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34 CFR Part 300

Assistance to States for the Education of Children With Disabilities; Final Rule

**DEPARTMENT OF EDUCATION****34 CFR Part 300**

RIN 1820-AB65

[Docket ID ED-2012-OSERS-0020]

**Assistance to States for the Education of Children With Disabilities**

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

**ACTION:** Final rule.

**SUMMARY:** The Secretary of Education (Secretary) amends regulations for Part B of the Individuals with Disabilities Education Act (Part B or IDEA). These regulations govern the Assistance to States for the Education of Children with Disabilities program and the Preschool Grants for Children with Disabilities program. These amendments revise the regulations governing the requirement that local educational agencies maintain fiscal effort.

**DATES:** These regulations are effective on July 1, 2015.

*Applicability dates:* The Subsequent Years rule for Fiscal Years 2014 and 2015, stated in final § 300.203(c)(1), reiterates the relevant provision of the 2014 Appropriations Act and the 2015 Appropriations Act, respectively. As explained in the Effective Date section of the Analysis of Comments and Changes, the 2014 and 2015 Appropriations Acts made the Subsequent Years rule applicable for IDEA Part B grants awarded on July 1, 2014, and July 1, 2015, respectively.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** We amend the regulations governing the Assistance to States for Education of Children with Disabilities program and the Preschool Grants for Children with Disabilities program.

On September 18, 2013, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (78 FR 57324) to amend the regulations in 34 CFR part 300 governing these programs. In the preamble to the NPRM, the Secretary discussed the changes being proposed to the regulations governing the

requirement that LEAs maintain effort, specifically: (1) The compliance standard; (2) the eligibility standard; (3) the level of effort required of an LEA in the year after it fails to maintain effort; and (4) the consequence for a failure to maintain local effort. These final regulations adopt the proposed amendments with modifications to improve organization, clarity, and flexibility for LEAs.

**Major Changes in the Regulations**

The following is a summary of the major changes in these final regulations from the regulations proposed in the NPRM. The rationale for each of these changes is discussed in the *Analysis of Comments and Changes* section of this preamble.

- We moved the regulations governing eligibility for an IDEA Part B subgrant (sections 611 and 619 of the IDEA) from proposed § 300.203(b) to § 300.203(a).

- We added language to the eligibility standard in § 300.203(a)(1) to clarify the four methods that LEAs may use to meet this standard: (1) Local funds only, (2) the combination of State and local funds, (3) local funds only on a per capita basis, or (4) the combination of State and local funds on a per capita basis.

- We changed the language in the eligibility standard in § 300.203(a)(1) to provide that the comparison year is the most recent fiscal year for which information is available, regardless of which method an LEA uses to establish eligibility.

- We added language in the eligibility standard in § 300.203(a)(2) to provide that, when determining the amount of funds that the LEA must budget to meet the requirement in paragraph § 300.203(a)(1), the LEA may take into consideration, to the extent the information is available, the exceptions and adjustment provided in §§ 300.204 (exceptions for local changes) and 300.205 (adjustment for Federal increase) that the LEA: (i) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the LEA is budgeting; and (ii) reasonably expects to take in the fiscal year for which the LEA is budgeting.

- We added language in § 300.203(a)(3) to clarify that expenditures made from funds provided by the Federal government for which the State educational agency (SEA) is required to account to the Federal government, or for which the LEA is required to account to the Federal government directly or through the SEA,

may not be considered in determining whether an LEA meets the eligibility standard in § 300.203(a)(1).

- We moved the regulations governing compliance from proposed § 300.203(a) to § 300.203(b).

- We changed the language in the compliance standard in § 300.203(b)(1) to state that the comparison year is the preceding fiscal year, regardless of which method an LEA uses to establish compliance.

- We added language to the compliance standard in § 300.203(b)(2) to clarify the four methods that LEAs may use to meet this standard: (1) Local funds only, (2) the combination of State and local funds, (3) local funds only on a per capita basis, or (4) the combination of State and local funds on a per capita basis.

- We replaced proposed § 300.203(c) with three paragraphs—§ 300.203(c)(1), (2), and (3)—to improve clarity and readability.

- The new § 300.203(c)(1) implements the requirement in the Consolidated Appropriations Act, 2014 (2014 Appropriations Act) and the Consolidated and Further Continuing Appropriations Act, 2015 (2015 Appropriations Act) that, for the fiscal years beginning on July 1, 2014, and on July 1, 2015, respectively, the level of effort an LEA must meet in the fiscal year after it fails to maintain effort is the level of effort that would have been required in the absence of that failure, not the LEA's reduced level of expenditures.

- The new § 300.203(c)(2) is applicable to any fiscal year beginning on or after July 1, 2015, and addresses the level of effort an LEA must maintain in a fiscal year after it fails to maintain effort, and the LEA is relying on local funds only, or local funds only on a per capita basis. The level of expenditures required of the LEA is the amount that would have been required under paragraph (b)(2)(i) or (iii) in the absence of that failure, not the LEA's reduced level of expenditures.

- The new § 300.203(c)(3) is applicable to any fiscal year beginning on or after July 1, 2015, and addresses the level of effort an LEA must maintain in a fiscal year after it fails to maintain effort, and the LEA is relying on a combination of State and local funds, or the combination of State and local funds on a per capita basis. The level of expenditures required of the LEA is the amount that would have been required under paragraph (b)(2)(ii) or (iv) in the absence of that failure, not the LEA's reduced level of expenditures.

- We added language in § 300.203(d) to clarify that, if an LEA fails to

maintain its level of expenditures for the education of children with disabilities, the SEA is liable in a recovery action for either the amount by which the LEA failed to maintain its level of expenditures in that fiscal year or the amount of the LEA's Part B subgrant in that fiscal year, whichever is lower.

- We made conforming changes to §§ 300.204, 300.205, and 300.208.
- We added a new "Appendix E to Part 300—Local Educational Agency Maintenance of Effort Calculation Examples".

#### Public Comment

In response to our invitation in the NPRM, more than 300 parties submitted comments on the proposed regulations. The perspectives of parents, individuals with disabilities, teachers, related services providers, State and local officials, and others were very important in helping us identify where changes to the proposed regulations were necessary and in formulating those changes.

#### Analysis of Comments and Changes

An analysis of the comments and of any changes in the regulations since publication of the NPRM follows. We group comments and our responses to them by these subjects and sections:

##### THE SUBSEQUENT YEARS RULE,

###### § 300.203(c)

##### EFFECTIVE DATE

##### LEA COMPLIANCE, § 300.203(b)

###### Compliance Standard and Methodology

###### Comparison Year

###### Exceptions and Adjustment

###### Data Retention and Administration

##### LEA ELIGIBILITY, § 300.203(a)

###### Eligibility Standard and Methodology

###### Comparison Year

###### Exceptions and Adjustment

###### SEA Review

###### Ineligibility

##### FAILURE TO MAINTAIN EFFORT AND

###### CONSEQUENCE, § 300.203(d)

###### Legal Authority

###### Burden on SEAs

###### Calculating Penalties

##### MISCELLANEOUS COMMENTS

Generally, we do not address:

- (a) Minor changes, including technical changes made to the language published in the NPRM;
- (b) Suggested changes the Secretary is not legally authorized to make under applicable statutory authority;
- (c) Suggested changes that are beyond the scope of the changes proposed in the NPRM, including comments and suggestions relating to the scope and meaning of the exceptions and adjustment in §§ 300.204 and 300.205, except as those issues are directly related to the NPRM; and
- (d) Comments that express concerns of a general nature about the U.S.

Department of Education (Department) or other matters that are not germane, such as requests for information about innovative instructional methods or matters that are within the purview of State and local decision-makers. However, the Department intends to issue guidance on LEA maintenance of effort (MOE) and to continue to provide technical assistance to States to address State-specific concerns.

#### The Subsequent Years Rule, § 300.203(c)

Throughout the *Analysis of Comments and Changes*, we reference the Subsequent Years rule. The rule, as provided in final § 300.203(c), applies to LEAs that fail to maintain effort and provides that, in the fiscal year after an LEA fails to maintain effort, the level of effort the LEA must meet under § 300.203 is the level of effort that would have been required in the absence of that failure, not the LEA's actual reduced level of expenditures.

*Comment:* Some commenters supported the Subsequent Years rule, which provides that, in the fiscal year after an LEA fails to maintain effort, the level of effort it must meet under § 300.203 is the level of effort that would have been required in the absence of that failure, not the LEA's actual reduced level of expenditures. Other commenters disagreed and asserted that the intent of the IDEA was to ensure that LEAs not reduce their level of expenditures for the education of children with disabilities from the preceding fiscal year, regardless of whether the LEA maintained effort in the preceding fiscal year.

Some commenters expressed concern that the Subsequent Years rule does not address the flexibility LEAs need as State and Federal funding levels shrink and as the demographics and educational needs of their students vary from year to year. These commenters recommended revising the proposed regulation to permit an LEA to use the preceding fiscal year as the comparison year to meet the compliance standard, regardless of whether the LEA met the compliance standard in that year.

In addition, a few of these commenters stated that the Subsequent Years rule is inconsistent with the IDEA and referenced the Subsequent Years provision in another section of the IDEA related to State financial support. Section 612(a)(18)(D) of the IDEA (20 U.S.C. 1412(a)(18)(D)). These commenters stated that, while Congress provided an explicit requirement for maintenance of State financial support in any fiscal year following a fiscal year in which a State failed to maintain State

financial support, Congress did not address what happens in a fiscal year after an LEA fails to maintain effort. The commenters, therefore, concluded that Congress did not intend to provide for a Subsequent Years rule applicable to LEA MOE.

*Discussion:* The Department continues to believe that when an LEA fails to maintain its required level of expenditures, the level of expenditures required in future fiscal years is the amount that would have been required in the absence of that failure, and not the LEA's actual expenditures in the fiscal year in which it failed to meet the compliance standard. We formally adopted this interpretation in April 2012, and it is based on a careful consideration of the statutory language, structure, and purpose. See April 4, 2012, letter to Ms. Kathleen Boundy, available at <http://www2.ed.gov/policy/speced/guid/idea/letters/2012-2/index.html>.

Section 613(a)(2)(B) and (C) of the IDEA (20 U.S.C. 1413(a)(2)(B) and (C)) provides four exceptions and an adjustment that permit an LEA to lawfully reduce its expenditures for the education of children with disabilities when compared to the preceding fiscal year. The absence of an exception in the statute for the failure of an LEA to meet the compliance standard in the preceding fiscal year strongly supports that such a failure does not reduce the level of expenditures required in future years. In light of the detail with which other exceptions are laid out in the statute, we believe that the IDEA's silence on the level of expenditures required in the fiscal year after an LEA has failed to meet the compliance standard does not reflect an intent by Congress to permit LEAs to benefit from a violation of the IDEA. Indeed, Congress included the Subsequent Years rule in the 2014 Appropriations Act, Public Law 113–76, 128 Stat. 5, 394 (2014), and in the 2015 Appropriations Act, Public Law 113–235, 128 Stat. 2130, 2499 (2014) and used language substantially similar both to the language the Department used in the NPRM and to the language in the Subsequent Years subparagraph of the maintenance of State financial support provision in section 612(a)(18)(D) of the IDEA. These factors strongly support the Department's conclusion that the Subsequent Years rule reflects congressional intent.

Furthermore, allowing an LEA to permanently reduce spending for the education of children with disabilities by failing to comply with the IDEA in a preceding fiscal year is inconsistent with the purpose of the MOE

requirement, which is to ensure a continuation of at least a certain level of non-Federal expenditures for the education of children with disabilities, and would provide a long-term financial incentive for noncompliance.

We also believe that permitting an LEA to reduce expenditures for the education of children with disabilities for reasons not specifically stated in the exceptions and adjustment in section 613(a)(2)(B) and (C) of the IDEA (20 U.S.C. 1413(a)(2)(B) and (C)) would likely have a negative effect on the amount and type of special education and related services available for

children with disabilities. This result would be contrary to the overall purpose of the IDEA, which is “to ensure that all children with disabilities have available to them a free appropriate public education.” Section 601(d) of the IDEA (20 U.S.C. 1401(d)).

To provide additional clarity on the Subsequent Years rule and other issues raised in comments the Department received, we have included a number of tables in the *Analysis of Comments and Changes*. In addition, we are including all of the tables in a new Appendix E in order to ensure that they will be included when these final regulations

are published in the Code of **Federal Register**. Tables 1 through 4 provide examples of how an LEA may comply with the Subsequent Years rule. Figures are in \$10,000s. In Table 1, for example, an LEA spent \$1 million in Fiscal Year (FY) 2012–2013 on the education of children with disabilities.<sup>1</sup> The following year, the LEA was required to spend at least \$1 million but spent only \$900,000. In FY 2014–2015, therefore, the LEA is required to spend \$1 million, the amount it was required to spend in 2013–2014, not the \$900,000 it actually spent.

TABLE 1—EXAMPLE OF LEVEL OF EFFORT REQUIRED TO MEET MOE COMPLIANCE STANDARD IN YEAR FOLLOWING A YEAR IN WHICH LEA FAILED TO MEET MOE COMPLIANCE STANDARD

Fiscal year	Actual level of effort	Required level of effort	Notes
2012–2013 .....	\$100	\$100	LEA met MOE.
2013–2014 .....	90	100	LEA did not meet MOE.
2014–2015 .....	.....	100	Required level of effort is \$100 despite LEA's failure in 2013–2014.

Table 2 shows how to calculate the required level of effort when there are consecutive fiscal years in which an LEA does not meet MOE.

TABLE 2—EXAMPLE OF LEVEL OF EFFORT REQUIRED TO MEET MOE COMPLIANCE STANDARD IN YEAR FOLLOWING CONSECUTIVE YEARS IN WHICH LEA FAILED TO MEET MOE COMPLIANCE STANDARD

Fiscal year	Actual level of effort	Required level of effort	Notes
2012–2013 .....	\$100	\$100	LEA met MOE.
2013–2014 .....	90	100	LEA did not meet MOE.
2014–2015 .....	90	100	LEA did not meet MOE. Required level of effort is \$100 despite LEA's failure in 2013–2014.
2015–2016 .....	.....	100	Required level of effort is \$100 despite LEA's failure in 2013–2014 and 2014–2015.

Table 3 shows how to calculate MOE in a fiscal year after which an LEA spent more than the required amount on the education of children with disabilities. This LEA spent \$1.1 million in FY 2015–2016 though only \$1 million was required. The required level of effort in FY 2016–2017, therefore, is \$1.1 million.

TABLE 3—EXAMPLE OF LEVEL OF EFFORT REQUIRED TO MEET MOE COMPLIANCE STANDARD IN YEAR FOLLOWING YEAR IN WHICH LEA MET MOE COMPLIANCE STANDARD

Fiscal year	Actual level of effort	Required level of effort	Notes
2012–2013 .....	\$100	\$100	LEA met MOE.
2013–2014 .....	90	100	LEA did not meet MOE.
2014–2015 .....	90	100	LEA did not meet MOE. Required level of effort is \$100 despite LEA's failure in 2013–2014.
2015–2016 .....	110	100	LEA met MOE.
2016–2017 .....	.....	110	Required level of effort is \$110 because LEA expended \$110, and met MOE, in 2015–2016.

Table 4 shows the same calculation when, in an intervening fiscal year, 2016–2017, the LEA did not maintain effort.

<sup>1</sup> All references to a “fiscal year” in these regulations refer to the fiscal year covering that school year, unless otherwise noted.

TABLE 4—EXAMPLE OF LEVEL OF EFFORT REQUIRED TO MEET MOE COMPLIANCE STANDARD IN YEAR FOLLOWING YEAR IN WHICH LEA DID NOT MEET MOE COMPLIANCE STANDARD

Fiscal year	Actual level of effort	Required level of effort	Notes
2012–2013 .....	\$100	\$100	LEA met MOE.
2013–2014 .....	90	100	LEA did not meet MOE.
2014–2015 .....	90	100	LEA did not meet MOE. Required level of effort is \$100 despite LEA's failure in 2013–2014.
2015–2016 .....	110	100	LEA met MOE.
2016–2017 .....	100	110	LEA did not meet MOE. Required level of effort is \$110 because LEA expended \$110, and met MOE, in 2015–2016.
2017–2018 .....	.....	110	Required level of effort is \$110, despite LEA's failure in 2016–2017.

To increase understanding of, and therefore compliance with, the Subsequent Years rule, and to address Congress's adoption of it for FYs 2014 and 2015 (the fiscal years beginning on July 1, 2014 and July 1, 2015, respectively) in the 2014 Appropriations Act and 2015 Appropriations Act, we divided proposed § 300.203(c) into three paragraphs.

The first, § 300.203(c)(1), states the Subsequent Years rule for FYs 2014 and 2015, respectively, as provided by the 2014 and 2015 Appropriations Acts. Section 300.203(c)(1) states that if, in the fiscal year beginning on July 1, 2013 or July 1, 2014, an LEA fails to meet the requirements of § 300.203 in effect at that time, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the LEA's reduced level of expenditures. In short, the 2014 Appropriations Act requires the LEA to maintain effort, in 2014–2015, at the level that the LEA maintained in 2013–2014, unless the LEA did not meet the effort required in that year. If it did not, the LEA must maintain effort at the level that the LEA should have maintained in 2013–2014, which is the level from the preceding fiscal year, 2012–2013. Similarly, the 2015 Appropriations Act requires the LEA to maintain effort, in 2015–2016, at the level that the LEA maintained in 2014–2015, unless the LEA did not meet the effort required in that year. If it did not, the LEA must maintain effort at the level that the LEA should have maintained in 2014–2015, which is the level from the preceding fiscal year, 2013–2014.

The second paragraph, § 300.203(c)(2), is applicable beginning on July 1, 2015, and sets out the Subsequent Years rule for when an LEA failed to meet the compliance standard using local funds only, or local funds only on a per capita basis, in a preceding fiscal year, and the LEA is

relying on the same method to meet the eligibility or compliance standard in a subsequent year.

The third paragraph, § 300.203(c)(3), is also applicable beginning on July 1, 2015, and sets out the Subsequent Years rule for when an LEA failed to meet the compliance standard using a combination of State and local funds, or a combination of State and local funds on a per capita basis, in a preceding fiscal year, and the LEA is relying on the same method to meet the eligibility or compliance standard in a subsequent year.

*Changes:* We replaced proposed § 300.203(c) with a clearer articulation of the Subsequent Years rule in three paragraphs, § 300.203(c)(1), (2), and (3). Final § 300.203(c) accounts for the adoption of the Subsequent Years rule for FY 2014 in the 2014 Appropriations Act, and, for FY 2015 in the 2015 Appropriations Act, but does not change the substance of the Subsequent Years rule from what was proposed in the NPRM.

#### Effective Date

*Comment:* Some commenters requested that the effective date of these regulations be extended to a date later than July 1, 2014, because SEAs and LEAs will need additional time to revise their policies and procedures. Several commenters recommended that the effective date be removed altogether, because the proposed regulations did not change LEAs' existing obligation to maintain effort, which, some commenters stated, dates to 1997. Those commenters stated that the proposed July 1, 2014, effective date would permit some LEAs that did not maintain effort in a fiscal year prior to the fiscal year that begins on July 1, 2014, to take advantage of that failure.

*Discussion:* There appears to have been confusion among some commenters about the effective date proposed in the NPRM. We proposed July 1, 2014, because that date was to be the beginning of the first grant award

period after the date on which these regulations were published. The beginning of the first grant award period after publication of these regulations is now July 1, 2015. We have, therefore, made July 1, 2015, the effective date of these regulations. We believe this gives SEAs and LEAs sufficient time to revise their policies and procedures. This does not mean, however, that the obligation of an LEA to maintain effort, or to comply with the Subsequent Years rule, begins on that date.

To the contrary, as we previously explained, the 2014 Appropriations Act and the 2015 Appropriations Act made the Subsequent Years rule applicable for the grant year beginning on July 1, 2014, and July 1, 2015, respectively. On March 13, 2014, the Office of Special Education Programs (OSEP) issued a letter to Chief State School Officers explaining the relevant provision of the 2014 Appropriations Act related to the Subsequent Years rule, and stating that the provision was effective for Part B grants awarded on July 1, 2014. See March 13, 2014 letter to Chief State School Officers, available at <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/lea-moe-3-13-14.pdf>.

Prior to that, in 2012, OSEP issued the April 4, 2012, letter to Ms. Kathleen Boundy addressing this issue. In that letter, the Department set out the Subsequent Years rule, which stated that the level of effort that an LEA must meet in the year after it fails to maintain effort is the level of effort that it should have met in the preceding fiscal year and not the LEA's actual expenditures for that year. While these regulations codify this position, this has been the Department's interpretation of the statute since the letter to Ms. Boundy was issued. Therefore, the Department's expectation is that SEAs and LEAs have been complying with this interpretation since FY 2012–2013.

For FY 2012–2013, an LEA must have maintained at least the same level of expenditures as it did in the preceding fiscal year, FY 2011–2012, unless it did

not meet the compliance standard in that year. If it did not, the LEA must determine what it should have spent in FY 2011–2012, which is the amount that it actually spent in the preceding fiscal year, FY 2010–2011.

The Department is unable, as some commenters suggest, to make these regulations effective back to 1997. The Department's guidance about MOE prior to April 2012 was not always consistent with the current interpretation. For example, our 2011 letter to Dr. Bill East offered different guidance on the Subsequent Years rule. See June 16, 2011, letter to Dr. Bill East, available at <http://www2.ed.gov/policy/speced/guid/idea/letters/2011-2/east061611partbmoe2q2011.pdf> We cannot now fault an SEA or an LEA for following the Department's earlier guidance, and therefore cannot extend the effective date of the rules back to 1997.

*Changes:* The effective date of these regulations is July 1, 2015.

*Comment:* One commenter requested that we add a paragraph (d) to § 300.203 that would, in effect, provide that States could not determine that LEAs were out of compliance with the MOE requirement for any fiscal year for which the State had previously determined the LEA to be in compliance.

*Discussion:* Because the Department may not impose retroactive requirements on grantees, it is not necessary to include in the final regulations a separate provision indicating that States and LEAs that were determined to be in compliance with the regulations in effect at the time of the receipt of a grant or subgrant may rely on those determinations of compliance. The Department does not expect States to revisit their compliance determinations.

*Changes:* None.

### **LEA Compliance, § 300.203(b)**

#### *Compliance Standard and Methodology*

*Comment:* Some commenters suggested that the regulation be revised to reflect the order of the process so that the eligibility standard is set out before the compliance standard.

*Discussion:* We agree that the eligibility standard should precede the compliance standard and that doing so will provide additional clarity. Therefore, we have set out the eligibility standard in § 300.203(a) and the compliance standard in § 300.203(b).

*Changes:* We have revised final § 300.203(a) to specify the eligibility standard and final § 300.203(b) to specify the compliance standard. We

also have made conforming changes in §§ 300.203(c), 300.204, 300.205, and 300.208.

*Comment:* Commenters raised many questions and concerns about the four methods by which an LEA may meet the compliance standard. One commenter requested that the proposed regulations specifically list the four methods available to LEAs. Some commenters requested that the Department clarify that SEAs are required to allow LEAs to meet the compliance standard using any of the four methods. Other commenters stated that the proposed regulations emphasize meeting the MOE requirement using local funds only.

*Discussion:* We agree that additional clarification is needed regarding the four methods by which an LEA may meet the compliance standard. We also agree that listing the four methods individually in the compliance standard will make it easier to understand that an LEA may meet the compliance standard using any one of these four methods and that SEAs must permit LEAs to do so. Listing the four methods individually should also clarify that the regulations do not emphasize meeting the compliance standard using local funds only or local funds only on a per capita basis.

*Changes:* We have revised final § 300.203(b)(2) to clarify that an LEA meets the compliance standard if it does not reduce the level of expenditures for the education of children with disabilities made by the LEA from at least one of the following sources below the level of those expenditures from the same source for the preceding fiscal year: (i) Local funds only; (ii) the combination of State and local funds; (iii) local funds only on a per capita basis; or (iv) the combination of State and local funds on a per capita basis.

*Comment:* A few commenters requested clarification regarding whether and how LEAs may change methods to establish compliance from one year to the next. A commenter asked whether an LEA must use the same method to meet the compliance standard in a fiscal year that it used to meet the eligibility standard for that same year.

*Discussion:* LEAs may change methods to establish compliance from one year to the next. Many LEAs will meet the compliance standard for a fiscal year using more than one method. An LEA is not required to use the same method to meet the compliance standard in a fiscal year that it used to meet the eligibility standard for that same year. For example, if an LEA meets the eligibility standard for FY 2016–2017 using local funds only, it is not

required to meet the compliance standard for FY 2016–2017 using local funds only. Likewise, an LEA is not required to use the same method to meet the eligibility standard in a subsequent year that it used to meet the compliance standard in a preceding fiscal year. For example, if an LEA met the compliance standard for FY 2016–2017 using a combination of State and local funds, the LEA is not required to meet the eligibility standard for FY 2017–2018 using a combination of State and local funds.

An LEA may demonstrate that it meets the eligibility standard using any of the four methods. Similarly, during the course of an audit or other compliance review, the LEA may demonstrate that it met the compliance standard using any of the four methods. Selecting a particular method does not mean that the LEA did not meet the compliance standard using any of the other methods, or that the LEA cannot rely on those other methods to identify the amount of expenditures it must budget in order to meet the eligibility standard in a future fiscal year. It simply means that the LEA only has to meet the eligibility or compliance standard using one method.

LEAs may meet the compliance standard using alternate methods from year to year. For example, an LEA met the compliance standard in FY 2016–2017 using all four methods. During a compliance review, the LEA provided data to the SEA demonstrating that it met the compliance standard for that year using a combination of State and local funds on a per capita basis. This data would be sufficient for the SEA to find that the LEA met the compliance standard. Subsequently, the State conducts an audit to determine if the LEA met the compliance standard in the next year, FY 2017–2018. The LEA provides information to the auditor that demonstrates that it met the compliance standard in FY 2017–2018 using local funds only. In order to demonstrate that it met the compliance standard using that method, the LEA provides to the auditor the amount of local funds only that the LEA spent for the education of children with disabilities in FY 2016–2017 and in FY 2017–2018 so that the auditor is comparing each year's expenditures using the same method. A further example can be found in Table 5 below.

*Changes:* None.

*Comment:* Another commenter asked whether the LEA must use separate thresholds for compliance using local funds only as well as local funds only on a per capita basis.

*Discussion:* The LEA would compare the amount of local funds only spent in the comparison year and the year for which it seeks to establish compliance. The LEA is not required to maintain effort on both an aggregate and a per capita basis. For example, if the LEA spent \$100 in local funds only in FY 2016–2017 and had 10 children with disabilities, the LEA spent \$10 in local funds only on a per capita basis. Assuming the LEA met MOE in FY 2016–2017 using those two methods, that is the amount (\$10 per child with a disability) that the LEA would have to spend in FY 2017–2018 in order to meet the compliance standard using local funds only on a per capita basis, and \$100 is the aggregate amount that the LEA would have to spend in FY 2017–2018 in order to meet the compliance standard using local funds only, assuming that, in FY 2017–2018, the LEA did not take any exceptions or adjustment in §§ 300.204 and 300.205. As noted above, the LEA is required to meet the compliance standard using only one of the four methods.

*Changes:* None.

*Comment:* A commenter noted that the tables in the NPRM did not address the difficulties encountered by LEAs that wish to use the exceptions and adjustment in §§ 300.204 and 300.205, or use per capita methods.

*Discussion:* Tables 5 through 9 address this comment. Table 5 provides an example of how an LEA may meet the compliance standard using alternate methods from year to year without using the exceptions or adjustment in §§ 300.204 and 300.205, and provides information on the following scenario. In FY 2015–2016, the LEA meets the compliance standard using all four methods. As a result, in order to demonstrate that it met the compliance standard using any one of the four methods in FY 2016–2017, the LEA must expend at least as much as it did in FY 2015–2016 using that same method. Because the LEA spent the same amount in FY 2016–2017 as it did in FY 2015–2016, calculated using a combination of State and local funds and a combination of State and local funds on a per capita basis, the LEA met the compliance standard using both of those methods in FY 2016–2017. However, the LEA did not meet the compliance standard in FY 2016–2017 using the other two methods—local funds only or local funds only on a per capita basis—because it did not spend at least the same amount in FY 2016–2017 as it did in FY 2015–2016 using the same methods.

In FY 2017–2018, the LEA may meet the compliance standard using any one

of the four methods. To meet the compliance standard using a combination of State and local funds, or a combination of State and local funds on a per capita basis, the LEA must expend at least the same amount it did in FY 2016–2017 using either of those methods, since it met the compliance standard using those methods in FY 2016–2017. Or, if the LEA seeks to meet the compliance standard using the other two methods available, local funds only or local funds only on a per capita basis, in FY 2017–2018, it must expend at least as much as it did in FY 2015–2016 using either of those methods. This is because the LEA did not meet the compliance standard using local funds only or local funds only on a per capita basis in FY 2016–2017. In FY 2016–2017, to demonstrate that it met the compliance standard using local funds only, or local funds only on a per capita basis, the LEA is required to spend at least the amount it expended in FY 2015–2016 from those sources. Per the Subsequent Years rule, the amount of expenditures from local funds only and local funds only on a per capita basis in FY 2015–2016 becomes the required level of effort in FY 2017–2018. Numbers are in \$10,000s spent for the education of children with disabilities.

TABLE 5—EXAMPLE OF HOW AN LEA MAY MEET THE COMPLIANCE STANDARD USING ALTERNATE METHODS FROM YEAR TO YEAR

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count
2015–2016 .....	* \$500	* \$950	* \$50	* \$95	10
2016–2017 .....	400	* 950	40	* 95	10
2017–2018 .....	* 500	900	* 50	90	10

\* LEA met compliance standard using this method.

*Changes:* We have not changed the regulation but we have included Tables 5 through 9 to illustrate examples of how an LEA may meet the compliance or eligibility standard using alternate methods from year to year, either with or without using the exceptions or adjustment in §§ 300.204 and 300.205.

*Comment:* One commenter requested clarification of the two per capita methods, one based on local funds only and one based on a combination of State and local funds.

*Discussion:* The regulations do not change the standards for meeting MOE using local funds only on a per capita basis or a combination of State and local funds on a per capita basis. The regulations continue to use the term

“per capita,” which, in context, refers to the amount per child with a disability served by the LEA, either in local funds per child with a disability or a combination of State and local funds per child with a disability.

When calculating the required level of effort on a per capita basis for the purpose of meeting the compliance standard, the LEA must determine the amount of local funds only (or a combination of State and local funds, as applicable) on a per capita basis that it expended for the education of children with disabilities, and reduce that amount by the exceptions or adjustment in §§ 300.204 and 300.205 calculated on a per capita basis. Specifically, the LEA must first divide the aggregate amount

of exceptions and the adjustment it properly takes under §§ 300.204 and 300.205 by the child count in the comparison year. The LEA must then subtract that result from the amount of local funds only (or a combination of State and local funds, as appropriate) on a per capita basis expended in the comparison year. Using other methods to determine the required level of effort (e.g., dividing the required level of aggregate effort using local funds only by the current year child count or dividing the exceptions and adjustment under §§ 300.204 and 300.205 properly taken by an LEA by the current year child count) may result in an inaccurate calculation of the required level of effort.

Table 6 provides an example of how an LEA may meet the compliance standard using alternate methods from year to year in years that the LEA used the exceptions or adjustment in §§ 300.204 and 300.205, including using the per capita methods. Numbers are in \$10,000s spent for the education of children with disabilities.

TABLE 6—EXAMPLE OF HOW AN LEA MAY MEET THE COMPLIANCE STANDARD USING ALTERNATE METHODS FROM YEAR TO YEAR AND USING EXCEPTIONS OR ADJUSTMENT UNDER §§ 300.204 AND 300.205

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count
2015–2016 .....	\$500* .....	\$950* .....	\$50* .....	\$95* .....	10
2016–2017 .....	\$400 .....	\$950* .....	\$40 .....	\$95* .....	10
2017–2018 .....	\$450* .....	\$1,000* .....	\$45* .....	\$100* .....	10
	In 2017–2018, the LEA was required to spend at least the same amount in local funds only that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§ 300.204 and 300.205, the LEA was required to spend at least \$500 in local funds only. In 2017–2018, the LEA properly reduced its expenditures, per an exception in § 300.204, by \$50, and therefore, was required to spend at least \$450 in local funds only (\$500 from 2015–2016 per Subsequent Years rule – \$50 allowable reduction per an exception under § 300.204).		In 2017–2018, the LEA was required to spend at least the same amount in local funds only on a per capita basis that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§ 300.204 and 300.205, the LEA was required to spend at least \$50 in local funds only on a per capita basis. In 2017–2018, the LEA properly reduced its aggregate expenditures, per an exception in § 300.204, by \$50. \$50/10 children with disabilities in the comparison year (2015–2016) = \$5 per capita allowable reduction per an exception under § 300.204. \$50 local funds only on a per capita basis (from 2015–2016 per Subsequent Years rule) – \$5 allowable reduction per an exception under § 300.204 = \$45 local funds only on a per capita basis to meet MOE.		
2018–2019 .....	\$405 .....	\$1,000* .....	\$45* .....	\$111.11* .....	9
	In 2018–2019, the LEA was required to spend at least the same amount in local funds only that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§ 300.204 and 300.205, the LEA was required to spend at least \$450 in local funds only. In 2018–2019, the LEA properly reduced its expenditures, per an exception in § 300.204 by \$10 and the adjustment in § 300.205 by \$10. Therefore, the LEA was required to spend at least \$430 in local funds only. (\$450 from 2017–2018 – \$20 allowable reduction per an exception and the adjustment under §§ 300.204 and 300.205).	Because the LEA did not reduce its expenditures from the comparison year (2017–2018) using a combination of State and local funds, the LEA met MOE.	In 2018–2019, the LEA was required to spend at least the same amount in local funds only on a per capita basis that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§ 300.204 and 300.205, the LEA was required to spend at least \$45 in local funds only on a per capita basis. In 2018–2019, the LEA properly reduced its aggregate expenditures, per an exception in § 300.204 by \$10 and the adjustment in § 300.205 by \$10. \$20/10 children with disabilities in the comparison year (2017–2018) = \$2 per capita allowable reduction per an exception and the adjustment under §§ 300.204 and 300.205. \$45 local funds only on a per capita basis (from 2017–2018) – \$2 allowable reduction per an exception and the adjustment under §§ 300.204 and 300.205 = \$43 local funds only on a per capita basis required to meet MOE. Actual level of effort is \$405/9 (the current year child count).	Because the LEA did not reduce its expenditures from the comparison year (2017–2018) using a combination of State and local funds on a per capita basis (\$1,000/9 = \$111.11 and \$111.11 > \$100), the LEA met MOE.	

\* LEA met MOE using this method.

**Note:** When calculating any exception(s) and/or adjustment on a per capita basis for the purpose of determining the required level of effort, the LEA must use the child count from the comparison year, and not the child count of the year in which the LEA took the exception(s) and/or adjustment. When determining the actual level of effort on a per capita basis, the LEA must use the child count for the current year. For example, in determining the actual level of effort in 2018–2019, the LEA uses a child count of 9, not the child count of 10 in the comparison year.

*Changes:* We have not changed the regulation but we have revised Table 6 to include the use of alternate methods from year to year to meet the MOE requirements in years where the LEA used the exceptions or adjustment.

*Comment:* One commenter asked whether the LEA or the SEA selects the method by which an LEA met the compliance standard if the LEA in fact met the standard using more than one method. The commenter expressed concern that choosing one method over

another will affect the comparison year to be used in the future.

*Discussion:* The SEA is responsible for determining whether an LEA meets the MOE eligibility standard in § 300.203(a) and for determining whether an LEA meets the MOE compliance standard in § 300.203(b). In order to make this determination, the SEA must permit the LEA to meet either standard using any of the four methods. If the LEA meets the standards using more than one method, the SEA may

select the method it uses to determine that the LEA met the eligibility or compliance standard. Ultimately, however, regardless of the method used to make these determinations, an LEA is not precluded from selecting a different method to meet either the eligibility or compliance standard in a subsequent year.

*Changes:* None.

*Comment:* A commenter suggested that the per capita calculation be expanded to allow for either

“headcount” or a full-time equivalent (FTE) because FTE is more closely related to the cost of services than headcount.

*Discussion:* By referencing FTE, we assume that the commenter was referring to using a per capita method of calculating effort that measures the cost per hour of special education and related services an LEA provides to children with disabilities, rather than the amount spent per child with a disability, in a particular fiscal year. Using a measure that depends on the cost of FTEs could allow LEAs to meet MOE by reducing the number of hours of special education and related services an LEA provides to children with disabilities. We therefore decline to adopt this method of measuring effort. This decision is consistent with the position we have taken on the meaning of “per capita.” As explained in the *Analysis of Comments and Changes* in the preamble to the 2006 IDEA Part B regulations, “[w]e do not believe it is necessary to include a definition of ‘per capita’ . . . because we believe that, in the context of the regulations, it is clear that we are using this term to refer to the amount per child with a disability served by the LEA.” See 71 FR 46540, 46624 (Aug. 14, 2006).

*Changes:* None.

*Comment:* Some commenters asked for clarification on how to determine the amount an LEA must spend in local funds only or local funds only on a per capita basis to meet the compliance and eligibility standards if the LEA has never spent local funds for the education of children with disabilities in the past. The commenters asked whether these LEAs may use “zero” local funds as the amount spent in the comparison year and noted that, if this is the case, these LEAs will always meet the compliance and eligibility standards using local funds only, even in years when the level of expenditures for the education of children with disabilities made from a combination of State and local funds, or a combination of State and local funds on a per capita basis, is lower than the level of those expenditures in the comparison year.

*Discussion:* LEAs, including an LEA that has not spent any local funds for the education of children with disabilities since the MOE requirement was enacted in 1997, are permitted to use any of the four methods to meet the compliance and eligibility standards. An LEA that has spent \$0 in local funds for the education of children with disabilities can meet the compliance and eligibility standards by continuing to budget and spend \$0 in local funds for the education of children with

disabilities. However, the Department believes that there are very few instances where LEAs have expended \$0 in local funds for the education of children with disabilities. We remind LEAs that, when demonstrating that they meet the compliance and eligibility standards using any of the four methods, they must be able to provide auditable data regarding their expenditures from the relevant sources in all relevant years. Simply because an LEA does not account for local funds separately from State funds does not mean that the LEA expends \$0 in local funds for the education of children with disabilities. We also remind LEAs that, regardless of which method they use to demonstrate that they meet the standards, they must continue to make a free appropriate public education (FAPE) available to all eligible children with disabilities.

*Changes:* None.

*Comment:* One commenter suggested that the MOE requirement be changed from a dollar requirement to a requirement that LEAs maintain only the same percentage of expenditures for the education of children with disabilities compared to the overall education budget.

*Discussion:* Section 613(a)(2)(A)(iii) of the IDEA (20 U.S.C. 1413(a)(2)(A)(iii)) states that, except as provided in section 613(a)(2)(B) and (C) of the Act, Part B funds provided to an LEA must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA below the level of those expenditures for the preceding fiscal year. Substituting a requirement that an LEA not reduce the percentage of its total budget spent for the education of children with disabilities would not ensure that the LEA would meet the requirement in the statute, which prohibits a reduction in the level of expenditures for the education of children with disabilities, and not a percentage of the overall education budget. In addition, this approach does not provide protection for children with disabilities when the overall amount of the education budget drops. Therefore, the Department declines to make this change.

*Changes:* None.

*Comment:* A commenter stated that the Subsequent Years rule does not permit an LEA to take into account that the LEA met the compliance standard using a different method in a preceding fiscal year and would, for example, prevent an LEA from meeting the compliance standard using local funds only on a per capita basis if the LEA had used a different method in the preceding fiscal year.

*Discussion:* The Subsequent Years rule does not prevent an LEA from using any of the four methods to meet the compliance standard in § 300.203(b), as demonstrated in Table 5. However, an LEA that wishes to meet the compliance standard in a fiscal year using one particular method must be able to identify the amount of funds that the LEA expended in the most recent fiscal year in which the LEA met the compliance standard using that same method.

In the hypothetical posed by the commenter (in which an LEA wished to meet the compliance standard using local funds only on a per capita basis), the LEA would look to the preceding fiscal year and determine the amount of expenditures for the education of children with disabilities made by the LEA with local funds only on a per capita basis. If the LEA could have met the compliance standard using that method in the preceding fiscal year, the amount expended by the LEA using local funds only on a per capita basis in the preceding fiscal year is the minimum amount that the LEA must spend in order to meet the compliance standard in the current year using that method.

However, if the LEA could not have met the compliance standard using local funds only on a per capita basis in the preceding fiscal year, the Subsequent Years rule applies. In that case, the LEA must determine the amount of local funds only on a per capita basis that the LEA should have spent in the preceding fiscal year in order to have met the compliance standard in that year. That is the amount of local funds only on a per capita basis that the LEA will need to spend in the current year to meet the compliance standard.

*Changes:* None.

*Comment:* A commenter suggested we reverse the order of the compliance standard in proposed § 300.203(a)(2)(i) and (ii) so that the methods that reference local funds only precede the methods that reference State and local funds. Another commenter recommended that the compliance standard in proposed § 300.203(a)(2) be rephrased in affirmative language.

*Discussion:* As previously stated, we have revised final § 300.203(b)(2) (proposed § 300.203(a)(2)(i) and (ii)). Therefore, the suggestion to reverse the order of proposed § 300.203(a)(2)(i) and (ii) is no longer applicable. These comments and analyses use affirmative language where appropriate. In addition, the Department intends to issue guidance on these regulations and plans to provide examples in that guidance using affirmative language.

*Changes:* None.

*Comment:* One commenter recommended that the determination that an LEA receives pursuant to section 616 of the IDEA (20 U.S.C. 1416) be considered when deciding whether an LEA met the MOE compliance standard because that determination is based on IDEA Part B compliance requirements and is an indication that the LEA implemented the requirements of the IDEA.

*Discussion:* Section 616 of the IDEA includes provisions related to monitoring, technical assistance, and enforcement of the IDEA. Pursuant to section 616(a)(1)(C) of the IDEA and 34 CFR 300.600(a), each State must determine annually whether an LEA meets the requirements and purposes of the IDEA. The commenter's suggestion is not consistent with section 613(a)(2)(A)(iii) of the IDEA (20 U.S.C. 1413(a)(2)(A)(iii)), which requires LEAs to maintain effort. Compliance with the MOE provision is a distinct requirement that cannot be met through compliance with other IDEA requirements or through meeting results targets.

*Changes:* None.

*Comment:* One commenter recommended that we add a new subsection to proposed § 300.203 entitled "Budget and Expenditure Categories" that would define or reference the terms "education" and "related services." The commenter recommended that the regulations allow LEAs to compare either "education" expenditures or "education and related services" expenditures to meet the compliance and eligibility standards. The commenter stated that, in States where certain federally-defined "related services" are considered "education" pursuant to State law, an annual MOE comparison of "education and related services" may be preferable. The commenter stated that, in that instance, the match provided in order to receive the Federal Medicaid reimbursement should be included in the calculation.

*Discussion:* The Department disagrees that the regulations should include definitions of these terms. The terms "special education" and "related services" are defined in §§ 300.39 and 300.34, respectively. When calculating the amount an LEA spends for the education of children with disabilities, the LEA must include expenditures for related services, regardless of whether a State considers certain federally-defined related services as education pursuant to State law. LEAs must include the amount of local only, or State and local, funds spent for the education of children with disabilities when calculating the level of effort required to

meet the eligibility and compliance standards, even if those local only, or State and local, funds are also used to meet a matching requirement in the Medicaid program. We believe the regulations adequately address the expenditures that may be included in the MOE calculations, and therefore decline to add a new subsection addressing specific budget and expenditure categories.

*Changes:* None.

#### *Comparison Year*

*Comment:* We received many comments about proposed § 300.203(a)(2)(ii), which provided that the comparison year for an LEA that seeks to establish compliance using local funds only, or local funds only on a per capita basis, is "the most recent fiscal year for which the LEA met the MOE compliance standard based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds. . . ." Some commenters stated that the comparison year must always be the "preceding fiscal year" because that is the language in the statute. Other commenters suggested that proposed subsection (a)(1) include the language "even if the LEA also met the MOE compliance standard based on State and local funds. . . ." A few commenters stated that, in almost all circumstances, the baseline for MOE when using expenditures of local funds only will be the year of the highest level of expenditures of local funds only, even if that level was not from the preceding fiscal year, and even if the LEA met MOE in the preceding fiscal year using a different method.

*Discussion:* We agree with the commenters that, when an LEA seeks to meet the compliance standard using local funds only, or local funds only on a per capita basis, the comparison year should align with the language in section 613(a)(2)(A)(iii) of the IDEA (20 U.S.C. 1413(a)(2)(A)(iii)), which is "the preceding fiscal year." Using the same comparison year for local funds only and for State and local funds will simplify the requirement for LEAs, SEAs, and auditors, which should result in increased compliance and enforcement. Therefore, we changed the comparison year for meeting the compliance standard using local funds only in proposed § 300.203(a)(2)(ii) to "the preceding fiscal year" from "the most recent fiscal year for which the LEA met the MOE compliance standard based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds."

However, because we are adopting the Subsequent Years rule in § 300.203(c), the Department is, in effect, defining "the preceding fiscal year" to mean the last fiscal year in which the LEA met MOE, regardless of whether the LEA is seeking to establish compliance based on local funds only, or based on State and local funds. Because our change affects the comparison year for the MOE calculation using local funds only, the provision in proposed § 300.203(a)(2)(iii), which addresses the comparison year if the LEA has not previously met the MOE compliance standard based on local funds only, is no longer necessary.

With regard to the comment that the comparison year when using local funds only, or local funds only on a per capita basis, will usually be the year of the highest level of local funds only expenditures, the final regulations at § 300.203(b)(2) provide that, regardless of the method used, the comparison year is always the preceding fiscal year. However, the comparison year is subject to the Subsequent Years rule in § 300.203(c), which means that, if the LEA did not maintain effort in the preceding fiscal year using local funds only, the required amount to meet the MOE compliance standard using local funds only is the amount that would have been required in the absence of that failure, and not the LEA's reduced level of local funds only expenditures.

*Changes:* We have revised final § 300.203(b)(2) to specify that the comparison year, regardless of the method used, is the preceding fiscal year. We also removed proposed § 300.203(a)(2)(iii).

*Comment:* One commenter questioned the language in proposed § 300.203(a)(2)(i) and (ii) that permitted LEAs to meet the compliance standard using local funds only and the combination of State and local funds. The commenter stated that having two standards imposes an unnecessary burden on SEAs and LEAs, which could result in additional misapplication of the MOE compliance standard.

*Discussion:* The Department agrees that proposed § 300.203(a)(2)(i) and (ii) could benefit from additional clarification and that confusion will not promote compliance. Therefore, we have revised final § 300.203(b)(2) (proposed § 300.203(a)(2)(i) and (ii)) to state the compliance standard more clearly.

However, the option to meet the compliance standard based on local funds only or a combination of State and local funds is not new. The 1999 IDEA Part B regulations provided additional flexibility to LEAs in the

event of increased funding from State sources by permitting LEAs to meet MOE based on State and local funds, and the 2006 IDEA Part B regulations maintained that language. As explained in the *Analysis of Comments and Changes* in the preamble to the 1999 IDEA Part B regulations, if a State increases funding to LEAs to reduce the fiscal burden on local government, an LEA may not need to continue to put the same amount of local funds toward expenditures for the education of children with disabilities in order to meet the MOE requirement. See 64 FR 12406, 12571 (Mar. 12, 1999). However, if a State increases funding to an LEA, the LEA should not be able to replace any or all of its local funds with State funds unless the combination of State and local funds is not at least equal to the amount expended from the same source in a preceding fiscal year (subject to the Subsequent Years rule), as this would result in reductions in expenditures not contemplated by the statute.

*Changes:* We have revised final § 300.203(b)(2) to state the compliance standard more clearly and to specify that the comparison year, regardless of the method used, is the preceding fiscal year.

#### *Exceptions and Adjustment*

*Comment:* One commenter asked for clarification of the relationship between the amount by which an LEA is permitted to reduce its expenditures pursuant to §§ 300.204 and 300.205 and the amount the LEA must spend to meet the compliance standard in a future fiscal year. The commenter asked how the threshold for future compliance using local funds only or a combination of State and local funds is affected if an LEA reduces its expenditures in an amount less than the maximum amount permitted by §§ 300.204 and 300.205.

*Discussion:* The LEA's actual level of expenditures for the education of children with disabilities in a preceding fiscal year, and not the reduced level of expenditures that the LEA could have spent had it taken all of the exceptions and the adjustment permitted by §§ 300.204 and 300.205, is the level of expenditures required of the LEA in a future fiscal year (which may be affected by the Subsequent Years rule in § 300.203(c)). For example, in FY 2015–2016, an LEA could have reduced its expenditures by \$100,000 (from \$2,100,000 to \$2,000,000) by taking all of the exceptions permitted by § 300.204. However, this LEA actually spent \$2,025,000 in FY 2015–2016. Therefore, this LEA only reduced its expenditures by \$75,000. In FY 2016–

2017, the LEA must spend at least \$2,025,000 if it chooses to use the same method of measuring expenditures (before calculating any exceptions or adjustment in §§ 300.204 and 300.205 that it takes in FY 2016–2017).

*Changes:* None.

*Comment:* A commenter asked whether exceptions taken pursuant to § 300.204 have to be specifically identified as reductions to State or local expenditures and whether all exceptions are allowable against local expenditures.

*Discussion:* An LEA need not identify the exceptions and adjustment in §§ 300.204 and 300.205 as applying specifically against State or local expenditures. An LEA may apply the exceptions and the adjustment in §§ 300.204 and 300.205 to meet the compliance standard using any of the four methods. For an example of this calculation, see Table 6.

*Changes:* None.

*Comment:* One commenter requested that the Department allow an LEA to reduce its required level of expenditures if the increase in expenditures with State and local funds, or local funds only, in the preceding fiscal year was caused by a reduction in IDEA Part B funds. Some commenters stated that, as Federal funding fluctuates, LEAs need additional flexibility to move dollars in and out of programs.

*Discussion:* While it is unusual for IDEA Part B funds to be reduced, the Department recognizes that this has occurred in the past. Nevertheless, reductions in expenditures, other than those permitted by the exceptions and adjustment in §§ 300.204 and 300.205, are not permissible under the statute and regulations, even if the LEA experienced decreased revenues. LEAs, therefore, must meet the eligibility and compliance standards regardless of the amount of their IDEA Part B subgrant.

*Changes:* None.

*Comment:* A few commenters requested that the Department consider a provision in the regulations that would permit a waiver of the MOE requirement, and they noted that the IDEA does not specifically prohibit MOE waivers.

*Discussion:* The statute does not include a waiver provision for LEA MOE. Therefore, we believe that adding such a waiver would be inconsistent with the language and purpose of the MOE requirement in section 613(a)(2)(A)(iii) of the IDEA (20 U.S.C. 1413(a)(2)(A)(iii)). In addition, the Department believes that the exceptions and adjustment in §§ 300.204 and 300.205, and the ability to meet the MOE eligibility and compliance

standards using any of the four methods, provide adequate flexibility to LEAs. Therefore, these regulations do not provide for waivers of LEA MOE.

*Changes:* None.

#### *Data Retention and Administration*

*Comment:* Commenters raised many questions and concerns about whether the proposed regulations would require LEAs and SEAs to maintain data and information on expenditures. Some commenters raised concerns or questions about the number of years for which LEAs and SEAs would have to maintain information related to meeting the eligibility and compliance standards. One of these commenters questioned how the MOE requirement interacts with State and local data retention policies because, without established time limits on how long the data must be maintained, the requirement may conflict with those policies. Several commenters expressed concern about the requirement for LEAs and SEAs to have systems that maintain information on the reductions an LEA took pursuant to §§ 300.204 and 300.205. Commenters were concerned about LEAs' ability to track the allowable exceptions and adjustment every year, and the cost of doing so, even if LEAs meet the MOE requirement, and particularly if they are required to go back an indefinite number of years to examine information. Some commenters stated that the proposed regulations would increase administrative costs if LEAs are required to track expenses by local and State sources separately. A few commenters asked what circumstances an LEA may take into account if it is required to go back more than five years to compare its expenditures (e.g., population shifts; State changes in funding formulas for special education; changes in poverty levels; statutory structural changes that shift pension or health care contributions from the employer (LEA) to the employees).

*Discussion:* As an initial matter, in accordance with 34 CFR 76.731, SEAs and LEAs must keep records to show their compliance with program requirements, including the MOE requirement in § 300.203 and the provisions for exceptions and adjustment permitted in §§ 300.204 and 300.205. SEAs and LEAs are subject to the record retention requirements in 2 CFR 200.333, under which records must generally be retained for three years from the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. Under 34 CFR 76.709, if SEAs or LEAs do not obligate all of their IDEA

Part B grant or subgrant funds by the end of the fiscal year for which Congress appropriated the funds, they may obligate those funds during a carryover period of one additional year. Therefore, SEAs and LEAs must generally keep records to show compliance with the MOE requirement for a minimum of five years. SEAs and LEAs have the discretion to keep the records longer than the required retention period if necessary to meet State and local data retention requirements.

The Department recognizes that there is confusion about the information and data that LEAs and SEAs must maintain in order to meet the eligibility and compliance standards. In addition to the minimum five-year record retention requirement discussed above, an LEA that wishes to retain the flexibility to use any of the four methods to meet the MOE requirement in a particular fiscal year must have data and information that allow the LEA to determine the amount of expenditures it made in the relevant comparison year using that same method.

An LEA that wishes to reduce its expenditures pursuant to the exceptions and adjustment in §§ 300.204 and 300.205 must have data and information that demonstrate the LEA properly took the exceptions and adjustment.

Unless the LEA failed to meet the compliance standard in the preceding fiscal year, the LEA will need information only from the preceding fiscal year to demonstrate compliance with the MOE requirement. However, if the LEA did not meet the compliance standard in the preceding fiscal year, the LEA will have to determine the proper comparison year. To do so, the LEA must use the Subsequent Years rule in § 300.203(c) and have information for that fiscal year, even if that fiscal year falls outside of the five years required for record retention.

For example, an LEA that wishes to meet the compliance standard in FY 2016–2017 using a combination of State and local funds must have information on the amount of State and local funds it expended for the education of children with disabilities in the preceding fiscal year, which is FY 2015–2016. If the LEA did not meet the compliance standard using that method in FY 2015–2016, it must have information from the proper comparison year. Since the Subsequent Years rule requirement is effective, at the earliest, for FY 2012–2013, the earliest fiscal year for which the LEA must have information is FY 2010–2011. This is because, in FY 2012–2013, the LEA must have spent at least the same amount for the education of children

with disabilities as it spent in FY 2011–2012. If the LEA did not meet the compliance standard in FY 2011–2012, the LEA must, using that same method, determine what it should have spent in FY 2011–2012, which is what it actually spent in FY 2010–2011. In addition, in this hypothetical, if the LEA reduces expenditures in FY 2016–2017 based on an exception or adjustment permitted in §§ 300.204 and 300.205, the LEA must have documentation that it properly took the exception or adjustment.

Finally, neither the proposed nor the final regulations change the circumstances under which an LEA may use the exceptions and adjustment in §§ 300.204 and 300.205, nor do they impose additional data retention requirements on LEAs. The change in circumstances raised by commenters, such as shifts in funding formulas, or changes that shift pension or health care contributions from the State or LEA to the employee, are not exceptions to the MOE requirement, and LEAs, therefore, would not be required to retain this information to demonstrate compliance with the MOE requirement.

*Changes:* None.

*Comment:* One commenter stated that, if an LEA does not have information on the amount of “local funds only” expended for the education of children with disabilities for a specified time period, the LEA should not be able to use the “local funds only” option to meet the eligibility and compliance standards for that same time period.

*Discussion:* We understand that, due to State or local fiscal systems, some LEAs cannot distinguish between expenditures made with State funds and those made with local funds. While the regulations permit LEAs to use any one of the four methods, the regulations do not require an LEA to separately account for expenditures made with local funds and those made with State funds. However, regardless of the method used, LEAs must be able to provide auditable data to document that they met the eligibility and/or compliance standards using that method. Therefore, LEAs that are unable to account for local funds only, or local funds only on a per capita basis, or that choose not to retain those records, will be unable to use those methods to meet the eligibility and compliance standards and instead must meet the eligibility and compliance standards using either the combination of State and local funds or the combination of State and local funds on a per capita basis.

*Changes:* None.

*Comment:* One commenter expressed concern that the proposed changes to the regulations will require significant

revision of training materials and documentation that some States have used for at least 15 years.

*Discussion:* We understand that the changes to the MOE regulations may require changes to States’ policies and procedures and may therefore also require revisions to their training materials and documentation practices. However, we believe that the changes we are making to the regulations are necessary to increase understanding of, and compliance with, the MOE requirement. The Department will provide guidance on these regulations that will assist States in training LEAs on the documentation needed to demonstrate compliance with the MOE requirement.

*Changes:* None.

### **LEA Eligibility, § 300.203(a)**

#### *Eligibility Standard and Methodology*

*Comment:* Commenters raised many questions and concerns related to the four methods by which an LEA may meet the eligibility standard. One commenter requested that the regulations specifically list the four methods available to LEAs. Some commenters requested that the Department clarify that SEAs are required to allow LEAs to meet the eligibility standard using all four methods. Other commenters stated that the proposed regulations emphasize meeting the MOE requirement using local funds only, rather than clarifying that an LEA may meet the requirement through any of the four methods.

*Discussion:* We agree that additional clarification is needed regarding the four methods by which an LEA may meet the eligibility standard. We also agree that listing the four methods individually in the eligibility standard will clarify that an LEA may meet the eligibility standard using any one of these four methods, and that SEAs must permit LEAs to do so. Listing the four methods individually should also clarify that the regulations do not give preference or greater weight to any of the four methods.

*Changes:* We have revised final § 300.203(a)(1) (proposed § 300.203(b)) to specify that, for purposes of establishing an LEA’s eligibility for an award for a fiscal year, the SEA must determine that the LEA budgets, for the education of children with disabilities, at least the same amount, from at least one of the following sources, as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available: (i) Local funds only; (ii) the combination of State and local funds; (iii) local funds only on

a per capita basis; or (iv) the combination of State and local funds on a per capita basis.

*Comment:* One commenter recommended that the Department retain the language in current § 300.203(b)(1) requiring “at least the same total or per capita amount . . . the LEA spent . . . for the most recent prior year for which information is available.” The commenter objected that replacing “the most recent prior year” with “the most recent fiscal year” would narrow the regulation and not give LEAs the opportunity to submit allowable exceptions for reduced expenditures that may have taken place multiple fiscal years ago. Other commenters supported the change from “most recent prior year” to “most recent fiscal year” because the latter provides more clarity.

*Discussion:* We do not believe that the change from “most recent prior year” to “most recent fiscal year” has the effect on demonstrating eligibility that the commenter attributes to it. The change is not a substantive change, and merely aligns the language of the regulation to the language of the statute, which uses “fiscal year” and does not use “prior year.” Section 613(a)(2)(A)(iii) of the IDEA (20 U.S.C. 1413(a)(2)(A)(iii)). Nothing in this language prevents an LEA from reducing the amount of funds expended for the education of children with disabilities pursuant to the exceptions in § 300.204 or adjustment in § 300.205. However, an LEA may not look back to a previous fiscal year and claim exceptions for that fiscal year that it did not actually take during that fiscal year. For example, an LEA expended \$10,000 for the education of children with disabilities in FY 2014–2015. During that fiscal year, the LEA could have properly reduced its expenditures pursuant to exceptions in § 300.204 by \$500 but chose not to do so. In January 2016, the LEA is budgeting for the expenditures for the education of children with disabilities in order to demonstrate eligibility for an IDEA Part B subgrant for FY 2016–2017. The most recent fiscal year for which the LEA has information is FY 2014–2015. The LEA must budget \$10,000 for the education of children with disabilities, and not \$9,500. This is not a change in current law.

*Changes:* None.

#### Comparison Year

*Comment:* The Department received many comments about the comparison year an LEA must use when meeting the eligibility standard. Some commenters supported a comparison year that is the same regardless of which of the four

methods the LEA uses to meet the eligibility standard.

*Discussion:* The Department appreciates the comments and questions that we received about the comparison year for the eligibility standard. We agree that the comparison year should be the same regardless of the method an LEA uses to meet the eligibility standard.

Using the same comparison year for local funds only and for the combination of State and local funds will simplify the requirement for LEAs, SEAs, and auditors, and therefore should result in increased compliance and enforcement. In addition, this is consistent with how we changed the comparison year for the compliance standard using local funds only. Therefore, we have changed the comparison year for meeting the eligibility standard using local funds only in proposed § 300.203(b)(2) from “the most recent fiscal year for which information is available and the LEA met the MOE compliance standard based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds” to “the most recent fiscal year for which information is available” in final § 300.203(a)(1). However, because we are adopting the Subsequent Years rule in § 300.203(c), the Department is, in effect, defining “the most recent fiscal year for which information is available” to mean the most recent fiscal year in which the LEA met MOE and for which it has information available, regardless of whether the LEA is seeking to meet the eligibility standard based on local funds only, or based on the combination of State and local funds. Because we have changed the comparison year for local funds only, the provision in proposed § 300.203(b)(3), which addresses the comparison year if the LEA has not previously met the MOE compliance standard based on local funds only, is no longer necessary.

*Changes:* We have revised final § 300.203(a)(1) (proposed § 300.203(b)(2)) to specify that the comparison year, regardless of the method used, is the most recent fiscal year for which information is available. We also removed proposed § 300.203(b)(3).

*Comment:* Some commenters sought a comparison year for the eligibility standard that is the “preceding fiscal year” and objected to making the comparison year “the most recent fiscal year for which information is available.” These commenters stated that the proposed regulation leaves open the possibility that the comparison year will

be so far in the past that it will not provide a meaningful comparison. Similarly, other commenters recommended including language that limits how far back SEAs and LEAs must look as a reference point for comparison.

*Discussion:* We do not agree with commenters who stated that the comparison year should be “the preceding fiscal year” because, at the time most LEAs are budgeting for the next fiscal year (the “budget year”), the fiscal year preceding the budget year has not yet ended. Therefore, the LEA must look to the amount actually spent in “the most recent fiscal year for which information is available” to determine the amount it must budget to meet the eligibility standard.

We anticipate that “the most recent fiscal year for which information is available” will be two years before the budget year and therefore will not be so far in the past as to preclude a meaningful comparison. We assume, for example, that when an LEA is budgeting for FY 2016–2017, the most recent fiscal year for which final expenditure data are available would be FY 2014–2015. However, because circumstances in individual LEAs may vary, the Department declines to include language in the regulations that limits how far back SEAs and LEAs must go to identify a comparison year.

*Changes:* None.

*Comment:* A commenter asked what comparison year an LEA would use to meet the eligibility standard in a fiscal year subsequent to a fiscal year (or years) when the LEA was not eligible for, or did not receive, an IDEA Part B subgrant.

*Discussion:* An LEA that seeks to establish eligibility in a fiscal year subsequent to a fiscal year (or years) when the LEA was not eligible, or did not receive, an IDEA Part B subgrant, must use the comparison year in § 300.203(a)(1), which is “the most recent fiscal year for which information is available.” This is the case even if the most recent fiscal year for which information is available is a fiscal year during which the LEA was not eligible for, or did not receive, an IDEA Part B subgrant.

*Changes:* None.

*Comment:* A commenter asked whether, in order to meet the eligibility standard, an LEA must use the same method it used to meet the compliance standard in the most recent fiscal year for which information is available.

*Discussion:* When establishing eligibility, an LEA is not required to use the same method it used to meet the compliance standard in the most recent

fiscal year for which information is available. When an LEA is budgeting for the education of children with disabilities, the LEA selects a method by which it intends to meet the eligibility standard. The LEA identifies the amount it spent for the education of children with disabilities using that same method in the most recent fiscal year for which information is available. If the LEA met the compliance standard using the same method in the most recent fiscal year for which information is available, the LEA must budget at least that amount (after taking into

consideration the exceptions and adjustment in §§ 300.204 and 300.205, as permitted by § 300.203(a)(2)) in order to meet the eligibility standard.

Pursuant to the Subsequent Years rule in § 300.203(c), if the LEA did not meet the compliance standard using that method in the most recent fiscal year for which information is available, the LEA determines the amount that the LEA should have spent for the education of children with disabilities using that same method in the most recent fiscal year for which information is available. In that case, the LEA must budget at

least that amount (after taking into consideration the exceptions and adjustment in §§ 300.204 and 300.205, as permitted by § 300.203(a)(2)) in order to meet the eligibility standard.

Tables 7 and 8 demonstrate how an LEA could meet the eligibility standard over a period of years using different methods from year to year. These tables assume that the LEA did not take any of the exceptions or adjustment in §§ 300.204 and 300.205. Numbers are in \$10,000s budgeted and spent for the education of children with disabilities.

TABLE 7—EXAMPLE OF HOW AN LEA MAY MEET THE ELIGIBILITY STANDARD IN 2016–2017 USING DIFFERENT METHODS

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count	Notes
2014–2015 .....	*\$500	*\$1,000	*\$50	*\$100	10	Final information not available at time of budgeting for 2016–2017. When the LEA submits a budget for 2016–2017, the most recent fiscal year for which the LEA has information is 2014–2015. It is not necessary for the LEA to consider information on expenditures for a fiscal year prior to 2014–2015 because the LEA maintained effort in 2014–2015. Therefore, the Subsequent Years rule in § 300.203(c) is not applicable.
2015–2016 .....	.....	.....	.....	.....	.....	
How much must the LEA budget for 2016–2017 to meet the eligibility standard in 2016–2017?	500	1,000	50	100	.....	

\* The LEA met the compliance standard using all 4 methods.

TABLE 8—EXAMPLE OF HOW AN LEA MAY MEET THE ELIGIBILITY STANDARD IN 2017–2018 USING DIFFERENT METHODS AND THE APPLICATION OF THE SUBSEQUENT YEARS RULE

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count	Notes
2014–2015 .....	*\$500	*\$1,000	*\$50	*\$100	10	Final information not available at time of budgeting for 2017–2018. If the LEA seeks to use a combination of State and local funds, or a combination of State and local funds on a per capita basis, to meet the eligibility standard, the LEA does not consider information on expenditures for a fiscal year prior to 2015–2016 because the LEA maintained effort in 2015–2016 using those methods.
2015–2016 .....	450	*1,000	45	*100	10	
2016–2017 .....	.....	.....	.....	.....	.....	
How much must the LEA budget for 2017–2018 to meet the eligibility standard in 2017–2018?	500	1,000	50	100	.....	

TABLE 8—EXAMPLE OF HOW AN LEA MAY MEET THE ELIGIBILITY STANDARD IN 2017–2018 USING DIFFERENT METHODS AND THE APPLICATION OF THE SUBSEQUENT YEARS RULE—Continued

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count	Notes
						However, if the LEA seeks to use local funds only, or local funds only on a per capita basis, to meet the eligibility standard, the LEA must use information on expenditures for a fiscal year prior to 2015–2016 because the LEA did not maintain effort in 2015–2016 using either of those methods, per the Subsequent Years rule. That is, the LEA must determine what it should have spent in 2015–2016 using either of those methods, and that is the amount that the LEA must budget in 2017–2018.

\* LEA met MOE using this method.

*Changes:* None.

*Comment:* A commenter stated that because the SEA is responsible for paying back funds if an LEA fails to maintain effort, it is better left to the SEA to determine how LEAs must demonstrate eligibility for an IDEA Part B subgrant.

*Discussion:* Section 613(a) of the IDEA (20 U.S.C. 1413(a)) provides the standard for an LEA's eligibility for an IDEA Part B subgrant. An LEA is eligible for assistance under IDEA Part B in a fiscal year only if it submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in section 613(a) of the IDEA, including an assurance that amounts provided to the LEA will not be used, except as provided in the statutory exceptions and adjustment, to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year. In addition, for the purpose of establishing an LEA's eligibility for an IDEA Part B subgrant in § 300.203(a), the SEA must determine that the LEA budgets for the education of children with disabilities at least the same total or per capita amount as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available. Because the IDEA statute and regulations specify that LEAs must meet these eligibility requirements, it would be inconsistent with the IDEA to allow SEAs to use different eligibility requirements. The

fact that an SEA would be liable in a recovery action pursuant to section 452 of the General Education Provisions Act (GEPA) (20 U.S.C. 1234a) does not affect the Department's responsibility to interpret the statute and issue regulations on the MOE requirement or the State's responsibility to ensure that LEAs meet the eligibility requirements.

*Changes:* None.

#### *Exceptions and Adjustment*

*Comment:* Many commenters objected to the eligibility standard in proposed § 300.203(b)(1), which would require an LEA to budget, for the education of children with disabilities, at least the same total or per capita amount as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available without permitting LEAs to take into consideration the exceptions and adjustment permitted in §§ 300.204 and 300.205. Some of these commenters recommended that proposed § 300.203(b)(1) make explicit reference to the authorized exceptions and adjustment in §§ 300.204 and 300.205. In addition, some commenters asked the Department to clarify how an LEA may consider the exceptions and adjustment in §§ 300.204 and 300.205 when budgeting for the expenditures for the education of children with disabilities.

*Discussion:* The commenters appear to have partially misread proposed § 300.203(b)(1), which did permit an LEA to take into consideration the exceptions and adjustment that the LEA

actually took in the comparison year, as permitted in §§ 300.204 and 300.205, when calculating the amount of expenditures for the education of children with disabilities in the most recent fiscal year for which information is available. The final regulations at § 300.203(a)(1) continue to permit an LEA to take into consideration the exceptions and adjustment, as permitted in §§ 300.204 and 300.205.

What the proposed rule did not do, however, was permit an LEA to take into consideration exceptions or an adjustment taken in the intervening fiscal year(s) between the budget year and the comparison year. The proposed rule also did not permit an LEA to consider the exceptions and adjustment that it reasonably anticipates taking in the budget year but that have not yet occurred.

We understand that an LEA will have information about exceptions and an adjustment that it took in the intervening year(s), even if the LEA does not have final information on expenditures for that year(s). For example, when an LEA is budgeting for FY 2016–2017, the LEA knows that it took an exception under § 300.204 in FY 2015–2016 that will permissibly lower the amount the LEA was otherwise required to spend for the education of children with disabilities in FY 2015–2016 when compared to FY 2014–2015 (the most recent fiscal year for which the LEA has information). The LEA may also reasonably anticipate that it will take an exception under § 300.204 in FY

2016–2017, the budget year. We agree with the commenters that the eligibility standard should permit LEAs to take into consideration the exceptions and

adjustment in the intervening fiscal year(s) and the budget year. Table 9 provides an example of how an LEA may consider the exceptions and

adjustment in §§ 300.204 and 300.205 when budgeting for the expenditures for the education of children with disabilities.

TABLE 9—EXAMPLE OF HOW AN LEA MAY MEET THE ELIGIBILITY STANDARD USING EXCEPTIONS AND ADJUSTMENT IN §§ 300.204 AND 300.205, 2016–2017

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count	Notes
Actual 2014–2015 expenditures.	* \$500	* \$1,000	* \$50	* \$100	10 .....	The LEA met the compliance standard using all 4 methods.*
Exceptions and adjustment taken in 2015–2016.	– 50	– 50	– 5	– 5	.....	LEA uses the child count number from the comparison year (2014–2015).
Exceptions and adjustment the LEA reasonably expects to take in 2016–2017.	– 25	– 25	– 2.50	– 2.50	.....	LEA uses the child count number from the comparison year (2014–2015).
How much must the LEA budget to meet the eligibility standard in 2016–2017?	425	925	42.50	92.50	.....	When the LEA submits a budget for 2016–2017, the most recent fiscal year for which the LEA has information is 2014–2015. However, if the LEA has information on exceptions and adjustment taken in 2015–2016, the LEA may use that information when budgeting for 2016–2017. The LEA may also use information that it has on any exceptions and adjustment it reasonably expects to take in 2016–2017 when budgeting for that year.

However, we caution that, when taking into consideration the exceptions and adjustment that the LEA took in the intervening fiscal year(s) for the purpose of meeting the eligibility standard in the budget year, the LEA does so without having final information on its expenditures for the education of children with disabilities in the intervening fiscal year(s). That intervening fiscal year will be the comparison year (subject to the Subsequent Years rule) for the purpose of meeting the compliance standard in the budget year. Accordingly, LEAs should also take into consideration information related to increased expenditures for the education of children with disabilities in the intervening fiscal year(s) that would affect the amount the LEA must spend in the budget year in order to meet the compliance standard in the budget year. Otherwise, the LEA may budget less for

the education of children with disabilities than it will need to expend in order to meet the compliance standard in that year.

*Changes:* We added new § 300.203(a)(2), which permits an LEA to take into consideration, to the extent the information is available, the exceptions and adjustment provided in §§ 300.204 and 300.205 that the LEA: (i) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the LEA is budgeting; and (ii) reasonably expects to take in the fiscal year for which the LEA is budgeting.

*SEA Review*

*Comment:* A few commenters objected to the language in the NPRM that “States will need to carefully review LEA applications, and compare

amounts budgeted to amounts expended in prior years.” These commenters stated that section 613(a) of the IDEA (20 U.S.C. 1413(a)) requires only assurances in an LEA’s application to the State, rather than information that demonstrates its compliance with the MOE requirement, and that the requirement that an LEA have on file with the SEA information to demonstrate that the eligibility requirement has been met was intentionally removed from the IDEA Part B regulations after the 2004 reauthorization of the IDEA. Moreover, these commenters stated that requiring LEAs to submit a budget as part of the eligibility process imposes undue burden on SEAs and LEAs, creating additional paperwork and requiring more staff to provide oversight. One commenter stated that the Department

must clarify whether a State must receive a detailed special education budget from each LEA outlining how the LEA has taken the exceptions and adjustment in §§ 300.204 and 300.205 or whether the State must receive an overall budgeted amount from the LEA for the education of children with disabilities for the upcoming fiscal year.

*Discussion:* The requirement that, in order to find an LEA eligible for an IDEA Part B subgrant award for a fiscal year, an SEA must determine that the LEA has budgeted sufficient funds to meet the MOE eligibility standard is a regulatory requirement that has been in effect since 1999 and was not removed from the 2006 IDEA Part B regulations implementing the 2004 amendments to the IDEA. In 2006, the Department did remove the requirement that an LEA have information on file with the SEA to demonstrate that the LEA actually met the MOE compliance standard. That regulatory change was based on the statutory change to section 613(a) made by the 2004 IDEA Amendments to require LEAs to provide assurances, rather than information demonstrating, that the LEA meets each of the conditions in section 613(a) of the IDEA. However, in § 300.203(b)(1) of the 2006 IDEA Part B regulations, the Department maintained the regulatory requirement that the SEA determine whether the LEA has met the MOE eligibility standard (*i.e.*, has budgeted sufficient funds for the education of children with disabilities). The Department continues to believe that the MOE eligibility standard is necessary because an LEA that has met the eligibility standard for a fiscal year is more likely to meet the MOE compliance standard for that same fiscal year.

We do not believe that this requirement imposes an undue burden on SEAs or LEAs. Some SEAs already use the IDEA Part B subgrant application process to collect compliance data on MOE, and the Department has learned through fiscal monitoring that most SEAs already require LEAs to submit budget information and are not relying on an assurance to determine whether an LEA has budgeted sufficient funds. In addition, the SEA has the discretion to determine the type and amount of information that it must review in order to be able to determine that the LEA has budgeted sufficient funds to meet the MOE eligibility standard. It is not necessary for the SEA to review a detailed budget, so long as the SEA has sufficient information to determine if the LEA meets the eligibility standard. For example, these regulations do not require LEAs to submit budgets broken

down by object codes or line items. The Department intends to issue guidance following the publication of these regulations and will include information regarding the eligibility standard.

*Changes:* None.

*Comment:* A commenter urged the Department to clarify that, when reviewing an LEA's application for an IDEA Part B subgrant, an SEA may rely on information on expenditures for the most recent fiscal year for which information is available at the time the LEA submits its application, rather than requiring the SEA to review information on expenditures for a more recent fiscal year than the one for which the LEA submits information to the SEA during the review of the LEA's application.

*Discussion:* The Department understands that, in some States, because of the timing of their fiscal years or for other State- or LEA-specific reasons, after an LEA submits its application for an IDEA Part B subgrant, the LEA submits information on expenditures for a more recent fiscal year than the one for which it provided information in its application. SEAs need not make multiple determinations of an LEA's eligibility for an IDEA Part B subgrant for a given fiscal year. However, the SEA must use, as a comparison year for the purpose of determining an LEA's eligibility, the most recent fiscal year for which the LEA has information. Accordingly, if, before the SEA determines the LEA's eligibility for a given fiscal year, the LEA submits to the SEA information on expenditures for a more recent fiscal year, the SEA must use that information in determining the LEA's eligibility.

*Changes:* None.

*Comment:* A commenter noted that budget data submitted with an LEA's application for an IDEA Part B subgrant are often preliminary, and that, therefore, by the time the SEA determines eligibility for an IDEA Part B subgrant, the LEA's budget may have changed.

*Discussion:* We recognize that, at the time some LEAs submit their applications to the SEA for an IDEA Part B subgrant, their budgets may be preliminary. The SEA has the discretion to determine, based on the patterns and practices of its LEAs, whether an LEA submitted reasonable budget data with its application. If, before it determines an LEA's eligibility for an IDEA Part B subgrant, an SEA finds that the budget data have changed substantially, we expect the SEA would require the LEA to update its application.

*Changes:* None.

*Comment:* One commenter asked if an LEA must submit budget amendments to the SEA if its expenditures change during the year.

*Discussion:* No. Once an SEA has determined an LEA's eligibility for an IDEA Part B subgrant, the LEA does not need to provide amendments that reflect changes in expenditures in order to remain eligible for that year.

*Changes:* None.

*Comment:* One commenter asked whether an LEA must describe in its IDEA Part B subgrant application the method it will use to meet the MOE eligibility standard.

*Discussion:* Although these regulations do not require an LEA to describe in its application the method that it will use to meet the MOE eligibility standard, an SEA may require this information, and the LEA is not prohibited from providing that information in its application. The SEA must be able to determine that the LEA meets the eligibility standard using at least one of the four permissible methods. As stated above, regardless of which method it uses to meet the MOE eligibility standard, the LEA may use a different method to meet the eligibility standard in a subsequent fiscal year.

*Changes:* None.

*Comment:* A commenter stated that the proposed regulations created a new requirement for auditors to compare the amounts budgeted to meet the MOE eligibility standard in a given fiscal year to the amounts spent in the comparison year to meet the MOE compliance standard. This commenter expressed concern that anticipated budget amounts might not align with prior expenditures.

*Discussion:* Neither the proposed nor the final regulations create a new audit standard. The eligibility standard has always required a comparison of amounts budgeted in a given fiscal year to amounts expended in the comparison year.

*Changes:* None.

#### *Ineligibility*

*Comment:* A few commenters requested clarification on the consequence of not meeting the MOE eligibility standard. One commenter asked if an SEA would be required to find an LEA ineligible for its IDEA Part B subgrant if the proposed LEA budget does not meet the MOE eligibility standard. Another commenter asked for clarification on what happens to the IDEA Part B funds that are not awarded to an LEA.

*Discussion:* If an SEA determines that an LEA does not meet the MOE eligibility standard using any of the four methods in final § 300.203(a) (proposed § 300.203(b)), the SEA must provide notice that the LEA is not eligible for an IDEA Part B subgrant, as required by § 300.221(a). The SEA must also provide the LEA with reasonable notice and an opportunity for a hearing, pursuant to § 300.221(b). If the SEA determines that the LEA is not eligible to receive a Part B subgrant for that fiscal year, the SEA retains the amount of Part B funds that the LEA would have received. 34 CFR 300.227(a)(1). The SEA would then be required to provide special education and related services directly to children with disabilities residing in the area served by that LEA. 34 CFR 300.227(a)(1).

*Changes:* None.

*Comment:* None.

*Discussion:* Current § 300.203(b)(3) provides that SEAs and LEAs may not consider any expenditures made from funds provided by the Federal government for which the SEA and LEA are required to account to the Federal government in determining an LEA's compliance with current § 300.203(a). While the proposed regulations included this requirement in the compliance standard in proposed § 300.203(a)(3), the proposed regulations did not include this requirement in the eligibility standard. This was an oversight. To ensure that this requirement applies to both the eligibility and compliance standards, we added § 300.203(a)(3).

*Changes:* We added new § 300.203(a)(3) to require that expenditures made from funds provided by the Federal government for which the SEA is required to account to the Federal government or for which the LEA is required to account to the Federal government directly or through the SEA may not be considered in determining whether an LEA meets the eligibility standard in § 300.203(a)(1).

#### **Failure To Maintain Effort and Consequence, § 300.203(d)**

##### *Legal Authority*

*Comment:* One commenter stated that proposed § 300.203(d) is based on a misreading of section 452 of GEPA (20 U.S.C. 1234a). The commenter stated that it is the responsibility of the LEA, rather than the SEA, to return any funds. Another commenter asked if an SEA has the right to seek recovery of funds from the LEA and requested that this right be included in the final regulation.

*Discussion:* The liability of the SEA in a recovery action if an LEA fails to meet the compliance standard is not new. The SEA is responsible for ensuring that LEAs receiving an IDEA Part B subgrant comply with all applicable requirements of that statute and its implementing regulations, including the MOE requirement. If an LEA fails to meet the MOE requirement in a particular fiscal year, the Department has authority to take steps to recover the appropriate amount of funds from the SEA.

Section 452(a)(1) of GEPA (20 U.S.C. 1234a(a)(1)) provides that the Department may recover funds if a grantee has made an unallowable expenditure of funds or has otherwise failed to discharge its obligation to account properly for funds under the grant. Under IDEA Part B, it is the State (operating through the SEA), and not the LEA, that is the Department's grantee. As such, the authority granted to the Department pursuant to GEPA specifically authorizes recovery of funds from the SEA. Section 453(a)(1) of GEPA (20 U.S.C. 1234b(a)(1)) provides that the measure of recovery in such a circumstance is an amount that is proportionate to the extent of the harm that the violation caused to an identifiable Federal interest associated with the program under which the recipient received the award. An identifiable Federal interest includes, but is not limited to, compliance with expenditure requirements and conditions, such as maintenance of effort. Section 453(a)(2) of GEPA (20 U.S.C. 1234b(a)(2)). Accordingly, when an SEA fails to ensure that an LEA has met the compliance standard in final § 300.203(b), the SEA, not the LEA, is liable in a recovery action under these provisions for the amount by which the LEA failed to maintain its level of expenditures, or the amount of the LEA's Part B IDEA subgrant, whichever is lower.

The SEA, in turn, following applicable State procedures, could seek reimbursement from the LEA. See July 26, 2006, letter to Ms. Carol Ann Baglin, available at <http://www2.ed.gov/policy/speced/guid/idea/letters/2006-3/baglin072606moe3q2006.pdf>. The Department has not included a provision permitting SEAs to seek reimbursement from LEAs because that is a matter of State law.

*Changes:* None.

##### *Burden on SEAs*

*Comment:* Some commenters objected to proposed § 300.203(d) and stated that the consequence for a failure to meet the MOE compliance standard should fall on the LEA and not the SEA. These

commenters stated that while an SEA is able, through its oversight responsibilities, to identify that an LEA has failed to meet its MOE obligation, SEAs have no control over local budgets, and not all States have the fiscal resources to provide State funds to help an LEA meet its MOE obligation. Some commenters stated that if an LEA fails to maintain effort and is not able to pay back funds to the SEA, the SEA will be required to absorb the financial loss and has no recourse because Federal funding cannot be reduced or withheld from the LEA.

*Discussion:* The Department appreciates the concern of some commenters that SEAs should not be liable in a recovery action to return non-Federal funds because of an LEA's failure to meet the MOE compliance standard. However, as noted in the *Legal Authority* section of the *Analysis of Comments and Changes*, the SEA (acting on behalf of the State), not the LEA, is the grantee in the IDEA Part B program. As a condition of eligibility for an IDEA Part B grant, States must provide an assurance to the Department that the SEA is responsible for ensuring that, among other things, all requirements of Part B are met. Section 612(a)(11)(A)(i) of the IDEA (20 U.S.C. 1412(a)(11)(A)(i)). SEAs can minimize LEA noncompliance by carefully reviewing an LEA's application for an IDEA Part B subgrant to determine if the LEA meets the MOE eligibility standard, by monitoring for compliance on a regular basis, and by providing technical assistance to LEAs. SEAs that find an LEA is failing to comply with the MOE requirement may take further enforcement action as provided in § 300.222.

With respect to the concern raised by some commenters that some SEAs may be unable to absorb the loss because they do not have sufficient State funds, or because the SEA may not withhold Federal funds to an LEA that has failed to meet the MOE compliance standard, we remind States that they may seek reimbursement of these amounts from the LEA, to the extent permitted under State law. Whether a State seeks recovery from an LEA is at the discretion of the State.

*Changes:* None.

*Comment:* Some commenters stated that SEAs will be required to spend additional administrative time collecting funds, accounting for the collection in their financial systems, and returning funds to the Department. One of these commenters requested clarification about the timeframe within

which funds must be returned to the Department and the process for returning funds (such as what identifying information to include on the check, where to send it, and what supporting documentation to include).

*Discussion:* There should be no additional burden on, or expense to, an SEA as a result of codifying the Department's long-standing practice, which is consistent with GEPA, into final § 300.203(d). We added this provision to the final regulations not because this is a change in law, but because the Department believes that some SEAs and LEAs were not aware of the consequence of an LEA's failure to meet the MOE compliance standard. We acknowledge that those SEAs that were not aware of this requirement may need additional time to set up a process for returning funds to the Department and taking any associated actions against an LEA that the SEA wishes to take. However, this is a long-standing requirement, and therefore, we expect that SEAs already have a process in place. The Department believes that enforcement of the MOE requirement is critical to ensuring compliance.

The Department intends to provide guidance on the process for returning funds but does not believe it is appropriate or necessary to include

administrative details in these regulations.

*Changes:* None.

*Calculating Penalties*

*Comment:* A few commenters requested clarification of the definition of the "amount equal to the amount by which the LEA failed to maintain its level of expenditures" in proposed § 300.203(d). One commenter asked how to determine the amount of the penalty if an LEA failed to meet the MOE compliance standard. The commenter asked whether the SEA should determine the amount of the failure to be the lesser amount generated by the four methods (after accounting for the allowed exceptions and adjustment).

*Discussion:* The "amount equal to the amount by which an LEA failed to maintain its level of expenditures" is determined by calculating the amount by which the LEA failed to meet the MOE compliance standard. Before determining the amount of the failure, the SEA must permit the LEA to use any one of the four methods and to take the exceptions and the adjustment in §§ 300.204 and 300.205, where permissible. The amount of the failure, therefore, would be the smallest amount generated by the four methods (after accounting for the allowed exceptions and adjustment).

*Changes:* None.

*Comment:* A commenter asked if the amount by which an LEA failed to meet the compliance standard could exceed the amount of the LEA's IDEA Part B subgrant received in the year of the failure.

*Discussion:* While it is possible that the amount of a failure to meet the compliance standard may exceed the amount of the LEA's IDEA Part B subgrant for the fiscal year in question, the SEA's liability to the Department cannot. This is because, as discussed earlier, section 453(a)(1) of GEPA (20 U.S.C. 1234b(a)(1)) provides that the measure of recovery in such a circumstance is proportionate to the extent of the harm that the violation caused to an identifiable Federal interest associated with the program under which the recipient received the award. Under this circumstance, the Federal interest associated with the IDEA Part B program is limited to the amount of the LEA's IDEA Part B subgrant (the total amount of the LEA's subgrants under sections 611 and 619 of the IDEA).

Table 10 provides examples of how to calculate the amount by which an LEA failed to maintain its level of expenditures and of the amount of non-Federal funds that an SEA must return to the Department on account of that failure.

TABLE 10—EXAMPLE OF HOW TO CALCULATE THE AMOUNT OF AN LEA'S FAILURE TO MEET THE COMPLIANCE STANDARD IN 2016–2017 AND THE AMOUNT THAT AN SEA MUST RETURN TO THE DEPARTMENT

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count	Amount of IDEA Part B subgrant
2015–2016 .....	* \$500	* \$950	\$50 * .....	\$95 * .....	.....	Not relevant.
2016–2017 .....	400	750	\$40 .....	\$75 .....	10	\$50.
Amount by which an LEA failed to maintain its level of expenditures in 2016–2017.	100	200	\$100 (the amount of the failure equals the amount of the per capita shortfall (\$10) times the number of children with disabilities in 2016–2017 (10)).	\$200 (the amount of the failure equals the amount of the per capita shortfall (\$20) times the number of children with disabilities in 2016–2017 (10)).		

The SEA determines that the amount of the LEA's failure is \$100 using the calculation method that results in the lowest amount of a failure. The SEA's liability is the lesser of the four calculated shortfalls and the amount of the LEA's Part B subgrant in the fiscal year in which the LEA failed to meet the compliance standard. In this case, the SEA must return \$50 to the Department because the LEA's IDEA Part B subgrant was \$50, and that is the lower amount.

\* LEA met MOE using this method.

*Changes:* We added language in § 300.203(d) to clarify that, if an LEA fails to maintain its level of expenditures for the education of children with disabilities, the SEA is liable in a recovery action for the amount by which the LEA failed to maintain its level of expenditures in that fiscal year, or the amount of the

LEA's Part B subgrant in that fiscal year, whichever is lower.

*Comment:* A commenter suggested that the phrase "up to the amount of IDEA funds spent in that year" be added to the end of proposed § 300.203(d) because section 613(a)(2)(A)(iii) of the IDEA (20 U.S.C. 1413(a)(2)(A)(iii)) states that an LEA shall not use these funds to reduce its level of expenditures for the

education of children with disabilities below the level of those expenditures for the preceding fiscal year; therefore, the penalty should be no more than the IDEA Part B funds that the LEA spent in a particular fiscal year.

*Discussion:* The Department disagrees with the commenter who recommended that § 300.203(d) be changed to limit the amount of the penalty to the amount of

IDEA Part B funds actually spent by the LEA in the fiscal year in which the LEA failed to meet the compliance standard. Once an LEA accepts an IDEA Part B subgrant, the LEA is required to meet the compliance standard in § 300.203(b), and the amount of IDEA Part B funds spent by the LEA in that fiscal year is not relevant to the calculation of the MOE penalty.

*Changes:* None.

*Comment:* Many commenters requested that proposed § 300.203(d) incorporate language from the July 26, 2006, letter to Baglin, which stated, "Faced with a history of noncompliance with the MOE requirement, however, the SEA would need to carefully determine whether the LEA will meet the MOE requirement in the coming year (in which case a grant should be made), or whether the SEA should begin an administrative withholding action [consistent with section 613(c) and (d) of the IDEA] because it is not convinced that the LEA will meet the MOE requirement for the new year." The commenters stated that this language would underscore the importance of SEA monitoring and oversight to ensure implementation and compliance with the MOE requirement. Another commenter suggested that the Department add a specific consequence for LEAs that fail to comply with MOE for more than one fiscal year.

*Discussion:* The Department agrees that SEAs have a responsibility to ensure that LEAs meet the MOE eligibility and compliance standards. However, §§ 300.221 and 300.222 address what procedures the SEA must follow if the SEA determines that the LEA is not eligible or that an eligible LEA is failing to comply with the MOE requirement, and it is not necessary to duplicate those provisions in § 300.203(d). We believe that § 300.203(d) provides an appropriate consequence for MOE failures that occur in more than one fiscal year, because the penalty in § 300.203(d) applies in each fiscal year in which the LEA fails to maintain effort. Therefore, it is not necessary to add an additional consequence for such LEAs.

*Changes:* None.

*Comment:* Some commenters stated that LEAs should not be penalized for MOE violations in the absence of evidence that the LEA has failed to make FAPE available. Another commenter questioned the effectiveness of the consequence for MOE violations. Specifically, the commenter asked what evidence demonstrates that repayment of Federal funds by an LEA leads to increased compliance with the IDEA or a greater ability to maintain effort in

future years. In addition, the commenter questioned whether losing access to Federal dollars will be an incentive for LEAs to use sound financial practices that are fair to all the students they serve and to be better positioned to provide FAPE in the least restrictive environment for children with disabilities.

*Discussion:* The Department appreciates, but disagrees with, these comments. LEAs that receive an IDEA Part B subgrant must meet both the FAPE obligation and the MOE requirement separately; the two provisions are not contingent on each other. Regarding the comment questioning the effectiveness of the consequence for failure to maintain effort, the Department notes that the requirement to return funds based on an LEA's failure to maintain effort is a statutory requirement. Consistent with sections 452(a)(1) and (a)(2) and 453(a)(1) of GEPA (20 U.S.C. 1234a(a)(1) and (a)(2) and 1234b(a)(1)) and long-standing Department practice, an SEA is liable in a recovery action to pay the Department, from non-Federal funds or funds for which accountability to the Federal government is not required, the difference between the amount of local, or State and local, funds the LEA should have expended and the amount that it actually did expend. Section 453(a)(1) of GEPA (20 U.S.C. 1234b(a)(1)) provides that the measure of recovery in such a circumstance is an amount that is proportionate to the extent of the harm that the violation caused to an identifiable Federal interest associated with the program under which the recipient received the award. An identifiable Federal interest includes, but is not limited to, compliance with expenditure requirements and conditions, such as maintenance of effort. Section 453(a)(2) of GEPA (20 U.S.C. 1234b(a)(2)). Because the SEA in such a recovery action is required to return non-Federal funds, and not Federal funds, the SEA and LEA are not losing access to Federal IDEA Part B funds. See 2 CFR 200.441.

*Changes:* None.

#### Miscellaneous Comments

*Comment:* A few commenters stated that, because the Department acknowledged that MOE violations have not been extensive, a more restrained regulatory approach is justified.

*Discussion:* We disagree. In determining whether there was a need to revise the MOE regulations, OSEP found that at least 40 percent of States have policies and procedures that are not consistent with the MOE requirement. For example, many States

have not permitted LEAs to use all four methods to meet the eligibility or compliance standard. Another State did not allow LEAs to include local funds spent for the education of children with disabilities in its MOE calculations if the LEA was also required to spend those funds to meet a Medicaid matching requirement. These actions restrict the ability of LEAs to meet the MOE requirement and may result in a finding of noncompliance by LEAs where none exists. Moreover, the Department learned through fiscal monitoring that some States, prior to awarding IDEA Part B subgrants, were not requiring LEAs to demonstrate that they met the MOE eligibility standard. In addition, as we stated in the NPRM, some States identified noncompliance by LEAs with the MOE requirement and returned non-Federal funds to the United States Treasury in the amount of that failure but did not inform the Department of the failures, indicating that the number of failures to comply with the MOE requirement may be undercounted. Moreover, the Department learned, through its review of comments received in response to the NPRM, that some States were not aware that, if an LEA failed to meet the MOE compliance standard, the SEA was liable in a recovery action to return non-Federal funds to the Department in the amount of the failure. Accordingly, the Department does not believe that the lack of documentation of widespread MOE noncompliance necessarily leads to the conclusion that States and LEAs understand and comply with the MOE requirement.

*Changes:* None.

*Comment:* Many commenters supported the proposed changes to the MOE regulations because the changes would provide necessary clarification. Other commenters stated that the proposed regulations did not clarify the MOE requirement. A few commenters stated that the MOE requirement should be imposed only after the Department and Congress make an effort to compensate school districts for the 40 percent of special education costs that the commenters say the States were promised when the IDEA was enacted.

*Discussion:* We believe that the final regulations and the tables provided here clarify the MOE requirement. We disagree with the view expressed by commenters that the Department should not issue and enforce MOE regulations until the maximum amount of the grant a State receives is 40 percent of the average per-pupil expenditure in public elementary and secondary schools in the United States. The Department has no legal authority to condition

compliance with the MOE requirement on Congress's providing a particular level of appropriations. The IDEA requires that amounts provided to LEAs shall not be used, except as allowed by the exceptions and adjustment in §§ 300.204 and 300.205, to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

The Department believes that the MOE regulations provide necessary clarification on, and therefore will increase understanding by States and LEAs of, the MOE requirement, including: The Subsequent Years rule, the eligibility and compliance standards, the four methods available to LEAs to meet the eligibility and compliance standards, and the existing exceptions and adjustment in §§ 300.204 and 300.205. The Department also believes that the MOE requirement is consistent with, and promotes, the requirement that LEAs make FAPE available to all eligible children with disabilities.

*Changes:* None.

*Comment:* Several commenters objected generally to the MOE requirement and raised a variety of concerns, including that the proposed regulations encourage fraud, waste, and abuse because they encourage LEAs to spend funds to meet the MOE requirement rather than to ensure that children with disabilities receive FAPE. Other commenters stated a concern that LEAs will submit budgets that have inflated or non-existent costs simply to demonstrate eligibility for an IDEA Part B subgrant. A few commenters also stated that the proposed regulations create a disincentive for LEAs that wish to increase their expenditures for the education of children with disabilities for one-time, high-cost initiatives, because the district would be forced to continue spending the same amount of funds in future years after the initiative is completed.

*Discussion:* We do not believe that the regulations encourage fraud, waste, and abuse because they encourage LEAs to spend funds to meet the MOE requirement rather than to ensure that children with disabilities receive FAPE. State and local funds spent on the education of children with disabilities meet both the requirement to maintain effort and the requirement to make FAPE available to children with disabilities.

With respect to the comment that the MOE regulations create a disincentive for LEAs that wish to implement temporary initiatives for the education

of children with disabilities because doing so will increase the LEA's required level of effort in future years, section 613(a)(2)(B) of the IDEA and its implementing regulations in § 300.204 include five exceptions that permit an LEA to reduce its required level of expenditures. We believe these exceptions, such as the termination of costly expenditures for long-term purchases, and the adjustment in § 300.205 provide LEAs sufficient flexibility to adjust their required level of effort based on changed circumstances.

*Changes:* None.

*Comment:* Some commenters stated that the MOE regulations do not take into account the variety of fiscal systems in States and LEAs. The commenters expressed concern over the many State-specific issues that need to be independently addressed by OSEP or that fall outside the scope of the proposed regulation.

*Discussion:* We believe that the regulations provide sufficient direction to States and LEAs regardless of their fiscal systems. State-specific issues will be addressed by OSEP as needed. In addition, the Department intends to issue guidance on the MOE requirement and will continue to provide technical assistance to States to address State-specific concerns, including those related to the specifics of financial systems. One source of technical assistance will be the new Center for IDEA Fiscal Reporting that OSEP awarded under the FY 2014 competition CFDA 84.373F. OSEP awarded the grant to WestEd. The Center for IDEA Fiscal Reporting can be found at <http://cifr.wested.org/>. This center will improve the capacity of State staff to collect and report accurate fiscal data to meet the data collection requirements related to LEA MOE Reduction and Coordinated Early Intervening Services (CEIS) and State Maintenance of Financial Support (State MFS); and increase States' knowledge of the underlying fiscal requirements and the calculations necessary to submit valid and reliable data on LEA MOE/CEIS and State MFS.

*Changes:* None.

*Comment:* One commenter asked whether the requirement regarding CEIS will be affected by the proposed regulations.

*Discussion:* The provisions regarding CEIS in §§ 300.205(d) and 300.226 are not affected by these regulations.

*Changes:* None.

*Comment:* A few commenters recommended that the Department issue additional guidance to accompany the final regulations. Suggestions included:

A detailed checklist of what needs to be accounted for in LEAs' budgets, a chart that lays out how to meet the MOE requirement, and examples that use specific numbers.

*Discussion:* We appreciate the commenters' suggestions for additional guidance. This *Analysis of Comments and Changes* includes several tables to assist States and LEAs. These tables also have been included in new Appendix E to the regulations. In addition, the Department intends to issue guidance on the MOE requirement.

*Changes:* We have redesignated current Appendix E as new Appendix F. We have added new Appendix E to include Tables 1 through 10, which are included in the *Analysis of Comments and Changes*. This appendix will be published in the *Code of Federal Regulations*.

## Executive Orders 12866 and 13563

### Regulatory Impact Analysis

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

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

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

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

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

This final regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

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

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

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

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

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

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

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

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

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

#### *Potential Costs and Benefits*

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. In conducting this analysis, the Department examined the extent to which the changes made by these proposed regulations would add to or reduce the costs to States, LEAs, and others, as compared to the costs of implementing the current Part B

program regulations. Based on the following analysis, the Secretary has concluded that the changes could result in reduced costs for States and LEAs to the extent that increased understanding of the MOE requirement and use of all four methods to demonstrate that LEAs met MOE would result in States making fewer repayments to the Department and seeking fewer recoveries from LEAs. However, there is also the potential for additional costs for States and LEAs to the extent that LEAs are required to increase expenditures in the year following a failure to meet the MOE provisions under Part B of the Act or if a State or LEA incorrectly calculated MOE in a preceding year. The Secretary believes that the benefits of ensuring that adequate resources are available to provide FAPE for children with disabilities are likely to outweigh any costs to LEAs that violated the MOE requirement in the preceding year and do not plan to restore funding in the subsequent year to the level they should have maintained in the preceding year.

#### *Section 300.203*

The effect of the final regulations on LEAs will depend on: (1) The degree of understanding by States and LEAs about the eligibility and compliance standards and the ability that the LEAs have to meet one of four methods; and (2) the likelihood that LEAs would violate the MOE requirement in any given year and seek to maintain funding at the reduced level in subsequent years. One possible source of information that could be used to estimate the effect of the final regulations on LEAs is data on previous findings of LEA violations. However, as described in the *Analysis of Comments and Changes* section, the Department has limited information on LEA violations. States are responsible for monitoring LEA compliance with the MOE requirement and resolving any audit findings in this area, but States are not required to report the number of LEAs that violated the MOE requirement, the basis of the violations, or the amount of funding involved.

Other sources of information on the likely effects of the final regulations are audit reports and OSEP’s fiscal monitoring of States’ implementation of the current regulations. OSEP’s fiscal monitoring, in conjunction with the Department’s Office of Inspector General’s (OIG) audit findings and reports, have identified a number of problems with State administration of the MOE requirement under the current regulations, suggesting that there is confusion about the MOE requirement and a lack of clarity in the existing regulations. Specifically, OSEP has

found that at least 40 percent of States have policies and procedures that are not consistent with how States should determine eligibility for, or compliance with, the MOE requirement. Most notably, it appears that some States have not allowed LEAs to use all four methods to demonstrate that they have met the MOE requirement for purposes of eligibility or compliance determinations, including the method that allows the LEA to demonstrate that it met the MOE requirement on the basis of local funds only. There is also some indication that States may have used an incorrect comparison year when LEAs made a local-to-local comparison.

In years in which States did not allow the LEAs to use all four methods to demonstrate they met MOE, it is possible that LEAs budgeted for, and expended, more than they would have if both States and LEAs had understood that they had flexibility to use any of the four methods. In these instances, the clarification made in the final regulations will result in a reduction in future expenditures on the part of LEAs. Additionally, in instances in which States did not appropriately allow the LEAs to use any of the four methods in meeting MOE, the State may have sought to recover funds from LEAs or made unnecessary repayments to the Department. Clarifying that all four methods may be used for MOE determinations should result in States making fewer repayments to the Department and seeking fewer recoveries from LEAs.

Alternatively, in those cases in which States may be allowing LEAs to use an incorrect comparison year when using the local funds only method, clarifying the comparison year may result in increased expenditures by LEAs. For example, in its May 20, 2013 Alert Memorandum, the OIG raised concerns about the comparison years used by the State of California in determining MOE compliance. According to that memorandum, the State used an incorrect comparison year when determining that two LEAs met the MOE requirement using local funds only method. Specifically, California allowed the LEAs that had never relied on local funds only to meet the MOE requirement to use a comparison year from three years earlier, instead of requiring a comparison of expenditures made with local funds only to the preceding fiscal year. In this case, the clarification made by the final regulations will require increased LEA expenditures. We do not know the extent to which the use by States and LEAs of incorrect comparison years has permitted lower expenditures than

would be required under the final regulations, or, alternatively, the extent to which using the incorrect comparison year has resulted in higher expenditures. However, in general, the findings made during fiscal monitoring demonstrating that States are providing less flexibility to LEAs than is allowable under the law suggest that the clarifications included in these regulations would reduce costs for both LEAs and States.

The regulations also specifically address the level of expenditures required by an LEA in the fiscal years following a fiscal year in which an LEA violated the MOE requirement. Specifically, the final regulations clarify that, in a fiscal year following a fiscal year in which the LEA failed to meet MOE, the required level of expenditures is the level of expenditures in the last fiscal year in which the LEA met the MOE requirement, not the reduced level of expenditures in the preceding fiscal year (the Subsequent Years rule).

We believe that this clarification in the regulations will improve State administration of the program, and that it is consistent with the IDEA and in the best interest of children with disabilities. We do not expect this change to have a significant impact on LEA expenditures in the near term based on available data concerning the extent of LEA violations and the likelihood of future violations. However, this change would eliminate the risk, under the current regulations, that State policy could permit LEAs that reduce spending in violation of the MOE requirement to maintain the reduced level of expenditures in subsequent years.

The Department typically learns of an LEA violation in conjunction with its review of audit findings. In the relatively few instances in which the Department has issued program determination letters to States concerning audit findings about LEA failure to maintain the appropriate level of effort, most of the findings concerned the absence of an effective State system for monitoring MOE rather than specific MOE violations.

Since 2004, the only program determination letter that identified specific questioned costs for LEA failure to meet MOE involved Oklahoma. In December 2006, the Department issued a program determination letter to the Oklahoma SEA seeking recovery of \$583,943.29 expended under IDEA Part B due to audit findings that 76 LEAs had not met their required level of effort for funds in Federal fiscal Year (FFY) 2003. In School Year (SY) 2009–2010, Oklahoma reported having 532 LEAs;

accordingly, approximately 14 percent of the State's LEAs were affected by these audit findings. After reviewing additional materials provided by the State that supported the application of the MOE exceptions in § 300.204, the Department reduced the amount of its determination to \$289,501.76. The final claim against Oklahoma was settled for \$217,126.32.

We also searched the Federal Audit Clearinghouse for information about single audits of Federal awards conducted by States or private accounting firms of LEAs that expend \$500,000 or more in a year in Federal award funds, as required by Office of Management and Budget (OMB) Circular A–133. The Federal Audit Clearinghouse is located at the following link: [www.census.gov/econ/overview/go1400.html](http://www.census.gov/econ/overview/go1400.html). We searched for audit findings in response to area “G” of the compliance supplement to OMB Circular A–133, which relates to “Matching, Level of Effort, and Earmarking,” for audits related to Code of Federal Domestic Assistance section 84.027 (funds awarded under section 611 of the IDEA). Single audits of Federal awards are not available for all LEAs through the Federal Audit Clearinghouse, but there is information on single audits for 9,024 LEAs for FY 2009, which represents approximately 60 percent of LEAs.

Our search identified 25 audits that contained findings related to section G of the compliance supplement, four of which were accompanied by audit reports that included questioned costs related to failure to achieve the required MOE. Only two of the four audits specified amounts of questioned costs, for \$10,428 and \$153,621.53, respectively. Although these findings do not necessarily represent all violations of the MOE requirement, both the small number and size of questioned costs related to failure to meet this requirement suggest that MOE violations are not extensive. Audit findings for fiscal years 2007, 2008, 2010, and 2011 (to the extent available) were generally consistent with the findings for 2009.

Another source of information for estimating the likelihood of future MOE violations are data on the extent to which LEAs have reduced expenditures pursuant to the new flexibility provided in the 2004 amendments to the IDEA. Pursuant to section 613(a)(2)(C) of the IDEA, for any fiscal year in which an LEA receives an allocation under section 611(f) that exceeds its allocation for the previous fiscal year, an LEA that otherwise meets the requirements of the IDEA may reduce the level of

expenditures that are otherwise required to meet the MOE requirement by not more than 50 percent of the amount of the increased allocation. Since May 2011, States have been reporting the amount that each LEA received in an IDEA subgrant under section 611 or section 619, whether the State had determined that the LEA or educational service agency (ESA) had met the requirements of Part B of the IDEA, and whether each LEA or ESA had reduced its expenditures pursuant to § 300.205. Data are available at <http://tadnet.public.tadnet.org/pages/712> (Table 8 LEA-level files, revised 2/29/12, accessed 11/03/14).

The data we have collected to date include reductions taken in the year in which LEAs were most likely to make reductions because of the availability of an additional \$11.3 billion for formula grant awards under the Grants to States program provided under the American Recovery and Reinvestment Act of 2009 (ARRA). Because these additional funds increased the annual allocation to most LEAs in FFY 2009 over FFY 2008, LEAs meeting conditions established by the State and the Department were permitted to reduce the level of support they would otherwise be required to provide during SY 2009–2010 by up to 50 percent of the amount of the increase.

Of the 14,936 LEAs that received allocations under section 611 in FFY 2008 and FFY 2009, States reported that 12,061 received increased allocations under section 611 and met other conditions so that they were eligible to reduce their level of effort. Notably, only 4,237 LEAs (or 36 percent) reported that they reduced their level of effort. If they met the conditions, LEAs were permitted to reduce effort by up to 50 percent of the increase in their allocation, but they typically reduced spending only by 38 percent.

Larger LEAs were more likely to reduce expenditures than LEAs in general. For the 100 largest LEAs, based on their FFY 2008 allocations under section 611, 31 of the 51 LEAs that were eligible to reduce expenditures actually did so, and these LEAs reduced expenditures by an average of 73 percent of the allowable amount.

Of the 4,237 LEAs that reported reducing expenditures, only 32 had been determined to have not met the requirements of IDEA Part B and may have violated the MOE requirement, unless one of the exceptions to the MOE requirement in § 300.204 were applicable. The combined amount of MOE reductions for these LEAs was \$19,304,506, with a median reduction of \$745. One of these LEAs reported a

reduction of \$18,358,631, which represents 41 percent of the increase in that LEA's allocation from the previous year; but the reductions that were taken by the remaining LEAs were relatively small.

The combined amount by which eligible LEAs in the 50 States, the District of Columbia, and Puerto Rico could have reduced their level of effort in SY 2009–2010 was \$5.6 billion, but the actual combined reduction was only 27 percent of that amount, or \$1.5 billion. Because most LEAs did not reduce expenditures when they had an opportunity to do so, which would have led to an allowable reduction of their level of effort required in future years, it is reasonable to assume that a smaller number of LEAs would undertake reductions that constitute violations of the MOE requirement. We believe that it is highly unlikely that the 4,205 LEAs that met the requirement of section 613(a)(2)(C) of the IDEA and reduced their level of effort would seek further reductions that would violate the MOE requirement because they legitimately lowered their own required level of effort when they made those previous reductions.

Based on available audit findings and data, the Department believes that LEAs generally are unlikely to reduce expenditures in violation of the MOE requirement. Moreover, we believe that the requirement that LEAs make FAPE available to all eligible children with disabilities provides another critical protection against unwarranted reductions of expenditures to support education for children with disabilities. However, to ensure that State policy and administration of the MOE requirement are consistent with the Department's position on the required level of future expenditures in cases of LEA violations, we think that it is critical to change the regulations to clearly articulate the Department's interpretation of the law.

#### *Paperwork Reduction Act of 1995*

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), we have assessed the potential information collections in these proposed regulations that would be subject to review by OMB (Report on IDEA Part B Maintenance of Effort Reduction (§ 300.205(a)) and Coordinated Early Intervening Services (§ 300.226)) (Information Collection 1820–0689). In conducting this analysis, the Department examined the extent to which the amended regulations would add information collection requirements for public agencies. Based on this analysis, the Secretary has concluded that these amendments to the Part B

regulations would not impose additional information collection requirements.

#### *Intergovernmental Review*

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

This document provides early notification of the Department's specific plans and actions for this program.

#### *Assessment of Educational Impact*

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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

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(Catalog of Federal Domestic Assistance Number 84.181)

#### **List of Subjects in 34 CFR Part 300**

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

Dated: April 9, 2015.

**Arne Duncan,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary amends part 300 of title 34 of the Code of Federal Regulations as follows:

#### **PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES**

■ 1. The authority citation for part 300 is revised to read as follows:

**Authority:** 20 U.S.C. 1221e–3, 1406, 1411–1419, 3474, unless otherwise noted.

■ 2. Section 300.203 is revised to read as follows:

##### **§ 300.203 Maintenance of effort.**

(a) *Eligibility standard.* (1) For purposes of establishing the LEA's eligibility for an award for a fiscal year, the SEA must determine that the LEA budgets, for the education of children with disabilities, at least the same amount, from at least one of the following sources, as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available:

- (i) Local funds only;
- (ii) The combination of State and local funds;
- (iii) Local funds only on a per capita basis; or
- (iv) The combination of State and local funds on a per capita basis.

(2) When determining the amount of funds that the LEA must budget to meet the requirement in paragraph (a)(1) of this section, the LEA may take into consideration, to the extent the information is available, the exceptions and adjustment provided in §§ 300.204 and 300.205 that the LEA:

- (i) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the LEA is budgeting; and
- (ii) Reasonably expects to take in the fiscal year for which the LEA is budgeting.

(3) Expenditures made from funds provided by the Federal government for which the SEA is required to account to the Federal government or for which the LEA is required to account to the

Federal government directly or through the SEA may not be considered in determining whether an LEA meets the standard in paragraph (a)(1) of this section.

(b) *Compliance standard.* (1) Except as provided in §§ 300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(2) An LEA meets this standard if it does not reduce the level of expenditures for the education of children with disabilities made by the LEA from at least one of the following sources below the level of those expenditures from the same source for the preceding fiscal year, except as provided in §§ 300.204 and 300.205:

- (i) Local funds only;
- (ii) The combination of State and local funds;
- (iii) Local funds only on a per capita basis; or
- (iv) The combination of State and local funds on a per capita basis.

(3) Expenditures made from funds provided by the Federal government for which the SEA is required to account to the Federal government or for which the LEA is required to account to the Federal government directly or through the SEA may not be considered in determining whether an LEA meets the standard in paragraphs (b)(1) and (2) of this section.

(c) *Subsequent years.* (1) If, in the fiscal year beginning on July 1, 2013 or July 1, 2014, an LEA fails to meet the requirements of § 300.203 in effect at that time, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure,

not the LEA's reduced level of expenditures.

(2) If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirement of paragraph (b)(2)(i) or (iii) of this section and the LEA is relying on local funds only, or local funds only on a per capita basis, to meet the requirements of paragraph (a) or (b) of this section, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under paragraph (b)(2)(i) or (iii) in the absence of that failure, not the LEA's reduced level of expenditures.

(3) If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirement of paragraph (b)(2)(ii) or (iv) of this section and the LEA is relying on the combination of State and local funds, or the combination of State and local funds on a per capita basis, to meet the requirements of paragraph (a) or (b) of this section, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under paragraph (b)(2)(ii) or (iv) in the absence of that failure, not the LEA's reduced level of expenditures.

(d) *Consequence of failure to maintain effort.* If an LEA fails to maintain its level of expenditures for the education of children with disabilities in accordance with paragraph (b) of this section, the SEA is liable in a recovery action under section 452 of the General Education Provisions Act (20 U.S.C. 1234a) to return to the Department, using non-Federal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures in accordance with paragraph (b) of this section in that fiscal year, or the amount of the LEA's Part B subgrant in that fiscal year, whichever is lower. (Approved by the

Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(a)(2)(A), Pub. L. 113-76, 128 Stat. 5, 394 (2014), Pub. L. 113-235, 128 Stat. 2130, 2499 (2014))

**§ 300.204 [Amended]**

■ 3. Section 300.204 is amended by removing, from the introductory text, the citation “§ 300.203(a)” and adding, in its place, the citation “§ 300.203(b)”.

**§ 300.205 [Amended]**

■ 4. Section 300.205 is amended by removing, from paragraph (a), both instances of the citation “§ 300.203(a)”, and adding, in both places, the citation “§ 300.203(b)”.

**§ 300.208 [Amended]**

■ 5. Section 300.208 is amended by removing, from paragraph (a), the citation “300.203(a)” and adding, in its place, the citation “300.203(b)”. Appendix E to Part 300 [Redesignated as Appendix F to Part 300]

■ 6. Appendix E to part 300 is redesignated as Appendix F to part 300.

■ 7. A new Appendix E is added to read as follows:

**Appendix E To Part 300—Local Educational Agency Maintenance of Effort Calculation Examples**

The following tables provide examples of calculating LEA MOE. Figures are in \$10,000s. All references to a “fiscal year” in these tables refer to the fiscal year covering that school year, unless otherwise noted.

Tables 1 through 4 provide examples of how an LEA complies with the Subsequent Years rule. In Table 1, for example, an LEA spent \$1 million in Fiscal Year (FY) 2012–2013 on the education of children with disabilities. In the following year, the LEA was required to spend at least \$1 million but spent only \$900,000. In FY 2014–2015, therefore, the LEA was required to spend \$1 million, the amount it was required to spend in FY 2013–2014, not the \$900,000 it actually spent.

**TABLE 1—EXAMPLE OF LEVEL OF EFFORT REQUIRED TO MEET MOE COMPLIANCE STANDARD IN YEAR FOLLOWING A YEAR IN WHICH LEA FAILED TO MEET MOE COMPLIANCE STANDARD**

Fiscal year	Actual level of effort	Required level of effort	Notes
2012–2013 .....	\$100	\$100	LEA met MOE.
2013–2014 .....	90	100	LEA did not meet MOE.
2014–2015 .....	.....	100	Required level of effort is \$100 despite LEA's failure in 2013–2014.

Table 2 shows how to calculate the required amount of effort when there are

consecutive fiscal years in which an LEA does not meet MOE.

TABLE 2—EXAMPLE OF LEVEL OF EFFORT REQUIRED TO MEET MOE COMPLIANCE STANDARD IN YEAR FOLLOWING CONSECUTIVE YEARS IN WHICH LEA FAILED TO MEET MOE COMPLIANCE STANDARD

Fiscal year	Actual level of effort	Required level of effort	Notes
2012–2013 .....	\$100	\$100	LEA met MOE.
2013–2014 .....	90	100	LEA did not meet MOE.
2014–2015 .....	90	100	LEA did not meet MOE. Required level of effort is \$100 despite LEA's failure in 2013–2014.
2015–2016 .....	.....	100	Required level of effort is \$100 despite LEA's failure in 2013–2014 and 2014–2015.

Table 3 shows how to calculate the required level of effort in a fiscal year after the year in which an LEA spent more than the required amount on the education of children with disabilities. This LEA spent \$1.1 million in FY 2015–2016 though only \$1 million was required. The required level of effort in FY 2016–2017, therefore, is \$1.1 million.

TABLE 3—EXAMPLE OF LEVEL OF EFFORT REQUIRED TO MEET MOE COMPLIANCE STANDARD IN YEAR FOLLOWING YEAR IN WHICH LEA MET MOE COMPLIANCE STANDARD

Fiscal year	Actual level of effort	Required level of effort	Notes
2012–2013 .....	\$100	\$100	LEA met MOE.
2013–2014 .....	90	100	LEA did not meet MOE.
2014–2015 .....	90	100	LEA did not meet MOE. Required level of effort is \$100 despite LEA's failure in 2013–2014.
2015–2016 .....	110	100	LEA met MOE.
2016–2017 .....	.....	110	Required level of effort is \$110 because LEA expended \$110, and met MOE, in 2015–2016.

Table 4 shows the same calculation when, in an intervening fiscal year, 2016–2017, the LEA did not maintain effort.

TABLE 4—EXAMPLE OF LEVEL OF EFFORT REQUIRED TO MEET MOE COMPLIANCE STANDARD IN YEAR FOLLOWING YEAR IN WHICH LEA DID NOT MEET MOE COMPLIANCE STANDARD

Fiscal year	Actual level of effort	Required level of effort	Notes
2012–2013 .....	\$100	\$100	LEA met MOE.
2013–2014 .....	90	100	LEA did not meet MOE.
2014–2015 .....	90	100	LEA did not meet MOE. Required level of effort is \$100 despite LEA's failure in 2013–2014.
2015–2016 .....	110	100	LEA met MOE.
2016–2017 .....	100	110	LEA did not meet MOE. Required level of effort is \$110 because LEA expended \$110, and met MOE, in 2015–2016.
2017–2018 .....	.....	110	Required level of effort is \$110, despite LEA's failure in 2016–2017.

Table 5 provides an example of how an LEA may meet the compliance standard using alternate methods from year to year without using the exceptions or adjustment in §§ 300.204 and 300.205, and provides information on the following scenario. In FY 2015–2016, the LEA meets the compliance standard using all four methods. As a result, in order to demonstrate that it met the compliance standard using any one of the four methods in FY 2016–2017, the LEA must expend at least as much as it did in FY 2015–2016 using that same method. Because the LEA spent the same amount in FY 2016–2017 as it did in FY 2015–2016, calculated using a combination of State and local funds and a combination of State and local funds on a per capita basis, the LEA met the compliance standard using both of those methods in FY 2016–2017. However, the LEA did not meet the compliance standard in FY 2016–2017 using the other two methods—local funds only or local funds only on a per capita basis—because it did not spend at least the same amount in FY 2016–2017 as it did in FY 2015–2016 using the same methods.

TABLE 5—EXAMPLE OF HOW AN LEA MAY MEET THE COMPLIANCE STANDARD USING ALTERNATE METHODS FROM YEAR TO YEAR

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count
2015–2016 .....	*\$500	*\$950	*\$50	*\$95	10
2016–2017 .....	400	*950	40	*95	10

TABLE 5—EXAMPLE OF HOW AN LEA MAY MEET THE COMPLIANCE STANDARD USING ALTERNATE METHODS FROM YEAR TO YEAR—Continued

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count
2017–2018 .....	* 500	900	* 50	90	10

\* LEA met compliance standard using this method.

Table 6 provides an example of how an LEA may meet the compliance standard using alternate methods from year to year in years in which the LEA used the exceptions or adjustment in §§ 300.204 and 300.205, including using the per capita methods.

TABLE 6—EXAMPLE OF HOW AN LEA MAY MEET THE COMPLIANCE STANDARD USING ALTERNATE METHODS FROM YEAR TO YEAR AND USING EXCEPTIONS OR ADJUSTMENT UNDER §§ 300.204 AND 300.205

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count
2015–2016 .....	\$500 *	\$950 *	\$50 *	\$95 *	10
2016–2017 .....	400 .....	950 * .....	40 .....	95 * .....	10
2017–2018 .....	450 * .....	1,000 * .....	45 * .....	100 * .....	10
	<p>In 2017–2018, the LEA was required to spend at least the same amount in local funds only that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§ 300.204 and 300.205, the LEA was required to spend at least \$500 in local funds only.</p> <p>In 2017–2018, the LEA properly reduced its expenditures, per an exception in § 300.204, by \$50, and therefore, was required to spend at least \$450 in local funds only (\$500 from 2015–2016 per Subsequent Years rule – \$50 allowable reduction per an exception under § 300.204).</p>				
	<p>In 2017–2018, the LEA was required to spend at least the same amount in local funds only on a per capita basis that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§ 300.204 and 300.205, the LEA was required to spend at least \$50 in local funds only on a per capita basis.</p> <p>In 2017–2018, the LEA properly reduced its aggregate expenditures, per an exception in § 300.204, by \$50.</p> <p>\$50/10 children with disabilities in the comparison year (2015–2016) = \$5 per capita allowable reduction per an exception under § 300.204.</p> <p>\$50 local funds only on a per capita basis (from 2015–2016 per Subsequent Years rule) – \$5 allowable reduction per an exception under § 300.204 = \$45 local funds only on a per capita basis to meet MOE.</p>				
2018–2019 .....	405 .....	1,000 * .....	45 * .....	111.11 * .....	9
	<p>In 2018–2019, the LEA was required to spend at least the same amount in local funds only that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§ 300.204 and 300.205, the LEA was required to spend at least \$450 in local funds only.</p> <p>In 2018–2019, the LEA properly reduced its expenditures, per an exception in § 300.204 by \$10 and the adjustment in § 300.205 by \$10.</p> <p>Therefore, the LEA was required to spend at least \$430 in local funds only. (\$450 from 2017–2018 – \$20 allowable reduction per an exception and the adjustment under §§ 300.204 and 300.205).</p>				
	<p>Because the LEA did not reduce its expenditures from the comparison year (2017–2018) using a combination of State and local funds, the LEA met MOE.</p> <p>In 2018–2019, the LEA was required to spend at least the same amount in local funds only on a per capita basis that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§ 300.204 and 300.205, the LEA was required to spend at least \$45 in local funds only on a per capita basis.</p> <p>In 2018–2019, the LEA properly reduced its aggregate expenditures, per an exception in § 300.204 by \$10 and the adjustment in § 300.205 by \$10.</p> <p>\$20/10 children with disabilities in the comparison year (2017–2018) = \$2 per capita allowable reduction per an exception and the adjustment under §§ 300.204 and 300.205.</p> <p>\$45 local funds only on a per capita basis (from 2017–2018) – \$2 allowable reduction per an exception and the adjustment under §§ 300.204 and 300.205 = \$43 local funds only on a per capita basis required to meet MOE. Actual level of effort is \$405/9 (the current year child count).</p>				

\* LEA met MOE using this method.

**Note:** When calculating any exception(s) and/or adjustment on a per capita basis for the purpose of determining the required level of effort, the LEA must use the child count from the comparison year, and not the child count of the year in which the LEA took the exception(s) and/or adjustment. When determining the actual level of effort on a per capita basis, the LEA must use the child count for the current year. For example, in 2018–2019, the LEA uses a child count of 9, not the child count of 10 in the comparison year, to determine the actual level of effort.

Tables 7 and 8 demonstrate how an LEA could meet the eligibility standard over a period of years using different methods from year to year. These tables assume that the LEA did not take any of the exceptions or adjustment in §§ 300.204 and 300.205. Numbers are in \$10,000s budgeted and spent for the education of children with disabilities.

TABLE 7—EXAMPLE OF HOW AN LEA MAY MEET THE ELIGIBILITY STANDARD IN 2016–2017 USING DIFFERENT METHODS

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count	Notes
2014–2015 .....	* \$500	* \$1,000	* \$50	* \$100	10	The LEA met the compliance standard using all 4 methods.* Final information not available at time of budgeting for 2016–2017. When the LEA submits a budget for 2016–2017, the most recent fiscal year for which the LEA has information is 2014–2015. It is not necessary for the LEA to consider information on expenditures for a fiscal year prior to 2014–2015 because the LEA maintained effort in 2014–2015. Therefore, the Subsequent Years rule in § 300.203(c) is not applicable.
2015–2016 .....	.....	.....	.....	.....	.....	
How much must the LEA budget for 2016–2017 to meet the eligibility standard in 2016–2017?	500	1,000	50	100	.....	

\* The LEA met the compliance standard using all 4 methods.

TABLE 8—EXAMPLE OF HOW AN LEA MAY MEET THE ELIGIBILITY STANDARD IN 2017–2018 USING DIFFERENT METHODS AND THE APPLICATION OF THE SUBSEQUENT YEARS RULE

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count	Notes
2014–2015 .....	* \$500	* \$1,000	* \$50	* \$100	10	Final information not available at time of budgeting for 2017–2018. If the LEA seeks to use a combination of State and local funds, or a combination of State and local funds on a per capita basis, to meet the eligibility standard, the LEA does not consider information on expenditures for a fiscal year prior to 2015–2016 because the LEA maintained effort in 2015–2016 using those methods. However, if the LEA seeks to use local funds only, or local funds only on a per capita basis, to meet the eligibility standard, the LEA must use information on expenditures for a fiscal year prior to 2015–2016 because the LEA did not maintain effort in 2015–2016 using either of those methods, per the Subsequent Years rule. That is, the LEA must determine what it should have spent in 2015–2016 using either of those methods, and that is the amount that the LEA must budget in 2017–2018.
2015–2016 .....	450	* 1,000	45	* 100	10	
2016–2017 .....	.....	.....	.....	.....	.....	
How much must the LEA budget for 2017–2018 to meet the eligibility standard in 2017–2018?	500	1,000	50	100	.....	

\* LEA met MOE using this method.

Table 9 provides an example of how an LEA may consider the exceptions and adjustment in §§ 300.204 and 300.205 when

budgeting for the expenditures for the education of children with disabilities.

TABLE 9—EXAMPLE OF HOW AN LEA MAY MEET THE ELIGIBILITY STANDARD USING EXCEPTIONS AND ADJUSTMENT IN §§ 300.204 AND 300.205, 2016–2017

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count	Notes
Actual 2014–2015 expenditures.	* \$500	* \$1,000	* \$50	* \$100	10	The LEA met the compliance standard using all 4 methods.* LEA uses the child count number from the comparison year (2014–2015).
Exceptions and adjustment taken in 2015–2016.	– 50	– 50	– 5	– 5	.....	
Exceptions and adjustment the LEA reasonably expects to take in 2016–2017.	– 25	– 25	– 2.50	– 2.50	.....	
How much must the LEA budget to meet the eligibility standard in 2016–2017?.	425	925	42.50	92.50	.....	LEA uses the child count number from the comparison year (2014–2015).  When the LEA submits a budget for 2016–2017, the most recent fiscal year for which the LEA has information is 2014–2015. However, if the LEA has information on exceptions and adjustment taken in 2015–2016, the LEA may use that information when budgeting for 2016–2017. The LEA may also use information that it has on any exceptions and adjustment it reasonably expects to take in 2016–2017 when budgeting for that year.

Table 10 provides examples both of how to calculate the amount by which an LEA failed to maintain its level of expenditures and of the amount of non-Federal funds that an SEA must return to the Department on account of that failure.

TABLE 10—EXAMPLE OF HOW TO CALCULATE THE AMOUNT OF AN LEA’S FAILURE TO MEET THE COMPLIANCE STANDARD IN 2016–2017 AND THE AMOUNT THAT AN SEA MUST RETURN TO THE DEPARTMENT

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count	Amount of IDEA Part B subgrant
2015–2016 .....	* \$500	* \$950	\$50 * .....	\$95 * .....	.....	Not relevant.
2016–2017 .....	400	750	40 .....	75 .....	10	\$50
Amount by which an LEA failed to maintain its level of expenditures in 2016–2017.	100	200	100 (the amount of the failure equals the amount of the per capita shortfall (\$10) times the number of children with disabilities in 2016–2017 (10)).	200 (the amount of the failure equals the amount of the per capita shortfall (\$20) times the number of children with disabilities in 2016–2017 (10)).	.....	.....

The SEA determines that the amount of the LEA’s failure is \$100 using the calculation method that results in the lowest amount of a failure. The SEA’s liability is the lesser of the four calculated shortfalls and the amount of the LEA’s Part B subgrant in the fiscal year in which the LEA failed to meet the compliance standard. In this case, the SEA must return \$50 to the Department because the LEA’s IDEA Part B subgrant was \$50, and that is the lower amount.

\* LEA met MOE using this method.