulations. This absence of data means the Department could not construct a baseline from which to estimate the likely effects of the proposed regulations. Instead, the Department has a reasonable framework for understanding the likely actions recipients would take to comply with the proposed regulations as well as a benchmark for generating baseline estimates of recipients' actions following the promulgation of the 2020 amendments, based on anecdotal information from experts in the field as well as feedback from the June 2021 Title IX Public Hearing, listening sessions, and the meetings held under Executive Order 12866 in 2022. These sources provide some reasonably reliable information about actions taken by recipients to comply with Title IX prior to the promulgation of the 2020 amendments. However, in using this anecdotal information, the Department is mindful that the 2020 amendments introduced requirements and definitions not previously promulgated and thus actions prior to the 2020 amendments will not capture all aspects of a recipient's actions following the issuance of the 2020 regulations.

The Department is not attempting to estimate the degree of sex discrimination at recipient institutions. Rather, the Department is attempting to estimate the number of times recipients will be required to engage in particular activities, such as conducting investigations or providing supportive measures. For instance, in the preamble to the 2020 amendments, the Department estimated that approximately 90 percent of LEAs and 50 percent of IHEs would reduce the number of investigations conducted each year. The Department estimated that, on average, these LEAs would conduct 1.29 fewer investigations per year under the 2020 amendments. The Department also estimated that the annual average reduction in investigations would be −2.84 for those IHEs that reduced their number of investigations. Since making those assumptions in the 2020 amendments, OCR has received feedback from a variety of stakeholders, through the June 2021 Title IX Public Hearing, in listening sessions, and meetings held in 2022 under Executive Order 12866, that the actual reduction may have been higher due to the deterrent effect of the perceived burden associated with the current sexual harassment grievance procedure requirements on a complainant's willingness to report sexual harassment or participate in a process to resolve a formal complaint of sexual harassment. Further, based on anecdotal reports, the Department understands that many recipients that experienced a reduction in the number of sexual harassment complaints filed at their respective institutions subsequent to the 2020 amendments shifted their resolution processes away from what would have been a proceeding under current § 106.45 to an alternative disciplinary process, such as a general student conduct process outside of the scope of Title IX. Although this information from recipients and others confirms the Department's 2020 estimate related to the decrease in the number of investigations, it is anecdotal and, as such, does not provide the Department with sufficient evidence on which to revise its 2020 estimate. Further, the Department recognizes that the COVID–19 pandemic resulted in many LEAs and IHEs operating remotely, which may have reduced the incidence or reporting of sexual harassment, the willingness of students and others to initiate a recipient's grievance procedures in response to alleged sexual harassment, or both. Again, however, the Department has not identified high-quality research studies to inform its analysis. Therefore, the Department continues to assume that the estimates of the 2020 amendments represent the baseline level of a recipient's actions to comply with Title IX in future years when considered in the absence of the proposed regulations. The Department invites comment on whether these estimates are reasonable and whether high quality data sources or studies exist regarding recipients' actions in response to the 2020 amendments.

Notwithstanding the estimates used for the 2020 amendments, for recipients that saw reductions in the number of investigations conducted each year under the 2020 amendments, the Department estimates that 90 percent of alleged incidents that were previously classified as sexual harassment under subregulatory guidance documents, but did not meet the definition of ''sexual harassment'' under the current regulations, were handled by a recipient in other disciplinary processes. The Department invites comment on this estimate.

4.B. Developing the Model

After the effective date of the 2020 amendments to its Title IX regulations, the Department assumes that recipients complied with the regulatory requirements and fell into one of three groups in how they handled complaints of sexual harassment that fell outside the scope of the current § 106.45:

- *Group A:* Recipients did not adopt a new process to handle complaints falling outside the current § 106.45 grievance procedures;
- *Group B:* Recipients handled complaints falling outside the current § 106.45 regulations through a different grievance process;
- *Group C:* Recipients handled complaints falling outside the current § 106.45 regulations through a resolution process similar to current § 106.45.

[23] *See* 85 FR 30026, 30565 (May 19, 2020).

[24] U.S. Dep't of Educ., Office for Civil Rights, Civil Rights Data Collection for the 2017–2018 School Year, *https://ocrdata.ed.gov/assets/ocr/docs/2017-18-crdc-data.zip* (open ''2017–18 Public Use Files''; then select ''Data''; then select ''SCH''; then select ''CRDC''; then select ''CSV''; then select the ''Harassment and Bullying.csv'' file) (last visited June 21, 2022).

The Department has not assumed a recipient would behave differently based on its public or private status. Further the Department does not distinguish cost structures or burden hours based on public or private status, but instead applied an average across all IHEs in each analytical group. The Department also assumes recipients in all three groups generally complied with the 2020 amendments to the Title IX regulations. To the extent that a recipient did not comply with some or all of those amendments, the following estimates may overestimate or underestimate actual costs of the proposed regulations for that recipient.

To populate each of the three groups, the Department is using the same disbursement as was used in the 2020 rulemaking analysis. That is, the Department assumes that approximately 5 percent of LEAs, 5 percent of IHEs, and 90 percent of other recipients [25] fall into Group A. Generally, the Department does not anticipate that LEAs or IHEs, which usually have existing disciplinary processes and a history of compliance with Title IX, would adopt the minimal framework of Group A. In contrast, other recipients, as defined in footnote 25, are less likely to have alternative disciplinary processes and the Department assumes that it is unlikely that these other recipients would have established alternative processes as a result of the 2020 amendments. The Department assumes that a recipient in this group, in response to the proposed regulations, would experience an increase in the number of incidents investigated each year but would also be likely to revise its grievance procedures to fit the context of its educational environment under proposed § 106.45. As a result, although the number of investigations may increase, each investigation and adjudication would be less burdensome relative to investigations and adjudications under the 2020 amendments, due to the ability of a recipient under the proposed regulations to adopt procedures consistent with Title IX that are prompt, equitable, and specifically adapted to its unique circumstances, including its setting, size, and administrative structure. Recipients in this group would see burden increases associated with necessary revision of procedures and recordkeeping.

The Department assumes that approximately 90 percent of LEAs, 50 percent of IHEs, and 5 percent of other recipients fall into Group B. The Department believes that a recipient in this group generally experienced some reduction in the number of sexual harassment investigations conducted under the grievance procedure requirements of the 2020 amendments, which would have been initiated only by a formal complaint of sexual harassment and, based on anecdotal evidence, would have also addressed at least some incidents that are no longer covered under the current grievance procedure requirements by using an alternative disciplinary process. In the preamble to the 2020 amendments, the Department did not account for such a shift in its estimates; however, the current model assumes such behavior as part of the baseline. The Department assumes that, in response to the proposed regulations, Group B would see an increase in the total number of investigations under Title IX due to the proposed application of regulatory grievance procedures to more than sexual harassment complaints. It is assumed that Group B would benefit from some of the additional flexibilities offered under the proposed regulations, such as having the option between providing equitable access to the relevant and not otherwise impermissible evidence to the parties or providing them with a written investigative report that accurately summarizes the evidence under proposed § 106.46. The Department also believes that a recipient in this group would likely retain many aspects of its current grievance procedures in response to the proposed regulations. As a result, the Department estimates that the increase in the number of investigations for Group B under the proposed regulations would be smaller than the increase in the number of investigations for Group A because of the number of investigations and adjudications already occurring under the auspices of an alternative student or employee conduct process. It is estimated that recipients in Group B would see burden increases associated with necessary revision of procedures and recordkeeping under the proposed regulations.

The Department assumes that approximately 5 percent of LEAs, 45 percent of IHEs, and 5 percent of other recipients fall into Group C. A recipient in this group is assumed to use the grievance process established under the 2020 amendments to also resolve conduct that was not required to be resolved under Title IX. As a result, it is estimated that a recipient in Group C would not see a large increase in the number of investigations conducted annually or a meaningful change in the burden per investigation. However, a recipient in Group C, like those in the other two groups, may see burden increases associated with necessary revision of procedures and recordkeeping.

For recipients in both Groups A and B, the Department assumes that the proposed regulations addressing sex discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, would result in an increase in the number of investigations conducted annually above the average encountered prior to the promulgation of the 2020 amendments. Although the Department has previously addressed a recipient's obligation to address these forms of discrimination in OCR's prior guidance, including harassment on these bases, the Department believes that at least some recipients may not have fully addressed these incidents absent a regulatory requirement.[26] The Department assumes that the proposed inclusion of these areas in the Department's Title IX regulations may result in a 10 percent increase in the number of investigations conducted annually.[27] The Department seeks

[25] Other recipients include entities other than LEAs and IHEs which operate education programs or activities supported by the Department and may include libraries, museums, and cultural centers, among other types of organizations. This group represents an exceptionally small number of LEAs and IHEs, many of which are likely to be very small in size (*e.g.,* an LEA of fewer than 100 students or an IHE of fewer than 15 students).

[26] This is explained in greater detail in the discussions of Pregnancy and Parental Status (Section III) and Title IX's Coverage of All Forms of Sex Discrimination (Section IV).

[27] As part of the 2017–2018 CRDC, schools reported 44,864 allegations of harassment and bullying on the basis of sex. That same year, they reported 18,414 allegations of harassment and bullying on the basis of sexual orientation, or approximately 33 percent of the number of allegations of harassment and bullying on the basis of sex. *See* U.S. Dep't of Educ., Office for Civil Rights, Civil Rights Data Collection for the 2017–2018 School Year, *https://ocrdata.ed.gov/assets/ocr/docs/2017–18-crdc-data.zip* (open ''2017–18 Public Use Files''; then select ''Data''; then select ''SCH''; then select ''CRDC''; then select ''CSV''; then select the ''Harassment and Bullying.csv'' file) (last visited June 21, 2022). The sum of the allegations of harassment or bullying on the basis of sexual orientation (18,414) is found in Column L of harassment and bullying.csv in the 2017–2018 CRDC data by excluding cells with reserve codes. The Department believes that 33 percent would represent a very high upper bound of the number of additional investigations conducted annually by recipients based on the inclusion of sexual orientation and gender identity in the proposed regulations. OCR has long recognized that ''[w]hen students are subjected to harassment on the basis of their LGBT status, they may also. . . be subjected to forms of sex discrimination prohibited under Title IX. The fact that the harassment includes anti-LGBT comments or is partly based on the target's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy overlapping sexual harassment or gender-based harassment.'' U.S.

comment on the assumptions regarding the categorization of affected entities and the extent to which these assumptions are reasonable.

Although the Department notes that proposed § 106.45(a)(2) would allow a third party participating or attempting to participate in a recipient's education program or activity to make a complaint of sex discrimination, the Department assumes this proposed change would result in a minimal increase in a recipient's overall number of complaints of sex discrimination. Specifically, the Department assumes that third-party complaints are somewhat uncommon (and would remain so), but that these complaints serve to inform recipients of at least some incidents of sex discrimination. In the case of a Group A recipient, the Department assumes that the recipient's treatment of information about conduct that may constitute discrimination received from a third party would solely depend on whether the third party made a complaint that initiated the recipient's grievance procedures. If the complainant declined or was not permitted to make a complaint under the recipient's policy, the Department assumes that the Group A recipient would not take action to address the information. The Department assumes that in contrast to Group A recipients, Group B and Group C recipients would take steps to address a third-party allegation of sex discrimination—whether by way of their Title IX process, alternative disciplinary process, or other process depending on the circumstances and nature of the report. Thus, although the proposed regulations may change the process under which such information is addressed, the inclusion of third-party complaints would not meaningfully increase the overall number of complaints processed annually across recipients. The Department welcomes comment on the extent to which third party complaints might increase the average number of investigations occurring annually above those estimated herein.

Unless otherwise specified, the Department's model uses mean hourly wages for personnel employed in the education sector as reported by the Bureau of Labor Statistics [28] and a lading factor of 2.0 to account for the employer cost of employee compensation and indirect costs (*e.g.,* physical space, equipment, technology costs). In addition, throughout this RIA, some described calculations have results that are fractions (*e.g.,* the described analysis generates an estimate of 4.79655 incidents at LEAs in which supportive measures are offered). To improve readability, the Department presents these results rounded to two decimal places in the text (*e.g.,* 4.80), but retains the unrounded value for purposes of its underlying calculations.

LEAs, IHEs, and other recipients would be subject to the proposed regulations. Estimates regarding the number of affected LEAs and IHEs are based on the most recent data available from the National Center for Education Statistics [29] regarding the number of LEAs nationwide with operational schools and the number of IHEs participating in programs under Title IV of the HEA (such as Direct Loans, Federal Work Study, and Pell grants). The estimate regarding the number of other institutions is based on an internal review of the Department's grant portfolio.

- *LEAs:* It is assumed that 18,131 LEAs would be impacted by the proposed regulations. Among affected LEAs, total enrollment during the 2020–2021 school year ranged from fewer than 10 students to more than 460,000 students.
- *IHEs:* It is assumed that 6,054 IHEs would be impacted by the proposed regulations. Among IHEs, recipients range from small, private, professional schools with fewer than 5 students enrolled in the Fall of 2020 to large, public research universities with enrollments of more than 85,000 students and institutions operating mostly virtually with enrollments in excess of 145,000 students.
- *Others:* It is assumed that 600 other recipients would be impacted by the proposed regulations. Other recipients include both small Tribal cultural centers located in remote rural areas and some of the largest and most well-funded arts centers and museums in the world. They also include State education agencies, State vocational rehabilitation agencies, local libraries, small parent organizations, and a range of other entities that receive Federal grant funds from the Department.

It is important to note that within each of these categories of recipients, there is wide variation in the number of students served, number of employees, administrative structure, and annual revenue. This wide variation has made estimating the effects of the proposed regulations challenging, and the Department notes that the estimates provided are intended to reflect the average burden across the full spectrum of affected entities. As a result, estimates may be lower than the actual burden realized by, for example, larger recipients or recipients with more complex administrative structures, and larger than those actually realized by smaller recipients with less complex administrative structures. The Department notes that the estimates in the discussion of Cost Estimates (Section 4.C) were developed based on the RIA from the 2020 amendments, as informed by comments in response to the 2018 NPRM, as well as information received by OCR through the June 2021 Title IX Public Hearing, in listening sessions, and during the meetings held under Executive Order 12866 in 2022. The estimates were further informed by the input of internal subject matter experts. The Department invites comment on all estimates provided herein to ensure that they accurately reflect realistic assumptions about average burdens the proposed regulations would impose on the full range of affected entities.

4.C. Cost Estimates

Review of Regulations and Policy Revisions

The Department assumes that all recipients would need to spend time

Dep't of Educ., Office for Civil Rights, Dear Colleague Letter: Harassment and Bullying at 8 (Oct. 26, 2010), *https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf*. The Department believes it would be extremely unlikely that the proposed regulations would result in such a large increase in the number of investigations occurring annually. First, such an assumption would imply that no allegations of harassment and bullying on the basis of sexual orientation were also reported as allegations of harassment and bullying on the basis of sex, which the Department believes is highly unlikely because the CRDC instructs schools to count a single harassment allegation under multiple categories if it meets the definition of more than one category. In addition, such an assumption would imply that no allegations of harassment and bullying on the basis of sexual orientation are currently investigated under a recipient's Title IX procedures, which the Department also believes is highly unlikely because, as described in the discussion of proposed § 106.10, harassment based on sexual orientation can be difficult to distinguish from other forms of harassment based on sex. However, the Department also believes it is unreasonable to assume that the express inclusion of sexual orientation and gender identity in the proposed regulations would have no effect on the number of investigations occurring annually. Based on the analysis set out here, the Department estimates that the additional clarity provided by the proposed regulations would result in a 10 percent increase in the number of investigations occurring annually.

[28] U.S. Dep't of Labor, Bureau of Labor Statistics, May 2021 National Industry-Specific Occupational Employment and Wage Estimates: Sector 61—Educational Services, *https://www.bls.gov/oes/current/naics2_61.htm* (last visited May 19, 2022).

[29] U.S. Dep't of Educ., Inst. of Educ. Sciences, Nat'l Ctr. for Educ. Statistics, Elementary/Secondary Information System, *http://nces.ed.gov/ccd/elsi/* (last visited May 19, 2022); U.S. Dep't of Educ., Inst. of Educ. Sciences, Nat'l Ctr. for Educ. Statistics, IPEDS Data Center, *https://nces.ed.gov/ipeds/datacenter/InstitutionByName.aspx* (last visited May 19, 2022).

reading and understanding the proposed regulations. The time necessary to complete this task across all recipients would likely vary widely, with some recipients opting for a close and time-consuming review of both the regulations and preamble, while others would rely on shorter third-party summaries targeted for specific audiences resulting in a less burdensome and expedient process. The Department has developed on-average assumptions based on feedback provided by stakeholders in listening sessions and, as noted in the discussion of Developing the Model (Section 4.B), invites comment on these estimates. On average, the Department assumes that it would take 4 hours each for a Title IX Coordinator ($100.36/hour) and lawyer ($148.76/hour) to complete this task. In total, the Department estimates that reading and understanding the proposed regulations would have a total one-time cost of approximately $24,697,760 in Year 1.

The Department assumes that all recipients would need to make revisions to their grievance procedures as a result of the proposed regulations. At each recipient institution, the Department assumes that these revisions would take, on average, 6 hours for a Title IX Coordinator, 2 hours for an administrator ($100.36/hour), and 6 hours for a lawyer. In total, the Department estimates that revising grievance procedures would have a one-time cost of $42,021,480 in Year 1. This estimate includes the costs of a recipient's revisions to its grievance procedures associated with the Department's proposal to require recipients to comply with its proposed revisions to § 106.45 rather than current § 106.45, and for IHEs to also comply with proposed § 106.46.

The proposed regulations would provide substantial clarity on recipient obligations under Title IX. As such, some recipients may choose to engage in supplemental review of their existing policies to determine compliance and to make changes, if needed, in addition to the proposed changes that may impact a recipient's grievance procedures. The Department assumes that these estimates would be sufficient to account for such behavior but seeks comment on the proportion of recipients, disaggregated by type of entity if appropriate, that would be likely to engage in supplemental policy compliance reviews as a result of the proposed regulations, as well as the likely burden associated with such reviews.

Although the 2020 amendments required a recipient to post nondiscrimination statements on the recipient's website, the Department assumes that approximately 40 percent of LEAs, 20 percent of IHEs, and 50 percent of other institutions would experience more than de minimis burden to modify their existing statements to comply with the requirements of the notice of nondiscrimination under proposed § 106.8(c). These estimates are based, in part, on how recently the 2020 amendments went into effect, potential impacts from the COVID–19 pandemic which likely delayed at least some recipients from complying with the requirement in the 2020 amendments, and any updates to existing content that may be necessary due to the proposed regulations. For a recipient that has not yet completed this requirement, the Department assumes doing so would take 1 hour from the Title IX Coordinator and 2 hours from a web developer ($68.48/hour).[30] In total, the Department estimates that posting nondiscrimination statements on websites would have a one-time cost of $2,081,380 in Year 1.

The Department requests comment on these estimates.

Revisions to Training

The proposed regulations would likely impact the annual training provided to Title IX Coordinators and designees, investigators, decisionmakers, and other persons who are responsible for implementing a recipient's grievance procedures or have the authority to modify or terminate supportive measures. For individuals other than the Title IX Coordinator and designees, the Department believes it is unlikely that the length of training would have to change, and therefore believes that any associated burden for these individuals would not change as a result of the proposed regulations. The Department assumes that Title IX Coordinators would revise existing training materials to incorporate any new content and adjust the remaining parts of the training accordingly to avoid extending the length and cost of administering the training.

Although the Department notes that the proposed regulations would require all employees to be trained on the scope of conduct that constitutes sex discrimination, including the definition of ''sex-based harassment,'' and all applicable notification requirements under proposed §§ 106.40(b)(2) and 106.44, the Department does not believe that this requirement would meaningfully change the overall annual burden related to training requirements for recipient employees. As an initial matter, the Department assumes that all employees of recipients receive required trainings each year and that recipients generally strive to limit the total amount of time employees spend in these trainings. The Department also assumes that recipients will not budget additional funds in response to the modification of the current training requirement, and thus, will not experience an increased monetary burden due to this proposed change. The Department believes that recipients make purposeful decisions about the amount of time dedicated to each required training and would increase or decrease the time required for particular training sessions, as needed, to ensure that all required topics are covered within a set amount of time. As a result, the Department assumes that the proposed regulations would ultimately have a de minimis effect on the time burden for employees associated with training, and requests comment on this assumption.

Across all recipients, the Department estimates that updating training materials for individuals other than the Title IX Coordinators would take 4 hours for the Title IX Coordinator for a total one-time cost of $9,949,690. In subsequent years, the Department assumes that the burden associated with the annual updating of training materials would be about the same as it would be in the absence of the proposed regulations.

In contrast, the Department anticipates that the proposed regulations would require more extensive, longer training for Title IX Coordinators compared to the current regulations. As an initial matter, the Department assumes that a recipient would employ similar means by which to train its Title IX Coordinator in response to the current regulations as the recipient employed in response to the promulgation of the 2020 amendments; however, the Department acknowledges that the development and delivery method of the training varies among recipients. For example, the Department assumes that some recipients hired outside counsel, law firms, and professional organizations to train their Title IX Coordinators while other recipients relied upon internal stakeholders such as the recipient's general counsel. In its tentative view, the Department has no reason to believe that a recipient would deviate from its current source of training because of the proposed regulations.

[30] Note that time burden estimates for this activity are unchanged from those used in the 2020 amendments.

The Department assumes that such trainings would be 2 hours longer for each Title IX Coordinator in Year 1, and 1 hour longer in future years. In total, the Department estimates that the training of Title IX Coordinators would have a cost of $4,974,850 in Year 1 and $2,487,423 in each succeeding year. Costs will also be incurred to update training materials for Title IX Coordinators. These materials may be developed in a variety of ways, depending on the preferences of individual recipients. These materials will be more comprehensive in nature, but individual entities may develop training materials that will be used across many recipients. As a result, the Department assumes training development costs for Title IX Coordinators equal to those estimated for other individuals, equaling a one-time cost of $9,949,690. The Department seeks comment on assumptions related to the effects of the proposed regulations on training.

Supportive Measures

With respect to the provision of supportive measures, the Department's proposed regulations would require a recipient to offer supportive measures, as appropriate, to complainants and respondents who may have experienced sex discrimination, including sex-based harassment and prohibited retaliation. Although the current regulations only require a recipient to offer supportive measures, as appropriate, to complainants and respondents in response to information regarding sexual harassment, nothing in the current regulations would prohibit a recipient from also offering supportive measures to address other types of sex discrimination. The Department assumes that prohibited retaliation would most likely occur following a report or complaint of sex-based harassment (as opposed to other forms of sex discrimination) and that, in such instances, the types of supportive measures offered following the initial report or complaint of sex-based harassment would be largely indistinguishable from the types of supportive measures offered in response to prohibited retaliation and would not result in additional measurable cost to the recipient. Further, the Department submits that it is unlikely that there would be an increase in the number of individuals seeking and accepting supportive measures solely to address the impacts of ''prohibited retaliation'' as defined under proposed § 106.71.

The Department notes that the proposed regulations state that for allegations of sex discrimination other than sex-based harassment or prohibited retaliation, the recipient would not be required to alter the conduct that is alleged to be sex discrimination for the purpose of providing a supportive measure. The Department expects that there would be little impact on anticipated costs to recipients associated with the proposed provision requiring supportive measures to be offered to complainants and respondents who may have experienced other forms of sex discrimination. The Department's assumption is based on the belief that such information would likely fall into one of two categories. The first category consists of information a recipient would receive about sex discrimination related to unequal access to resources or facilities (*e.g.,* reports that women's sports teams have lower quality practice facilities than men's teams or men's locker rooms are not maintained at the same level as women's locker rooms). In these instances, the Department anticipates that there are few, if any, appropriate supportive measures beyond eliminating the source of sex discrimination (*e.g.,* improving the quality of women's practice facilities or the men's locker rooms). Although it is the Department's current belief that this type of information would likely result in increased costs associated with the provision of supportive measures, there may be additional costs incurred when addressing these types of situations that are unrelated to providing supportive measures.

Likewise, the Department anticipates that complaints of and information about sex discrimination in educational settings (*e.g.,* a teaching assistant treating an individual student differently because of sex) would be the most likely reason for a request for supportive measures. In these instances, appropriate supportive measures would likely be academic in nature and have relatively minor costs (*e.g.,* allowing a student to attend a section of the same class taught by a different teaching assistant after a complaint of sex discrimination has been made and is proceeding; counseling the teacher's aide).

For supportive measures related to sex-based harassment, the Department assumes that the proposed regulations would have a negligible effect on the burden per incident. Specifically, as the variety of supportive measures and need to adapt those measures to a particular situation makes estimating the full spectrum of costs impracticable, the Department used the cost of more commonly provided supportive measures when calculating cost estimates. Moreover, as it is likely that many of the supportive measures available to individuals are already provided by recipients, the Department expects that the actual costs of each type of measure would be de minimis; however, the Department has added a flat cost of $250 per incident to account for any potential costs. The Department cannot provide greater specificity regarding specific measures given the wide range of possible measures that could be offered, the varying administrative structures of recipients, and the need to align any supportive measures to the specific facts of each case.

At the LEA level, the Department assumes that, per incident, the provision of supportive measures currently takes 2 hours from a Title IX Coordinator and 2 hours from an administrative assistant ($61.06/hour), with a flat additional cost of $250 per incident.[31] As such, the Department assumes that, on average, the provision of supportive measures at a LEA costs approximately $570 per incident (staff time plus flat additional cost). At the IHE level and at other recipients, the Department assumes that, per incident, the provision of supportive measures currently takes 2 hours from a Title IX Coordinator and 1 hour from an administrative assistant with a flat additional cost of $250 per incident. Therefore, the Department estimates that, on average, the provision of supportive measures at an IHE or other recipient costs approximately $510 per incident. The Department anticipates that the proposed regulations may increase the number of incidents for which supportive measures are provided per year.

Currently, the Department assumes that a recipient offers and potentially provides supportive measures in all instances that, prior to the 2020 amendments, would have triggered an investigation, as well as in many instances that previously would not have triggered an investigation. Across all recipient types, the Department assumes that under the proposed regulations, the number of incidents prompting an offer and provision of

[31] This flat cost is intended to capture any non-staff time costs associated with the provision of supportive measures, including but not limited to fees for services covered by the recipient (such as for counseling) or foregone fees not collected by the recipient (such as a waiver of fees for housing reassignment). Note that, due to the wide variety of supportive measures that may be offered by recipients and the need to tailor any such measures to the specific circumstances of a particular individual, more precise estimation of the costs associated with the provision of supportive measures is not practicable.

supportive measures would be approximately 50 percent higher than the number of investigations conducted under the current regulations. For example, at LEAs, where the Department assumes an average of 3.23 investigations per year were conducted before the 2020 amendments, the Department assumes that there would be an average annual increase to 4.85 incidents prompting an offer of supportive measures under the proposed regulations. The Department assumes that, across all recipient types, supportive measures are accepted in approximately 90 percent of the incidents in which they are offered. Thus, the Department assumes that LEAs provide supportive measures 4.36 times per year. At IHEs, the Department assumes 7.70 provisions of supportive measures per year and at other recipients, 2.70 provisions per year. Across all recipient types, the Department estimates that the provision of supportive measures based on pre-2020 amendments incident data costs approximately $69,962,040 per year.

The Department's estimates also reflect an anticipated change in the behavior of complainants across all recipient types due to the proposed regulations. Specifically, the Department has received anecdotal reports of complainants accepting supportive measures while declining to participate in a recipient's grievance procedures due to the perceived burden associated with initiating those procedures. The Department estimates that currently, the number of individuals accepting supportive measures is two to three times greater than the number of individuals choosing to pursue resolution through the recipient's grievance procedures. Under the proposed regulations, however, the Department estimates that the percentage of individuals who report an incident to a recipient and choose to make a complaint to initiate the recipient's grievance procedures under proposed § 106.45, and if applicable proposed § 106.46, would increase, with the discrepancy between the two reduced, on average, to approximately 35 percent. This change is also likely to result in large, unquantified benefits to complainants by providing increased opportunities for reporting sex discrimination and accepting supportive measures, as explained in the discussion of Benefits of the Proposed Regulations (Section 3). In response to the proposed regulations, the Department assumes, as described in the discussion of Developing the Model (Section 4.B), that all recipients would see a 10 percent increase in the number of incidents in which a complainant accepts some supportive measures offered. The Department notes that this is not an assumption that the proposed regulations would increase the number of incidents that may initiate an offer of supportive measures, but rather, the Department believes this increase likely would be driven by greater clarity regarding the scope of coverage created by the proposed regulations and enhanced training requirements which would inform individuals who are already eligible for such measures of the availability of these measures. The Department assumes that under the proposed regulations, each LEA would provide supportive measures 4.80 times per year, each IHE would do so 8.47 times per year, and other recipients would do so 2.97 times each per year. In all, the Department estimates that after the enactment of the proposed regulations, the provision of supportive measures would cost a total of $76,958,240, for a net increase of $6,996,200.

The Department requests comment on the likely effect of the proposed regulations on the costs associated with the provision of supportive measures, particularly regarding assumptions about the likely effects of recipients offering supportive measures in instances of receiving information about sex discrimination not related to sex-based harassment or prohibited retaliation.

Investigations and adjudications

Under the current regulations, the geographic location of an alleged incident affects whether the allegations would be covered under Title IX. As a result, the Department recognizes that LEAs and IHEs spend time investigating whether incidents took place in a location that requires the use of Title IX grievance procedures to investigate and adjudicate allegations of sexual harassment. The proposed change to § 106.11 would clarify that Title IX applies to every recipient and all sex discrimination occurring under a recipient's education program or activity. This includes the obligation to respond to a hostile environment based on sex under a recipient's education program or activity in the United States, even if the sex-based harassment contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States. In some instances, such as when an alleged incident occurred outside of the United States and may have contributed to a hostile environment in the recipient's education program or activity domestically, the Department anticipates that the resulting investigation may be more time consuming. Due to a lack of high-quality data on these issues, the Department does not have a basis upon which to develop estimates of this change. The Department seeks comment to help better estimate the effects of this change.

As noted in the discussion of Developing the Model (Section 4.B), it is the Department's preliminary view that recipients would fall into three groups for purposes of categorizing their likely responses to the proposed regulations. A recipient in Group A would likely experience an increase in the number of Title IX investigations conducted under the proposed regulations, but it would also likely exercise flexibilities built into the proposed regulations which would reduce the burden per complaint. It is important to note that the Department assumes that the exercise of these flexibilities would not impact a recipient's ability to ensure fair investigations and adjudications but rather, would allow it to develop and maintain prompt and equitable procedures tailored to its educational settings, reducing the burden on the recipient while ensuring the implementation of a fair and equitable proceedings for the parties. A recipient in Group B also would likely experience an increase in the number of investigations conducted annually. However, the Department believes in its tentative view that a recipient in Group B would be more likely to maintain the structures required under the 2020 amendments, as these recipients likely already investigate and adjudicate the forms of conduct covered by the proposed regulations but excluded from the scope of the current regulations, by way of an alternative disciplinary process. Likewise, a recipient in Group C, having complied with the 2020 amendments and also having continued to respond to sex discrimination as it had prior to those amendments, would be unlikely to experience any burden changes associated with increased numbers of investigations or changes in the burden of such investigations.

As described in the discussion of Developing the Model (Section 4.B), the Department has a reasonable framework for understanding the likely actions of recipients, including how long it would take for a recipient to investigate a complaint of sexual harassment, based on discussions with organizations that work directly with Title IX Coordinators at LEAs and IHEs. For LEAs in Group A, the Department estimates that an investigation currently takes, on

average, 3 hours from a Title IX Coordinator, 4 hours from an administrative assistant, 2 hours each from two lawyers/advisors ($148.76/hour) when they are involved, 6 hours from an investigator ($56.52/hour), and 2 hours from an adjudicator ($75.94/hour). Note that the Department assumes that lawyers/advisors would be involved in approximately 15 percent of cases. For IHEs in Group A, the Department assumes an investigation currently takes, on average, 6 hours from a Title IX Coordinator, 8 hours from an administrative assistant, 5 hours each from two lawyers/advisors, 10 hours from an investigator, and 2 hours from an adjudicator. For other recipients in Group A, the Department assumes an investigation currently takes, on average, 2 hours from a Title IX Coordinator, 24 hours from an administrative assistant, 2 hours each from two lawyers/advisors, 1 hour from an investigator, and 2 hours from an adjudicator. Across all recipients in Group A, the Department assumes a flat rate of $100 per adjudication to meet the recording requirements of the 2020 amendments. The Department estimates that LEAs in Group A currently conduct, on average, 1.94 investigations per year. At the IHE level, the Department estimates that Group A institutions conduct 3.82 investigations per year, while other recipients in Group A conduct, on average, one investigation per year. In total, the Department estimates that investigations and adjudications for recipients in Group A currently cost a total of approximately $6,807,190.

Under the proposed regulations, the Department estimates that recipients in Group A would develop revised procedures to ensure fair investigations tailored to their educational settings, which would reduce the burden associated with each investigation and adjudication. Specifically, the removal of LEAs from some of the specific obligations under current § 106.45 would result in such recipients in Group A no longer being required to supplement the work of their own administrators with specialized individuals when conducting an investigation and making a determination in response to a complaint of sex-based harassment. The Department assumes investigations would require 4 hours from a Title IX Coordinator or other administrator (such as a building-level principal or assistant principal) and 4 hours from an administrative assistant. At the IHE level, the Department assumes each investigation and adjudication would take 5 hours from a Title IX Coordinator, 8 hours from an administrative assistant, 5 hours each from two lawyers/advisors, 10 hours from an investigator, and 2 hours from an adjudicator. For other recipients, the Department anticipates a need for 2 hours from a Title IX Coordinator, 4 hours from an administrative assistant, 2 hours each from two lawyers/advisors, 1 hour from an investigator, and 2 hours from an adjudicator.

As a preliminary matter, the current regulations require a recipient to create an ''audio or audiovisual recording, or transcript'' of all live hearings. As LEAs are not required to hold hearings, the Department assumes that few, if any, choose to do so. However, because IHEs are required to hold hearings under the current regulations, many recipients with means have chosen to fulfill this requirement by using a court reporter.

For IHEs and other recipients in Group A, the Department anticipates no change in the flat rate of $100 per investigation associated with meeting the recording requirements. The Department assumes no recording costs for LEAs in Group A. Under the proposed regulations, the Department assumes that LEAs in Group A would conduct, on average, 3.55 investigations per year; IHEs in Group A would conduct an average of 6.27 investigations per year, and other recipients would conduct, on average, 2.20 investigations per year. The Department therefore estimates that, under the proposed regulations, investigations and adjudications among recipients in Group A would cost approximately $9,548,740 per year, which represents a net burden increase of $2,741,550 per year.

TABLE I—INVESTIGATIONS AND ADJUDICATIONS BURDEN ESTIMATES—GROUP A RECIPIENTS [32]

	Baseline			After proposed regulations		
Cost category	LEAs	IHEs	Other	LEAs	IHEs	Other
Title IX Coordinator	3 hours	6 hours	2 hours	4 hours	5 hours	2 hours.
Adm. Assistant	4 hours	8 hours	4 hours	2 hours	8 hours	4 hours.
Lawyer/Advisor [1]	2 hours [2]	5 hours	2 hours		5 hours	2 hours.
Investigator	6 hours	10 hours	1 hour		10 hours	1 hour.
Adjudicator	2 hours	2 hours	2 hours		2 hours	2 hours.
Recording	$100	$100	$100	$0	$100	$100.
# of Investigations	1.94	3.82	1.00	3.55	6.27	2.20.

[1] When present, the Department assumes two lawyers/advisors per investigation and adjudication.
[2] The Department assumes lawyers/advisors are involved in only 15 percent of investigations and adjudications. This estimate is based on information from a professional organization.

For LEAs in Group B, the Department assumes an investigation currently requires 3 hours of time from a Title IX Coordinator, 14 hours from an administrative assistant, 8 hours each from two lawyers/advisors in 15 percent of cases, 8 hours from an investigator, and 2 hours from an adjudicator. At the IHE level in Group B, the Department estimates that current practices likely require 6 hours from a Title IX Coordinator, 20 hours from an administrative assistant, 20 hours each from two lawyers/advisors, 20 hours from an investigator, and 10 hours from an adjudicator. At other recipients in Group B, the Department assumes that current practices require 8 hours from a Title IX Coordinator, 16 hours from an administrative assistant, 8 hours each from two lawyers/advisors, 5 hours from an investigator, and 2 hours from an adjudicator. At LEAs and other recipients in Group B, the Department estimates that it would cost a flat rate of $100 per hearing to meet the recording requirements of the 2020 amendments.

[32] Estimates were based on information provided by national professional organizations and discussions with internal subject matter experts.

At IHEs, the Department assumes a rate of $200 per hearing to account for the possibility that IHEs may want more extensive records of hearings, such as official transcripts, in addition to an audio recording. The Department assumes that LEAs in Group B currently conduct, on average, 1.938 investigations per year; that IHEs in Group B conduct 3.82 investigations per year, and that other recipients in Group B conduct one investigation per year. In total, therefore, the Department estimates that investigations and adjudications for a recipient in Group B currently cost approximately $184,185,730 per year.

As noted in the discussion of Lack of Data Following the Promulgation of the 2020 Amendments (Section 4.A.3), the Department assumes that a recipient in Group B shifted approximately 90 percent of those incidents into an alternative disciplinary process rather than not taking any action in response to incidents that were previously covered under their Title IX policies. As described in the discussion of Developing the Model (Section 4.B), the Department has initially determined, based on internal subject matter expertise, that many recipients developed alternative processes by which to address conduct that fell outside of the parameters of current § 106.45. As noted in that section, Group B and Group C recipients created alternative processes that either reflected the recipient's student conduct process (Group B recipients) or mirrored the current § 106.45 grievance procedures (Group C recipients). The Department assumes that resource and time expenditures for these alternative processes mirror those of the recipient's student conduct process for Group B recipients or the recipient's current § 106.45 grievance procedures for Group C recipients.

At the LEA level, the Department assumes that an alternative disciplinary process requires 3 hours from an administrator ($100.36/hour), 14 hours from an administrative assistant, 6 hours each from two lawyers/advisors in 5 percent of cases, and 6 hours from an investigator. The Department estimates that in 75 percent of LEAs, the process is adjudicated by an administrator for 3 additional hours, while in the other 25 percent of LEAs, an independent adjudicator is needed for 2 hours. At the IHE level, the Department assumes that the alternative disciplinary process requires 6 hours from an administrator, 20 hours from an administrative assistant, 10 hours each from two lawyers/advisors, and 15 hours from an investigator. The Department estimates that in 60 percent of IHEs, the process is adjudicated by an administrator for 6 additional hours, while in the other 40 percent of IHEs, an independent adjudicator is required for 8 hours. The Department estimates that LEAs in Group B, on average, shifted 1.628 investigations per year into alternative disciplinary processes in response to the 2020 amendments, while IHEs did the same with 1.70 investigations, and other recipients did so for 0.9 investigations. The Department therefore estimates that a recipient currently spends approximately $62,463,510 per year on implementing alternative disciplinary processes for incidents that were previously covered under their grievance procedures prior to the 2020 amendments.

Under the proposed regulations, the Department assumes that all of those incidents would be handled under the recipient's Title IX grievance procedures. At LEAs in Group B, the revised procedures would require approximately 4 hours from a Title IX Coordinator or other administrator (such as a building level principal or assistant principal) and 2 hours from an administrative assistant. The Department assumes that, in approximately 25 percent of instances, LEAs would use an investigator and adjudicator other than the Title IX Coordinator or other administrator. In such instances, the Department assumes that those LEAs would need 2 hours from an investigator and 1 hour from an adjudicator. The Department assumes that, in 5 percent of instances, each party would have a lawyer/advisor each spending 4 hours on the incident. These LEA level estimates represent an assumption that most LEAs would return to their processes from prior to the 2020 amendments due to the removal of LEAs from some of the specific obligations under current § 106.45. At the IHE level in Group B, the revised procedures would require 5 hours from a Title IX Coordinator, 13 hours from an administrative assistant, 15 hours each from two lawyers/advisors, 18 hours from an investigator, and 8 hours from an adjudicator. For other Group B recipients, revised procedures would require 2 hours from a Title IX Coordinator, 6 hours from an administrative assistant, 2 hours each from two lawyers/advisors in 5 percent of proceedings, 2 hours from an investigator, and 1 hour from an adjudicator.

Under the proposed regulations, the Department believes that Group B LEAs would conduct, on average, 3.553 investigations per year, while IHEs would conduct 6.27 investigations per year, and other recipients would conduct 2.20 investigations per year. Therefore, under the proposed regulations, investigations and adjudications at a recipient in Group B would cost a total of approximately $180,542,490 per year which represents a net decrease in the burden associated with investigations and hearings by $66,106,750 per year.

TABLE II—INVESTIGATIONS AND ADJUDICATIONS BURDEN ESTIMATES—GROUP B RECIPIENTS

Cost category	Baseline			After proposed regulations		
Harassment grievance procedures	LEAs	IHEs	Other	LEAs	IHEs	Other
Title IX Coordinator	3 hours	6 hours	8 hours	4 hours	5 hours	2 hours.
Adm. Assistant	14 hours	20 hours	16 hours	2 hours	13 hours	6 hours.
Lawyer/Advisor [1]	8 hours [2]	20 hours	8 hours	4 hours [3]	15 hours	2 hours.
Investigator	8 hours	20 hours	5 hours	2 hours [4]	18 hours	2 hours.
Adjudicator	2 hours	10 hours	2 hours	1 hours [4]	8 hours	1 hour.
Recording	$100	$200	$100	$100	$200	$100.
# of Investigations	1.94	3.82	1.00	3.55	6.27	2.20.
Alternate Process	LEAs	IHEs	Other.			
Administrator	3 hours [5]	6 hours [6]	4 hours.			
Adm. Assistant	14 hours	20 hours	8 hours.			
Lawyer/Advisor [1]	6 hours [3]	10 hours.				

TABLE II—INVESTIGATIONS AND ADJUDICATIONS BURDEN ESTIMATES—GROUP B RECIPIENTS—Continued

Cost category	Baseline			After proposed regulations		
Harassment grievance procedures	LEAs	IHEs	Other	LEAs	IHEs	Other
Investigator	6 hours	15 hours.				
Adjudicator	2 hours	8 hours.				
Recording	$100	$200	$100.			
# of Investigations	1.16	1.70	0.90.			

[1] When present, the Department assumes two lawyers/advisors per investigation and adjudication.
[2] The Department assumes lawyers/advisors are involved in 15 percent of investigations and adjudications.
[3] The Department assumes lawyers/advisors are involved in 5 percent of investigations and adjudications.
[4] The Department assumes investigators and adjudicators other than the Title IX Coordinator or another administrator would be used in approximately 25 percent of instances.
[5] The Department assumes administrators also serve as adjudicators in 75 percent of instances and their burden doubles in such cases.
[6] The Department assumes administrators also serve as adjudicators in 60 percent of instances and their burden doubles in such cases.

Appeals and Informal Resolution

The Department assumes that nothing in the proposed regulations would change the nature of the appeal process for fully adjudicated complaints. The Department notes that the proposed regulations would require all recipients to offer an appeal of a dismissal of a sex discrimination complaint. This limited right to an appeal is an expansion of recipients' current obligations as it would apply to any dismissal of a sex discrimination complaint, not just to complaints of sex-based harassment. Although it is possible that at least some portion of recipients have an appeal process as part of their current procedures for resolving complaints of sex discrimination, the Department assumes that its current estimates may overestimate the costs of the proposed regulations in this area. The Department requests comment on this issue. Assuming that there is a de minimis change regarding the number of recipients that offer an appeal because all recipients would need to offer an appeal from a dismissal of a complaint of sex discrimination, there would be additional costs to a recipient associated with appeals because of the estimated increase in the number of complaints brought under the proposed regulations and the proportion of decisions that could be appealed.

Across all recipients, the Department estimates that one or more parties in approximately half of all fully adjudicated complaints appeal the determination. This estimate is consistent with estimates from the 2020 amendments and the Department again seeks comment on the extent to which this estimate is reasonable and whether this proportion is likely to change under the proposed regulations. The Department assumes that at the LEA level, the appeal process would require 2 hours each from a Title IX Coordinator, administrative assistant, and two lawyers/advisors as well as an additional 6 hours from an adjudicator while at the IHE level, the Department assumes that the appeal process requires 2 hours from a Title IX Coordinator, 4 hours from an administrative assistant, 5 hours each from two lawyers/advisors, and 8 hours from an adjudicator. Likewise, at other recipients, the Department assumes that the appeal process requires 2 hours each from a Title IX Coordinator, administrative assistant, and two lawyers/advisors, with an additional 8 hours from an adjudicator. Assuming that LEAs, on average, would handle an additional 0.605 appeals per year as a result of the proposed regulations, IHEs, on average, would receive an additional 0.921 appeals per year, and other recipients, on average, would see an additional 0.5 per year, the Department estimates that the increase in appeals stemming from the increase in complaints likely to be made under the proposed regulations would result in an additional cost of approximately $21,084,350 per year.

The Department expects that the proposed regulations would have a de minimis change on the proportion of complaints resolved through informal resolution and would not affect the general burden associated with each such resolution. Specifically, although the requirements for grievance procedures would be less burdensome under the proposed regulations than under the current regulations, the Department expects that the majority of complainants who would have elected to proceed with informal resolution under the current regulations would continue to do so under the proposed regulations because of the elimination of the current regulations' formal complaint requirement prior to initiating the informal resolution process. Although it is possible that a complainant would decide to make a complaint and pursue an investigation because of the reduced burden under the proposed regulations, it is the Department's tentative view that there is no basis to assume that a complainant who would have pursued informal resolution under the current regulations is more or less likely to choose informal resolution under the proposed regulations because individuals' rationales for choosing an informal resolution process vary widely.

Based on anecdotal reports from recipients and other stakeholders, the Department assumes that informal resolutions require more time from a Title IX Coordinator and an administrative assistant than an investigative process. In contrast, the Department assumes that the informal resolution process would remove all costs associated with investigators, adjudicators, and recording at all levels and eliminate costs for lawyers/advisors at the LEA level. At the LEA level, informal resolution may require 1 additional hour from a Title IX Coordinator and 5 hours from an administrative assistant above the level needed for a full hearing; at the IHE level, the additional burden would be 2.5 hours from a Title IX Coordinator and 1 hour from an administrative assistant, while at other recipients, the additional burden is estimated to be 1 hour from a Title IX Coordinator and 3 hours from an administrative assistant. The Department assumes that, in instances of informal resolution, there would be no burden for investigators or adjudicators at LEAs, IHE, or other recipients, and no burden for lawyers/advisors at LEAs or other recipients. At the IHE level, the Department assumes that, even in instances of informal resolution, there would be a burden of 6 hours each for two lawyers/advisors (one working with each party), assuming that the individuals serving in those roles may become involved earlier in the process than at other educational levels or at other recipients. In light of the increase in complaints that the Department anticipates under the

proposed regulations, the estimated increase in the cost of informal resolutions would be approximately $12,830,090 per year.

Recordkeeping

The Department assumes that all recipients would need to modify their existing recordkeeping systems to comply with the proposed regulations. Specifically, the Department submits that proposed § 106.8(f) would broaden the existing scope of the recordkeeping requirements under current § 106.45(b)(10) because, unlike the current regulations, the proposed recordkeeping requirement applies to all incidents or complaints of sex discrimination. However, the Department assumes that many recipients already maintain records related to sex discrimination under the auspices of State, local, or other requirements. In these instances, proposed § 106.8(f) would not impose any additional burden on those recipients as their existing recordkeeping activity would likely address all pertinent requirements under the proposed regulations.

Alternatively, for recipients that only maintain records related to sexual harassment as required by current § 106.45(b)(10) and do not preserve information related to other forms of sex discrimination, the proposed changes would increase their burden based on the volume of records they will need to maintain related to forms of sex discrimination other than sexual harassment, as would be required by proposed § 106.8(f). The Department estimates that the proposed regulations, in general, would increase the recordkeeping burden for these recipients. At the LEA level, the Department estimates that necessary modifications to current practice would require 2 hours each from a Title IX Coordinator and an administrative assistant, whereas at the IHE level, where a recipient is more likely to maintain electronic systems for these records, these changes would require 4 hours from a Title IX Coordinator, 8 hours from an administrative assistant, and 4 hours from a database administrator ($76.54/hour). At other recipients, the Department estimates that modifications would require 2 hours each from a Title IX Coordinator and an administrative assistant. In total, the Department estimates that modifications to recipients' recordkeeping systems would cost approximately $13,288,180 in Year 1.

In future years, the Department assumes the proposed regulations would necessitate an ongoing increase, above the baseline year, in recordkeeping costs. Specifically, at the LEA level, the Department estimates that recordkeeping would require 1 additional hour each from the Title IX Coordinator and an administrative assistant; at the IHE level, 1 additional hour from the Title IX Coordinator and 5 hours from an administrative assistant; and at other recipients, 1 additional hour each from the Title IX Coordinator and an administrative assistant. In total, the Department estimates the ongoing recordkeeping burden to increase by approximately $5,382,570 per year.

The Department seeks comment on these estimates, particularly whether they accurately reflect the likely changes in annual burden on recipients associated with the proposed changes to § 106.8(f).

Monitoring the Recipient's Education Program or Activity for Barriers to Reporting Information About Conduct That May Constitute Sex Discrimination

The Department's proposed regulations would require a recipient to ensure that its Title IX Coordinator monitors the recipient's education program or activity for barriers to reporting sex discrimination and that the recipient take steps reasonably calculated to address such barriers. Although a recipient is neither required to nor prohibited from monitoring its environment for these barriers under the current regulations, the Department assumes that many recipients, particularly IHEs, currently monitor their education programs or activities for such barriers to avoid potential legal liability because barriers to reporting limit a recipient's ability to ensure that its education program or activity is operating free from sex discrimination. The Department also assumes that Title IX Coordinators are motivated to proactively identify and address sex discrimination in the recipient's education program or activity. Although some recipients may need to create new mechanisms to monitor their environments, the Department believes that many of these recipients will select options with de minimis costs, such as incorporating questions designed to elicit information from students and employees about barriers to reporting into existing training materials, incorporating such questions into conversations with students, employees, and others during roundtable discussions or listening sessions with interested stakeholders, or through other means. The Department similarly assumes that the steps a recipient would need to take to remove these barriers, should they be identified, would likely have a de minimis cost as well (*e.g.,* reminding students, employees, and others during trainings about the range of reporting options available at a particular recipient or reporting an employee who discourages their students from reporting to human resources for violating the recipient's code of ethics standards). That said, the Department recognizes that there is a wide range of possible recipient responses to this proposed requirement with potentially varying costs and benefits. Therefore, the Department requests comment on the likely costs associated with monitoring a recipient's environment for barriers to sex discrimination and taking steps reasonably calculated to remove such barriers.

4.D. Changes in the Proposed Regulations Not Estimated To Have Costs

In addition to the changes explained in the discussion of Cost Estimates (Section 4.C) that are estimated to have costs, there are several proposed changes that the Department does not anticipate would generate costs for regulated entities above and beyond general costs described previously. The Department believes it is important to discuss some of these proposed changes to clarify the basis for that assumption and ensure that the public has an adequate opportunity to review and comment on the Department's analysis.

Lactation Space for Students and Employees

Although the current regulations specifically prohibit discrimination against students and employees based on pregnancy, childbirth, termination of pregnancy, and recovery, the Department proposes revising the regulations to clarify that a recipient may not discriminate based on pregnancy or related conditions, including lactation. The Department also proposes revisions to the regulations that would require a recipient to provide a lactation space for students and employees and reasonable modifications for students and break time for employees to enable use of the space as needed. Specifically, proposed § 106.40(b)(3)(iv) would require a recipient to ''[e]nsure the availability of a lactation space, which must be a space other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed.'' Similarly, proposed § 106.57(e) would require a recipient to provide ''reasonable break

time for an employee to express breast milk or breastfeed as needed'' and to ''ensure the availability of a lactation space, which must be a space other than a bathroom that is clean, shielded from view, free from intrusion from others, and may be used by an employee for expressing breast milk or breastfeeding as needed.'' Both measures are critical means for preventing discrimination and ensuring that students and employees are able to continue pursuing their education and employment, respectively, while taking brief breaks from their classes or job duties as needed to express breast milk or breastfeed.

The Department does not anticipate significant cost to recipients based on this proposed revision. Although it is possible that the proposed regulations' clarification that a lactation space must be available for both students and employees may result in an increase in demand for a such a space, it is the Department's tentative view that any such increase would likely result in a de minimis impact on costs as distributed over all recipients over time. The Department posits this for several reasons.

First, although it is unknown how many recipients presently offer lactation space for students or employees due to a lack of data, all or virtually all recipients are already required to comply with provisions for lactation time and space for employees covered under the Affordable Care Act's amendments to Section 7 of the Fair Labor Standards Act (FLSA).[33] The FLSA requires employers to provide reasonable break times and a private place, other than a bathroom, to employees covered under Section 7 of the FLSA who are breastfeeding to express milk for one year after their child's birth. 29 U.S.C. 207(r)(1). The space must be ''shielded from view and free from intrusion from coworkers and the public.'' *Id.* The Department of Labor (DOL) has explained that the space must also be ''functional'' and ''available when needed'' and that the ''frequency of breaks needed to express milk as well as the duration of each break will likely vary.'' U.S. Dep't of Labor, Fact Sheet #73: Break Time for Nursing Mothers under the FLSA (April 2018), *https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers.* DOL has also clarified that a temporary or converted space is sufficient if the space is available when needed, shielded from view, and free from any intrusion from co-workers and the public. *Id.* Employees who would be covered by the lactation time and space requirements of the FLSA include many full-time and part-time workers in public and private education programs or activities. 29 U.S.C. 203(e). Although the FLSA exempts certain employees, such as professors, teachers, and certain academic administrative personnel from coverage, virtually all recipients would nevertheless have to provide lactation space to their non-exempt staff. *See* 29 U.S.C. 213(a)(1) (exempting executive, administrative, and professional employees, including academic administrative personnel and teachers, from the FLSA); 29 U.S.C. 207(r)(1) (FLSA lactation time and space requirement). The Department does not have specific information about existing lactation spaces for employees due to a lack of relevant data. The Department assumes, however, that given the limited requirements for the lactation space itself, that most recipients would be able to locate such a space within their current property or maximize the use of an existing space. The Department's proposed requirements regarding lactation space are similar to those of the FLSA with the additional requirement that the space be clean. The Department assumes that most, if not all, recipients already clean their facilities, including any existing lactation space, and anticipates that the additional cost of cleaning associated with the proposed regulations would be negligible.

Second, some States also require a recipient either to provide lactation space to employees or to make reasonable attempts to do so. *See, e.g.,* Minn. Stat. Ann. § 181.939 (2014) (requiring employers to make a reasonable effort to provide a private location, other than a bathroom or toilet stall, in close proximity to the workplace that is shielded from view, free from intrusion, and has an electrical outlet); N.M. Stat. Ann. § 28–20–2 (2007) (requiring employers to provide a clean, private place, not a bathroom, for employees who are breastfeeding to pump); N.Y. Labor Law § 206–C (2007) (requiring that employers make a reasonable attempt to provide employees a private location for lactation); Okla. Stat. tit. 70, § 5–149.3 (2021) (requiring each school district board of education to make a reasonable effort to provide a private, secure, sanitary room or other location, other than a toilet stall, for an employee to express milk or breastfeed a child); R.I. Gen. Laws § 28–5–7.4 (2015) (prohibiting employers from refusing to reasonably accommodate an employee's or prospective employee's condition related to pregnancy, childbirth, or a related medical condition, including but not limited to the need to express breast milk for a nursing child; ''reasonable accommodation'' is defined to include a ''private non-bathroom space for expressing breast milk''); S.C. Code Ann. § 41–1–130 (2020) (requiring employers to make reasonable efforts to provide certain areas where employees may express breast milk); Tenn. Code Ann. § 50–1–305 (1999) (requiring employers to make a reasonable effort to provide a private location, other than a toilet stall, near the workplace for employees' lactation); Utah Code Ann. § 34–49–202 (2015) (requiring public employers to provide employees a clean, private room or location that is not a bathroom and that has an electrical outlet for lactation, as well as access to a refrigerator or freezer for the storage of breast milk); Vt. Stat. Ann. Tit. 21, § 305 (2008) (requiring employers to ''[m]ake a reasonable accommodation [for lactation] to provide appropriate private space that is not a bathroom stall''); Va. Code § 22.1–79.6 (2014) (requiring local school boards to designate private, non-restroom locations for employees and students to express breast milk); Wash. Rev. Code 43.10.005 (2017) (requiring employers to provide a private location, other than a bathroom, for employee lactation, or if no such space exists, work with the employee to identify a convenient location for lactation). As some States already require recipients to provide lactation spaces or make reasonable attempts to do so, the Department believes that the proposed requirement would be neither burdensome nor costly as many recipients may already be required to comply with similar provisions due to State law.

In addition, for some recipients, lactation space and break times may be the subject of local laws or separate employment agreements, such as collective bargaining agreements. Some recipients may simply provide lactation space and break time voluntarily. In short, the Department anticipates that its proposed regulations would impose de minimis cost on a recipient that is already providing lactation space and breaks to its staff.

[33] Under the FLSA, a covered enterprise is ''the related activities performed through unified operation or common control by any person or persons for a common business purpose and . . . is engaged in the operation of a . . . a preschool, an elementary or secondary school, or an institution of higher education (whether operated for profit or not for profit)'' or ''is an activity of a public agency.'' U.S. Dep't of Labor, Handy Reference Guide to the Fair Labor Standards Act (Sept. 2016), *https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa.*

The Department acknowledges that in some cases, the proposed regulations may result in increased demand for lactation space or break time. It is difficult to quantify the extent to which demand might increase or how demand might vary over time as the Department is not aware of any available data source that tracks the numbers of students or employees in need of lactation space. The Department anticipates that demand would vary across recipients, based on the composition of the student and employee population at any time, further reducing the impact to individual recipients.

When a recipient already has a lactation space, the Department anticipates that it is likely that the space would meet the Department's proposed requirements for the reasons already discussed. In addition, because a lactation space is only in use by any given person for a limited period of time, it is possible that many recipients already have sufficient capacity to accommodate additional users; however, the Department anticipates that a recipient that does not currently provide lactation space would be able to comply with the proposed regulations using existing space at minimal cost. For example, the proposed regulations do not require that a lactation space be of a particular size, shape, or include particular features other than being private and clean. Similarly, the Department anticipates that a recipient that currently provides lactation space would already have a system in place to administer use of the space (for example, through a sign-up system) to the extent needed and that this could be adapted to accommodate new demand with minimal cost.

With respect to the Department's proposed requirement that a recipient provide its employees with reasonable break time for lactation, the Department also anticipates that any increased demand could be managed through an existing system for coverage of employees who require brief breaks for other reasons. This is more likely to be necessary for LEA school teachers, whose breaks may require coverage because of the nature of school schedules, rather than employees at IHEs who may not require coverage during breaks needed for lactation because those employees do not typically have supervisory responsibility for children. The Department also recognizes that at some IHEs and other types of recipients, some employees would have access to a private office that is sufficient for lactation needs.

Finally, the Department anticipates that its proposed regulations regarding lactation time and space would also likely improve the recipient's retention of its students and employees. For example, a student parent may be more comfortable remaining in an education program or activity in which the recipient is reducing barriers to remaining in school during the early months and years of a child's life. Likewise, an employee who has access to sufficient lactation time and space may also be more likely to return to the workplace or return earlier from parental leave than one who does not have such access because the employee knows that they can continue to breastfeed after returning to work. For these reasons, the Department submits that this provision, as proposed, would impose de minimis costs and would provide important benefits in terms of eliminating sex-based barriers to education and employment.

Reasonable Modifications for Students Because of Pregnancy or Related Conditions

The Department does not anticipate significant cost to a recipient based on proposed § 106.40(b)(3)(ii) and (4), which would require that a recipient provide a student the option of reasonable modifications because of the student's ''pregnancy or related conditions'' as defined by proposed § 106.2, because this requirement is similar to OCR's previous discussion of a recipient's obligations in this context. U.S. Dep't of Educ., Office for Civil Rights, Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972 at 9 (June 2013) (2013 Pregnancy Pamphlet), *https://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf*. Current § 106.40(b)(1) prohibits a recipient from discriminating against or excluding ''any student from its education program or activity, including any class or extracurricular activity, on the basis of the student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.'' Likewise, current § 106.40(b)(4) has long required a recipient to treat pregnancy or related conditions similarly to other temporary disabilities ''with respect to any medical or hospital benefit, service, plan, or policy [the] recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.''

OCR's 2013 Pregnancy Pamphlet clarified that to ''ensure a pregnant student's access to its educational program, when necessary, a school must make adjustments to the regular program that are reasonable and responsive to the student's temporary pregnancy status. For example, a school might be required to provide a larger desk, allow frequent trips to the bathroom, or permit temporary access to elevators.'' 2013 Pregnancy Pamphlet at 9. As the requirement for reasonable modifications because of pregnancy or related conditions builds upon the former ''reasonable and responsive'' standard and sets a clearer framework for how to assess what must be provided, the Department does not anticipate that the required steps for compliance with the proposed ''reasonable modifications because of pregnancy or related conditions'' standard under proposed § 106.40(b)(4) would be more costly than under the prior OCR interpretation of a recipient's duties.

Participation Consistent With Gender Identity

The Department does not anticipate significant cost to a recipient above and beyond the general costs described in the discussion of Costs of the Proposed Regulations (Section 4), to comply with proposed §§ 106.31(a)(2) and 106.41(b)(2). Proposed § 106.31(a)(2) would clarify that even in the discrete, limited settings in which a recipient may impose different treatment or separate students on the basis of sex, a recipient must not do so in a manner that subjects a person to more than de minimis harm, unless otherwise permitted by Title IX or the Title IX regulations. Proposed § 106.31(a)(2) also would clarify that adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with their gender identity causes more than de minimis harm. As described in the discussion of Coverage of All Forms of Sex Discrimination (Section IV), the proposed regulations' prohibition on preventing a person from participating in an education program or activity consistent with their gender identity is consistent with the analysis of Federal courts that have addressed how Title IX protects students from discrimination based on sex stereotypes and gender identity. Some stakeholders have expressed concern about costs associated with permitting students to participate in certain education programs or activities consistent with their gender identity. Compliance with proposed § 106.31(a)(2) may require

updating of policies or training materials, but would not require significant expenditures, such as construction of new facilities or creation of new programs. For the many schools that have long maintained policies and practices that generally permit students to participate in school consistent with their gender identity, the proposed regulations may not require any change. *See, e.g.,* Cal. Dep't of Educ., Legal Advisory regarding application of California's antidiscrimination statutes to transgender youth in schools (updated Sept. 16, 2021), *https://www.cde.ca.gov/re/di/eo/legaladvisory.asp* (describing obligation under California and Federal law that schools afford students equal opportunity and access to the school's facilities, activities, and programs, in a manner that is consistent with each student's gender identity); Washoe Cnty. Sch. Dist., Administrative Regulation 5161: Gender Identity and Gender Non-Conformity—Students (2019), *https://www.wcsdpolicy.net/pdf_files/administrative_regulations/5161_Reg-Gender_Identify-v2.pdf* (permitting students to participate in sex-separate activities in accordance with their gender identity). A recipient that maintains policies and practices that prevent students from participating in school consistent with their gender identity would be required to review and update those policies and practices under the proposed regulations; however, the Department anticipates that the costs of these modifications would be subsumed into the general costs of updating policies and procedures to comply with the proposed regulations.

The Department notes that some costs associated with proposed § 106.31(a)(2) may be addressed elsewhere in the RIA. For instance, to the extent that a recipient's failure to comply with proposed § 106.31(a)(2) would lead to additional investigations of alleged discrimination, those costs are addressed in the discussion of costs associated with the proposal to clarify Title IX's coverage of gender identity discrimination. Similarly, to the extent that a recipient would take steps to train employees or students on gender identity discrimination, those costs are addressed in the discussion of costs associated with training. As this is an evolving area of the law, the Department anticipates there may be some costs associated with potential litigation.

The Department acknowledges that these assumptions are uncertain, and requests comment on anticipated changes associated with compliance with proposed § 106.31(a)(2), along with information on any costs associated with such changes.

5. Regulatory Alternatives Considered

The Department reviewed and assessed various alternatives prior to issuing the proposed regulations, drawing from internal sources, as well as feedback OCR received in connection with the June 2021 Title IX Public Hearing, numerous listening sessions, and the meetings held in 2022 under Executive Order 12866. In particular, the Department considered the following alternative actions: (1) leaving the current regulations without amendment; (2) rescinding the current regulations in their entirety and reissuing past guidance, including U.S. Dep't of Educ., Office for Civil Rights, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties at 3, noticed at 66 FR 5512 (Jan. 19, 2001) (rescinded upon effective date of 2020 amendments, Aug. 14, 2020), *www.ed.gov/ocr/docs/shguide.pdf;* U.S. Dep't of Educ., Office for Civil Rights, Dear Colleague Letter: Sexual Violence (Apr. 4, 2011) (rescinded in 2017), *https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf;* and U.S. Dep't of Educ., Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence at 5 (Apr. 29, 2014) (rescinded in 2017), *www.ed.gov/ocr/docs/qa-201404-title-ix.pdf;* (3) rescinding the current regulations, either in whole or in part, and issuing new guidance; (4) proposing narrower amendments to the current regulations, or (5) issuing completely new proposed amendments to address significant areas (*e.g.,* clarifying coverage includes gender identity, applying regulatory grievance procedure requirements to all sex discrimination complaints, and adding regulatory provisions on a recipient's obligation to students and employees who are pregnant or experiencing pregnancy-related conditions).

The Department believes a combination of (4) and (5), which involves issuing proposed amendments, is the better alternative. The combination of these alternatives would mean amending the current regulations to make noteworthy adjustments that would better achieve the objectives of the statute, are consistent with recent case law, and account for the feedback OCR received in connection with its June 2021 Title IX Public Hearing, numerous listening sessions, and the meetings held in 2022 under Executive Order 12866. Based on its internal review, the Department's current view is that the current regulations may not fully address all forms of sex discrimination in a recipient's education program or activity or offer sufficient safeguards to reduce—and ultimately remove—sex discrimination in the educational setting. The approach adopted in the 2020 amendments may have created a gap in implementing Title IX's prohibition on sex discrimination: a recipient may have information about possible sex discrimination in its education program or activity and yet may have no obligation to take any action to address it if a formal complaint is not filed and the recipient's Title IX Coordinator determines that the allegations do not warrant overriding a complainant's wishes and initiating a complaint. Numerous stakeholders shared their concerns with the Department, specifically that certain requirements in the current regulations may impede a recipient from taking prompt and effective action in response to allegations of sexual harassment in the recipient's education program or activity. By creating extensive obligations related only to certain forms of sexual harassment and leaving a recipient's obligations with respect to the necessary grievance procedures to respond to other forms of sex-based harassment and sex discrimination unaddressed, the current regulations may have created a risk that Title IX's prohibition on sex discrimination would be underenforced. In addition, it is the Department's tentative view that greater clarity is required than what is in the current regulations with respect to the scope of sex discrimination, including with respect to discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. The Department is concerned that equal access to a recipient's education program or activity free from sex discrimination may be impaired absent this clarity.

For reasons explained in the RIA as well as throughout the preamble, and in light of stakeholder feedback received in 2021 and 2022, alternative (1) was not a reasonable option. Alternatives (2) and (3) were rejected because the Department continues to believe that it is necessary to establish, through regulations, the legal obligations of a recipient to ensure that its education program or activity is free from all forms of sex discrimination; guidance documents, which are not legally binding on a recipient, would not serve that function.

After careful consideration of these alternatives, the Department proposes that adopting alternatives (4) and (5) to

(a) best fulfill Title IX's guarantee of nondiscrimination on the basis of sex by a recipient of Federal funds in its education program or activity; (b) ensure that a recipient understands its obligations to address sex discrimination in all forms, including sex-based harassment, so that students and others can participate in the educational environment free from discrimination based on sex; (c) safeguard fairness for all who participate in a recipient's grievance procedures for sex discrimination, including sex-based harassment; (d) protect a person's rights under Title IX by requiring a recipient to provide appropriate supportive measures to the complainant and the respondent and remedies to a complainant or any other person the recipient identifies as having their equal access to the recipient's education program or activity limited or denied by sex discrimination; and (e) ensure that a recipient understands its obligations to prevent discrimination against and ensure equal access for students and employees who are pregnant or experiencing pregnancy-related conditions.

In addition to reviewing stakeholder feedback, the Department considered alternatives to the proposed regulations based upon its internal analysis of the costs and benefits of various options.

Clarification of the Scope of Title IX

During its review of various alternatives to the proposed regulations, the Department considered whether to clarify and define the scope of Title IX. Specifically, although the current regulations define sexual harassment, they do not clarify the scope of Title IX's prohibition on sex discrimination. The Department considered several options to address this area and chose to specify in the proposed regulations that Title IX's prohibition on sex discrimination includes discrimination on the basis of pregnancy or related conditions, sex stereotypes, sex characteristics, sexual orientation, and gender identity. Although the Department recognizes that clarifying the scope of Title IX could result in increased costs to recipients, especially those recipients that limited the application of their Title IX policies to those forms of conduct explicitly referenced in the current regulations, the Department believes that the non-monetary benefits of providing clarity and recognizing the broad scope of Title IX's protections outweighs the costs associated with the implementation of these robust protections.

Clarification of the Geographic Scope of Title IX's Prohibition on Sex Discrimination

The Department also considered retaining the current regulations' scope of coverage with respect to conduct that occurs off-campus and off school grounds. Numerous stakeholders in OCR's June 2021 Title IX Public Hearing, OCR's listening sessions, and the meetings held in 2022 under Executive Order 12866 requested that the Department explicitly include additional instances of off-campus conduct within the scope of its proposed regulations. Specifically, these stakeholders commented that excluding such conduct denied students, employees, and others equal access to a recipient's education program or activity and failed to fully implement Title IX. As explained in greater detail in the discussion of investigations and adjudications in Cost Estimates (Section 4.C), the Department acknowledges the potential cost increase for a recipient in addressing discrimination that occurs off-campus and also in addressing a hostile environment within the recipient's education program or activity that arises in part from sex-based harassment that occurs off-campus. However, the Department expects that many recipients are already addressing such conduct and incurring related costs through their creation and implementation of alternative disciplinary proceedings to address discriminatory conduct previously addressed through their Title IX procedures prior to the current regulations. Moreover, the Department now believes that the conduct excluded from the current regulations may have profound and long-lasting economic impacts on students, employees, a recipient's educational environment, and the general public and that the benefits of addressing this conduct through the proposed regulations far outweighs any associated costs.

Distinguishing Between Educational Levels

The Department also considered whether to distinguish between educational levels in the proposed regulations. Specifically, during the June 2021 Title IX Public Hearing, in listening sessions, and during the meetings held in 2022 under Executive Order 12866, stakeholders associated with LEAs expressed concerns that certain requirements in the current regulations impeded their ability to successfully address sexual harassment in their day-to-day school environment. Likewise, the Department considered whether all students and employees should remain subject to identical regulations or whether, for the reasons set out in the preamble, equitable treatment under Title IX would be best ensured by amending the regulations in ways that require IHEs to be responsive to the unique needs of their students. For reasons explained in the discussions of Benefits of the Proposed Regulations (Section 3) and Costs of the Proposed Regulations (Section 4), the Department is unable to quantify the benefits or costs of enabling recipients to adapt equitable grievance procedures to their educational environment; however, as discussed throughout the preamble, the Department believes that not doing so would result in continuing impediments to full implementation of Title IX's nondiscrimination guarantee. Alternatively, the Department believes that the proposed regulations create the benefit of enabling all recipients to respond promptly and equitably to sex discrimination in their program or activity, remedy that discrimination as appropriate, and increase access and the opportunity to participate free from sex discrimination.

6. Accounting Statement

As required by OMB Circular A–4, the following table is the Department's accounting statement showing the classification of the expenditures associated with the provisions of the proposed regulations. This table provides the Department's best estimate of the changes in annual monetized costs, benefits, and transfers as a result of the proposed regulations.

Category	Benefits (calculated on an annual basis)
Address gaps in coverage in current regulations	Not quantified
Clarify scope of Title IX's protection	Not quantified
Clarify responsibilities toward students who are experiencing pregnancy or related conditions	Not quantified

Category	Benefits (calculated on an annual basis)	
	Costs (calculated on an annual basis)	
	3%	7%
Reading and Understanding the Regulations	$2,811,001	$3,286,360
Policy Revisions	4,782,718	5,591,508
Publishing Notice of Nondiscrimination	236,894	276,955
Training of Title IX Coordinators	2,770,531	2,818,407
Updating Training Materials	2,264,868	2,647,873
Supportive Measures	6,996,204	6,996,204
Group A Investigations	2,741,547	2,741,547
Group B Investigations	(66,106,747)	(66,106,747)
Appeal Process	21,084,353	21,084,353
Informal Resolutions	12,830,088	12,830,088
Creation and Maintenance of Documentation	6,425,456	6,761,161

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make the proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if the Department divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, is § 106.8 Designation of coordinator, adoption and publication of nondiscrimination policy and grievance procedures, notice of nondiscrimination, training, and recordkeeping.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could the Department do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make the proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act (Small Business Impacts)

1. Introduction

This analysis, required by the Regulatory Flexibility Act (RFA), presents an estimate of the effect of the proposed regulations on small entities. The U.S. Small Business Administration (SBA) Size Standards define ''proprietary IHEs'' as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. ''Nonprofit institutions'' are defined as small entities if they are independently owned and operated and not dominant in their field of operation. ''Public institutions and LEAs'' are defined as small organizations if they are operated by a government overseeing a population below 50,000.

2. Initial Regulatory Flexibility Analysis

As explained in the discussion of Lack of Data Following the Promulgation of the 2020 Amendments (Section 4.A.3) of the RIA, there is a lack of high quality, comprehensive data about recipients' Title IX compliance activities and burdens following the implementation of the 2020 amendments. As a result, the Department could not definitively conclude that burdens on small entities, particularly among recipients other than IHEs or LEAs, would be sufficiently low to justify certification under the RFA. If an agency is unable to make such a certification, it must prepare an Initial Regulatory Flexibility Analysis (IRFA) as described in the RFA. Based on the data available, the Department has completed an IRFA and requests comments from affected small entities.

The purpose of this analysis is to identify the number of small entities affected, assess the economic impact of the proposed regulations on those small entities, and consider alternatives that may be less burdensome to small entities that meet the Department's regulatory objectives. Specifically, the Department estimates the number of small entities potentially impacted by the proposed regulations in the discussion of Estimated Number of Small Entities (Section 2.B), assesses the potential economic impact of the proposed regulations on those small entities in the discussion of Estimate of the Projected Burden of the Proposed Regulations on Small Entities (Section 2.C), and examines and considers less burdensome alternatives to the proposed regulations for small entities in the Discussion of Significant Alternatives (Section 2.D). The Department requests comment on the burdens currently faced by small entities in complying with the 2020 amendments and likely changes to that burden as a result of the proposed regulations, including the total number of Title IX investigations conducted each year by small entities and the extent to which the burden assumptions described in the RIA are reasonable for small entities (*i.e.,* whether particular activities are likely to take more or less time or cost more or less than otherwise estimated).

2.A. Reasons for Regulating

The Department's review of the current regulations and of feedback received during and pursuant to the June 2021 Title IX Public Hearing, as well as listening sessions and meetings held in 2022 under Executive Order 12866, suggests that the current regulations do not best fulfill the requirement of Title IX that recipients of Federal financial assistance eliminate discrimination based on sex in their education programs or activities. The Department has determined that more clarity and greater specificity would better equip recipients to create and maintain school environments free from sex discrimination. This, in turn, will help recipients ensure that all persons have equal access to educational opportunities in accordance with Title IX's nondiscrimination mandate.

The goal of the Department's proposed regulations is to fully effectuate Title IX by clarifying and specifying the scope and application of Title IX protections and recipients' obligation not to discriminate based on

sex. Specifically, the proposed regulations focus on ensuring that recipients prevent and address sex discrimination, including but not limited to sex-based harassment, in their education programs or activities; clarifying the scope of Title IX's protection for students and others who are participating or attempting to participate in a recipient's education program or activity; defining important terms related to a recipient's obligations under Title IX; ensuring the provision of supportive measures, as appropriate to restore or preserve a complainant's or respondent's access to the recipient's education program or activity; clarifying a recipient's responsibilities toward students who are pregnant or experiencing pregnancy-related conditions; and clarifying that Title IX's prohibition on sex discrimination encompasses discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. In addressing confusion about coverage of sex-based harassment in the current regulations, the Department's proposed regulations also set out requirements that enable recipients to meet their obligations in settings that vary in size, student populations, and administrative structure. The proposed regulatory action would strengthen the current framework, clarify the scope and application of Title IX, and fully align the Title IX regulations with the nondiscrimination mandate of Title IX.

2.B. Estimated Number of Small Entities

As in the 2020 amendments (85 FR 30026), for purposes of assessing the impacts on small entities, the Department proposes defining a ''small IHE'' as a two-year IHE with an enrollment of fewer than 500 full time equivalent (FTE) or a four-year IHE with an enrollment of fewer than 1,000 FTE. The Department also proposes defining a ''small LEA'' as an LEA with annual revenues of less than $7,000,000.

During the 2020–2021 school year, of the 6,165 Title IV participating IHEs for which sufficient data are available, 2,803 were four-year institutions, 1,644 were two-year institutions, and 1,718 were less-than-two-year institutions. Of those, 1,226 four-year institutions, 690 two-year institutions, and 1,650 less-than-two-year institutions met the Department's proposed definition of a ''small IHE.''

TABLE 1—NUMBER OF SMALL IHES, FALL 2020

	Four-year	Two-year	Less than two-year	Total
Not Small	1,577	954	68	2,599
Small	1,226	690	1,650	3,566
Total	2,803	1,644	1,718	6,165

During the 2018–2019 school year, 6,518 of the 17,798 LEAs with available revenue data met the Department's proposed definition of a ''small LEA.''

The Department does not have comprehensive revenue data for other recipients in order to estimate the number of entities that would meet the applicable SBA size standards. The Department therefore requests comment on the number of other recipients affected by these proposed regulations that meet these standards.

TABLE 2—NUMBER OF SMALL LEAS, FALL 2018

	LEAs
Not Small	11,280
Small	6,518
Total	17,798

2.C. Estimate of the Projected Burden of the Proposed Regulations on Small Entities

As discussed throughout the RIA, Group A institutions are those most likely to see a net cost increase from the proposed regulations. As such, a Group A IHE would fare worse than an IHE in Group B or Group C. As described in the discussion of Developing the Model (Section 4.B), an IHE in Group A would see a net increase in costs of approximately $8,986 per year. For purposes of assessing the impacts on small entities, the Department proposes defining a ''small IHE'' as a two-year IHE with an enrollment of less than 500 FTE or a four-year IHE with an enrollment of less than 1,000 FTE, based on official 2020 FTE enrollment. The Department notes that this estimate assumes that each small IHE would conduct the same number of investigations per year, on average, as the total universe of all affected IHEs. The Department believes it is much more likely that small IHEs will conduct fewer investigations per year and therefore, their actual realized costs will be less than those estimated herein. According to data from the Integrated Postsecondary Education Data System (IPEDS), in FY 2019, small IHEs had, on average, total revenues of approximately $10,349,540.[34] Therefore, the Department estimates that the proposed regulations could generate a net cost for small IHEs equal to approximately 0.08 percent of annual revenue. According to data from IPEDS, approximately 175 IHEs had total reported annual revenues of less than $900,000, for which the costs estimated above would potentially exceed 1 percent of total revenues. Those IHEs enrolled, on average, 36 students in Fall 2020. For institutions of this size, the Department currently believes it would be highly unlikely for the recipient to conduct 6.3 investigations per year, which would represent a rate of investigations approximately 18 times higher than all other institutions, on average. The Department therefore does not anticipate that the proposed regulations would place a substantial burden on small IHEs.

As in the 2020 amendments, for purposes of assessing the impacts on small entities, the Department proposes defining a ''small LEA'' as one with annual revenues of less than $7,000,000. Based on the model described in the discussion of Developing the Model (Section 4.B), an LEA in Group A would see a net increase in costs of approximately $1,761 per year. The Department notes that these estimates assume small LEAs conduct the same number of investigations per year, on average, as all other LEAs. To the extent that smaller LEAs conduct fewer investigations, on average, than all LEAs, these annual costs will be overestimated for small LEAs. In 2018–2019, small LEAs had an average total revenue of approximately $3,450,911.

[34] Based on data reported for FY 2020 for ''total revenue and other additions'' for public institutions and ''total revenues and investment return'' for private not-for-profit and private for-profit institutions.

Therefore, the Department estimates that the proposed regulations could generate a net cost for small LEAs of approximately 0.05 percent of total revenues. According to data from the National Center for Education Statistics, in 2018–2019, 123 LEAs had total revenues of less than $1,760,000, for which the estimated costs would potentially exceed 1 percent of total revenues. Those LEAs enrolled, on average, 35 students each in the 2018–2019 school year. For LEAs of this size, the Department currently believes it would be highly unlikely for the recipient to conduct 3.6 investigations per year, which would represent a rate of investigations approximately 80 times higher than all other LEAs, on average. The Department, therefore, does not anticipate that these proposed regulations would place a substantial burden on small LEAs.

As described in the discussion of Developing the Model (Section 4.B), an ''other'' recipient in Group A would see a net increase in costs of approximately $3,090 per year. As explained in the discussion of small IHEs and small LEAs, the Department notes that these estimates assume small other entities would conduct the same number of investigations per year, on average, as all other recipients in this category. To the extent that smaller entities conduct fewer investigations on average than all other recipients, these annual costs will be overestimated for small other recipients. Although the Department does not have revenue data for all other recipients, for purposes of this analysis, the Department will assume that, among other recipients with annual revenues of less than $7,000,000, the average annual revenue is approximately $3,500,000, which assumes that recipient revenues are normally distributed within the range of $0 to $7,000,000. At this level, the estimated cost would constitute approximately 0.09 percent of total revenues. The Department notes that, for estimated costs to exceed 1 percent of total revenues, ''other'' recipients would need total annual revenues of less than $309,000. The Department believes that very few other recipients would fall into this category, in part, because in FY 2020, among other recipients receiving less than $1,000,000 in grant funds from the Department, the average grantee received approximately $377,000 in Federal grant funds. Among those receiving less than $500,000 in funding from the Department, the average other recipient received approximately $287,000 in grant funds in FY 2020. Even with very small amounts of non-Federal funding, it is unlikely that costs of compliance with these proposed regulations would exceed 1 percent of annual revenues for these recipients. The Department, therefore, does not expect that these proposed regulations would place a substantial burden on small other recipients.

The Department requests comment on any additional burdens for small entities. The Department also requests comment on whether small entities may discontinue their Federal funding due to the impacts of the proposed regulations.

2.D. Discussion of Significant Alternatives

The Department also considered alternatives that could potentially reduce the burden for small entities. One alternative would be to extend the effective date of the Title IX regulations for small entities such that they would have additional time to implement key components of the regulations. However, it would be premature for the Department to consider an extension at this juncture because no regulatory compliance date has been set. In addition, an extension of the effective date would delay the efforts of small entities to ensure that their education programs or activities are free from sex discrimination, thereby depriving students, employees, and others of their rights under Title IX. Another alternative would be to waive certain requirements for small entities to help facilitate their compliance with Title IX. The Department declines this approach at this time because the proposed requirements are critical to ensuring that all education programs or activities that receive Federal funding do not discriminate based on sex. In addition, the proposed regulations are more adaptable than the current regulations and would provide greater opportunities for small entities to tailor their compliance efforts to their particular settings. Finally, the Department considered proposing different requirements for smaller-sized recipients than for mid-sized or larger ones. The Department rejects this alternative at this time because the Title IX rights of students, employees, and other members of a recipient's educational community do not depend on the size of a recipient, and the proposed regulations are sufficiently adaptable for small entities to adopt the approach that works best for them. Being subjected to sex discrimination in a recipient's education program or activity can affect an applicant's opportunity to enroll in a recipient's education program or activity, a student's ability to learn and thrive in and outside of the classroom, a prospective or current employee's ability to contribute their talents to the recipient's educational mission, and the opportunity of all participants to benefit, on an equal basis, from the recipient's education program or activity. Thus, permitting a small entity the opportunity to delay implementation of the proposed regulations, waiving certain requirements for smaller entities, or having different requirements for small entities could jeopardize these important civil rights and harm students, employees, and others. The Department requests comment on the extent to which the Department's rationale for not adopting each of the alternatives discussed in this section is reasonable and whether there are additional alternatives for reducing burden on small entities without frustrating the purpose of the proposed regulations.

Executive Order 12250 on Leadership and Coordination of Nondiscrimination Laws

Under Executive Order 12250, the Attorney General has the responsibility to ''review . . . proposed rules . . . of the Executive agencies'' implementing nondiscrimination statutes such as Title IX ''in order to identify those which are inadequate, unclear or unnecessarily inconsistent.'' [35] The Attorney General has delegated that function to the Assistant Attorney General for the Civil Rights Division for purposes of reviewing and approving proposed rules, 28 CFR 0.51, and the Assistant Attorney General has reviewed and approved this proposed rule.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and the burden of responding, the Department provides the general 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 requirement helps ensure that: (1) the public understands the Department's collection instructions; (2) respondents can provide the requested data in the desired format; (3) reporting burden (time and financial resources) is minimized; (4) collection instruments are clearly understood; and (5) the Department can properly assess the

[35] *Executive Order on Leadership and Coordination of Nondiscrimination Laws,* Exec. Order. No. 12250, 45 FR 72995 (Nov. 4, 1980), *https://tile.loc.gov/storage-services/service/ll/fedreg/fr045/fr045215/fr045215.pdf.*

impact of collection requirements on respondents.

As discussed in Cost Estimates (Section 4.C.), the Department estimates that all regulated entities would experience an increased recordkeeping burden under the proposed regulations as a result of the proposed changes to recordkeeping requirements in proposed § 106.8(f). Specifically, in Year 1, the Department estimates that compliance would require an additional 4 hours of recordkeeping burden per LEA, 16 hours per IHE, and 4 hours per other recipient. In total, the Department estimates the Year 1 recordkeeping burden associated with the proposed regulations to be a net increase of 171,788 hours.

In subsequent years, the Department estimates that the proposed regulations would require an additional ongoing burden of 2 hours per LEA, 6 hours per IHE, and 2 hours per other recipient. In total, the Department estimates an ongoing annual recordkeeping burden increase of 72,586 hours. However, the Department's current view is that proposed § 106.8(f) will not result in a change of disclosure requirements. Specifically, there are three main reasons for this assumption: (1) recipients were already required to maintain all records related to sexual harassment under the current regulations; (2) many recipients (based on anecdotal reports) were already conducting and maintaining records related to alternative disciplinary proceedings addressing conduct outside of the coverage area of the current regulations; and (3) based upon anecdotal reports, many recipients were already maintaining their records related to sex discrimination. As a result, the Department believes that recipients falling within one or more of these categories would experience a de minimis increase in the number of disclosures.

Regulatory section	Information collection	OMB control number and estimated change in burden
106.8(f)	This regulatory provision requires a recipient to maintain certain documentation related to Title IX activities.	OMB 1870–NEW Changes would increase burden over the first seven years by $45,712,498 382, 168 hours.

The Department prepared an Information Collection Request (ICR) for this collection. This proposed collection is identified as proposed collection OMB control number 1870–NEW. If you would like to review and comment on the ICR, please follow the instructions listed below in this section of this document. Please note that the Office of Information and Regulatory Affairs (OIRA) and the Department of Education review all comments posted at *http://www.regulations.gov*.

When commenting on the information collection requirements, the Department considers your comments on these collections of information in—

- Deciding whether the collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information the Department collects; and
- Minimizing the burden on those who must respond, which includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Comments submitted in response to this document should be submitted electronically through the Federal eRulemaking Portal *http://www.regulations.gov* by selecting Docket ID Number ED–2021–OCR–0166. Please specify the Docket ID number and indicate ''Information Collection Comments'' if your comment(s) relate to the information collection for the proposed regulations. If you need further information, email *ICDocketMgr@ed.gov*.

Consistent with 5 CFR 1320.8(d), the Department is soliciting comments on the information collection through this document. OMB is required to make a decision concerning the collections of information contained in the proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by August 11, 2022. This does not affect the deadline for your comments to us on the proposed regulations. However if you require an accommodation, cannot otherwise request information, or cannot submit your comments electronically, please submit requests for information or your ICR comments to Strategic Collections and Clearance Director, U.S. Department of Education, 400 Maryland Avenue SW, LBJ Room 6W201, Washington, DC 20202–8240.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79 because it is not a program or activity of the Department that provides Federal financial assistance.

Assessment of Educational Impact: In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism: Executive Order 13132 requires the Department to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations, including §§ 106.6, 106.8, 106.31, 106.40, 106.44, 106.45, 106.46, and 106.57 may have federalism implications. The Department encourages State and local elected officials to review and provide comments on the proposed regulations.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *http://www.govinfo.gov*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must

have Adobe Acrobat Reader, which is available free at the site.

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

List of Subjects in 34 CFR Part 106

Civil rights, Education, Sex discrimination, Youth organizations.

Miguel A. Cardona,

Secretary of Education.

For the reasons discussed in the preamble, the Department of Education proposes to revise 34 CFR part 106 to read as follows:

PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 1. The authority citation for part 106 continues to read as follows:

Authority: 20 U.S.C. 1681 *et seq.,* unless otherwise noted.

■ 2. Section 106.1 is revised to read as follows:

§ 106.1 Purpose.

The purpose of this part is to effectuate Title IX, which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Public Law 93–380, 88 Stat. 484.

■ 3. Section 106.2 is revised to read as follows:

§ 106.2 Definitions.

As used in this part, the term:

Administrative law judge means a person appointed by the reviewing authority to preside over a hearing held under § 106.81.

Administratively separate unit means a school, department, or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

Admission means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

Applicant, as used in the definition of educational institution in this section and as used in § 106.4, means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

Assistant Secretary means the Assistant Secretary for Civil Rights of the Department.

Complainant means:

(1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or

(2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX and who was participating or attempting to participate in the recipient's education program or activity when the alleged sex discrimination occurred.

Complaint means an oral or written request to the recipient to initiate the recipient's grievance procedures as described in § 106.45, and if applicable § 106.46.

Confidential employee means:

(1) An employee of a recipient whose communications are privileged under Federal or State law associated with their role or duties for the institution;

(2) An employee of a recipient whom the recipient has designated as a confidential resource for the purpose of providing services to persons in connection with sex discrimination—but if the employee also has a role or duty not associated with providing these services, the employee's status as confidential is limited to information received about sex discrimination in connection with providing these services; or

(3) An employee of a postsecondary institution who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination—but the employee's confidential status is limited to information received while conducting the study.

Department means the Department of Education.

Disciplinary sanctions means consequences imposed on a respondent following a determination that the respondent violated the recipient's prohibition on sex discrimination.

Educational institution means a local educational agency (LEA) as defined by section 8101 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (20 U.S.C. 7801(30)), a preschool, a private elementary or secondary school, or an applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education.

Elementary school means elementary school as defined by section 8101 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (20 U.S.C. 7801(19)), and a public or private preschool.

Federal financial assistance means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

Institution of graduate higher education means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first

professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

Institution of undergraduate higher education means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

Institution of professional education means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary.

Institution of vocational education means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

Parental status, as used in §§ 106.21(c)(2)(i), 106.37(a)(3), 106.40(a), and 106.57(a)(1), means the status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

(1) A biological parent;

(2) An adoptive parent;

(3) A foster parent;

(4) A stepparent;

(5) A legal custodian or guardian;

(6) In loco parentis with respect to such a person; or

(7) Actively seeking legal custody, guardianship, visitation, or adoption of such a person.

Peer retaliation means retaliation by a student against another student.

Postsecondary institution means an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education that serves postsecondary school students.

Pregnancy or related conditions means:

(1) Pregnancy, childbirth, termination of pregnancy, or lactation;

(2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or their related medical conditions.

Program or activity and *program* means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or local government; or

(ii) The entity of a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition, any part of which is extended Federal financial assistance.

Recipient means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.

Relevant means related to the allegations of sex discrimination under investigation as part of the grievance procedures under § 106.45, and if applicable § 106.46. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

Remedies means measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had equal access to the recipient's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the recipient's education program or activity after a recipient determines that sex discrimination occurred.

Respondent means a person who is alleged to have violated the recipient's prohibition on sex discrimination.

Retaliation means intimidation, threats, coercion, or discrimination against any person by a student, employee, person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity, or recipient for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process under § 106.44(k), in grievance procedures under § 106.45, and if applicable § 106.46, and in any other appropriate steps taken by a recipient in response to sex discrimination under § 106.44(f)(6).

Reviewing authority means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part.

Secondary school means secondary school as defined by section 8101 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (20 U.S.C. 7801(45)), and an institution of vocational education that serves secondary school students.

Secretary means the Secretary of Education.

Sex-based harassment prohibited by this part means sexual harassment,

harassment on the bases described in § 106.10, and other conduct on the basis of sex that is:

(1) *Quid pro quo harassment.* An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

(2) *Hostile environment harassment.* Unwelcome sex-based conduct that is sufficiently severe or pervasive, that, based on the totality of the circumstances and evaluated subjectively and objectively, denies or limits a person's ability to participate in or benefit from the recipient's education program or activity (*i.e.,* creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(i) The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;

(ii) The type, frequency, and duration of the conduct;

(iii) The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the alleged unwelcome conduct;

(iv) The location of the conduct, the context in which the conduct occurred, and the control the recipient has over the respondent; and

(v) Other sex-based harassment in the recipient's education program or activity.

(3) *Specific offenses.* (i) Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;

(ii) Dating violence meaning violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim;

(iii) Domestic violence meaning felony or misdemeanor crimes of violence committed by a person who:

(A) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;

(B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(C) Shares a child in common with the victim; or

(D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction; or

(iv) Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for the person's safety or the safety of others; or

(B) Suffer substantial emotional distress.

Student means a person who has gained admission.

Student with a disability means a student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(9)(B), (20)(B), or a child with a disability as defined in the Individuals with Disabilities Education Act, 20 U.S.C. 1401(3).

Supportive measures means non-disciplinary, non-punitive individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a party, and without fee or charge to the complainant or respondent to:

(1) Restore or preserve that party's access to the recipient's education program or activity, including temporary measures that burden a respondent imposed for non-punitive and non-disciplinary reasons and that are designed to protect the safety of the complainant or the recipient's educational environment, or deter the respondent from engaging in sex-based harassment; or

(2) Provide support during the recipient's grievance procedures under § 106.45, and if applicable § 106.46, or during the informal resolution process under § 106.44(k).

Title IX means Title IX of the Education Amendments of 1972 (Pub. L. 92–318; 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), as amended.

§ 106.3 [Amended]

■ 4. Section 106.3 is amended by removing paragraphs (c) and (d).

■ 5. Section 106.6 is amended by:

■ a. Revising paragraphs (b), (e), and (g).

■ b. Removing paragraph (h).

The revisions read as follows:

§ 106.6 Effect of other requirements and preservation of rights.

* * * * *

(b) *Effect of State or local law or other requirements.* The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement. Nothing in this part would preempt a State or local law that does not conflict with this part and that provides greater protections against sex discrimination.

* * * * *

(e) *Effect of Section 444 of General Education Provisions Act (GEPA)/ Family Educational Rights and Privacy Act.* The obligation to comply with this part is not obviated or alleviated by the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99.

* * * * *

(g) *Exercise of rights by parents, guardians, or other authorized legal representatives.* Nothing in this part may be read in derogation of any legal right of a parent, guardian, or other authorized legal representative to act on behalf of a complainant, respondent, or other person, subject to paragraph (e) of this section, including but not limited to making a complaint through the recipient's grievance procedures for complaints of sex discrimination.

■ 6. Section 106.8 is revised to read as follows:

§ 106.8 Designation of coordinator, adoption and publication of nondiscrimination policy and grievance procedures, notice of nondiscrimination, training, and recordkeeping.

(a) *Designation of a Title IX Coordinator.*—(1) *Title IX Coordinator.* Each recipient must designate and authorize at least one employee, referred to herein as the Title IX Coordinator, to coordinate its efforts to comply with its responsibilities under this part.

(2) *Delegation to designees.* As appropriate, the recipient may assign one or more designees to carry out some of the recipient's responsibilities for compliance with this part, but one Title IX Coordinator must retain ultimate oversight over those responsibilities.

(b) *Adoption and publication of nondiscrimination policy and grievance procedures.*—(1) *Nondiscrimination policy.* Each recipient must adopt and publish a policy stating that the recipient does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and this part, including in admission (unless subpart C of this part does not apply) and employment.

(2) *Grievance procedures.* A recipient must adopt and publish grievance procedures consistent with the requirements of § 106.45, and if applicable § 106.46, that provide for the prompt and equitable resolution of complaints made by students, employees, or third parties who are participating or attempting to

participate in the recipient's education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX and this part.

(c) *Notice of nondiscrimination.* A recipient must provide a notice of nondiscrimination to students; parents, guardians, or other authorized legal representatives of elementary school and secondary school students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the recipient.

(1) *Contents of notice of nondiscrimination.* The notice of nondiscrimination must include the following elements:

(i) A statement that the recipient does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and this part, including in admission (unless subpart C of this part does not apply) and employment;

(ii) A statement that inquiries about the application of Title IX and this part to the recipient may be referred to the recipient's Title IX Coordinator, to the Office for Civil Rights, or to both;

(iii) The name or title, office address, email address, and telephone number of the recipient's Title IX Coordinator;

(iv) How to locate the recipient's nondiscrimination policy under paragraph (b)(1) of this section; and

(v) How to report information about conduct that may constitute sex discrimination under Title IX, how to make a complaint of sex discrimination under this part, and how to locate the recipient's grievance procedures under paragraph(b)(2) of this section, § 106.45, and if applicable § 106.46.

(2) *Publication of notice of nondiscrimination.* (i) Each recipient must prominently include all elements of its notice of nondiscrimination set out in paragraphs (c)(1)(i) through (v) of this section on its website and in each handbook, catalog, announcement, bulletin, and application form that it makes available to persons entitled to notice under paragraph (c) of this section, or which are otherwise used in connection with the recruitment of students or employees.

(ii) If necessary, due to the format or size of any publication under paragraph (c)(2) of this section, the recipient may instead comply with paragraph (c)(2) of this section by including in those publications a statement that the recipient prohibits sex discrimination in any education program or activity that it operates and that individuals may report concerns or questions to the Title IX Coordinator, and providing the location of the notice on the recipient's website.

(iii) A recipient must not use or distribute a publication stating that the recipient treats applicants, students, or employees differently on the basis of sex, except as such treatment is permitted by Title IX or this part.

(d) *Training.* The recipient must ensure that the persons described below receive training related to their responsibilities as follows. This training must not rely on sex stereotypes.

(1) *All employees.* All employees must be trained on:

(i) The recipient's obligation to address sex discrimination in its education program or activity;

(ii) The scope of conduct that constitutes sex discrimination under this part, including the definition of sex-based harassment; and

(iii) All applicable notification and information requirements under §§ 106.40(b)(2) and 106.44.

(2) *Investigators, decisionmakers, and other persons who are responsible for implementing the recipient's grievance procedures or have the authority to modify or terminate supportive measures.* In addition to the training requirements in paragraph (d)(1) of this section, all investigators, decisionmakers, and other persons who are responsible for implementing the recipient's grievance procedures or have the authority to modify or terminate supportive measures under § 106.44(g)(4) must be trained on the following topics to the extent related to their responsibilities:

(i) The recipient's obligations under § 106.44;

(ii) The recipient's grievance procedures under § 106.45, and if applicable § 106.46;

(iii) How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and

(iv) The meaning and application of the term relevant in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance under § 106.45, and if applicable § 106.46.

(3) *Facilitators of informal resolution process.* In addition to the training requirements in paragraph (d)(1) of this section, all facilitators of an informal resolution process under § 106.44(k) must be trained on the rules and practices associated with the recipient's informal resolution process and on how to serve impartially, including by avoiding conflicts of interest and bias.

(4) *Title IX Coordinator and designees.* In addition to the training requirements in paragraphs (d)(1) through (3) of this section, the Title IX Coordinator and any designees under paragraph (a) of this section must be trained on their specific responsibilities under paragraph (a) of this section, §§ 106.40(b)(3), 106.44(f), 106.44(g), the recipient's recordkeeping system and the requirements of paragraph (f) of this section, and any other training necessary to coordinate the recipient's compliance with Title IX.

(e) *Students with disabilities.* If a complainant or respondent is an elementary or secondary student with a disability, the Title IX Coordinator must consult with the student's Individualized Education Program (IEP) team, 34 CFR 300.321, if any, or the group of persons responsible for the student's placement decision under 34 CFR 104.35(c) (Section 504 team), if any, to help ensure that the recipient complies with the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.,* and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, throughout the recipient's implementation of grievance procedures under § 106.45, and if applicable § 106.46. If a complainant or respondent is a postsecondary student with a disability, the Title IX Coordinator may consult, as appropriate, with the individual or office that the recipient has designated to provide support to students with disabilities to help comply with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

(f) *Recordkeeping.* A recipient must maintain for a period of at least seven years:

(1) For each complaint of sex discrimination, records documenting the informal resolution process under § 106.44(k) or the grievance procedures under § 106.45, and if applicable § 106.46, and the resulting outcome.

(2) For each incident of conduct that may constitute sex discrimination under Title IX of which the Title IX Coordinator was notified, records documenting the actions the recipient took to meet its obligations under § 106.44.

(3) All materials used to provide training under paragraph (d) of this section. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

(4) All records documenting the actions the recipient took to meet its obligations under §§ 106.40 and 106.57.

■ 7. Section 106.10 is added to subpart B to read as follows:

§ 106.10 Scope.

Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

■ 8. Section 106.11 is revised to read as follows:

§ 106.11 Application.

Except as provided in this subpart, this part applies to every recipient and to all sex discrimination occurring under a recipient's education program or activity in the United States. For purposes of this section, conduct that occurs under a recipient's education program or activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by a postsecondary institution, and conduct that is subject to the recipient's disciplinary authority. A recipient has an obligation to address a sex-based hostile environment under its education program or activity, even if sex-based harassment contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States.

■ 9. Section 106.15 is amended by revising paragraph (b) to read as follows:

§ 106.15 Admissions.

* * * * *

(b) *Administratively separate units.* For purposes only of this section and subpart C, each administratively separate unit shall be deemed to be an educational institution.

* * * * *

§ 106.16 [Removed]

■ 10. Section 106.16 is removed.

§ 106.17 [Removed]

■ 11. Section 106.17 is removed.

§ 106.18 [Redesignated as § 106.16]

■ 12. Section 106.18 is redesignated as § 106.16.

■ 13. Section 106.21 is amended by revising paragraphs (a) and (c) to read as follows:

§ 106.21 Admissions.

(a) *Status generally.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies.

* * * * *

(c) *Parental, family, or marital status; pregnancy or related conditions.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Must treat pregnancy or related conditions or any temporary disability resulting therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(2) Must not:

(i) Adopt or apply any policy, practice, or procedure concerning the current, potential, or past parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;

(ii) Discriminate against any person on the basis of current, potential, or past pregnancy or related conditions, or establish or follow any policy, practice, or procedure that so discriminates; and

(iii) Make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is ''Miss or Mrs.'' A recipient may ask an applicant to self-identify their sex, but only if this question is asked of all applicants and if the response is not used as a basis for discrimination prohibited by this part.

§ 106.30 [Removed]

■ 14. Section 106.30 is removed.

■ 15. Section 106.31 is amended by revising paragraph (a) to read as follows:

§ 106.31 Education programs or activities.

(a) *General.* (1) Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance.

(2) In the limited circumstances in which Title IX or this part permits different treatment or separation on the basis of sex, a recipient must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, unless otherwise permitted by Title IX or this part. Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

(3) This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of:

(i) A recipient to which subpart C does not apply; or

(ii) An entity, not a recipient, to which subpart C would not apply if the entity were a recipient.

* * * * *

■ 16. Section 106.40 is revised to read as follows:

§ 106.40 Parental, family, or marital status; pregnancy or related conditions.

(a) *Status generally.* A recipient must not adopt or apply any policy, practice, or procedure concerning a student's current, potential, or past parental, family, or marital status that treats students differently on the basis of sex.

(b) *Pregnancy or related conditions.*—(1) *Nondiscrimination.* A recipient must not discriminate in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions. A recipient may permit a student based on pregnancy or related conditions to participate voluntarily in a separate portion of its education program or activity provided the recipient ensures that the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions.

(2) *Requirement for recipient to provide information.* A recipient must ensure that when any employee is informed of a student's pregnancy or related conditions by the student or a person who has a legal right to act on behalf of the student, the employee promptly informs that person of how the person may notify the Title IX Coordinator of the student's pregnancy or related conditions for assistance and provides contact information for the Title IX Coordinator, unless the employee reasonably believes the Title IX Coordinator has already been notified.

(3) *Specific actions to prevent discrimination and ensure equal access.* Once a student, or a person who has a legal right to act on behalf of the student, notifies the Title IX Coordinator of the student's pregnancy or related conditions, the Title IX Coordinator must promptly:

(i) Inform the student, and if applicable the person who notified the Title IX Coordinator, of the recipient's obligations to:

(A) Prohibit sex discrimination under this part, including sex-based harassment;

(B) Provide the student with the option of reasonable modifications to the recipient's policies, practices, or procedures because of pregnancy or

related conditions, under paragraphs (b)(3)(ii) and (b)(4) of this section;

(C) Allow access, on a voluntary basis, to any separate and comparable portion of the recipient's education program or activity under paragraph (b)(1) of this section;

(D) Allow a voluntary leave of absence under paragraph (b)(3)(iii) of this section;

(E) Ensure the availability of lactation space under paragraph (b)(3)(iv) of this section; and

(F) Maintain grievance procedures that provide for the prompt and equitable resolution of complaints of sex discrimination, including sex-based harassment, under § 106.45, and if applicable § 106.46.

(ii) Provide the student with voluntary reasonable modifications to the recipient's policies, practices, or procedures because of pregnancy or related conditions, under paragraph (b)(4) of this section.

(iii) Allow the student a voluntary leave of absence from the recipient's education program or activity to cover, at minimum, the period of time deemed medically necessary by the student's physician or other licensed healthcare provider. To the extent that a recipient maintains a leave policy for students that allows a greater period of time than the medically necessary period, the recipient must permit the student to take leave under that policy instead if the student so chooses. Upon the student's return to the recipient's education program or activity, the student must be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the leave began.

(iv) Ensure the availability of a lactation space, which must be a space other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed.

(4) *Reasonable modifications for students because of pregnancy or related conditions.* Reasonable modifications to the recipient's policies, practices, or procedures for a student because of pregnancy or related conditions, for purposes of this section:

(i) Must be provided on an individualized and voluntary basis depending on the student's needs when necessary to prevent discrimination and ensure equal access to the recipient's education program or activity, unless the recipient can demonstrate that making the modification would fundamentally alter the recipient's education program or activity. A fundamental alteration is a change that is so significant that it alters the essential nature of the recipient's education program or activity;

(ii) Must be effectively implemented, coordinated, and documented by the Title IX Coordinator; and

(iii) May include but are not limited to breaks during class to attend to related health needs, expressing breast milk, or breastfeeding; intermittent absences to attend medical appointments; access to online or other homebound education; changes in schedule or course sequence; extension of time for coursework and rescheduling of tests and examinations; counseling; changes in physical space or supplies (for example, access to a larger desk or a footrest); elevator access; or other appropriate changes to policies, practices, or procedures.

(5) *Comparable treatment to temporary disabilities or conditions.* To the extent not otherwise addressed in paragraph (b)(3) of this section, a recipient must treat pregnancy or related conditions or any temporary disability resulting therefrom in the same manner and under the same policies as any other temporary disability or physical condition with respect to any medical or hospital benefit, service, plan, or policy the recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's education program or activity.

(6) *Certification to participate.* A recipient may not require a student who is pregnant or has related conditions to provide certification from a physician or other licensed healthcare provider that the student is physically able to participate in the recipient's class, program, or extracurricular activity unless:

(i) The certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity;

(ii) The recipient requires such certification of all students participating in the class, program, or extracurricular activity; and

(iii) The information obtained is not used as a basis for discrimination prohibited by this part.

§ 106.41 [Amended]

■ 17. Section 106.41 is amended by removing paragraph (d).

■ 18. Section 106.44 is revised to read as follows:

§ 106.44 Action by a recipient to operate its education program or activity free from sex discrimination.

(a) *General.* A recipient must take prompt and effective action to end any sex discrimination that has occurred in its education program or activity, prevent its recurrence, and remedy its effects. To ensure that it can satisfy this obligation, a recipient must comply with this section.

(b) *Monitoring.* A recipient must:

(1) Require its Title IX Coordinator to monitor the recipient's education program or activity for barriers to reporting information about conduct that may constitute sex discrimination under Title IX; and

(2) Take steps reasonably calculated to address such barriers.

(c) *Notification requirements.* (1) An elementary school or secondary school recipient must require all of its employees who are not confidential employees to notify the Title IX Coordinator when the employee has information about conduct that may constitute sex discrimination under Title IX.

(2) All other recipients must, at a minimum, require:

(i) Any employee who is not a confidential employee and who has authority to institute corrective measures on behalf of the recipient to notify the Title IX Coordinator when the employee has information about conduct that may constitute sex discrimination under Title IX;

(ii) Any employee who is not a confidential employee and who has responsibility for administrative leadership, teaching, or advising in the recipient's education program or activity to notify the Title IX Coordinator when the employee has information about a student being subjected to conduct that may constitute sex discrimination under Title IX;

(iii) Any employee who is not a confidential employee and who has responsibility for administrative leadership, teaching, or advising in the recipient's education program or activity and has information about an employee being subjected to conduct that may constitute sex discrimination under Title IX to either:

(A) Notify the Title IX Coordinator when the employee has information about an employee being subjected to conduct that may constitute sex discrimination under Title IX; or

(B) Provide the contact information of the Title IX Coordinator and information about how to report sex discrimination to any person who provides the employee with the information; and

(iv) All other employees who are not confidential employees, if any, to either:

(A) Notify the Title IX Coordinator when the employee has information

about conduct that may constitute sex discrimination under Title IX; or

(B) Provide the contact information of the Title IX Coordinator and information about how to report sex discrimination to any person who provides the employee with information about conduct that may constitute sex discrimination under Title IX.

(3) A postsecondary institution must make a fact-specific inquiry to determine whether the requirements of paragraph (c)(2) of this section apply to a person who is both a student and an employee of the postsecondary institution. In making this determination, a postsecondary institution must, at a minimum, consider whether the person's primary relationship with the postsecondary institution is to receive an education and whether the person learns of conduct that may constitute sex discrimination under Title IX in the postsecondary institution's education program or activity while performing employment-related work.

(4) The requirements of paragraphs (c)(1) and (2) of this section do not apply when the only employee with information about conduct that may constitute sex discrimination under Title IX is the employee-complainant.

(d) *Confidential employee requirements.* (1) A recipient must notify all participants in the recipient's education program or activity of the identity of any confidential employee.

(2) A recipient must require a confidential employee to explain their confidential status to any person who informs the confidential employee of conduct that may constitute sex discrimination under Title IX and must provide that person with contact information for the recipient's Title IX Coordinator and explain how to report information about conduct that may constitute sex discrimination under Title IX.

(e) *Public awareness events.* When a postsecondary institution's Title IX Coordinator is notified of information about conduct that may constitute sex-based harassment under Title IX that was provided by a person during a public event held on the postsecondary institution's campus or through an online platform sponsored by a postsecondary institution to raise awareness about sex-based harassment associated with a postsecondary institution's education program or activity, the postsecondary institution is not obligated to act in response to this information under this section, § 106.45, or § 106.46, unless the information reveals an immediate and serious threat to the health or safety of students or other persons in the postsecondary institution's community. However, in all cases the postsecondary institution must use this information to inform its efforts to prevent sex-based harassment, including by providing tailored training to address alleged sex-based harassment in a particular part of its education program or activity or at a specific location when information indicates there may be multiple incidents of sex-based harassment.

(f) *Title IX Coordinator requirements.* A recipient must require its Title IX Coordinator to take the following steps upon being notified of conduct that may constitute sex discrimination under Title IX:

(1) Treat the complainant and respondent equitably;

(2)(i) Notify the complainant of the grievance procedures under § 106.45, and if applicable § 106.46; and

(ii) If a complaint is made, notify the respondent of the applicable grievance procedures and notify the parties of the informal resolution process under this section if available and appropriate;

(3) Offer and coordinate supportive measures under paragraph (g) of this section, as appropriate, to the complainant and respondent to restore or preserve that party's access to the recipient's education program or activity;

(4) In response to a complaint, initiate the grievance procedures or informal resolution process under § 106.45, and if applicable § 106.46;

(5) In the absence of a complaint or informal resolution process, determine whether to initiate a complaint of sex discrimination that complies with the grievance procedures under § 106.45, and if applicable § 106.46, if necessary to address conduct that may constitute sex discrimination under Title IX in the recipient's education program or activity; and

(6) Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity, in addition to remedies provided to an individual complainant.

(g) *Supportive measures.* Upon being notified of conduct that may constitute sex discrimination under Title IX, a Title IX Coordinator must offer supportive measures, as appropriate, to the complainant or respondent to the extent necessary to restore or preserve that party's access to the recipient's education program or activity. For allegations of sex discrimination, other than sex-based harassment or retaliation, a recipient's provision of supportive measures would not require the recipient, its employee, or other person authorized to provide aid, benefit or services on the recipient's behalf to alter the allegedly discriminatory conduct for the purpose of providing a supportive measure.

(1) Supportive measures may vary depending on what the recipient deems to be available and reasonable. These measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact between the parties; leaves of absence; voluntary or involuntary changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(2) Supportive measures that burden a respondent may be imposed only during the pendency of a recipient's grievance procedures under § 106.45, and if applicable § 106.46, and must be terminated at the conclusion of those grievance procedures. These measures must be no more restrictive of the respondent than is necessary to restore or preserve the complainant's access to the recipient's education program or activity. A recipient may not impose such measures for punitive or disciplinary reasons.

(3) For supportive measures other than those that burden a respondent, a recipient may, as appropriate, modify or terminate supportive measures at the conclusion of the grievance procedures under § 106.45, and if applicable § 106.46, or at the conclusion of the informal resolution process under paragraph (k) of this section, or the recipient may continue them beyond that point.

(4) A recipient must provide a complainant or respondent affected by a decision to provide, deny, modify, or terminate supportive measures with a timely opportunity to seek modification or reversal of the recipient's decision by an appropriate, impartial employee. The impartial employee must be someone other than the employee who made the decision being challenged and must have authority to modify or reverse the decision, if appropriate. A recipient must make a fact-specific inquiry to determine what constitutes a timely opportunity for seeking modification or reversal of a supportive measure. If the supportive measure burdens the respondent, the initial opportunity to seek modification or reversal of the recipient's decision must be provided before the measure is imposed or, if

necessary under the circumstances, as soon as possible after the measure has taken effect. A recipient must also provide a complainant or respondent affected by a supportive measure with the opportunity to seek additional modification or termination of such supportive measure if circumstances change materially.

(5) A recipient must ensure that it does not disclose information about any supportive measures to persons other than the complainant or respondent unless necessary to provide the supportive measure. A recipient may inform a party of supportive measures provided to or imposed on another party only if necessary to restore or preserve that party's access to the education program or activity.

(6) Under paragraph (f)(3) of this section, the Title IX Coordinator is responsible for offering and coordinating supportive measures.

(7)(i) If the complainant or respondent is an elementary or secondary student with a disability, the Title IX Coordinator must consult with the Individualized Education Program (IEP) team, 34 CFR 300.321, if any, or the group of persons responsible for the student's placement decision under 34 CFR 104.35(c) (Section 504 team), if any, to help ensure the recipient complies with the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.,* and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, in the implementation of supportive measures.

(ii) If the complainant or respondent is a postsecondary student with a disability, the Title IX Coordinator may consult, as appropriate, with the individual or office that the recipient has designated to provide supports to students with disabilities to help ensure that the recipient complies with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, in the implementation of supportive measures.

(h) *Emergency removal.* Nothing in this part precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an immediate and serious threat to the health or safety of students, employees, or other persons arising from the allegations of sex discrimination justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision must not be construed to modify any rights under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.,* Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, or Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131–12134.

(i) *Administrative leave.* Nothing in this part precludes a recipient from placing an employee respondent on administrative leave from employment responsibilities during the pendency of the recipient's grievance procedures. This provision must not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, or Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131–12134.

(j) *Recipient prohibitions.* When conducting an informal resolution process under paragraph (k) of this section, implementing grievance procedures under § 106.45, and if applicable § 106.46, or requiring a Title IX Coordinator to take other appropriate steps under paragraph (f)(6) of this section, a recipient must not disclose the identity of a party, witness, or other participant except in the following circumstances:

(1) When the party, witness, or other participant has provided prior written consent to disclose their identity;

(2) When permitted under the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99;

(3) As required by law; or

(4) To carry out the purposes of this part, including action taken to address conduct that may constitute sex discrimination under Title IX in the recipient's education program or activity.

(k) *Discretion to offer informal resolution in some circumstances.* (1) At any time prior to determining whether sex discrimination occurred under § 106.45, and if applicable § 106.46, a recipient may offer to a complainant and respondent an informal resolution process, unless there are allegations that an employee engaged in sex discrimination toward a student or such a process would conflict with Federal, State or local law. A recipient that provides the parties an informal resolution process must, to the extent necessary, also require its Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity.

(i) A recipient has discretion to determine whether it is appropriate to offer an informal resolution process when it receives information about conduct that may constitute sex discrimination under Title IX or a complaint of sex discrimination is made, and may decline to offer informal resolution despite one or more of the parties' wishes.

(ii) Circumstances when a recipient may decline to allow informal resolution include but are not limited to when the recipient determines that the alleged conduct would present a future risk of harm to others.

(2) A recipient must not require or pressure the parties to participate in an informal resolution process. The recipient must obtain the parties' voluntary consent to the informal resolution process and must not require waiver of the right to an investigation and adjudication of a complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercise of any other right.

(3) Before initiation of an informal resolution process, the recipient must provide to the parties notice that explains:

(i) The allegations;

(ii) The requirements of the informal resolution process;

(iii) That, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the recipient's grievance procedures;

(iv) That the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming grievance procedures arising from the same allegations;

(v) The potential terms that may be requested or offered in an informal resolution agreement;

(vi) Which records will be maintained and could be shared;

(vii) That if the recipient initiates or resumes its grievance procedures under § 106.45, and if applicable § 106.46, the recipient or a party must not access, consider, disclose, or otherwise use information, including records, obtained solely through an informal resolution process as part of the investigation or determination of the outcome of the complaint; and

(viii) That, when applicable, and if the recipient resumes its grievance procedures, the informal resolution facilitator could serve as a witness for purposes other than providing information obtained solely through the informal resolution process.

(4) The facilitator for the informal resolution process must not be the same person as the investigator or the decisionmaker in the recipient's grievance procedures. Any person designated by a recipient to facilitate an informal resolution process must not

have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Any person facilitating informal resolution must receive training under § 106.8(d)(3).

(5) Potential terms that may be included in an informal resolution agreement include but are not limited to:

(i) Restrictions on contact; and

(ii) Restrictions on the respondent's participation in one or more of the recipient's programs or activities or attendance at specific events, including restrictions the recipient could have imposed as remedies or disciplinary sanctions had the recipient determined that sex discrimination occurred under the recipient's grievance procedures.

■ 19. Section 106.45 is revised to read as follows:

§ 106.45 Grievance procedures for the prompt and equitable resolution of complaints of sex discrimination.

(a)(1) *General.* For purposes of addressing complaints of sex discrimination, a recipient's prompt and equitable grievance procedures must be in writing and include provisions that incorporate the requirements of this section. The requirements related to a respondent apply only to sex discrimination complaints alleging that a person violated the recipient's prohibition on sex discrimination. When a sex discrimination complaint alleges that a recipient's policy or practice discriminates on the basis of sex, the recipient is not considered a respondent.

(a)(2) *Complaint.* The following persons have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that the recipient initiate its grievance procedures:

(i) A complainant;

(ii) A person who has a right to make a complaint on behalf of a complainant under § 106.6(g);

(iii) The Title IX Coordinator;

(iv) With respect to complaints of sex discrimination other than sex-based harassment, any student or employee; or third party participating or attempting to participate in the recipient's education program or activity when the alleged sex discrimination occurred.

(b) *Basic requirements for grievance procedures.* A recipient's grievance procedures must:

(1) Treat complainants and respondents equitably;

(2) Require that any person designated as a Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The decisionmaker may be the same person as the Title IX Coordinator or investigator;

(3) Include a presumption that the respondent is not responsible for the alleged conduct until a determination whether sex discrimination occurred is made at the conclusion of the recipient's grievance procedures for complaints of sex discrimination;

(4) Establish reasonably prompt timeframes for the major stages of the grievance procedures, including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay. Major stages include, for example, evaluation (*i.e.,* the recipient's determination of whether to dismiss or investigate a complaint of sex discrimination); investigation; determination; and appeal, if any;

(5) Take reasonable steps to protect the privacy of the parties and witnesses during the pendency of a recipient's grievance procedures, provided that the steps do not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses, subject to § 106.71; consult with a family member, confidential resource, or advisor; prepare for a hearing, if one is offered; or otherwise defend their interests;

(6) Require an objective evaluation of all relevant evidence, consistent with the definition of relevant in § 106.2—including both inculpatory and exculpatory evidence—and provide that credibility determinations must not be based on a person's status as a complainant, respondent, or witness; and

(7) Exclude the following types of evidence, and questions seeking that evidence, as impermissible (*i.e.,* must not be accessed, considered, disclosed, or otherwise used), regardless of whether they are relevant:

(i) Evidence that is protected under a privilege as recognized by Federal or State law, unless the person holding such privilege has waived the privilege voluntarily in a manner permitted in the recipient's jurisdiction;

(ii) A party's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent for use in the recipient's grievance procedures; and

(iii) Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is offered to prove consent with evidence concerning specific incidents of the complainant's prior sexual conduct with the respondent. The fact of prior consensual sexual conduct between the complainant and respondent does not demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(c) *Notice of allegations.* Upon initiation of the recipient's grievance procedures, a recipient must provide notice of the allegations to the parties whose identities are known.

(1) The notice must include:

(i) The recipient's grievance procedures under this section, and if applicable § 106.46, and any informal resolution process under § 106.44(k);

(ii) Sufficient information available at the time to allow the parties to respond to the allegations. Sufficient information includes the identities of the parties involved in the incident, the conduct alleged to constitute sex discrimination under Title IX, and the date and location of the alleged incident, to the extent that information is available to the recipient; and

(iii) A statement that retaliation is prohibited.

(2) If, in the course of an investigation, the recipient decides to investigate additional allegations about the respondent's conduct toward the complainant that are not included in the notice provided under paragraph (c)(1) of this section or that are included in a complaint that is consolidated under paragraph (e) of this section, the recipient must provide notice of the additional allegations to the parties whose identities are known.

(d) *Dismissal of a complaint.* (1) A recipient may dismiss a complaint of sex discrimination made through its grievance procedures under this section, and if applicable § 106.46, for any of the following reasons:

(i) The recipient is unable to identify the respondent after taking reasonable steps to do so;

(ii) The respondent is not participating in the recipient's education program or activity and is not employed by the recipient;

(iii) The complainant voluntarily withdraws any or all of the allegations in the complaint and the recipient determines that without the complainant's withdrawn allegations,

the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or

(iv) The recipient determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Prior to dismissing the complaint under this paragraph, the recipient must make reasonable efforts to clarify the allegations with the complainant.

(2) Upon dismissal, a recipient must promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the recipient must also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

(3) A recipient must notify all parties that a dismissal may be appealed, provide any party with an opportunity to appeal its dismissal of a complaint, and must:

(i) Notify the parties when an appeal is filed and implement appeal procedures equally for the parties;

(ii) Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;

(iii) Ensure that the decisionmaker for the appeal has been trained as set out in § 106.8(d)(2);

(iv) Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and

(v) Notify all parties of the result of the appeal and the rationale for the result.

(4) A recipient that dismisses a complaint must, at a minimum:

(i) Offer supportive measures to the complainant as appropriate under § 106.44(g);

(ii) For dismissals under paragraphs (d)(1)(iii) or (iv) of this section in which the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate under § 106.44(g); and

(iii) Require its Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity under § 106.44(f)(6).

(e) *Consolidation of complaints.* A recipient may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances. If one of the complaints to be consolidated is a complaint of sex-based harassment involving a student complainant or student respondent at a postsecondary institution, the grievance procedures for investigating and resolving the consolidated complaint must comply with the requirements of this section and § 106.46. When more than one complainant or more than one respondent is involved, references in this section and in § 106.46 to a party, complainant, or respondent include the plural, as applicable.

(f) *Complaint investigation.* A recipient must provide for adequate, reliable, and impartial investigation of complaints. To do so, the recipient must:

(1) Ensure that the burden is on the recipient—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred;

(2) Provide an equal opportunity for the parties to present relevant fact witnesses and other inculpatory and exculpatory evidence;

(3) Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance, consistent with § 106.2 and with paragraph (b)(7) of this section; and

(4) Provide each party with a description of the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, as well as a reasonable opportunity to respond.

(g) *Evaluating allegations and assessing credibility.* A recipient must provide a process that enables the decisionmaker to adequately assess the credibility of the parties and witnesses to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.

(h) *Determination of whether sex discrimination occurred.* Following an investigation and evaluation process under paragraphs (f) and (g) of this section, the recipient must:

(1) Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred, unless the recipient uses the clear and convincing evidence standard of proof in all other comparable proceedings, including proceedings relating to other discrimination complaints, in which case the recipient may elect to use that standard of proof in determining whether sex discrimination occurred. Both standards of proof require the decisionmaker to evaluate relevant evidence for its persuasiveness; if the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker should not determine that sex discrimination occurred.

(2) Notify the parties of the outcome of the complaint, including the determination of whether sex discrimination occurred under Title IX, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable;

(3) If there is a determination that sex discrimination occurred, as appropriate, require the Title IX Coordinator to provide and implement remedies to a complainant or other person the recipient identifies as having had equal access to the recipient's education program or activity limited or denied by sex discrimination, and require the Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity under § 106.44(f)(6);

(4) Comply with this section, and if applicable § 106.46, before the imposition of any disciplinary sanctions against a respondent; and

(5) Not discipline a party, witness, or others participating in a recipient's grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the recipient's determination of whether sex discrimination occurred.

(i) *Additional provisions.* If a recipient adopts additional provisions as part of its grievance procedures for handling complaints of sex discrimination, including sex-based harassment, such additional provisions must apply equally to the parties.

(j) *Informal resolution.* In lieu of resolving a complaint through the recipient's grievance procedures, the parties may instead elect to participate in an informal resolution process under § 106.44(k) if provided by the recipient consistent with that paragraph.

(k) *Provisions limited to sex-based harassment complaints.* For complaints alleging sex-based harassment, the grievance procedures must:

(1) Describe the range of supportive measures available to complainants and respondents under § 106.44(g); and

(2) Describe the range of, or list, the possible disciplinary sanctions and remedies that the recipient may impose following a determination that sex-based harassment occurred.

§ 106.46 [Redesignated as § 106.48]

■ 20. Section 106.46 is redesignated as § 106.48.

■ 21. Add a new § 106.46 to subpart D to read as follows:

§ 106.46 Grievance procedures for the prompt and equitable resolution of complaints of sex-based harassment involving student complainants or student respondents at postsecondary institutions.

(a) *General.* A postsecondary institution's prompt and equitable written grievance procedures for complaints of sex-based harassment involving a student complainant or student respondent must include provisions that incorporate the requirements of § 106.45 and this section.

(b) *Student employees.* When a complainant or respondent is both a student and an employee of a postsecondary institution, the postsecondary institution must make a fact-specific inquiry to determine whether the requirements of this section apply. In making this determination, a postsecondary institution must, at a minimum, consider whether the party's primary relationship with the postsecondary institution is to receive an education and whether the alleged sex-based harassment occurred while the party was performing employment-related work.

(c) *Written notice of allegations.* (1) Upon the initiation of the postsecondary institution's sex-based harassment grievance procedures under this section, a postsecondary institution must provide written notice to the parties, whose identities are known, of:

(i) All information required under § 106.45(c); and

(ii) Allegations potentially constituting sex-based harassment, including the information required under § 106.45(c)(1)(ii), with sufficient time for the parties to prepare a response before any initial interview.

(2) The written notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged conduct until a determination of whether sex-based harassment occurred is made at the conclusion of the grievance procedures under this section and that prior to the determination, the parties will have an opportunity to present relevant evidence to a trained, impartial decisionmaker;

(ii) They may have an advisor of their choice to serve in the role set out in paragraph (e)(2) of this section, and that the advisor may be, but is not required to be, an attorney;

(iii) They are entitled to receive access to relevant evidence or to an investigative report that accurately summarizes this evidence as set out in paragraph (e)(6) of this section; and

(iv) If applicable, any provision in the postsecondary institution's code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance procedure.

(3) To the extent the postsecondary institution has legitimate concerns for the safety of any person as a result of providing this notice, the postsecondary institution may reasonably delay providing written notice of the allegations in order to address the safety concern appropriately. Legitimate concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

(d) *Dismissal of a complaint.* When dismissing a complaint alleging sex-based harassment and involving a student complainant or a student respondent, a postsecondary institution must:

(1) Provide the parties, simultaneously, with written notice of the dismissal and the basis for the dismissal, if dismissing a complaint under any of the bases in § 106.45(d)(1); and

(2) Obtain the complainant's withdrawal in writing if dismissing a complaint based on the complainant's voluntary withdrawal of the complaint or allegations under § 106.45(d)(1)(iii).

(e) *Complaint investigation.* When investigating a complaint alleging sex-based harassment and throughout the postsecondary institution's grievance procedures for complaints of sex-based harassment involving a student complainant or a student respondent, a postsecondary institution:

(1) Must provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings, investigative interviews, or hearings with sufficient time for the party to prepare to participate;

(2) Must provide the parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of the advisor for the complainant or respondent in any meeting or grievance proceeding; however, the postsecondary institution may establish restrictions regarding the extent to which the advisor may participate in the grievance procedures, as long as the restrictions apply equally to the parties;

(3) Must provide the parties with the same opportunities, if any, to have persons other than the advisor of the parties' choice present during any meeting or proceeding;

(4) Has discretion to determine whether the parties may present expert witnesses as long as the determination applies equally to the parties;

(5) Must allow for the reasonable extension of timeframes on a case-by-case basis for good cause with written notice to the parties that includes the reason for the delay; and

(6) Must provide each party and the party's advisor, if any, with equitable access to the evidence that is relevant to the allegations of sex-based harassment and not otherwise impermissible, consistent with §§ 106.2 and 106.45(b)(7), in the following manner:

(i) A postsecondary institution must provide either equitable access to the relevant and not otherwise impermissible evidence, or to the same written investigative report that accurately summarizes this evidence. If the postsecondary institution provides an investigative report, it must further provide the parties with equitable access to the relevant and not otherwise impermissible evidence upon the request of any party;

(ii) A postsecondary institution must provide the parties with a reasonable opportunity to review and respond to the evidence as provided under paragraph (6)(i) of this section prior to the determination of whether sex-based harassment occurred. If a postsecondary institution conducts a live hearing as part of its grievance procedures, it must provide this opportunity to review the evidence in advance of the live hearing; it is at the postsecondary institution's discretion whether to provide this opportunity to respond prior to the live hearing, during the live hearing, or both prior to and during the live hearing;

(iii) A postsecondary institution must take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the sex-based harassment grievance procedures; and

(iv) Compliance with paragraph (e)(6) of this section satisfies the requirements of § 106.45(f)(4).

(f) *Evaluating allegations and assessing credibility.*—(1) *Process for evaluating allegations and assessing credibility.* A postsecondary institution must provide a process as specified in this subpart that enables the decisionmaker to adequately assess the credibility of the parties and witnesses to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based

harassment. This assessment of credibility includes either:

(i) Allowing the decisionmaker to ask the parties and witnesses, during individual meetings with the parties or at a live hearing, relevant and not otherwise impermissible questions under §§ 106.2 and 106.45(b)(7) and follow-up questions, including questions challenging credibility, before determining whether sex-based harassment occurred and allowing each party to propose to the decisionmaker or investigator relevant and not otherwise impermissible questions under §§ 106.2 and 106.45(b)(7) and follow-up questions, including questions challenging credibility, that the party wants asked of any party or witness and have those questions asked during individual meetings with the parties or at a live hearing under paragraph (g) of this section subject to the requirements in paragraph (f)(3) of this section; or

(ii) When a postsecondary institution chooses to conduct a live hearing, allowing each party's advisor to ask any party and any witnesses all relevant and not otherwise impermissible questions under §§ 106.2 and 106.45(b)(7) and follow-up questions, including questions challenging credibility, subject to the requirements under paragraph (f)(3) of this section. Such questioning must never be conducted by a party personally. If a postsecondary institution permits advisor-conducted questioning and a party does not have an advisor who can ask questions on their behalf, the postsecondary institution must provide the party with an advisor of the postsecondary institution's choice, without charge to the party, for the purpose of advisor-conducting questioning. The advisor may be, but is not required to be, an attorney.

(2) *Compliance with § 106.45(g).* Compliance with paragraph (f)(1)(i) or (ii) of this section satisfies the requirements of § 106.45(g).

(3) *Procedures for the decisionmaker to evaluate the questions and limitations on questions.* The decisionmaker must determine whether a proposed question is relevant and not otherwise impermissible under §§ 106.2 and 106.45(b)(7), prior to the question being posed, and must explain any decision to exclude a question as not relevant. If a decisionmaker determines that a party's question is relevant and not otherwise impermissible, then it must be asked except that a postsecondary institution must not permit questions that are unclear or harassing of the party being questioned. A postsecondary institution may also impose other reasonable rules regarding decorum, provided they apply equally to the parties.

(4) *Refusal to respond to questions related to credibility.* If a party does not respond to questions related to their credibility, the decisionmaker must not rely on any statement of that party that supports that party's position. The decisionmaker must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond questions related to their credibility.

(g) *Live hearing procedures.* A postsecondary institution's sex-based harassment grievance procedures may, but need not, provide for a live hearing. If a postsecondary institution chooses to conduct a live hearing, it may conduct the live hearing with the parties physically present in the same geographic location, but at the postsecondary institution's discretion or upon the request of either party, it will conduct the live hearing with the parties physically present in separate locations with technology enabling the decisionmaker and parties to simultaneously see and hear the party or the witness while that person is speaking or communicating in another format. A postsecondary institution must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

(h) *Written determination of whether sex-based harassment occurred.* The postsecondary institution must provide the determination whether sex-based harassment occurred in writing to the parties simultaneously.

(1) The written determination must include:

(i) A description of the alleged sex-based harassment;

(ii) Information about the policies and procedures that the postsecondary institution used to evaluate the allegations;

(iii) The decisionmaker's evaluation of the relevant evidence and determination of whether sex-based harassment occurred;

(iv) When the decisionmaker finds that sex-based harassment occurred, any disciplinary sanctions the postsecondary institution will impose on the respondent, and whether remedies other than the imposition of disciplinary sanctions will be provided by the postsecondary institution to the complainant and, to the extent appropriate, other students identified by the postsecondary institution to be experiencing the effects of the sex-based harassment; and

(v) The postsecondary institution's procedures for the complainant and respondent to appeal.

(2) The determination regarding responsibility becomes final either on the date that the postsecondary institution provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

(i) *Appeals.* (1) A postsecondary institution must offer the parties an appeal from a determination that sex-based harassment occurred, and from a postsecondary institution's dismissal of a complaint or any allegations therein, on the following bases:

(i) Procedural irregularity that would change the determination of whether sex-based harassment occurred in the matter;

(ii) New evidence that would change the outcome of the matter and that was not reasonably available at the time the determination of whether sex-based harassment occurred or dismissal was made; and

(iii) The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome of the matter.

(2) A postsecondary institution may offer an appeal equally to the parties on additional bases, as long as the additional bases are available to all parties.

(3) As to all appeals, the postsecondary institution must comply with the requirements in § 106.45(d)(3)(i), (iv), and (v) in writing.

(j) *Informal resolution.* If a postsecondary institution offers or provides the parties to the grievance procedures under § 106.45 and under this section with an informal resolution process under § 106.44(k), the postsecondary institution must inform the parties in writing of the offer and their rights and responsibilities in the informal resolution process and otherwise comply with the provisions of § 106.44(k)(3) in writing.

■ 22. Section 106.47 is added to subpart D to read as follows:

§ 106.47 Assistant Secretary review of sex-based harassment complaints.

The Assistant Secretary will not deem a recipient to have violated this part solely because the Assistant Secretary would have reached a different determination than a recipient reached under § 106.45, and if applicable § 106.46, based on an independent

weighing of the evidence in sex-based harassment complaints.

■ 23. Section 106.51 is amended by revising paragraph (b)(6) to read as follows:

§ 106.51 Employment.

* * * * *

(b) * * *

(6) Granting and return from leaves of absence, leave for pregnancy or related conditions, leave for persons of either sex to care for children or dependents, or any other leave;

* * * * *

■ 24. Section 106.57 is revised to read as follows:

§ 106.57 Parental, family, or marital status; pregnancy or related conditions.

(a) *Status generally.* A recipient shall not adopt or apply any policy, practice, or procedure, or take any employment action on the basis of sex:

(1) Concerning the current, potential, or past parental, family, or marital status of an employee or applicant for employment which treats persons differently; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy or related conditions.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of current, potential, or past pregnancy or related conditions.

(c) *Comparable treatment to temporary disabilities or conditions.* A recipient shall treat pregnancy or related conditions or any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy or related conditions as a justification for a voluntary leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(e) *Lactation time and space.* (1) A recipient must provide reasonable break time for an employee to express breast milk or breastfeed as needed.

(2) A recipient must ensure the availability of a lactation space, which must be a space other than a bathroom that is clean, shielded from view, free from intrusion from others, and may be used by an employee for expressing breast milk or breastfeeding as needed.

■ 25. Section 106.60 is revised to read as follows:

§ 106.60 Pre-employment inquiries.

(a) *Marital status.* A recipient must not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is ''Miss or Mrs.''

(b) *Sex.* A recipient may ask an applicant for employment to self-identify their sex, but only if this question is asked of all applicants and if the response is not used as a basis for discrimination prohibited by this part.

■ 26. Section 106.71 is revised to read as follows:

§ 106.71 Retaliation.

A recipient must prohibit retaliation in its education program or activity. When a recipient receives information about conduct that may constitute retaliation, the recipient is obligated to comply with § 106.44. A recipient must initiate its grievance procedures upon receiving a complaint alleging retaliation under § 106.45. As set out in § 106.45(e), if the complaint is consolidated with a complaint of sex-based harassment involving a student complainant or student respondent at a postsecondary institution, the grievance procedures initiated by the consolidated complaint must comply with the requirements of §§ 106.45 and 106.46. Prohibited retaliation includes but is not limited to:

(a) Initiating a disciplinary process against a person for a code of conduct violation that does not involve sex discrimination but arises out of the same facts and circumstances as a complaint or information reported about possible sex discrimination, for the purpose of interfering with the exercise of any right or privilege secured by Title IX or this part; or

(b) Peer retaliation.

■ 27. Section 106.81 is revised to read as follows:

§ 106.81 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein. These procedures may be found at 34 CFR 100.6–100.11 and 34 CFR part 101.

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