

(2) [The text of the proposed amendments to § 1.1001-3(e)(5)(ii)(B)(2) is the same as the text of § 1.1001-3T(e)(5)(ii)(B)(2) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(g) * * *

Example 1. [The text of the proposed amendments to § 1.1001-3(g) *Example 1* is the same as the text of § 1.1001-3T(g) *Example 1* published elsewhere in this issue of the **Federal Register**.]

* * * * *

Example 5. [The text of the proposed amendments to § 1.1001-3(g) *Example 5* is the same as the text of § 1.1001-3T(g) *Example 5* published elsewhere in this issue of the **Federal Register**.]

* * * * *

Example 8. [The text of the proposed amendments to § 1.1001-3(g) *Example 8* is the same as the text of § 1.1001-3T(g) *Example 8* published elsewhere in this issue of the **Federal Register**.]

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 9. The authority citation for part 48 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 10. Section 48.4101-1 paragraphs (f)(4)(ii)(B) and (l)(5) are revised to read as follows:

§ 48.4101-1 Taxable fuel; registration.

* * * * *

(f) * * *

(4) * * *

(ii) * * *

(B) [The text of the proposed amendments to § 48.4101-1(f)(4)(ii)(B) is the same as the text of § 48.4101-1T(f)(4)(ii)(B) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(l) * * *

(5) [The text of the proposed amendments to § 48.4101-1(l)(5) is the same as the text of § 48.4101-1T(l)(5) published elsewhere in this issue of the **Federal Register**.]

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011-16857 Filed 7-1-11; 11:15 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-101826-11]

RIN 1545-BK04

New Markets Tax Credit Non-Real Estate Investments; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG-101826-11) that was published in the **Federal Register** on Tuesday, June 7, 2011 (76 FR 32882) modifying the new markets tax credit program to facilitate and encourage investments in non-real estate businesses in low-income communities.

FOR FURTHER INFORMATION CONTACT: Julie Hanlon-Bolton, (202) 622-3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 45D of the Internal Revenue Code.

Need for Correction

As published, a notice of proposed rulemaking (REG-101826-11) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG-101826-11), which was the subject of FR Doc. 2011-13978, is corrected as follows:

1. On page 32883, column 2, in the preamble, under the paragraph heading “General Overview”, second paragraph of the column, fourth line, the language “nonprofit corporation) or partnership if” is corrected to read “nonprofit corporation) or partnership, if”.

2. On page 32883, column 3, in the preamble, under the paragraph heading “Explanation of Provisions”, first paragraph of the column, second line, the language “amortizing loans) reinvest those” is corrected to read “amortizing loans) reinvest those”.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2011-16825 Filed 7-5-11; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF EDUCATION

34 CFR Subtitles A and B

[Docket ID ED-2011-OGC-0004]

Reducing Regulatory Burden; Retrospective Review Under E.O. 13563

AGENCY: Department of Education.

ACTION: Request for information.

SUMMARY: The U.S. Department of Education (the Department) requests comments on its preliminary plan for the retrospective analysis of its existing regulations as part of its implementation of Executive Order 13563 “Improving Regulation and Regulatory Review.” The purpose of this preliminary plan is to make the Department’s regulatory program more effective and less burdensome in achieving the Department’s regulatory objectives. The plan, once final, will establish the Department’s policy for conducting thorough and meaningful retrospective reviews and analyses of its regulations on an ongoing basis. The Department requests public comment on this preliminary plan to help the Department review its significant existing regulations in order to determine whether any of these regulations should be modified, streamlined, expanded, or repealed.

In addition, pursuant to the “President’s Memorandum on Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments,” we request comments (including, when applicable, from students, their parents, and consumer and taxpayer representatives) on possible administrative flexibility that the Department may be able to provide to State, local, and tribal governments.

DATES: We must receive your comments on or before July 25, 2011.

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—Docket ID ED-2011-OGC-0004—at the top of your comments.

• *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your comments. Information on using Regulations.gov, including instructions for finding a notice, submitting a comment, finding a comment, and signing up for e-mail alerts, is available

on the site under “How to Use Regulations.gov” in the Help section.

- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments, address them to Elizabeth McFadden, Deputy General Counsel for Ethics, Legislative Counsel, and Regulatory Services, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E300, Washington, DC 20202–2110.

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: Elizabeth McFadden, Deputy General Counsel for Ethics, Legislative Counsel, and Regulatory Services, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–2110. Telephone: 202–401–6000. You may also e-mail your questions to: Reg-Review@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.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or computer diskette) by contacting the person listed under this section.

To view Executive Order 13563 go to: <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

To view the “President’s Memorandum on Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments,” go to: <http://www.whitehouse.gov/the-press-office/2011/02/28/presidential-memorandum-administrative-flexibility>.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding the preliminary plan, which is published in its entirety as an Appendix to this notice, and possible administrative flexibility that the Department may be able to provide to State, local, and tribal governments. Please let us know of any further opportunities we should take to improve any of our regulations by modifying, streamlining, expanding, or

repealing them or to provide additional flexibility to entities that receive Department funds.

During and after the comment period, you may inspect all public comments on this notice by accessing Regulations.gov. You may also inspect the comments, in person, in room 6E300, 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. If you want to schedule an appointment to review the comments in person, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals With Disabilities in Reviewing the Public Docket

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public docket for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

Retrospective Review

On January 18, 2011, President Obama issued Executive Order 13563 (published in the **Federal Register** on January 21, 2011 (76 FR 3821)), which directs agencies to conduct a retrospective analysis of existing significant regulations and to modify, streamline, expand, or repeal those regulations that are outmoded, ineffective, insufficient, or excessively burdensome. Executive Order 13563 supplements and reaffirms the principles of regulatory review enunciated in Executive Order 12866, “Regulatory Planning and Review” (published in the **Federal Register** on November 4, 1993 (58 FR 51735)). Some of these principles are that our regulatory system must: (1) Promote economic growth, innovation, competitiveness, and job creation; (2) be based on the best available science; (3) allow for meaningful public participation; (4) consider costs and benefits; (5) promote predictability; and (6) ensure that regulations are accessible and easy to understand. In order to advance these principles, Executive Order 13563 requires agencies to develop and implement a plan for periodically reviewing their existing significant regulations.

Section 6(b) of Executive Order 13563 directs each agency to develop and submit to the Office of Management and

Budget’s (OMB) Office of Information and Regulatory Affairs a preliminary plan for reviewing existing significant regulations in order to determine whether any such regulations should be modified, streamlined, expanded, or repealed.

The Department developed a preliminary plan and submitted it to OMB on May 18, 2011. The preliminary plan addresses our plan to review existing significant regulations (and significant guidance documents and existing information collections—to the extent they are associated with existing regulations), and priorities, requirements, definitions, and selection criteria governing discretionary grant programs that are established through rulemaking but that are not codified in the Code of Federal Regulations. More specifically, the plan (1) lists the factors and processes the Department proposes to use to set priorities for the retrospective review of its regulations; (2) identifies an initial list of existing regulations that are candidates for review; (3) explains how the Department intends to coordinate with other Federal agencies that have overlapping jurisdiction or similar interests; and (4) sets forth the proposed components of its retrospective cost-benefit analysis. Through this notice, we request public comment on these particular elements of the preliminary plan as well as all other aspects of the plan. We will consider the feedback we receive through this process when formulating a final retrospective review plan and establishing processes for ongoing review at the Department.

The preliminary plan is included in the Appendix to this notice and is also available on the Department’s Open Government Web site at <http://www.ed.gov/open>.

Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments

On February 28, 2011, the President issued a memorandum to Federal agencies entitled “Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments.” This memorandum requires Federal agencies to report to OMB on actions taken and plans to offer greater flexibility, where it will yield improved outcomes at lower cost, in Federal programs administered by State, local, and tribal governments.

To implement the President’s directive in the memorandum, the Department is working to identify administrative, regulatory, and legislative barriers that currently prevent States, localities, and tribes

from efficiently and effectively using Federal funds to achieve program objectives. We are in the process of identifying a number of high-impact areas in which efforts to increase flexibility and reduce costs could have broad implications for a wide set of stakeholders. Potential actions under consideration include offering additional waiver options that would provide regulatory relief on key provisions, simplifying redundant or overlapping data requirements, providing a better and more transparent process for considering State requests to waive requirements to maintain fiscal effort, and improving interagency collaboration in such areas as early learning, workforce development, and place-based initiatives such as Promise Neighborhoods, which may offer opportunities for achieving additional cross-agency efficiencies.

We would appreciate responses to the following questions:

(1) What administrative, regulatory, and statutory requirements could be changed to help reduce costs and unnecessary burdens, spur innovation, and improve student or program outcomes?

(2) What regulatory requirements should the Department consider waiving, subject to statutory waiver authority?

(3) Should the Department streamline the application and approval process for waivers and, if so, how?

(4) Where could the Department reduce current reporting requirements that are not necessary or useful in measuring program performance, facilitating data-driven program improvements, or ensuring the proper use of taxpayer dollars? Where are there opportunities to consolidate or streamline data collection or submission requirements?

(5) How can the Department streamline or modify the procedures that we use for processing requests for waivers of maintenance-of-effort (MOE) requirements to make them more transparent and uniform across programs with MOE requirements and reduce unnecessary reporting for States?

(6) What cross-agency flexibility or alignment is needed to allow States, local, and tribal governments to improve their early learning, workforce, and place-based efforts? (This could include consideration of how we might provide additional flexibility in such areas as performance measurement, application requirements, or uses of funds, or might encourage cross-agency funding opportunities, etc.)

(7) What flexibility can the Department offer to help facilitate

collaboration at and across the State, local, and tribal levels?

(8) Where could increased flexibility drive the most improvements in program and student outcomes?

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: <http://www.gpo.gov/fdsys>. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: <http://www.federalregister.gov>. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 29, 2011.

Arne Duncan,
Secretary of Education.

United States Department of Education

Preliminary Plan for Retrospective Analysis of Existing Rules

May 18, 2011.

I. Executive Summary of Preliminary Plan and Compliance With Executive Order 13563

Executive Order 13563 (Executive Order) recognizes the importance of maintaining a consistent culture of retrospective review and analysis throughout the executive branch. Determining the costs and benefits of a regulation before it is implemented is a challenging task and it often cannot be accomplished with perfect precision. The U.S. Department of Education's (ED) plan is designed to create a defined policy, method, and schedule for identifying certain significant rules that may be outmoded, ineffective, insufficient, or excessively burdensome. The review processes described in this plan are intended to facilitate the identification of regulations that warrant repeal or modification, or the strengthening, complementing, or modernizing of regulations, where necessary or appropriate.

II. Scope of Plan

a. *Background:* ED supports States, local communities, institutions of higher education, and others in

improving education nationwide and in helping to ensure that all Americans receive a quality education. We provide leadership and financial assistance pertaining to education at all levels to a wide range of stakeholders and individuals, including State educational agencies, early childhood programs, elementary and secondary schools, institutions of higher education, career and technical schools, nonprofit organizations, members of the public, and many others. These efforts are helping to ensure that all students will be ready for college and careers, and that all K–12 students have an open path towards postsecondary education. We also vigorously monitor and enforce the implementation of Federal civil rights laws in education programs and activities that receive Federal financial assistance, and support innovation, research, evaluation, and dissemination of findings to improve the quality of education. Overall, the programs we administer affect nearly every American during his or her life.

In developing and implementing regulations, guidance, technical assistance, and approaches to compliance related to our programs, we are guided by the following three principles. First, we are committed to working closely with affected persons and groups. Specifically, we work with a broad range of interested parties and the general public, including parents, students, and educators; State, local, and tribal governments; and neighborhood groups, schools, colleges, rehabilitation service providers, professional associations, advocacy organizations, businesses, and labor organizations.

Secondly, we are committed to ensuring our regulations are concise and minimize burden to the greatest extent possible while still helping ensure the achievement of program outcomes. And finally, we continue to seek greater and more useful public participation in our rulemaking activities through the use of transparent and interactive rulemaking procedures and new technologies. If we determine that it is necessary to develop regulations, we seek public participation at all key stages in the rulemaking process.

These three guiding principles will be incorporated fully into our retrospective analyses of ED regulations.

b. *List all subagencies within the Department that are included in this plan:*

The following offices within ED are included in this plan:

Office of the Secretary
Office of the Deputy Secretary

Office of the Under Secretary
 Office of the Chief Financial Officer
 Office of the Chief Information Officer
 Office of Management
 Office of Elementary and Secondary Education
 Office of Postsecondary Education
 Office of Federal Student Aid
 Office of English Language Acquisition
 Office of Special Education and Rehabilitative Services, including the Office of Special Education Programs, the National Institute on Disability and Rehabilitation Research, and the Rehabilitation Services Administration
 Office of Inspector General
 Office of Innovation and Improvement
 Office of Safe and Drug-Free Schools
 Office of Vocational and Adult Education
 Office of the General Counsel
 Office for Civil Rights
 Office of Planning, Evaluation, and Policy Development

c. The following types of documents are covered under this plan:

- Existing regulations
- Significant guidance documents (to the extent they are associated with existing regulations)
- Existing information collections (to the extent they are associated with existing regulations)
- Priorities, requirements, definitions, and selection criteria governing discretionary grant programs that are established through rulemaking but are not codified in the Code of Federal Regulations¹

III. Public Access and Participation

*a. Did the agency publish a notice in the **Federal Register** seeking public input on developing plans? If yes, please provide a link to the notice.*

No. However, ED will soon be publishing a notice requesting public comment on our preliminary plan in the **Federal Register** and posting it on our Open Government Web site. Through these notices, and pursuant to the President's Memorandum on Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments, ED will solicit feedback (including, when applicable, from students, their parents, and consumer and taxpayer representatives) on possible administrative flexibilities that ED may be able to provide to State, local, and tribal governments; non-profit organizations; institutions of higher

education; community-based organizations; and other entities that receive funds under our programs. ED believes it will receive more meaningful feedback from the public and stakeholders by providing a specific draft plan for retrospective review and by including in that notice questions on possible administrative flexibilities that may be accomplished through regulatory revisions as well as through other methods. ED also intends to solicit this feedback on an ongoing basis through meetings with stakeholders.

b. Brief summary of public comments to notice seeking input: N/A.

c. Did the agency reach out to the public in addition to the public notice? N/A.

IV. Current Agency Efforts Already Underway Independent of E.O. 13563

a. Summary of pre-existing agency efforts (independent of E.O. 13563) to conduct retrospective analysis of existing rules:

ED has long been committed to ensuring that its regulations are reviewed and updated as necessary and appropriate. As outlined each year in ED's Regulatory Plan,² and through consistent application of the key principles outlined below, we have eliminated unnecessary regulations and identified situations in which major programs could be implemented without regulations or with limited regulatory action.

In deciding when to regulate, we consider:

- Whether regulations are essential to promote quality and equality of opportunity in education;
- Whether a demonstrated problem can be resolved without regulation;
- Whether regulations are necessary in order to provide a legally binding interpretation that resolves ambiguity;
- Whether entities or situations subject to regulation are so diverse that a uniform approach through regulation would do more harm than good; and
- Whether regulations are needed to protect the Federal interest; that is, to ensure that Federal funds are used for their intended purpose and to eliminate fraud, waste, and abuse.

In deciding how to regulate, we are mindful of the following principles:

- Regulate no more than necessary;
- Minimize burden to the extent possible, and promote multiple approaches to meeting statutory requirements when possible;
- Encourage coordination of federally funded activities with State and local reform activities;

- Ensure that the benefits justify the costs of regulating;

- To the extent possible, establish performance objectives rather than specify compliance behavior; and

- Encourage flexibility, to the extent possible, so institutional forces and incentives achieve desired results.

Additionally, we routinely review the priorities and requirements governing our discretionary grant competitions following the completion of those competitions to determine whether changes should be made for future competitions.

Over the past two years, and operating under these principles, we have engaged in retrospective review of several key regulations that required updating to reflect changes in the authorizing statute, Administration priorities, or ED policies. We also began the process of developing a broader plan for a retrospective review of our regulations. Some examples of those efforts are as follows:

- ED recently reviewed and revised its Freedom of Information Act (FOIA) regulations to implement changes made to FOIA in recent years. These amended regulations also took into account public guidance regarding FOIA issued by the White House and the Department of Justice. The revised regulations articulate more clearly to the public how ED processes FOIA requests for publicly available records, thereby promoting equality of opportunity and decreasing ambiguity.

- In 2009 and 2010, ED reviewed and subsequently modified, following notice and public comment, its Education Department Acquisition Regulations (EDAR) to bring those regulations into alignment with changes to the Federal Acquisition Regulations. These modifications will increase the efficiency with which ED manages contracts.

- Upon reauthorization of the Federal TRIO discretionary grant programs in the Higher Education Opportunity Act of 2008, ED reviewed its existing TRIO regulations and conducted negotiated rulemaking in 2009 and 2010 to comprehensively update and amend the regulations governing these programs. These amended regulations will help ensure that Federal funds are used for their intended purpose and resolve ambiguity for potential applicants, thereby ensuring that all eligible applicants have an opportunity to participate in the program.

- Over the past two years, ED reviewed and revised a number of program integrity regulatory provisions associated with the Federal student aid programs authorized under Title IV of

¹ When referring to the review of regulations throughout this plan, that review includes review of significant guidance documents and information collections associated with the regulations under review.

² See U.S. Department of Education, Statement of Regulatory Priorities, 75 FR 79509 (Dec. 20, 2010).

the Higher Education Act of 1965, as amended (HEA). ED conducted this review in recognition of the fact that the student financial aid programs have grown dramatically in recent years, placing significantly more taxpayer funding at risk. In response to this dramatic growth in aid, we tightened our regulatory requirements in some areas (*e.g.*, misrepresentation, State authorization, credit hours, and incentive compensation) while relaxing them in others (*e.g.*, verification). This balanced approach, combined with our work on the “gainful employment” issue, will allow for additional growth in the aid programs while ensuring that we have appropriate safeguards in place to protect taxpayer funds.

- In January 2011, ED successfully completed its 2010 Burden Reduction Initiative to reduce Free Application for Federal Student Aid (FAFSA) burden by at least five percent. In fact, ED decreased the FAFSA burden by 5,405,813 hours, or more than 14 percent. As part of accomplishing this impressive burden reduction, ED also realized the other goals included as part of the initiative: (a) Consolidation of the FAFSA and SAR into one ICR to better reflect that the two are part of one business process—applying for Federal student financial aid; and (b) Simplifying the application experience for student aid applicants by shortening completion times, primarily through the use of improved technology such as “skip and assumption logic.”

- In preparation for conducting a retrospective review of ED’s regulations, we have reviewed plans and strategies used by other agencies, journal articles, and Administrative Conference of the United States (ACUS) Recommendation 95–3, “Review of Existing Agency Regulations.” We also began considering methods for determining which regulations should be reviewed, strategies for engaging senior leadership, and how best to allocate resources for such a review.

b. *What specific rules, if any, were already under consideration for retrospective analysis?*

Prior to issuance of the Executive Order, and in establishing ED’s regulatory priorities for 2011, we identified several specific regulations for retrospective review and determined that, based on that review, further amendments to these regulations are necessary. These regulations are as follows:

- *The Federal Family Education Loan (FFEL) program regulations in 34 CFR part 682 and the William D. Ford Federal Direct Loan (Direct Loan) program regulations in 34 CFR part 685.*

In the SAFRA Act, Title II of the Health Care and Education Reconciliation Act of 2010, Congress ended the making of new loans in the FFEL program, effective July 1, 2010. As a result, the Direct Loan program has expanded to be the single source of new Federal student loans. ED is evaluating to what extent some of the FFEL program regulations are no longer needed and what changes are needed within the Direct Loan program regulations to improve efficiency and modernize the operations of that program. ED has begun the negotiated rulemaking process for these regulations.

- *Regulations in 34 CFR parts 607, 608, 609, 628, and 637, governing the institutional development programs authorized by Titles III and V of the HEA.* These regulations govern existing discretionary grant programs for minority-serving institutions. The Higher Education Opportunity Act of 2008 and the SAFRA Act created several new programs for minority-serving institutions; these new programs, however, are not covered by the existing regulations. We need to review and amend the existing regulations in order to streamline them across the different programs, to the extent feasible, and to ensure that they cover the newly authorized programs. Through these amendments, we plan to simplify the application process, thereby reducing burden on potential applicants.

- *ED’s regulations governing its direct grant and State-administered grant programs in 34 CFR parts 74 through 99, also known as the Education Department General Administrative Regulations (EDGAR).* Over the last several years, we have identified provisions within these regulations that are obsolete or that require updating to take into account developments in technology and streamlined application submission processes, thereby reducing burden on our applicants and grantees. Additionally, in implementing several new grant programs under the American Recovery and Reinvestment Act of 2009 (ARRA), we have identified key provisions in EDGAR that require substantive changes to improve transparency and improve the efficiency of our grant-making functions.

- *Regulations in 34 CFR part 99 regarding the Family Educational Rights and Privacy Act (FERPA).* On April 8, 2011, ED issued a notice of proposed rulemaking to amend these regulations. These proposed amendments are necessary to ensure that ED’s implementation of FERPA continues to protect the privacy of education records, as intended by Congress, while allowing for the effective use of data in statewide

longitudinal data systems (SLDS) as envisioned in the America COMPETES Act and under the ARRA. Improved access to data contained within an SLDS will reduce burden on States and greatly facilitate States’ efforts to evaluate education programs, to build upon what works and discard what does not, to increase accountability and transparency, and to contribute to a culture of innovation and continuous improvement in education.

V. Elements of Preliminary Plan/ Compliance With E.O. 13563

a. *How does the agency plan to develop a strong, ongoing culture of retrospective analysis?*

This plan, once finalized, will establish ED’s policy for conducting thorough and meaningful retrospective reviews and analyses of our regulations on an ongoing basis. This plan will be disseminated to all offices within ED, and all offices will participate in implementing the plan.

ED has established a retrospective review team that is responsible for developing this plan and for coordinating the retrospective reviews going forward. This team will regularly report its progress in implementing the plan and conducting the retrospective reviews to Deputy Secretary Miller and other senior officials. As indicated below, ED intends to conduct its retrospective reviews biennially. Thus, retrospective reviews will become standard operating procedure in the agency.

b. *Prioritization. What factors and processes will the agency use in setting priorities?*

The factors ED will use in setting priorities for the retrospective review of its regulations are:

- Have regulated parties expressed confusion about the regulations or requested changes to the regulations?

- Can the regulations be understood and implemented without extensive legal interpretation, non-regulatory guidance, or technical assistance?

- Have regulated parties expressed concern about unwarranted regulatory burden? Do the regulations create an unnecessary administrative burden?

- What is the estimated timeline for reviewing and possibly amending the regulations? For instance, will ED need to conduct negotiated rulemaking to amend the regulations, and does ED need amended regulations in place by a certain date?

- Has Congress amended the authorizing statute such that prompt review of existing regulations is necessary?

- Does ED anticipate reauthorization of the authorizing statute in the near term such that prompt review of existing regulations would likely be disrupted or not lead to regulatory revisions that could be implemented before reauthorization?

- Are the regulations outmoded, unnecessary, or out of date? If so, are they impeding the proper administration of the relevant program?

- Are the current regulations sufficient to administer the applicable programs?

- Are the regulations necessary to conduct the grant program or can the program be implemented based entirely on the statutory provisions or through using appropriate provisions of EDGAR?

- Have issues with the regulations been identified in audits (Office of Inspector General (OIG), Government Accountability Office (GAO), Single Audits)? Are there repeat audit findings or conflicting views on what the regulations mean?

- Are the regulations essential for program effectiveness and financial integrity? For example, does ED or another oversight entity monitor compliance with the regulations?

c. *Initial list of candidate rules for review over the next two years:*

In addition to those regulations currently under review, we have preliminarily identified a number of other regulatory provisions that we believe warrant retrospective review. As indicated below, program offices will be asked to conduct a retrospective review of these and other regulatory provisions in the next several months. These are as follows:

- *Regulations in 34 CFR part 300 under Part B of the Individuals with Disabilities Education Act (IDEA) and reporting requirements under Part B of IDEA.* We have heard from a number of States about burden associated with some provisions of our current Part B, IDEA regulations and annual reporting requirements. We intend to conduct a thorough review of these regulations and requirements to assess their effectiveness and determine whether burden can be reduced, without diminishing the rights of students with disabilities.

- *Regulations in 34 CFR part 350 relating to programs administered by the National Institute on Disability and Rehabilitation Research (NIDRR).* In reviewing these regulations, ED seeks to identify regulatory changes that could improve the process for awarding grants and reduce the burden for eligible entities who apply for discretionary funds under the programs administered by NIDRR.

- *Regulations in 34 CFR 388.21 for the State Vocational Rehabilitation Unit In-Service Training Program.* The Department is concerned that the current formula may lead to inequitable or inefficient distribution of funding among eligible entities and is interested in identifying changes that might increase the effectiveness of this program.

- *Regulations in 34 CFR parts 400 through 491 governing career and technical education programs.* These regulations have not been updated since the most recent reauthorization in the Carl D. Perkins Career and Technical Education Improvement Act of 2006. We will consider whether regulations are needed to improve the administration and effectiveness of the program.

- *Regulations in 34 CFR part 104 implementing section 504 of the Rehabilitation Act of 1973.* These regulations, which are designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance, have not been updated since 2000. We will consider whether changes are needed to improve the administration and implementation of the regulations.

- *Regulations in 34 CFR parts 655, 656, 657, 658, 660, 661, 662, 663, 664, and 669 governing the postsecondary international education programs.* Following reauthorization of the HEA in 2008, ED made limited technical amendments to these regulations. However, a more comprehensive review of these regulations is necessary. Specifically, ED needs to review and amend these regulations to streamline them across the different programs to reduce burden on potential applicants, to the extent feasible, and to ensure that they provide the flexibility necessary to address emerging issues in international education.

- *Regulations in 34 CFR parts 673, 674, 675, and 676 governing the campus-based Federal Student Aid programs.* ED has regulations governing these formula grant programs that require updating and streamlining. We will consider changes that are needed to improve the administration and efficiency of these programs, while reducing burden on regulated parties.

- *Regulations governing discretionary grant programs for which the authorization has been repealed or for which Congress has not provided funding in some time.* These include regulations for the Endowment Challenge Grant program in 34 CFR part 628, the Urban Community Service Program in 34 CFR part 636, the Christa McAuliffe Fellowship Program in 34

CFR part 237, and in the Bilingual Education: Graduation Fellowship Program 34 CFR part 535. We will repeal the regulations for the programs that are no longer authorized and consider whether the regulations for authorized but no longer funded programs are still necessary.

d. *Structure and Staffing. High-level agency official responsible for retrospective review.*

Name/Position Title: Tony Miller, Deputy Secretary.

E-mail address: tony.miller@ed.gov.

e. *How does the agency plan to ensure that the agency's retrospective team and process maintain sufficient independence from the offices responsible for writing and implementing regulations?*

The retrospective review team will include representatives of the following offices: Office of the Deputy Secretary; Office of the Under Secretary; Office of Planning, Evaluation, and Policy Development; Budget Service; and the Office of the General Counsel. These offices do not have primary responsibility for drafting or implementing regulations. Additionally, the team will consult, as appropriate, with other offices that have agency-wide responsibilities, such as the Office of Inspector General.

f. *Describe agency actions, if any, to strengthen internal review expertise. This could include training staff, regrouping staff, hiring new staff, or other methods.*

The review team will be trained on the prioritization factors that ED has identified above and on our principles for regulating. The principles and the prioritization factors will be used as the key criteria in conducting the review.

g. *How will the agency plan for retrospective analysis over the next two years, and beyond?*

ED will be publishing the preliminary plan for public comment and, following the receipt of public comment, will revise the plan accordingly. At the same time, the retrospective review team will be asking program offices, budget analysts, and program attorneys to complete a retrospective review survey that requests information on existing regulations (see response to question VI(c) below). The team will coordinate the retrospective reviews and provide periodic reports to Deputy Secretary Miller and other senior officials on the progress and results of those reviews.

Once these reviews have been completed, the retrospective review team will analyze the results and develop recommendations to senior officials about which regulations should be amended (or what other actions other

than regulation could be taken to reduce burden). Taking into account the prioritization factors listed above and agency resources, and working with senior officials, ED will develop a schedule for the amendment of those regulations identified for revision.

While ED is conducting these reviews, it will analyze the public comments that it receives on the draft plan and incorporate any changes into the final plan. ED intends to conduct its retrospective reviews biennially.

h. How will the agency decide what to do with the analysis?

The retrospective review team will use the results of the analysis to develop recommendations for senior officials regarding whether regulations should be amended and whether alternatives to regulating, such as updating guidance or modifying reporting requirements, should instead be used to reduce burden, simplify program implementation, or improve understanding of the regulations.

i. What are the agency's plans for revising rules? How will agencies periodically revisit rules (e.g., through sunset provisions, during regular intervals)?

ED will revise regulations based on the results of the retrospective reviews, the recommendations of the retrospective review team, and the decisions of senior officials. As indicated above, ED intends to conduct its retrospective reviews biennially.

j. Describe how the agency will coordinate with other Federal agencies that have jurisdiction or similar interests:

ED will work through the Office of Information and Regulatory Affairs within the Office of Management and Budget and with its existing contacts at other agencies as it is conducting its retrospective reviews and any subsequent amendments to our regulations. These agencies include the U.S. Department of Justice, the U.S. Department of Labor, the U.S. Department of Health and Human Services, the Social Security Administration, and the U.S. Small Business Administration. With respect to our discretionary grant programs, we have consulted and will continue to consult with other Federal agencies engaged in similar activities to assess ways in which we can reduce overlap and redundancy and share best practices, including in such areas as pre-award risk assessments and audit reviews.

k. Will the plan be peer reviewed?

There has been a thorough internal review of the preliminary plan by all offices within ED and any revisions

made as a result of the public comment we receive on the draft plan will undergo a similarly thorough review.

If yes, please describe those plans:

The preliminary plan has undergone several levels of Departmental review. We have actively engaged and sought input from ED's senior leaders in developing the plan. The plan was presented to ED's Policy Committee for input and recommendations by senior policy officials. Based on recommendations from the Policy Committee, changes were made to the plan, and further changes were made as a result of the review by a larger group of ED staff who are directly responsible for administering the programs that would be affected by any changes to the regulations. As necessary, meetings were held to answer questions and reconcile differences.

ED will soon be publishing the preliminary plan for public comment and will seek informal feedback from stakeholders. Following receipt of public and stakeholder input, ED will consider further revisions to the plan. The final plan will undergo a similar internal review as the preliminary plan.

VI. Components of Retrospective Cost-Benefit Analysis

a. What metrics will the agency use to evaluate regulations after they have been implemented? For example, will the agency use increases in net benefits, increases in cost effectiveness ratios, or something else?

ED will use several metrics to evaluate regulations after they have been implemented. These metrics are as follows:

- Have there been numerous questions from stakeholders asking for further clarification of, or further amendment to, the regulations on points it would be feasible or desirable to address or clarify in the regulations?

- What, if any, guidance has ED provided to clarify the regulations following issuance of the regulations and has the guidance provided the clarification needed?

- What does information obtained from ED data collections, including data collected through evaluations, grantee performance reports, and other sources tell us about changes in net benefits, cost-effectiveness ratios, or other financial metrics?

- With respect specifically to ED's regulations implementing Parts B and C of IDEA, ED already publishes a quarterly list of correspondence that it sends in response to requests from stakeholders. This correspondence provides guidance and interpretations of the IDEA and its implementing

regulations. We will continue to monitor the substance of this correspondence and the number of inquiries received to assess whether regulatory changes may be necessary.

- Has implementation of the regulations led to unfair or unequal access to funding?

b. What steps has the agency taken to ensure that it has the data available with which to conduct a robust retrospective analysis?

The retrospective review team will develop a template for offices to use in collecting data on the metrics identified above. ED also is exploring using a customer survey on an ongoing basis to obtain feedback and data from the public on ED regulations.

c. How, if at all, will the agency incorporate experimental designs into retrospective analyses?

Although ED will not be incorporating experimental designs into its analyses, its retrospective analysis of a given set of regulations will begin with independent reviews from the following: (1) Program staff who are responsible for overseeing the implementation of the regulations; (2) the program attorney who advises the program staff on the legal aspects of administering the program; and (3) budget staff who are knowledgeable about the allowable uses of program funds. Each individual will independently complete a review survey that requests information on at least the following questions (which correspond to the prioritization factors described above):

- Have regulated parties identified a lack of clarity or need for changes in the regulations? If so, what regulatory provisions cause confusion or need change?

- Can the regulations be understood and implemented without extensive legal interpretation, non-regulatory guidance, or technical assistance?

- Have regulated parties expressed concern about unwarranted regulatory burden? Do the regulations create an unnecessary administrative burden? If so, what regulatory provisions might be unduly burdensome and why?

- What is the estimated timeline for reviewing and possibly amending the regulations? For instance, will ED need to conduct negotiated rulemaking to amend the regulations and does ED need amended regulations in place by a certain date?

- Has Congress amended the authorizing statute such that prompt review of existing regulations is necessary?

- Does ED anticipate reauthorization of the authorizing statute in the near

term? If yes, how will reauthorization affect existing regulations?

- Are the regulations outmoded, unnecessary, or out of date? If so, are they impeding the proper administration of the relevant program? Please identify specific regulatory provisions that are obsolete or out of date and provide a brief explanation.

- What does the evidence from program evaluations, including those that use experimental designs, reveal about the efficacy of the regulations and the need for changes?

- Are the current regulations sufficient to administer the applicable programs? If not, what specific changes would you recommend to update the existing regulations?

- Are regulations necessary to conduct the grant program or can the program be implemented based on the statutory provisions? If regulations are necessary, what specific areas need to be covered in the regulations?

- Have issues with the regulations been identified in audits (OIG, GAO, Single Audits)? Are there repeat audit findings or conflicting views on what the regulations mean?

- Are the regulations essential for program effectiveness and financial integrity? For example, does ED or any other oversight entity monitor compliance with the regulations?

- What are the costs and benefits of removing a regulatory requirement, and what would be the effect on students and program accountability?

VII. Publishing the Agency's Plan Online

a. Will the agency publish its retrospective review plan and available data on its Open Government Web site (<http://www.agency.gov/open>). If yes, please provide the name of a technical staff person who will be charged with updating the plans online.

ED will publish its plan on its Open Government website (<http://www.ed.gov/open>). As indicated above, ED intends to solicit public comment on its plan as well. The technical person who will be charged with updating the plan online is Kirk Winters, who can be reached at kirk.winters@ed.gov.

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024-AD85

Special Regulations, Areas of the National Park System, Cape Hatteras National Seashore

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to designate routes where off-road vehicles (ORVs) may be used within Cape Hatteras National Seashore (Seashore), North Carolina. Under NPS general regulations, the operation of motor vehicles off of roads within areas of the national park system is prohibited unless otherwise provided for by special regulation. The proposed rule would authorize ORV use at the Seashore, manage it to protect and preserve natural and cultural resources and natural processes, and provide a variety of safe visitor experiences while minimizing conflicts among various users.

DATES: Comments must be received on or before midnight (Eastern Daylight Time) Tuesday September 6, 2011. The NPS does not anticipate extending the public comment period beyond the stated deadline due to a court imposed deadline for completing the final rule.

ADDRESSES: You may submit comments, identified by the Regulation Identifier Number (RIN) 1024-AD85, by any of the following methods:

—*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

—*Mail or hand deliver to:* Superintendent, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, North Carolina 27954.

—For additional information see “Public Participation” under **SUPPLEMENTARY INFORMATION** below.

Comments submitted through Federal eRulemaking Portal: <http://www.regulations.gov> or submitted by mail must be entered or postmarked before midnight (Eastern Daylight Time) September 6, 2011. Comments submitted by hand delivery must be received by the close of business hours (5 p.m. Eastern Daylight Time) September 6, 2011. Comments will not be accepted by fax, e-mail, or in any way other than those specified above, and bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted.

FOR FURTHER INFORMATION CONTACT:

Mike Murray, Superintendent, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, North Carolina 27954. Phone: (252) 473-2111 (ext 148).

SUPPLEMENTARY INFORMATION:

Background

Description of Cape Hatteras National Seashore

Officially established in 1937 along the Outer Banks of North Carolina, Cape Hatteras is the nation's first national seashore. Consisting of more than 30,000 acres distributed along approximately 67 miles of shoreline, the Seashore is part of a dynamic barrier island system.

The Seashore serves as a popular recreation destination where visitors participate in a variety of recreational activities. The Seashore also contains important habitat for wildlife created by the Seashore's dynamic environmental processes. Several species, listed under the Endangered Species Act (ESA), including the piping plover, seabeach amaranth, and three species of sea turtles, are found within the park.

Authority and Jurisdiction

In enacting the National Park Service Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*), Congress granted the NPS broad authority to regulate the use of areas under its jurisdiction. Section 3 of the Organic Act specifically authorizes the Secretary of the Interior, acting through the NPS, to “make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks.

* * *

Off-Road Motor Vehicle Regulation

Executive Order 11644, Use of Off-Road Vehicles on the Public Lands, was issued in 1972 in response to the widespread and rapidly increasing off-road driving on public lands “often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity.” Executive Order 11644 was amended by Executive Order 11989 in 1977, and together they are collectively referred to in this rule as “E.O.”. The E.O. requires Federal agencies that allow motorized vehicle use in off-road areas to designate specific areas and routes on public lands where the use of motorized vehicles may be permitted.

Specifically, section 3 of the E.O. requires agencies to develop and issue regulations and administrative instructions to provide for