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Part III

Department of Education

Race to the Top Fund; State Fiscal Stabilization Fund Program; Institute of Education Sciences; Overview Information; Grant Program for Statewide Longitudinal Data Systems; Notice Inviting Applications for New Awards Under the American Recovery and Reinvestment Act of 2009; Notices

DEPARTMENT OF EDUCATION

[Docket ID ED–2009–OESE–0006]

RIN 1810–AB07

Race to the Top Fund

AGENCY: Department of Education.

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

Catalog of Federal Domestic Assistance (CFDA) Number: 84.395A.

SUMMARY: The Secretary of Education (Secretary) proposes priorities, requirements, definitions, and selection criteria for the Race to the Top Fund. The Secretary may use these priorities, requirements, definitions, and selection criteria in any year in which this program is in effect.

DATES: We must receive your comments on or before August 28, 2009. We encourage you to submit comments well in advance of this date.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID and the term ''Race to the Top'' at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.'' A direct link to the docket page is also available at *http://www.ed.gov/programs/racetothetop.*
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed priorities, requirements, definitions, and selection criteria, address them to Office of Elementary and Secondary Education (Attention: Race to the Top Fund Comments), U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W329, Washington, DC 20202.
- *Privacy Note:* The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Beth Yeh, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6W219, Washington, DC 20202. Telephone: 202–205–3775 or by e-mail: *racetothetop@ed.gov*. Note that we will not accept comments by e-mail.

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

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, definitions, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, definition, or selection criterion that each comment addresses. We encourage you to submit comments in advance of the date by which they must be received.

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

During and after the comment period, you may inspect all public comments about this notice by accessing Regulations.gov. You may also inspect the comments in person, in Room 3W329, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

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

Purpose of Program: The Race to the Top Fund, authorized under the American Recovery and Reinvestment Act of 2009 (ARRA), provides approximately $4.3 billion for competitive grants to States to encourage and reward States that are creating the conditions for education innovation and reform; implementing ambitious plans in the four education reform areas described in the ARRA; and achieving significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates, and ensuring student preparation for success in college and careers.

Program Authority: American Recovery and Reinvestment Act of 2009, Division A, Section 14006, Public Law 111–5.

Background for Proposed Priorities, Requirements, Definitions, and Selection Criteria

The Statutory Context

On February 17, 2009, President Obama signed into law the ARRA, historic legislation designed to stimulate the economy, support job creation, and invest in critical sectors, including education. The ARRA lays the foundation for education reform by supporting investments in innovative strategies that are most likely to lead to improved results for students, long-term gains in school and school system capacity, and increased productivity and effectiveness.

The ARRA provides $4.3 billion for the Race to the Top Fund (referred to in the statute as the State Incentive Grant Fund). This is a competitive grant program designed to encourage and reward States that are implementing significant education reforms across four ''assurance'' areas. Specifically, section 14006(a)(2) of the ARRA requires States to have made significant progress in the following four education reform areas in order to receive a grant: implementing standards and assessments, improving teacher effectiveness and achieving equity in teacher distribution, improving collection and use of data, and supporting struggling schools. In addition, as required by section 14006(c) of the ARRA, States that receive a Race to the Top grant must use at least 50 percent of the award to provide subgrants to local educational agencies (LEAs), including public charter schools identified as LEAs under State law, based upon LEAs' relative shares of funding under Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA). LEAs that choose to participate in their State's Race to the Top proposal must agree to fully implement the State's proposed plan and to use their funding under this grant in support of that plan.

The ARRA also requires that the Governor apply on behalf of a State seeking a Race to the Top grant, and section 14005(c) of the ARRA specifically requires that a Race to the Top application:

- Describe the status of the State's progress in each of the four education reform areas, and the strategies the State is employing to help ensure that students in the subgroups described in section 1111(b)(2)(C)(v)(II) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency) who have not met the State's proficiency targets continue making progress toward meeting the State's student academic achievement standards;
- Describe the achievement and graduation rates (as described in section 1111(b)(2)(C)(vi) of the ESEA and as clarified in 34 CFR 200.19(b)(1)) of public elementary and secondary school students in the State, and the strategies the State is employing to help ensure that all subgroups of students identified in section 1111(b)(2)(C)(v)(II) of the ESEA continue making progress toward meeting the State's student academic achievement standards;
- Describe how the State would use its grant funding to improve student academic achievement in the State, including how it will allocate the funds to give priority to high-need LEAs (as defined in this notice); and
- Include a plan for evaluating the State's progress in closing achievement gaps.

In this notice, we propose additional specific priorities, requirements, definitions, and selection criteria regarding the applications that individual States submit for approximately $4 billion of Race to the Top funds. At a later date, we may announce a separate Race to the Top Standards and Assessment competition, for approximately $350 million, to support the development of assessments by consortia of States.

Structure of Race to the Top

Race to the Top will reward States for having created the conditions for reform (as measured through the State Reform Conditions Criteria proposed in this notice) and for increasing student achievement. Race to the Top will also provide incentives for States to develop and implement comprehensive reform strategies that are integrated across the four ARRA education reform areas and lead to improved student outcomes (as measured through the Reform Plan Criteria proposed herein). The Department expects successful applicants to clear a high bar on both State Reform Conditions and Reform Plan Criteria. Proposed State Reform Conditions and Reform Plan Criteria are described in detail in the Proposed Selection Criteria section of this notice.

To ensure that the State's Race to the Top plans (which the State will describe in its application in response to the Reform Plan Criteria) are comprehensive, coherent, and measurable, we propose that States describe their approaches and, where appropriate, set annual targets for each of the Reform Plan Criteria.

Note: The proposed annual targets are set forth in the Appendix to this notice. These targets are specific to Race to the Top, and they are in addition to, not a replacement for, the existing annual requirements under the ESEA.) The annual targets should be achievable but sufficiently ambitious to support a successful Race to the Top grant application.

Under the statute, at least 50 percent of the funds under a State's Race to the Top grant must be provided to LEAs based on LEAs' relative shares of funding under part A of Title I of the ESEA. The remaining funds are available to the State for State-level activities and for disbursements to LEAs and other eligible entities under such formulas, competitive processes, or other mechanisms as the State may propose in its plan. We propose that a State incorporate into its plan the activities that LEAs will undertake to advance the four education reform areas.

Timing of Applications and Awards

The Department plans to make Race to the Top grants in two phases. States that are ready to apply may do so in Phase 1, which will open in late calendar year 2009. States that need more time—for example, to engage in planning with and secure commitments from superintendents, school boards, principals, teachers, union leaders, and community supporters, or others—may apply in Phase 2, which will open in late Spring of calendar year 2010. States that apply in Phase 1 but are not awarded grants may reapply for funding in Phase 2, together with States that are applying for the first time in Phase 2. Phase 1 grantees may not apply for additional funding in Phase 2. We will announce specific deadlines for both Phase 1 and Phase 2 in subsequent notice(s) inviting applications for funds under this program.

I. Proposed Priorities

Background: The Secretary proposes five priorities for the Race to the Top competition. We are proposing to designate Proposed Priority 1 as an absolute priority, Proposed Priority 2 as a competitive preference priority, and Proposed Priorities 3 through 5 as invitational priorities. We may choose, in the notice of final priorities, requirements, definitions, and selection criteria, to change the designation of any of these priorities to absolute, competitive preference, or invitational priorities, or to include the substance of these priorities in the selection criteria.

Under an absolute priority, as specified by 34 CFR 75.105(c)(3), we would consider only applications that meet the priority. Under a competitive preference priority, we would 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)). With an invitational priority, we would signal our interest in receiving applications that meet the priority; however, consistent with 34 CFR 75.105(c)(1), we would not give an application that meets an invitational priority preference over other applications.

Proposed Priority 1: Absolute Priority—Comprehensive Approach to the Four Education Reform Areas

To meet this priority, the State's application must comprehensively address each of the four education reform areas specified in the ARRA to demonstrate that the State and its participating LEAs are taking a systemic approach to education reform. The State's application must describe how the State and participating LEAs intend to use Race to the Top and other funds to implement comprehensive and coherent policies and practices in the four education reform areas, and how these are designed to increase student achievement, reduce the achievement gap across student subgroups (as described in section 303(b)(2)(G) of the National Assessment of Educational Progress Authorization Act (NAEP) [1]), and increase the rates at which students

[1] This statute, rather than relevant sections of the ESEA, is referenced because it provides the most recent listing of NAEP subgroups. We propose using the NAEP to monitor overall increases in student achievement and decreases in the achievement gap over the course of this grant because the NAEP provides a way to report consistently across Race to the Top grantees as well as within a State over time as the State transitions from its current assessments to the high-quality assessments (as defined in this notice).

graduate from high school prepared for college and careers.

Proposed Priority 2: Competitive Preference Priority—Emphasis on Science, Technology, Engineering, and Mathematics (STEM)

To meet this priority, the State's application must describe plans to address the need to (i) offer a rigorous course of study in mathematics, sciences, technology, and engineering; (ii) cooperate with industry experts, museums, universities, research centers, or other STEM-capable community partners to prepare and assist teachers in integrating STEM content across grades and disciplines, in promoting effective and relevant instruction, and in offering applied learning opportunities for students; and (iii) prepare more students for advanced study and careers in the sciences, technology, engineering, and mathematics, including addressing the needs of underrepresented groups and of women and girls in the areas of science, technology, engineering and mathematics.

Proposed Priorities 3 Through 5: Proposed Priority 3—Invitational Priority— Expansion and Adaptation of Statewide Longitudinal Data Systems

The Secretary is particularly interested in applications in which the State plans to expand statewide longitudinal data systems to include or integrate data from special education programs, limited English proficiency programs, early childhood programs, human resources, finance, health, postsecondary, and other relevant areas, with the purpose of allowing important questions related to policy or practice to be asked and answered.

The Secretary is also particularly interested in applications in which States propose working together to adapt one State's statewide longitudinal data system so that it may be used, in whole or in part, by other State(s), rather than having each State build or continue building such system(s) independently.

Proposed Priority 4—Invitational Priority—P–20 Coordination and Vertical Alignment

The Secretary is particularly interested in applications in which the State plans to address how early childhood programs, K–12 schools, postsecondary institutions, and workforce organizations will coordinate to improve all parts of the education system and create a more seamless P–20 route for students. Vertical alignment across P–20 is particularly critical at each point where a transition occurs (*e.g.,* between early childhood and K–12, or between K–12 and post secondary) to ensure that students exiting one level are prepared for success, without remediation, in the next.

Proposed Priority 5—Invitational Priority—School-Level Conditions for Reform and Innovation

The Secretary is particularly interested in applications in which the State's participating LEAs provide schools, where appropriate, with flexibilities and autonomies conducive to reform and innovation, such as—

(i) Selecting staff;

(ii) Implementing new structures and formats for the school day or year that expand learning time;

(iii) Placing budgets under the schools' control;

(iv) Awarding credit to students based on student performance instead of instructional time; and

(v) Providing comprehensive services to high-need students (*e.g.,* through local partnerships, internal staffing, and contracts with outside providers).

II. Requirements

The Secretary proposes the following requirements for this program. We may apply these requirements in any year in which this program is in effect.

A. Eligibility Requirements

Background: We are proposing two eligibility requirements for Race to the Top applicants. First, we propose that a State must have an approved application under both Phase 1 and Phase 2 of the State Fiscal Stabilization Fund (Stabilization) program of the ARRA in order to be eligible to receive an award from the Race to the Top competition. Section 14005(d) of the ARRA requires a State that receives funds under the Stabilization program to provide assurances in the same four education reform areas that will be advanced by the Race to the Top grant. We therefore believe that it would be inconsistent to award a Race to the Top grant, which requires a determination that a State has made significant progress in the four education reform areas, to a State that has not met requirements for receiving funds under the Stabilization program.

Second, we propose that to be eligible under this program, a State must not have any legal, statutory, or regulatory barriers to linking student achievement or student growth data to teachers for the purpose of teacher and principal evaluation. Research indicates that teacher quality is a critical contributor to student learning and that there is dramatic variation in teacher quality.[2] Yet it is difficult to predict teacher quality based on the qualifications that teachers bring to the job. Indeed, measures such as certification, master's degrees, and years of teaching experience have limited predictive power on this point.[3] Therefore, one of the most effective ways to accurately assess teacher quality is to measure the growth in achievement of a teacher's students;[4] [5] and by aggregating the performance of students across teachers within a school, to assess principal quality. Current law in a number of States presents an obstacle to efforts to improve teacher quality by prohibiting data regarding student achievement from being tied to teachers for the purposes of evaluation. This capability is fundamental to Race to the Top reforms and to the requirement in section 14005(d)(2) of the ARRA that States take actions to improve teacher effectiveness. Without this legal authority, States would not be able to execute reform plans relating to several selection criteria in this notice (see Selection Criteria (C)(2) through (C)(5)), because these plans must require LEAs and schools to determine which

[2] See, *e.g.* Kane, Thomas J., Jonah E. Rockoff, and Douglas O. Staiger (2006), ''What Does Certification Tell Us About Teacher Effectiveness? Evidence from New York City,'' NBER Working Paper No. 12155; Rivkin, Steven G., Eric A. Hanushek, and John F. Kain (2005), ''Teachers, Schools, and Academic Achievement,'' Econometrica, 73(2), 417–458; Rockoff, Jonah. E. (2004), ''The Impact of Individual Teachers on Students' Achievement: Evidence from Panel Data,'' American Economic Review 94(2), 247–52; Organisation for Economic Co-operation and Development (2004), ''Teachers Matter: Attracting, Developing and Retaining Effective Teachers'', p. 3; Leithwood, Kenneth, Karen Seashore Louis, Stephen Anderson, and Kyla Wahlstrom (2004), ''How Leadership Influences Student Learning,'' Wallace Foundation Learning from Leadership Project; Aaronson, Daniel, Lisa Barrow, and William Sander (2003), ''Teacher and Student Achievement in the Chicago Public High Schools,'' Federal Reserve Bank of Chicago Working Paper 2002–28.

[3] Rivkin, Hanushek, and Kain (2005). Kane, Rockoff, and Staiger (2006). Aaronson, Barrow, and Sander (2003).

[4] For example, Rockoff et al. find that even using a detailed data set on incoming teacher characteristics allows them to predict only about 12 percent of the variance of the expected distribution of teacher effectiveness. Jonah E. Rockoff, Brian A. Jacob, Thomas J. Kane, and Douglas O. Staiger (2008), ''Can You Recognize an Effective Teacher When You Recruit One?'' NBER Working Paper No. 14485. Similarly, Goldhaber et al. show that the variance in student achievement due to unobservable teacher variables is 40 times greater than the variance due to observable teacher variables. Dan Goldhaber, Dominic Brewer, and Deborah J. Anderson (1999), ''A three-way error components analysis of educational productivity,'' *Education Economics* 7 (3): 199–208.

[5] Kane, Rockoff, and Staiger (2006). Aaronson, Barrow, and Sander (2003).

teachers and principals are effective using student achievement data.

Proposed Eligibility Requirements: We propose the following requirements that a State must meet in order to be eligible to receive funds under this program.

(a) In order for the State to be eligible for the Race to the Top Phase 1 competition, the State's applications for funding under Phase 1 and Phase 2 of the Stabilization program must be approved by the Department by December 31, 2009. In order for the State to be eligible for the Race to the Top Phase 2 competition, the State's application for funding under Phase 1 and Phase 2 of the Stabilization program must be approved by the Department prior to the State submitting its Race to the Top Phase 2 application.

(b) The State does not have any legal, statutory, or regulatory barriers to linking data on student achievement (as defined in this notice) or student growth (as defined in this notice) to teachers and principals for the purpose of teacher and principal evaluation.

B. Application Requirements

Background: Section 14005(c) of the ARRA requires that certain information (as discussed earlier in this notice) be included in States' Race to the Top applications. Consistent with those requirements and the need for additional information that will ensure a fair and accurate peer review of the grant applications, we propose the following requirements for the application a State would submit to the Department for funding under this program.

The Department recognizes that requests for data and information should reflect an integrated and coordinated approach among the various ARRA programs, particularly the State Fiscal Stabilization, Race to the Top, School Improvement Grants, and Statewide Longitudinal Data Systems grant programs. Accordingly, the Department will continue to evaluate our requests for data and information under this program in context with the other ARRA programs.

Proposed Application Requirements

(a) The State's application must be signed by the Governor, the State's chief school officer, and the president of the State board of education.

(b) The State must describe the progress it has made to date in each of the four education reform areas, including how the State has used ARRA and other Federal and State funding over the last several years to pursue reforms in these areas (as described in Overall Selection Criterion (E)(1)).

(c) The State must provide financial data to show whether and to what extent the percentage of the total revenues available to the State (as defined in this notice) that were used to support elementary, secondary, and public higher education for FY 2009 increased, decreased, or remained the same compared to FY 2008 (as described in Overall Selection Criterion (E)(2)).

(d) The State must describe its statewide support from stakeholders and LEAs, including public charter schools identified as LEAs under State law (as described in Overall Selection Criterion (E)(3)).

(e) The State must include a budget that details how it will use grant funds and other resources to meet targets and perform related functions, including how it will use funds awarded under this program to—

(1) Achieve its targets for improving student achievement and graduation rates and for closing achievement gaps (as described in Overall Selection Criterion (E)(4)); and

(2) Give priority to high-need LEAs (as defined in this notice), in addition to providing 50 percent of the grant to participating LEAs based on their relative shares of funding under part A of Title I of the ESEA as required under section 14006(c) of the ARRA.

(f) The State must provide, for each State Reform Conditions Criterion (listed later in this notice), a description of the State's current status in meeting that Criterion, and at a minimum, the information requested as supporting evidence for the Criterion. The Appendix to this notice contains a table listing the proposed evidence.

(g) The State must provide, for each Reform Plan Criterion (listed later in this notice) a detailed plan for use of grant funds that includes, but need not be limited to—

(1) The key activities to be undertaken;

(2) The goals and rationale for the activities, which may include but need not be limited to evidence of the past effectiveness of those activities, as documented in research or through the effective implementation of an activity in one or more States, LEAs, or schools (which may include charter schools);

(3) The timeline for implementing the activities;

(4) The party or parties responsible for implementing the activities;

(5) The resources the State will use to support the activities (*e.g.,* funding, personnel, systems);

(6) The State's annual targets, where applicable, with respect to the performance measures aligned to the Criterion for the four school years beginning with the 2010–2011 school year. The Appendix to this notice contains a table listing the proposed performance measures. Where plans are proposed for reform efforts not covered by a performance measure specified by the Department, States are encouraged to propose performance measures and annual targets for those efforts; and

(7) The information requested as supporting evidence, if any (as described in the Appendix), for the Criterion, together with any additional information the State believes will be helpful to peer reviewers.

(h) The State must submit a certification from the State Attorney General, or other chief State legal officer, that the State's description of, and statements and conclusions concerning, State law (for example, with respect to the Eligibility Requirement regarding teacher effectiveness or any of the applicable Selection Criteria) in its application are complete, accurate, and constitute a reasonable interpretation of State law.

C. Annual Report and Performance Measures

The Secretary proposes core performance measures for evaluating the performance of States receiving funds under this program. See the Appendix to this notice for the proposed performance measures.

In addition, a State receiving funds under this program must submit to the Department an annual report which may include, in addition to the standard elements, a description of the State's and its LEAs' progress to date on their goals, timelines, and budgets, as well as actual performance compared to the annual targets the State established in its application with respect to each performance measure.

Further, a State receiving funds under this program and its participating LEA are accountable for meeting the goals, timelines, budget, and annual targets established in the application; adhering to an annual fund drawdown schedule that is tied to meeting these goals, timelines, budget, and annual targets; and fulfilling and maintaining all other conditions for the conduct of the project.

The Department will monitor a State's and its participating LEAs' progress in meeting its goals, timelines, budget, and annual targets and in fulfilling other applicable requirements. To support a collaborative process between the State and the Department, the Department may require that applicants who are selected to receive an award enter into a written performance or cooperative

agreement with the Department. If the Department determines that a State is not meeting its goals, timelines, budget, or annual targets or is not fulfilling other applicable requirements, the Department will take appropriate action, which could include a collaborative process between the Department and the State, or enforcement measures with respect to this grant such as placing the State in high-risk status, putting the State on reimbursement payment status, or delaying or withholding funds.

D. Other Program Requirements

We propose the following additional requirements for States receiving funds under this program:

(a) The State and its participating LEAs must use funds under this program to participate in a national evaluation of the program, if the Department chooses to conduct one. In addition, the Department is seeking comment on whether a State should, instead of or in addition to a national evaluation, be required to conduct its own evaluation of its program activities using funds under this program. The Department will announce in the notice inviting applications the evaluation approach(es) that will be required.

(b) The State must participate in all applicable technical assistance activities that may be conducted by the Department or its designees.

(c) The State must make freely available all of the outputs (*e.g.,* materials, tools, processes, systems) that it or its designated partners produce related to its grant, including by posting the outputs on any Web site identified or sponsored by the Department.

III. Selection Criteria

The Secretary proposes the following criteria for reviewing applications submitted under this program. We may apply one or more of these criteria in any year in which this program is in effect. In the notice inviting applications, the application package, or both, we will announce the maximum number of points assigned to each criterion.

As discussed elsewhere in this notice, we propose using two types of selection criteria—State Reform Conditions Criteria and Reform Plan Criteria—to rate a State's application for Race to the Top funds. State Reform Conditions Criteria will be used to assess a State's past progress and its success in creating conditions for reform in specific areas related to the four ARRA education reform areas. The Reform Plan Criteria will be used to assess States' plans for future efforts in the four ARRA education reform areas.

In the Appendix, we list both the minimum evidence, if any, that the State must provide to assist the Department and peer reviewers in determining whether a State's application meets each Criterion, and the performance measures, if any, for each Reform Plan Criterion. States may submit additional information if they deem it to be relevant and useful. In addition, States that have submitted the requested information to the Department for other programs are welcome to indicate that they would like a specific previous submission to be used as evidence, or they may provide an updated submission.

For each Reform Plan Criterion, peer reviewers will also consider the extent to which States, where applicable, set ambitious yet achievable annual targets against the performance measure, to support the State's plan. Grantees will report their progress with respect to these performance measures and annual targets as part of their annual reports.

Proposed Selection Criteria

A. Standards and Assessments

Note: Under this reform area, we are proposing several Criteria that will be different for applications submitted under Phase 1 and Phase 2. Where the Criteria are different, we have so indicated.

State Reform Conditions Criteria

(A)(1) Developing and adopting common standards:[6]

(i) For Phase 1 applications: The extent to which the State has demonstrated commitment to improving the quality of its standards by participating in a consortium of States that is working toward jointly developing and adopting, by June 2010, a common set of K–12 standards (as defined in this notice) that are internationally benchmarked and that build toward college and career readiness by the time of high school graduation, and the extent to which this consortium includes a significant number of States.

(ii) For Phase 2 applications: Whether the State has demonstrated commitment to improving the quality of its standards by adopting, as part of a multi-State consortium, a common set of K–12 standards (as defined in this notice) that are internationally benchmarked and that build toward college and career readiness by the time of high school graduation, and the extent to which this consortium includes a significant number of States.

(A)(2) *Developing and implementing common, high-quality assessments:*[7] Whether the State has demonstrated a commitment to improving the quality of its assessments by participating in a consortium of States that is working toward jointly developing and implementing common, high-quality assessments (as defined in this notice) aligned with the consortium's common set of K–12 standards (as defined in this notice) that are internationally benchmarked and that build toward college and career readiness by the time of high school graduation, and the extent to which this consortium includes a significant number of States.

Reform Plan Criteria

(A)(3) *Supporting transition to enhanced standards and high-quality assessments:*[8] The extent to which the State, in collaboration with its participating LEAs, has a high-quality plan for supporting a statewide transition to and implementation of (a) internationally benchmarked K–12 standards that build toward college and career readiness by the time of high school graduation, and (b) high-quality assessments (as defined in this notice) tied to these standards. State or LEA activities might include: Aligning high school exit criteria and college entrance requirements with the new assessments; developing, disseminating, and implementing curricular frameworks and materials, formative and interim assessments (as defined in this notice), and professional development materials; and engaging in other strategies that translate the standards and information from assessments into classroom practice.

B. Data Systems to Support Instruction

State Reform Conditions Criteria

(B)(1) *Fully implementing a statewide longitudinal data system:*[9] The extent to

[6] A State's responses to proposed Indicator (c)(2) and Descriptor (c)(1) in its Stabilization program Phase 2 application may contain information responsive, in part, to this State Reform Conditions Criterion, to which the State may refer and incorporate in its Race to the Top application.

[7] A State's responses to proposed Indicator (c)(2) and Descriptor (c)(1) in its Stabilization program Phase 2 application may contain information responsive, in part, to this State Reform Conditions Criterion, to which the State may refer and incorporate in its Race to the Top application.

[8] A State's responses to proposed Indicators (c)(1)–(c)(13) and Descriptor (c)(1) in its Stabilization program Phase 2 application may contain information related to this Reform Plan Criterion, to which the State can refer and build upon in its Race to the Top application.

[9] The State's responses to proposed Indicator (b)(1) and requirements II.c.1.A and II.c.1.B.(i–iii) in its Stabilization program Phase 2 application may contain information responsive, in part, to this State Reform Conditions Criterion, to which the State can refer and build upon in its Race to the Top application.

which the State has a statewide longitudinal data system that includes all of the elements specified in section 6401(e)(2)(D) of the America COMPETES Act (as defined in this notice).

Reform Plan Criteria

(B)(2) *Accessing and using State data:*[10] The extent to which the State has a high-quality plan to ensure that data from the State's statewide longitudinal data system are accessible to, and used to inform and engage, as appropriate, key stakeholders (*e.g.,* parents, students, teachers, principals, LEA leaders, community members, unions, researchers, and policymakers); that the data support decision-makers in the continuous improvement of instruction, operations, management, and resource allocation; and that they comply with the applicable requirements of the Family Educational Rights and Privacy Act (FERPA).

(B)(3) *Using data to improve instruction:*[11] The extent to which the State, in collaboration with its participating LEAs, has a high-quality plan to—

(i) Increase the use of instructional improvement systems (as defined in this notice) that provide teachers, principals, and administrators with the information they need to inform and improve their instructional practices, decision-making, and overall effectiveness; and

(ii) Make these data, together with statewide longitudinal data system data, available and accessible to researchers so that they have detailed information with which to evaluate the effectiveness of instructional materials, strategies, and approaches for educating different types of students (*e.g.,* students with disabilities, limited English proficient students, students whose achievement is well below or above grade level), in a manner that complies with the applicable requirements of FERPA.

C. Great Teachers and Leaders

State Reform Conditions Criteria

(C)(1) *Providing alternative pathways for aspiring teachers and principals:* The extent to which the State has in place legal, statutory, or regulatory provisions that allow alternative routes to certification (as defined in this notice) for teachers and principals, particularly routes that allow for providers in addition to institutions of higher education; and the extent to which these routes are in use.

Reform Plan Criteria

(C)(2) *Differentiating teacher and principal effectiveness based on performance:*[12] The extent to which the State, in collaboration with its participating LEAs, has a high-quality plan and ambitious yet achievable annual targets to (a) Determine an approach to measuring student growth (as defined in this notice); (b) employ rigorous, transparent, and equitable processes for differentiating the effectiveness of teachers and principals using multiple rating categories that take into account data on student growth (as defined in this notice) as a significant factor; (c) provide to each teacher and principal his or her own data and rating; and (d) use this information when making decisions regarding—

(i) Evaluating annually and developing teachers and principals, including by providing timely and constructive feedback and targeted professional development;

(ii) Compensating and promoting teachers and principals, including by providing opportunities for teachers and principals who are highly effective (as defined in this notice) to obtain additional compensation and responsibilities; and

(iii) Granting tenure to and dismissing teachers and principals based on rigorous and transparent procedures for awarding tenure (where applicable) and for removing tenured and untenured teachers and principals after they have had ample opportunities to improve but have not done so.

(C)(3) *Ensuring equitable distribution of effective teachers and principals:*[13] The extent to which the State has a high-quality plan and ambitious yet achievable annual targets to increase the number and percentage of highly effective teachers and principals (as defined in this notice) in high-poverty schools (as defined in this notice), and to increase the number and percentage of effective teachers (as defined in this notice) teaching hard-to-staff subjects including mathematics, science, special education, English language proficiency, and other hard-to-staff subjects identified by the State or LEA. Plans may include, but are not limited to, the implementation of incentives and strategies in areas such as recruitment, compensation, career development, and human resources practices and processes.

(C)(4) *Reporting the effectiveness of teacher and principal preparation programs:* The extent to which the State has a high-quality plan and ambitious yet achievable annual targets to link a student's achievement data to the student's teachers and principals, to link this information to the programs where each of those teachers and principals was prepared for credentialing, and to publicly report the findings for each credentialing program that has twenty or more graduates annually.

(C)(5) *Providing effective support to teachers and principals:* The extent to which the State, in collaboration with its participating LEAs, has a high-quality plan to use rapid-time (as defined in this notice) student data to inform and guide the support provided to teachers and principals (*e.g.,* professional development, time for common planning and collaboration) in order to improve the overall effectiveness of instruction; and to continuously measure and improve both the effectiveness and efficiency of those supports.

D. Turning Around Struggling Schools

State Reform Conditions Criteria

(D)(1) *Intervening in the lowest-performing schools and LEAs:* The extent to which the State has the legal, statutory, or regulatory authority to intervene directly in the State's persistently lowest-performing schools (as defined in this notice) and in LEAs that are in improvement and corrective action status.

(D)(2) *Increasing the supply of high-quality charter schools:*[14]

(i) The extent to which the State has a charter school law that does not prohibit or effectively inhibit increasing the number of charter schools in the State (as measured by the percentage of total schools in the State that are allowed to be charter schools) or otherwise restrict student enrollment in charter schools.

[10] A State's responses to proposed Indicator (b)(2) and requirements II.c.2.A and II.c.2.B(i–iii) in its Stabilization program Phase 2 application may contain information related to this Reform Plan Criterion, to which the State can refer and build upon in its Race to the Top application.

[11] A State's responses to proposed Indicator (b)(2) and requirements II.c.2.A and II.c.2.B(i–iii) in its Stabilization program Phase 2 application may contain information related to this Reform Plan Criteria, to which the State can refer and build upon in its Race to the Top application.

[12] A State's responses to proposed Indicators (a)(2) and (a)(5) and Descriptors (a)(1) and (a)(2) in its Stabilization program Phase 2 application may contain information related to this Reform Plan Criterion, to which the State can refer and build upon in its Race to the Top application.

[13] A State's response to proposed Indicator (a)(1) in its Stabilization program Phase 2 application may contain information related to this Reform Plan Criterion, to which the State can refer and build upon in its Race to the Top application.

[14] A State's responses to proposed Indicator (d)(6) in its Stabilization program Phase 2 application may contain information related to this Reform Plan Criterion, to which the State can refer and build upon in its Race to the Top application.

(ii) The extent to which the State has statutes and guidelines regarding how charter school authorizers approve, monitor, hold accountable, reauthorize, and close charter schools, including the extent to which such statutes or guidelines require that student academic achievement be a factor in such activities and decisions, and the extent to which charter school authorizers in the State have closed or not renewed ineffective charter schools.

(iii) The extent to which the State's charter schools receive equitable funding, compared to traditional public schools, and a commensurate share of local, State, and Federal program and revenue sources.

(iv) The extent to which the State provides charter schools with facilities funding (for leasing facilities, purchasing facilities, or making tenant improvements), assistance with facilities acquisition, access to public facilities, the ability to share in bonds and mill levies, or other supports; and the extent to which the State does not impose any facility-related requirements on charter schools that are stricter than those applied to traditional public schools.

Reform Plan Criteria

(D)(3) *Turning around struggling schools:*[15] The extent to which the State has a high-quality plan and ambitious yet achievable annual targets to (i) identify at least the lowest-achieving five percent of the persistently lowest-performing schools (as defined in this notice) or the lowest-achieving five schools, whichever is larger; and (ii) support its LEAs in turning around these schools by—

- Putting in place new leadership and a majority of new staff, new governance, and improved instructional programs, and providing the school with flexibilities such as the ability to select staff, control its budget, and expand student learning time; or
- Converting them to charter schools or contracting with an education management organization (EMO); or
- Closing the school and placing the school's students in high-performing schools; or
- To the extent that these strategies are not possible, implementing a school transformation model that includes: Hiring a new principal, measuring teacher and principal effectiveness (as defined in this notice), rewarding effective teachers and principals (as defined in this notice), and improving strategies for recruitment, retention, and professional development; implementing comprehensive instructional reform, including an improved instructional program and differentiated instruction; and extending learning time and community-oriented supports, including more time for students to learn and for teachers to collaborate, more time for enrichment activities, and on-going mechanisms for family and community engagement.

E. Overall Selection Criteria

State Reform Conditions Criteria

(E)(1) *Demonstrating significant progress:* The extent to which the State has, over the past several years—

(i) Made progress to date in each of the four education reform areas;

(ii) Used ARRA and other Federal and State funding to pursue reforms in these areas;

(iii) Created, through law or policy, conditions favorable to education reform and innovation;

(iv) Increased student achievement and decreased the achievement gap, as reported on the NAEP since 2003; and increased graduation rates.

(E)(2) *Making education funding a priority:* The extent to which the percentage of the total revenues available to the State (as defined in this notice) that were used to support elementary, secondary, and public higher education for FY 2009 was greater than or equal to the percentage of the total revenues available to the State (as defined in this notice) that were used to support elementary, secondary, and public higher education for FY 2008.

(E)(3) *Enlisting statewide support and commitment:* The extent to which the State has demonstrated commitment, support, and/or funding from the following key stakeholders:

(i) The State's teachers' union(s) and charter school authorizers;

(ii) Other State and local leaders (*e.g.,* business, community, civil rights, and education association leaders);

(iii) Grant-making foundations and other funding sources; and

(iv) LEAs, including public charter schools identified as LEAs under State law, with special emphasis on the following: High-need LEAs (as defined in this notice); participation by LEAs, schools, students, and students in poverty; and the strength of the Memoranda of Understanding between LEAs and the State, which must at a minimum be signed by the LEA superintendent (or equivalent), the president of the local school board (if relevant), and the local teachers' union leader (if relevant).

Reform Plan Criteria

(E)(4) *Raising achievement and closing gaps:*

(i) *Achievement gains:* The extent to which the State has set ambitious yet achievable targets for increasing its students' achievement results overall and by student subgroup (as described in section 303(b)(2)(G) of the National Assessment of Educational Progress Authorization Act) in reading and mathematics, as reported by the NAEP; annual targets using other assessments may be submitted as well.

(ii) *Gap closing:* The extent to which the State has set ambitious yet achievable targets for decreasing the reading and mathematics achievement gaps between subgroups (as described in section 303(b)(2)(G) of the National Assessment of Educational Progress Authorization Act), as reported, at a minimum, by the NAEP; annual targets using other assessments may be submitted as well.

(iii) *Graduation rate:*[16] The extent to which the State has ambitious yet achievable annual targets for increasing graduation rates (as defined in this notice) overall and by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA).

(E)(5) *Building strong statewide capacity to implement, scale, and sustain proposed plans:* The extent to which the State has a high-quality overall plan that demonstrates how it has, and will continue to build, the capacity to—

(i) Effectively and efficiently oversee the grant, including administering and disbursing funds, and, if necessary, taking appropriate enforcement actions to ensure that participating LEAs comply with the State's plan and program requirements;

(ii) Support the success of participating LEAs, ensure the dissemination of effective practices, and hold participating LEAs accountable for progress;

(iii) Use the economic, political, and human capital resources of the State to continue the reforms funded under the grant after the period of funding has ended;

(iv) Collaborate with other States on key elements of or activities in the State's application; and

(v) Coordinate, reallocate, or repurpose education funds from other

[15] A State's responses to proposed Indicators (d)(3)–(d)(5) in its Stabilization program Phase 2 application may contain information related to this Reform Plan Criterion, to which the State can refer and build upon in its Race to the Top application.

[16] A State's responses to proposed Indicator (c)(11) in its Stabilization program Phase 2 application may contain information related to this Reform Plan Criterion, to which the State can refer and build upon in its Race to the Top application.

sources to align with the State's Race to the Top goals, as outlined in its plans.

IV. Definitions

The Secretary proposes the following definitions for terms not defined in the ARRA (or, by reference, in the ESEA). We may apply these definitions in any year in which this program is in effect.

Proposed Definitions

Alternative certification routes means pathways to certification that are authorized under the State's laws or regulations that allow the establishment and operation of teacher and administrator preparation programs in the State that have the following characteristics: (a) Can be provided by various types of qualified providers, including both institutions of higher education and other providers; (b) provide a clinical/student teaching experience; (c) significantly limit the amount of coursework required or have options to test-out of courses; and (d) award the level of certification that permits a candidate who successfully completes the program to teach or lead in public schools within the State.

Common set of K–12 standards means a set of content standards that define what students must know and be able to do, and that are identical across all States in a consortium. Notwithstanding this, a State may supplement the common standards with additional standards, provided that the additional standards do not exceed 15 percent of the State's total standards for that content area.

Effective principal means a principal whose students, overall and for each subgroup (described in section 1111(b)(2)(C)(v)(II) of the ESEA), demonstrate acceptable rates (*e.g.,* at least one grade level in an academic year) of student growth (as defined in this notice). States may supplement this definition as they see fit so long as principal effectiveness is judged, in significant measure, by student growth (as defined in this notice).

Effective teacher means a teacher whose students achieve acceptable rates (*e.g.,* at least one grade level in an academic year) of student growth (as defined in this notice). States may supplement this definition as they see fit so long as teacher effectiveness is judged, in significant measure, by student growth (as defined in this notice).

Formative assessment means an assessment process that is embedded in instruction and is used by teachers and students to provide instant feedback on student understanding and to adjust ongoing teaching and learning accordingly.

Graduation rate means the four-year adjusted cohort graduation rate as defined by 34 CFR 200.19(b)(1)(i). A State may also use, as a supplement to this rate, extended adjusted cohort graduation rates (consistent with 34 CFR 200.19(b)(1)(v)) that are approved by the Secretary.

Highly effective principal means a principal whose students, overall and for each subgroup (described in section 1111(b)(2)(C)(v)(II) of the ESEA), demonstrate high rates (*e.g.,* more than one grade level in an academic year) of student growth (as defined in this notice). States may supplement this definition as they see fit so long as principal effectiveness is judged, in significant measure, by student growth (as defined in this notice).

Highly effective teacher means a teacher whose students achieve high rates (*e.g.,* more than one grade level in an academic year) of student growth (as defined in this notice). States may supplement this definition as they see fit so long as teacher effectiveness is judged, in significant measure, by student growth (as defined in this notice).

High-need LEA means an LEA with one or more high-poverty schools (as defined in this notice).

High-poverty school means, consistent with section 1111(h)(1)(C)(viii) of the ESEA, a school in the highest quartile of schools in the State with respect to poverty level, using a measure of poverty determined by the State.

High-quality assessment means an assessment designed to measure a student's understanding of, and ability to apply, critical concepts through the use of a variety of item types, formats, and administration conditions (*e.g.,* open-ended responses, performance-based tasks, use of technology). Such assessments are structured to enable measurement of student achievement (as defined in this notice) and student growth (as defined in this notice); are of high technical quality (*e.g.,* are valid, reliable, and aligned to standards); and include the assessment of students with disabilities and limited English proficient students.

Instructional improvement systems means tools that provide teachers, principals, and administrators with meaningful support for a cycle of continuous instructional improvement, including activities such as: instructional planning; gathering information (*e.g.,* through formative assessments (as defined in this notice), interim assessments (as defined in this notice), and looking at student work); analyzing information with the support of rapid-time (as defined in this notice) reporting; using this information to inform decisions on appropriate next steps; and evaluating the effectiveness of the actions taken.

Interim assessment means an assessment given at regular and specified intervals throughout the school year, and designed to evaluate students' knowledge and skills relative to a specific set of academic standards, and the results of which can be aggregated (*e.g.,* by course, grade level, school, or LEA) in order to inform teachers and administrators at the student, classroom, school, and LEA levels.

Persistently lowest-performing schools means Title I schools in improvement, corrective action, or restructuring in the State and the secondary schools (both middle and high schools) in the State that are equally as low-achieving as these Title I schools and are eligible for, but do not receive, Title I funds. When considering which schools are the lowest-achieving, the State must consider both the absolute performance of schools on the State assessments in reading/language arts and mathematics and whether schools have made progress on those assessments.

Rapid-time, in reference to reporting and availability of school- and LEA-level data, means that data is available quickly enough to inform current lessons, instruction, and related supports; in most cases, this will be within 72 hours of an assessment or data gathering in classrooms, schools, and LEAs.

Student achievement means, at a minimum—

(a) For tested grades and subjects: A student's score on the State's assessment under section 1111(b)(3) of the ESEA; and

(b) For non-tested grades and subjects: An alternative measure of student performance (*e.g.,* student performance on interim assessments (as defined in this notice), rates at which students are on track to graduate from high school, percentage of students enrolled in Advanced Placement courses who take Advanced Placement exams, rates at which students meet goals in individualized education programs, student scores on end-of-course exams).

Student growth means the change in achievement data for an individual student between two points in time. Growth may be measured by a variety of approaches, but any approach used must be statistically rigorous and based on student achievement (as defined in this notice) data, and may also include other measures of student learning in

order to increase the construct validity and generalizability of the information.

Total revenues available to the State means either (a) projected or actual total State revenues for education and other purposes for the relevant year; or (b) projected or actual total State appropriations for education and other purposes for the relevant year.

America COMPETES Act elements (as specified in section 6401(e)(2)(D)) means: (1) A unique statewide student identifier that does not permit a student to be individually identified by users of the system; (2) student-level enrollment, demographic, and program participation information; (3) student-level information about the points at which students exit, transfer in, transfer out, drop out, or complete P–16 education programs; (4) the capacity to communicate with higher education data systems; (5) a State data audit system assessing data quality, validity, and reliability; (6) yearly test records of individual students with respect to assessments under section 1111(b) of the ESEA (20 U.S.C. 6311(b)); (7) information on students not tested by grade and subject; (8) a teacher identifier system with the ability to match teachers to students; (9) student-level transcript information, including information on courses completed and grades earned; (10) student-level college readiness test scores; (11) information regarding the extent to which students transition successfully from secondary school to postsecondary education, including whether students enroll in remedial coursework; and (12) other information determined necessary to address alignment and adequate preparation for success in postsecondary education.

Final Priorities, Requirements, Definitions, and Selection Criteria

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

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

Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments, or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. Pursuant to the Executive order, it has been determined that this regulatory action will have an annual effect on the economy of more than $100 million because the amount of government transfers provided through the Race to the Top Fund will exceed that amount. Therefore, this action is ''economically significant'' and subject to OMB review under section 3(f)(1) of the Executive order.

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

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

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

Need for Federal Regulatory Action

These proposed priorities, requirements, definitions, and selection criteria are needed to implement the Race to the Top program. The Secretary does not believe that the statute, by itself, provides a sufficient level of detail to ensure that Race to the Top truly serves as a mechanism for driving significant education reform in the States. The authorizing language is very brief, and we believe the Congress likely expected the Secretary to augment this language, through rulemaking, in order to give greater meaning to the statutory provisions. Additionally, the statute expressly provides the Secretary the authority to require States to include in their application such information as the Secretary may reasonably require and to determine which States receive grants on the basis of other criteria as the Secretary determines appropriate.

In the absence of specific selection criteria for Race to the Top grants, the Department would use the general selection criteria in 34 CFR 75.210 of the Education Department General Administrative Regulations in selecting States to receive grants. The Secretary does not believe the use of those general criteria would be appropriate for the Race to the Top competitions, because they do not focus on the educational reforms that States must be implementing in order to receive a Race to the Top grant, on the specific uses of funds under Race to the Top, or on the plans that the Secretary believes States should develop for their Race to the Top grants.

Regulatory Alternatives Considered

The Department considered a variety of possible priorities, requirements, definitions, and selection criteria before deciding to propose those included in this notice. The proposed priorities, requirements, definitions, and selection criteria are those that best embody the Secretary's concept of how the Race to the Top program should operate. The proposals would provide States (and their LEAs) receiving Race to the Top grants with broad flexibility in the expenditure of those grants, while creating clear criteria for the selection of applications and providing greater clarity (than is provided in the legislation itself) on what must be included in a State application and what progress States would have to make in the four education reform areas in order to receive a grant. The Secretary believes that the proposals, thus, appropriately balance a limited degree of Federal prescription with broad flexibility in State and local implementation. We seek public comment on whether we have achieved the optimal balance.

Summary of Costs and Benefits

The Department believes that the proposed priorities, requirements, definitions, and selection criteria will not impose significant costs on States,

or on the LEAs and other entities that will receive assistance through the Race to the Top Fund. As discussed elsewhere, the proposals are intended to create a framework for the award of approximately $4 billion in support of State and local efforts to implement critical educational reforms and to making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates, and ensuring student preparation for success in college and careers. Without promulgation of priorities, requirements, definitions, and selection criteria for the Race to the Top competitions, the Department would not have clear and defensible criteria for making very large grants to States.

The Department believes that the costs imposed on States by the proposed priorities, requirements, definitions, and selection criteria will be limited to the paperwork burden discussed elsewhere in this notice. The benefits conveyed on a State through its receipt of a grant will greatly exceed those costs. In addition, even States that apply but are unsuccessful in the competitions may derive benefits, as the process of working with LEAs and other stakeholders on the State application may help accelerate the pace of education reforms in the State.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed regulatory action. This table provides our best estimate of the Federal payments to be made to States under this program as a result of this proposed regulatory action. Expenditures are classified as transfers to States.

TABLE—ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers (in millions)
Annual Monetized Transfers.	$3,956.
From Whom to Whom	Federal Government to States.

As previously explained, ARRA provides approximately $4.3 billion for the Race to the Top Fund (referred to in the statute as State Incentive Grants). In this notice, we propose additional specific priorities, requirements, definitions, and criteria regarding the applications that individual States submit for approximately $4 billion of Race to the Top funds. At a later date, we may announce a separate Race to the Top Standards and Assessment competition, for approximately $350 million, to support the development of assessments by consortia of States.

Paperwork Reduction Act of 1995

The application requirements and selection criteria proposed in this notice will require the collection of information that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). It is our plan to offer a comment period for the information collection at the time of the notice of final priorities, requirements, definitions, and selection criteria. At that time, the Department will submit the information collection to OMB for its review and provide the specific burden hours associated with each of the requirements and selection criteria for comment. However, because it is likely that the information collection will be reviewed under emergency OMB processing, the Department encourages the public to comment on the estimates we are providing for the burden hours associated with the requirements and selection criteria proposed in this notice.

Proposed Application Requirements

There are eight application requirements that the Department proposes States must meet when submitting their applications. These are:

(a) The State's application must be signed by the Governor, the State's chief school officer, and the president of the State board of education.

(b) The State must describe the progress it has made to date in each of the four education reform areas, including how the State has used ARRA and other Federal and State funding over the last several years to pursue reforms in these areas (as described in Overall Selection Criterion (E)(1)).

(c) The State must provide financial data to show whether and to what extent the percentage of the total revenues available to the State (as defined in this notice) that were used to support elementary, secondary, and public higher education for FY 2009 increased, decreased, or remained the same compared to FY 2008 (as described in Overall Selection Criterion (E)(2)).

(d) The State must describe its statewide support from stakeholders and LEAs, including public charter schools identified as LEAs under State law (as described in Overall Selection Criterion (E)(3)).

(e) The State must include a budget that details how it will use grant funds and other resources to meet targets and perform related functions, including how it will use funds awarded under this program to—

(1) Achieve its targets for improving student achievement and graduation rates and for closing achievement gaps (as described in Overall Selection Criterion (E)(4)); and

(2) Give priority to high-need LEAs (as defined in this notice), in addition to providing 50 percent of the grant to participating LEAs based on their relative shares of funding under part A of Title I of the ESEA as required under section 14006(c) of the ARRA.

(f) The State must provide, for each State Reform Conditions Criterion (listed earlier in this notice), a description of the State's current status in meeting that Criterion, and at a minimum, the information requested as supporting evidence for the Criterion. The Appendix to this notice contains a table listing the proposed evidence.

(g) The State must provide, for each Reform Plan Criterion (listed earlier in this notice) a detailed plan for use of grant funds that includes, but need not be limited to the activities to be undertaken, the goals and rationale for the activities, the timeline for implementation, the party responsible for implementing the activities, the resources the State will use to support the activities, the State's annual targets, if applicable, for the performance measures aligned to the Criterion, and the evidence requested in support of that Criterion (if any). (See the ''Proposed Application Requirements'' section for a detailed description of these proposed requirements.)

(h) The State must submit a certification from the State Attorney General, or other chief State legal officer, that the State's description of, and statements and conclusions concerning, State law (for example, with respect to the Eligibility Requirement regarding teacher effectiveness or any of the applicable Selection Criteria) in its application are complete, accurate, and constitute a reasonable interpretation of State law.

Proposed Selection Criteria

There are 19 selection criteria that the Department proposes States may address when submitting their applications. These are—

(A)(1) *Developing and adopting common standards;*

(A)(2) *Developing and implementing common, high-quality assessments;*
(A)(3) *Supporting transition to enhanced standards and high-quality assessments;*
(B)(1) *Fully implementing a statewide longitudinal data system;*
(B)(2) *Accessing and using State data;*
(B)(3) *Using data to improve instruction;*
(C)(1) *Providing alternative pathways for aspiring teachers and principals;*
(C)(2) *Differentiating teacher and principal effectiveness based on performance;*
(C)(3) *Ensuring equitable distribution of effective teachers and principals;*
(C)(4) *Reporting the effectiveness of teacher and principal preparation programs;*
(C)(5) *Providing effective support to teachers and principals;*
(D)(1) *Intervening in the lowest-performing schools and LEAs;*
(D)(2) *Increasing the supply of high-quality charter schools;*
(D)(3) *Turning around struggling schools;*
(E)(1) *Demonstrating significant progress;*
(E)(2) *Making education funding a priority;*
(E)(3) *Enlisting statewide support and commitment;*
(E)(4) *Raising achievement and closing gaps;* and
(E)(5) *Building strong statewide capacity to implement, scale, and sustain proposed plans.*

(*Please see* the ''Proposed Selection Criteria'' section for detailed descriptions.)

We estimate that each SEA would spend approximately 642 hours of staff time to address the application requirements and criteria, prepare the application, and obtain necessary clearances. The total number of hours for all 52 SEAs is an estimated 33,384 hours (52 SEAs (the 50 States plus the District of Columbia and Puerto Rico) times 642 hours equals 33,384 hours.) We estimate the average total cost per hour of the State-level staff who carry out this work to be $30.00 an hour. The total estimated cost for all States would be $1,001,520 ($30.00 × 33,384 hours = $1,001,520).

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action will not have a significant economic impact on a substantial number of small entities. The Secretary makes this certification because the only entities eligible to apply for grants are States, and States are not small entities.

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

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

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

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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

Dated: July 22, 2009.

Arne Duncan,

Secretary of Education.

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Appendix - Proposed Evidence and Performance Measures

The table below presents the proposed evidence and performance measures for each criterion, if any. For a Reform Plan Criterion, when evaluating applications, peer reviewers will consider the extent to which applicants set ambitious yet achievable annual targets. In addition, grantees will report annually on their actual performance compared to these targets.

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
Standards and Assessments								
(A)(1) Developing and adopting common standards	(i) For Phase 1 applications: The extent to which the State has demonstrated commitment to improving the quality of its standards by participating in a consortium of States that is working toward jointly developing and adopting, by June 2010, a common set of K-12 standards (as defined in this notice) that are internationally benchmarked and that build toward college and career readiness by the time of high school graduation, and the extent to which this consortium includes a significant number of States.	• A copy of the applicable Memorandum of Agreement among the States participating in the consortium, regarding the standards being developed and adopted. • The list of States participating in the consortium and a description of how the consortium is being led and managed. • A copy of the final standards, or if the standards are not yet final, a copy of the draft standards and anticipated date for completing and adopting the standards. • Documentation that the standards are internationally benchmarked and that, when well-implemented, will help to ensure that students are prepared for college and careers.	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
	(ii) For Phase 2 applications: Whether the State has demonstrated commitment to improving the quality of its standards by adopting, as part of a multi-State consortium, a common set of K-12 standards (as defined in this notice) that are internationally benchmarked and that build toward college and career readiness by the time of high school graduation, and the extent to which this consortium includes a significant number of States.	• A copy of the adopted standards and the State's relevant statutes or policies, if any. • The list of States that have adopted the same common set of K-12 standards (as defined in this notice). • Documentation that the standards are internationally benchmarked and that, when well-implemented, will help to ensure that students are prepared for college and careers.	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA
(A)(2) Developing and implementing common, high-quality assessments	Whether the State has demonstrated a commitment to improving the quality of its assessments by participating in a consortium of States that is working toward jointly developing and implementing common, high-quality assessments (as defined in this notice) aligned with the consortium's common set of K-12 standards (as defined in this notice) that are internationally benchmarked and that build toward college and career readiness by the time of high school graduation, and the extent to which this consortium includes a significant number of States.	Evidence for Phase 1 applications: • A statement of intention to join a consortium and to apply for a grant under the separate Race to the Top Standards and Assessments competition (to be described in a subsequent notice), or other evidence of the State's commitment to developing and adopting common, high-quality assessments (as defined in this notice). Evidence for Phase 2 applications: • A copy of the applicable Memorandum of Agreement among the States participating in the	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
		consortium, regarding the assessments being developed and implemented; • The list of States participating in the consortium and a description of how the consortium is being led and managed. • Documentation that the State's consortium has applied for a grant through the separate Race to the Top Standards and Assessments competition (to be described in a subsequent notice), or other evidence of the State's plan to develop and adopt common, high-quality assessments (as defined in this notice).						
(A)(3) Supporting transition to enhanced standards and high-quality assessments	The extent to which the State, in collaboration with its participating LEAs, has a high-quality plan for supporting a statewide transition to and implementation of (a) internationally benchmarked K-12 standards that build toward college and career readiness by the time of high school graduation, and (b) high-quality assessments (as defined in this notice) tied to these standards. State or LEA activities might include: aligning high school exit criteria and college	No minimum evidence specified here.	State may propose its own performance measure(s) here.					

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
	entrance requirements with the new assessments; developing, disseminating, and implementing curricular frameworks and materials, formative and interim assessments (as defined in this notice), and professional development materials; and engaging in other strategies that translate the standards and information from assessments into classroom practice.							
Data Systems to Support Instruction								
(B)(1) Fully implementing a statewide longitudinal data system	The extent to which the State has a statewide longitudinal data system that includes all of the elements specified in section 6401(e)(2)(D) of the America COMPETES Act (as defined in this notice).	A description of the extent to which the State's statewide longitudinal data system includes each element specified in section 6401(e)(2)(D) of the America COMPETES Act (as defined in this notice). (States that have submitted such information to the Department for other programs are welcome to indicate that they would like a specific previous submission to be used as evidence, or they may provide an updated submission.)	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA
(B)(2) Accessing and using State data	The extent to which the State has a high-quality plan to ensure that data from the State's statewide longitudinal data system are accessible to, and used to inform and engage, as	No minimum evidence specified here.	State may propose its own performance measure(s) here.					

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
	appropriate, key stakeholders (e.g., parents, students, teachers, principals, LEA leaders, community members, unions, researchers, and policymakers); that the data support decision-makers in the continuous improvement of instruction, operations, management, and resource allocation; and that they comply with the applicable requirements of the Family Educational Rights and Privacy Act (FERPA).							
(B)(3) Using data to improve instruction	The extent to which the State, in collaboration with its participating LEAs, has a high-quality plan to— (i) Increase the use of instructional improvement systems (as defined in this notice) that provide teachers, principals, and administrators with the information they need to inform and improve their instructional practices, decision-making, and overall effectiveness; and (ii) Make these data, together with statewide longitudinal data system data, available and accessible to researchers so that they have detailed information with which to evaluate the effectiveness of instructional	No minimum evidence specified here.	State may propose its own performance measure(s) here.					

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
	materials, strategies, and approaches for educating different types of students (e.g., students with disabilities, limited English proficient students, students whose achievement is well below or above grade level), in a manner that complies with the applicable requirements of FERPA.							
Great Teachers and Leaders								
(C)(1) Providing alternative pathways for aspiring teachers and principals	The extent to which the State has in place legal, statutory, or regulatory provisions that allow alternative routes to certification (as defined in this notice) for teachers and principals, particularly routes that allow for providers other than institutions of higher education; and the extent to which these routes are in use.	• A copy of the State's applicable statutes, regulations, or other relevant legal documents. • A list of the alternative certification programs operating in the State under the State's alternative certification routes (as defined in this notice), and the characteristics (as described in the alternative certification routes definition) of each program. • The number of teachers and principals that successfully completed each of these alternative certification programs in the previous academic year. • The total number of teachers and principals certified statewide in the previous year.	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
(C)(2) Differentiating teacher and principal effectiveness based on performance	The extent to which the State, in collaboration with its participating LEAs, has a high-quality plan and ambitious yet achievable annual targets to (a) determine an approach to measuring student growth (as defined in this notice); (b) employ rigorous, transparent, and equitable processes for differentiating the effectiveness of teachers and principals using multiple rating categories that take into account data on student growth (as defined in this notice) as a significant factor; (c) provide to each teacher and principal his or her own data and rating; and (d) use this information when making decisions regarding-	No minimum evidence specified here.	The number and percentage of teachers in participating LEAs who are effective teachers (as defined in this notice) The number and percentage of principals in participating LEAs who are effective principals (as defined in this notice)					
	(i) Evaluating and developing teachers and principals, including by providing timely and constructive feedback and targeted professional development;	No minimum evidence specified here.	Effectiveness information is used as a significant factor when making evaluation decisions - By what number and percentage of LEAs in the State - For what number and percent of					

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
			teachers in participating LEAs - For what number and percent of principals in participating LEAs					
	(ii) Compensating and promoting teachers and principals, including by providing opportunities for teachers and principals who are highly effective (as defined in this notice) to obtain additional compensation and responsibilities; and	No minimum evidence specified here.	Effectiveness information is used as a significant factor when making compensation decisions - By what number and percent of LEAs - For what number and percent of teachers in participating LEAs - For what number and percent of principals in participating LEAs					

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
	(iii) Granting tenure to and dismissing teachers and principals, based on rigorous and transparent procedures for awarding tenure (where applicable) and for removing tenured and untenured teachers and principals after they have had ample opportunities to improve but have not done so.	No minimum evidence specified here.	Effectiveness information is used as a significant factor when making tenure decisions - By what number and percent of LEAs - For what number and percent of teachers in participating LEAs - For what number and percent of principals in participating LEAs					
			Effectiveness information is used as a significant factor when making dismissal decisions - By what number and percent of LEAs - For what number and percent of teachers in participating LEAs					

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
			- For what number and percent of principals in participating LEAs					
(C)(3) Ensuring equitable distribution of effective teachers and principals	The extent to which the State has a high-quality plan and ambitious yet achievable annual targets to increase the number and percentage of effective teachers and principals (as defined in this notice) in high-poverty schools (as defined in this notice), and to increase the number and percentage of effective teachers (as defined in this notice) teaching hard-to-staff subjects including mathematics, science, special education, English language proficiency, and other hard-to-staff subjects identified by the State or LEA. Plans may include, but are not limited to, the implementation of incentives and strategies in areas such as recruitment, compensation, career development, and human resources practices and processes.	No minimum evidence specified here.	• The number and percentage of teachers in high-poverty schools (as defined in this notice) who are effective teachers (as defined in this notice). • The number and percentage of principals in high-poverty schools (as defined in this notice) who are effective principals (as defined in this notice). • The number and percentage of science teachers who are effective teachers (as defined in this notice). • The number and					

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
			percentage of teachers of mathematics who are effective teachers (as defined in this notice).					
(C)(4) Reporting the effectiveness of teacher and principal preparation programs	The extent to which the State has a high-quality plan and ambitious yet achievable annual targets to link a student's achievement data to the student's teachers and principals, to link this information to the programs where each of those teachers and principals was prepared for credentialing, and to publicly report the findings for each credentialing program that has twenty or more graduates annually.	No minimum evidence specified here.	• The number and percentage of teachers in the State whose data are aggregated to produce publicly available reports on the State's credentialing programs. • The number and percentage of principals in the State whose data are aggregated to produce publicly available reports on the State's credentialing programs. • The number and percentage of teacher credentialing programs in the State for which the information					

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
			(as described in the criterion) is publicly reported. • The number and percentage of principal credentialing programs in the State for which the information (as described in the criterion) is publicly reported.					
(C)(5) Providing effective support to teachers and principals	The extent to which the State, in collaboration with its participating LEAs, has a high-quality plan to use rapid-time (as defined in this notice) student data to inform and guide the support provided to teachers and principals (e.g., professional development, time for common planning and collaboration) in order to improve the overall effectiveness of instruction; and to continuously measure and improve both the effectiveness and efficiency of those supports.	No minimum evidence specified here.	State may propose its own performance measure(s) here.					

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
Turning Around Struggling Schools								
(D)(1) Intervening in the lowest-performing schools and LEAs	The extent to which the State has the legal, statutory, or regulatory authority to intervene directly in the State's persistently lowest-performing schools (as defined in this notice) and in LEAs that are in improvement and corrective action status.	• A description of the State's intervention authority and a copy of the State's applicable statutes, regulations, or other relevant legal documents.	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA
(D)(2) Increasing the supply of high-quality charter schools	(i) The extent to which the State has a charter school law that does not prohibit or effectively inhibit increasing the number of charter schools in the State (as measured by the percentage of total schools in the State that are allowed to be charter schools) or otherwise restrict student enrollment in charter schools.	• A description of the State's charter school laws and a link or citation to the relevant statutory or regulatory sections. • The number and types of charter schools currently operating in the State.	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA
	(ii) The extent to which the State has statutes and guidelines regarding how charter school authorizers approve, monitor, hold accountable, reauthorize, and close charter schools, including the extent to which such statutes or guidelines require that student academic achievement be a factor in such activities and decisions, and the extent to which charter school	• A description of the State's approach to charter school accountability and authorization, and a copy of the State's applicable statutes, regulations, or other relevant documents. • The charter schools authorizers' historic performance on accountability, as evidenced by the number of charter schools that have been closed or not renewed annually for each of the	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
	authorizers in the State have closed or not renewed ineffective charter schools.	last five years, and the reasons for each of these closures.						
	(iii) The extent to which the State's charter schools receive equitable funding, compared to traditional public schools, and a commensurate share of local, State, and Federal program and revenue sources.	• A copy of the State's applicable statutes, regulations, or other relevant legal documents. • A description of the State's approach to charter school funding, the amount of funding passed through to charter schools per student, and how those amounts compare with traditional public school per-student funding allocations.	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA
	(iv) The extent to which the State provides charter schools with facilities funding (for leasing facilities, purchasing facilities, or making tenant improvements), assistance with facilities acquisition, access to public facilities, the ability to share in bonds and mill levies, or other supports; and the extent to which the State does not impose any facility-related requirements on charter schools that are stricter than those applied to traditional public schools.	• A copy of the State's applicable statutes, regulations, or other relevant legal documents. • A description of the statewide facilities supports provided to charter schools, if any.	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
(D)(3) Turning around struggling schools	The extent to which the State has a high-quality plan and ambitious yet achievable annual targets to (i) identify at least the lowest-achieving five percent of the persistently lowest-performing schools (as defined in this notice) or the lowest-achieving five schools, whichever number is larger; and (ii) support its LEAs in turning around these schools by— • Putting in place new leadership and a majority of new staff, new governance, and improved instructional programs, and providing the school with flexibilities such as the ability to select staff, control its budget, and expand the learning time; or • Converting them to charter schools or contracting with an education management organization (EMO); or • Closing the school and placing the school's students in high-performing schools; or • To the extent that these strategies are not possible, implementing a school transformation model that includes: hiring a new principal, measuring teacher and principal effectiveness (as defined in this	• The State's historic performance on school turnaround, as evidenced by the total number of Title I schools in restructuring in each of the last five years; and of this total number of schools- • The number each year that have been turned around with new leadership and a majority of new staff and new governance; • The number that have been turned around through conversion to charter schools, CMO-operated schools, or EMO-operated schools; and • The number that have been closed and the students placed in high-performing schools.	The number of schools - from among the lowest-performing five percent of schools (or five schools, whichever number is larger) in improvement, correction action, or restructuring in the State - for which one of the three school transformation strategies described in the criterion will be implemented each year.					

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
	notice), rewarding effective teachers and principals (as defined in this notice), and improving strategies for recruitment, retention, and professional development; implementing comprehensive instructional reform, including an improved instructional program and differentiated instruction; and extending learning time and community-oriented supports, including more time for students to learn and for teachers to collaborate, more time for enrichment activities, and on-going mechanisms for family and community engagement.							
Overall Selection Criteria								
(E)(1) Demonstrating significant progress	The extent to which the State has, over the past several years-- (i) Made progress to date in each of the four education reform areas	A description, by education reform area, of the State's goals, activities and Reform Conditions.	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA
	(ii) Used ARRA and other Federal and State funding to pursue reforms in these areas	A description of how the State has used these funding sources to accomplish its education reform goals. [Footnote: As stated in "Modifications to Questions in the April 2009 Guidance on the State Fiscal Stabilization Fund Program" issued by the Department	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
		on May 11, 2009 (http://www.ed.gov/programs/state stabilization/guidance-mod-05112009.pdf), the Department discourages the use of either Education Stabilization funds or Government Services funds for new construction. If the State has used funds for this purpose, please describe.]						
	(iii) Created, through law or policy, conditions favorable to education reform and innovation	A description of laws or policies (in addition to those highlighted in the State Reform Conditions Criteria) that the State believes have helped create the conditions for education innovation and reform.	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA
	(iv) Increased student achievement and decreased the achievement gap, as reported on the National Assessment of Educational Progress (NAEP) since 2003; and increased graduation rates.	A description of the successes and challenges the State has had over the past several years in increasing student achievement and graduation rates while narrowing the achievement gap.	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA
(E)(2) Making education funding a priority	The extent to which the percentage of the total revenues available to the State (as defined in this notice) that were used to support elementary, secondary, and public higher education for FY 2009 was greater than or equal to the percentage	Financial data to show whether and to what extent expenditures, as a percentage of the total revenues available to the State (as defined in this notice), increased, decreased, or remained the same.	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
	of the total revenues available to the State (as defined in this notice) that were used to support elementary, secondary, and public higher education for FY 2008.							
(E)(3) Enlisting statewide support and commitment	The extent to which the State has demonstrated commitment, support, and/or funding from the following key stakeholders: (i) The State's teachers' union(s) and charter school authorizers.	Letters of strong commitment.	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA
	(ii) Other State and local leaders (e.g., business, community, civil rights, and education association leaders).	Letters of commitment or support.	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA
	(iii) Grant-making foundations and other funding sources.	Letters of commitment, support, or funding.	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
	(iv) LEAs, including public charter schools identified as LEAs under State law, with special emphasis on the following: high-need LEAs (as defined in this notice); participation by LEAs, schools, students, and students in poverty; and the strength of the Memoranda of Understanding between LEAs and the State, which must at a minimum be signed by the LEA superintendent (or equivalent), the president of the local school board (if relevant), and the local teachers' union leader (if relevant).	• The list of LEAs participating with the State in the application. • The number and percentage of the State's LEAs that are participating, the number and percentage of the State's K-12 public schools represented by these LEAs, the number and percentage of the State's K-12 public school students represented by these LEAs, and the number and percentage of the State's K-12 public school students in poverty (based on eligibility for free or reduced-price lunches, or other poverty measures that the State permits the LEAs to use) represented by these LEAs. • For each participating LEA, the Memorandum of Understanding signed by the superintendent (or equivalent), the president of the school board (if relevant), and the teachers' union leader (if relevant), demonstrating strong support and affirming their respective commitments to the goals, activities, timelines, and annual targets outlined in the State's plan. (Note: If the Memoranda of Understanding (MOU) signed by the LEAs are similar, the State may submit an example	Not applicable - this criterion is about past State Reform Conditions, not future plans.	NA	NA	NA	NA	NA

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
		of the Memorandum along with a list including at least the following information for each participating LEA: the name of the LEA, the name and title of each signatory on the MOU, and a description of any differences in the Memorandum from the submitted example.)						
(E)(4) Raising achievement and closing gaps	(i) Achievement gains: The extent to which the State has set ambitious yet achievable targets for increasing its students' achievement results overall and by student subgroup (as described in section 303(b)(2)(G) of the National Assessment of Educational Progress Authorization Act) in reading and mathematics, as reported by the NAEP; annual targets using other assessments may be submitted as well.	• An estimate of the State's expected levels of future performance on the NAEP were the State not to receive funds under this program.	State NAEP scale score in 4th and 8th grade reading and math. [In addition, attach a separate sheet for targets for each student subgroup reported by the NAEP for the State. Indicate how your State addresses students with disabilities and students with limited English proficiency.] [In addition, attach a separate sheet, as desired, for any other tests or					

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
			subject areas on which the State plans to report.]					
	(ii) Gap closing: The extent to which the State has set ambitious yet achievable targets for decreasing the reading and mathematics achievement gaps between subgroups (as described in section 303(b)(2)(G) of the National Assessment of Educational Progress Authorization Act), as reported, at a minimum, by the NAEP; annual targets using other assessments may be submitted as well.	No minimum evidence specified here.	[The Department will use the information provided in (E)(4)(i) to calculate gap closing.]					
	(iii) Graduation rate: The extent to which the State has ambitious yet achievable annual targets for increasing graduation rates (as defined in this notice) overall and by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA).	• An estimate of the State's expected future graduation rates were the State not to receive funds under this program.	Overall Statewide graduation rate (as described in the criterion) [In addition, attach a separate sheet for annual targets by student subgroup]					
(E)(5) Building strong statewide capacity to implement,	The extent to which the State has a high-quality overall plan that demonstrates how it has, and will continue to build, the capacity to-- (i) Effectively and	• A description of how the State's past performance supports the credibility of its plan.	State may propose its own performance measure(s) here.					

Reference	Proposed Selection Criteria	Minimum Proposed Evidence	Proposed Performance Measures	Annual Targets (Applicant to complete)				
				Current School Year (SY)	End of SY '10-11	End of SY '11-12	End of SY '12-13	Grant End-SY '13-14
scale and sustain proposed plans	efficiently oversee the grant, including administering and disbursing funds, and, if necessary, taking appropriate enforcement actions to ensure that participating LEAs comply with the State's plan and program requirements; (ii) Support the success of participating LEAs, ensure the dissemination of effective practices, and hold participating LEAs accountable for progress; (iii) Use the economic, political, and human capital resources of the State to continue the reforms funded under the grant after the period of funding has ended; (iv) Collaborate with other States on key elements of or activities in the State's application; and (v) Coordinate, reallocate, or repurpose education funds from other sources to align with the State's Race to the Top goals, as outlined in its plans.							

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BILLING CODE 4000–01–C

DEPARTMENT OF EDUCATION

[Docket ID ED–2009–OESE–0007]

RIN 1810–AB04

State Fiscal Stabilization Fund Program

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.394 (Education Stabilization Fund) and 84.397 (Government Services Fund).

AGENCY: Department of Education.

ACTION: Notice of proposed requirements, definitions, and approval criteria.

SUMMARY: The Secretary of Education (Secretary) proposes requirements, definitions, and approval criteria for the State Fiscal Stabilization Fund (Stabilization) program. The Secretary may use one or more of these requirements, definitions, and approval criteria in awarding funds under this program in fiscal year (FY) 2010. The requirements, definitions, and approval criteria proposed in this notice are based on the assurances regarding education reform that grantees are required to provide in exchange for receiving funds under the Stabilization program. We take this action to specify the data and information that grantees must collect and report with respect to those assurances and to help ensure grantees' ability to collect and report the required data and information.

DATES: We must receive your comments on or before August 28, 2009.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID and the term ''State Fiscal Stabilization Fund'' at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed requirements, definitions, and approval criteria, address them to Office of Elementary and Secondary Education (Attention: State Fiscal Stabilization Fund Comments), U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E108, Washington, DC 20202–6200.
- *Privacy Note:* The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: James Butler. Telephone: (202) 260–2274 or by e-mail: *phase2comments@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

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

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

During and after the comment period, you may inspect all public comments about this notice by accessing Regulations.gov. You may also inspect the public comments in person in Room 3E108, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC, time, Monday through Friday of each week except Federal holidays.

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

Purpose of Program: The State Fiscal Stabilization Fund program provides approximately $48.6 billion in formula grants to States to help stabilize State and local budgets in order to minimize and avoid reductions in education and other essential services, in exchange for a State's commitment to advance essential education reform in key areas.

Program Authority: American Recovery and Reinvestment Act of 2009, Division A, Title XIV—State Fiscal Stabilization Fund, Public Law 111–5.

Proposed Requirements

Note: The proposed requirements are listed following the background for this section.

Background: Section 14005(d) of Division A of the American Recovery and Reinvestment Act of 2009 (ARRA) requires a State receiving funds under the Stabilization program to provide assurances in four key areas of education reform: (a) Achieving equity in teacher distribution, (b) improving collection and use of data, (c) standards and assessments, and (d) supporting struggling schools. For each area of reform, the ARRA prescribes specific action(s) that the State must assure that it will implement. In addition, section 14005(a) of the ARRA requires a State that receives funds under the Stabilization program to submit an application to the Department containing such information as the Secretary may reasonably require. In this notice, we propose specific data and information requirements (the assurance indicators and descriptors) that a State receiving funds under the Stabilization program must meet with respect to the statutory assurances. We also propose specific requirements for a plan that a State must submit (the State plan), as part of its application for the second phase [1] of funding under the Stabilization program, describing its ability to collect and report the required

[1] The Department is awarding Stabilization program funds in two phases. In the first phase, the Department is awarding 67 percent of a State's Education Stabilization Fund allocation, unless the State can demonstrate that additional funds are required to restore fiscal year 2009 State support for education, in which case the Department will award the State up to 90 percent of that allocation. In addition, the Department will award 100 percent of each State's Government Services Fund allocation in Phase I. The Department will award the remainder of a State's Education Stabilization Fund allocation in the second phase. A table listing the allocations to States under the Stabilization program is available at: *http://www.ed.gov/programs/statestabilization/funding.html.*