Federal Register

Tuesday,
October 26, 2010

Part II

Department of Education

34 CFR Parts 206, 642, 643, et al.
High School Equivalency Program and College Assistance Migrant Program, The Federal TRIO Programs, and Gaining Early Awareness and Readiness for Undergraduate Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 206, 642, 643, 644, 645, 646, 647, and 694

RIN 1840–AD01

[Docket ID ED–2010–OPE–0002]

High School Equivalency Program and College Assistance Migrant Program, The Federal TRIO Programs, and Gaining Early Awareness and Readiness for Undergraduate Program

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

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations, and establishes new regulations, for the High School Equivalency Program and College Assistance Migrant Program (HEP and CAMP); the Federal TRIO programs (TRIO programs—Training program for Federal TRIO programs (Training), Talent Search (TS), Educational Opportunity Centers (EOC), Upward Bound (UB), Student Support Services (SSS), and the Ronald E. McNair Postbaccalaureate Achievement (McNair) programs); and the Gaining Early Awareness and Readiness for Undergraduate (GEAR UP) program.

The purpose of HEP is to help migrant and seasonal farmworkers and their immediate family members obtain a general educational development (GED) credential, while CAMP assists students from this background to complete their first academic year of college and continue in postsecondary education. The Federal TRIO programs consist of five postsecondary educational opportunity outreach and support programs designed to motivate and assist low-income individuals, first-generation college students, and individuals with disabilities to enter and complete secondary and postsecondary programs of study and enroll in graduate programs, and a training program for project staff working in one or more of the Federal TRIO programs. The purpose of the GEAR UP program is to increase the number of low-income students who are prepared to enter and succeed in postsecondary education.

These regulations are needed to implement provisions of the Higher Education Act of 1965, as amended (HEA) by the Higher Education Opportunity Act of 2008 (HEOA) that relate to the HEP and CAMP, Federal TRIO programs, and GEAR UP program.

DATES: *Effective Date:* These regulations are effective December 27, 2010.

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

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SUPPLEMENTARY INFORMATION: On March 23, 2010, the Secretary published a notice of proposed rulemaking (NPRM) for the HEP and CAMP, the Federal TRIO programs, and the GEAR UP program in the **Federal Register** (75 FR 13814). In the preamble to the NPRM, the Secretary discussed on pages 13816 through 13859 the major changes proposed in that document to strengthen and improve the administration of the HEP and CAMP, the Federal TRIO programs, and the GEAR UP program authorized under the HEA.

These final regulations implement changes made by the HEOA to discretionary grant programs authorized by title IV of the HEA, including:

HEP and CAMP:

- Amending § 206.3(a)(1) for HEP and CAMP to allow students to qualify for the program through their own qualifying work, or that of an immediate family member, rather than only through their own work or that of a parent, as the statute previously held (see section 418A(b)(B)(i) of the HEA).
- Amending § 206.5(c) to define the term *immediate family member* to include only individuals who are dependent upon a migrant or seasonal farmworker (see section 418A(b)(B)(i) of the HEA).
- Amending § 206.5(c) to revise the definition of the term *seasonal farmworker* to clarify that the individual's primary employment in migrant and seasonal farmwork must occur for at least 75 days within the past 24 months (see section 418A(b)(1)(B)(i) of the HEA).
- Amending the authorized HEP services section in § 206.10(b) to (1) provide that permissible HEP services include preparation for college entrance examinations; (2) provide that permissible HEP services include all stipends—not only weekly stipends—for HEP participants; (3) add transportation and child care as examples of essential supportive services; and (4) specify that HEP services include other activities to improve persistence and retention in postsecondary education (see section 418A(b) of the HEA).
- Amending CAMP services in § 206.10(b)(2) to specify that: (1) Permissible CAMP services include supportive and instructional services to improve placement, persistence, and retention in postsecondary education; (2) these supportive services include personal, academic, career, economic education, or personal finance counseling as an ongoing part of the program, and (3) permissible CAMP services include internships (see section 418A(c)(1) of the HEA).
- Amending § 206.11(b) to specify that follow-up CAMP services include: (1) Referring CAMP students to on-campus or off-campus providers of counseling services, academic assistance, or financial aid, and coordinating those services, assistance, and aid with other non-program services, assistance, and aid, including services, assistance, and aid provided by community-based organizations, which may include mentoring and guidance, and (2) for students attending two-year institutions of higher education, encouraging the students to transfer to four-year institutions of higher education, where appropriate, and monitoring the rate of transfer of these students (see section 418A(c)(2) of the HEA).
- Amending § 206.20(b)(2) to specify that the Secretary must not allocate an amount less than $180,000 for HEP and CAMP grants (see section 418A(e) of the HEA).

• Adding § 206.31 to the HEP and CAMP program regulations to specify the criteria the Department considers in evaluating prior experience (see section 418A(f) of the HEA).

Federal TRIO Programs

• Amending §§ 643.7(b) (TS), 644.7(b) (EOC), 645.6(b) (UB), 646.7(b) (SSS), and 647.7(b) (McNair) to revise or add definitions for *different campus* and *different population,* which change the prior regulatory definitions of these terms for the SSS program and the Department's administrative practice with regard to the number of applications an eligible entity may submit under each of the TRIO programs (see section 402A(h)(1) and (h)(2) of the HEA).

• Adding new §§ 642.11 and 642.12 (Training) and amending § 643.4 (TS), part 645 (UB, Upward Bound Math and Science (UBMS), and Veterans Upward Bound (VUB)) § 646.4 (SSS), and § 647.4 (McNair) to specify the services or activities that projects funded under the Federal TRIO programs must provide and the services or activities that these projects may provide.

• Amending §§ 643.7(b) (TS), 644.7(b) (EOC), 645.6(b) (UB), and 646.7(b) (SSS) to add new categories of participants (foster care youth and homeless children and youth) for whom projects funded under these programs are to provide services (see section 402A(e)(3) of the HEA).

• Amending newly redesignated § 642.22 (Training) and §§ 643.22 (TS), 644.22 (EOC), 645.32 (UB), 646.22 (SSS), and 647.22 (McNair) to align prior experience determinations with statutorily revised outcome criteria (see section 402A(f)(3)(A) of the HEA (TS), section 402A(f)(3)(B) of the HEA (UB), section 402A(f)(3)(C) of the HEA (SSS), section 402A(f)(3)(D) of the HEA (McNair), and section 402A(f)(3)(E) of the HEA (EOC)).

• Adding §§ 642.25 (Training), 643.24 (TS), 644.24 (EOC), 645.35 (UB), 646.24 (SSS), and 647.24 (McNair) to provide a new procedure to allow unsuccessful grant applicants to request a review of alleged technical, administrative, or scoring errors that affected the applicant's application.

• Amending newly redesignated § 642.6(b) (Training) and §§ 643.7(b) (TS), 644.7(b) (EOC), 645.6(b) (UB), 646.7(b) (SSS), and 647.7(b) (McNair) to revise definitions for some terms and to add new definitions to implement amendments to the HEA by the HEOA:

• *Financial and economic literacy* (§§ 643.7(b) (TS), 644.7(b) (EOC), 645.6(b) (UB), 646.7(b) (SSS), and 647.7(b) (McNair)) (see section 402B(b)(6) of the HEA (TS), section 402C(b)(6) of the HEA (UB), section 402D(b)(4) of the HEA (SSS), section 402E(c)(1) of the HEA (McNair)), and section 402F(b)(5) of the HEA (EOC)).

• *Foster care youth* and *homeless children and youth* (newly redesignated § 642.6(b) (Training) and §§ 643.7(b) (TS), 644.7(b) (EOC), 645.6(b) (UB), and 646.7(b) (SSS)) (see sections 402A(e)(3) and 402B(c)(7) of the HEA (TS), section 402C(d)(7) of the HEA (UB), section 402D(a)(3) and (c)(6) of the HEA (SSS), section 402F(b)(11) of the HEA (EOC), and section 402G(b)(5) of the HEA (Training)).

• *Graduate center; groups underrepresented in graduate school;* and *research and scholarly activities* (§ 647.7(b) (McNair)) (see sections 101 and 102 of the HEA and section 402E(d)(2) of the HEA (McNair)).

• *Individual with a disability* (newly redesignated § 642.6(b) (Training) and §§ 643.7(b) (TS), 644.7(b) (EOC), 645.6(b) (UB), and 646.7(b) (SSS)) (see section 402B(c)(7) of the HEA (TS), section 402C(d)(7) of the HEA (UB), section 402D(a)(3) and (c)(6) of the HEA (SSS), section 402F(b)(11) of the HEA (EOC), and section 402G(b)(5) of the HEA (Training)).

• *Individual who has a high risk for academic failure* and *veteran who has a high risk for academic failure* (§ 645.6(b) (UB and VUB)) (see sections 402A(f)(3)(B)(iii) and (iv) and 402C(e)(2) of the HEA (UB)).

• *Institution of higher education* (newly redesignated § 642.6(b) (Training) and §§ 643.7(b) (TS), 644.7(b) (EOC), 645.6(b) (UB), 646.7(b) (SSS), and 647.7(b) (McNair)) (see sections 101 and 102 of the HEA).

• *Regular secondary school diploma* and *rigorous secondary school program of study* (§§ 643.7(b) (TS) and 645.6(b) (UB)) (see section 402A(f)(3)(A)(iii) and (iv) of the HEA (TS) and section 402A(f)(3)(B) of the HEA (UB)).

• *Veteran* (newly redesignated § 642.6(b) (Training) and §§ 643.7(b) (TS), 644.7(b) (EOC), and 645.6 (b) (UB)) (see section 402A(h)(5) of the HEA (TS, EOC, and UB)).

Additionally, the regulations for the TRIO programs were amended to reflect other changes made by the HEOA, other amendments to the HEA, and established administrative practices. These changes include the following:

• Amending the project period for the TRIO programs in newly redesignated § 642.4 (Training) and §§ 643.5 (TS), 644.5 (EOC), 645.34 (UB), 646.5 (SSS), and 647.5 (McNair) to define the project period as two years for Training and five years for TS, EOC, UB, SSS, and McNair (see section 402A(b)(2)(B) and (C) of the HEA).

• Revising the selection criteria related to "Objectives" for the following TRIO pre-college and college programs: TS (§ 643.21(b)); EOC (§ 644.21(b)); UB (§ 645.31(b)(1), VUB (§ 645.31(b)(2)); SSS (§ 646.21(b)); and McNair (§ 647.21(b)) (see section 402A(f)(3)(A) of the HEA (TS), section 402A(f)(3)(B) of the HEA (UB), section 402A(f)(3)(C) of the HEA (SSS), section 402A(f)(3)(D) of the HEA (McNair), and section 402A(f)(3)(E) of the HEA (EOC)).

• Removing the minimum number of participants in the regulations for TS, EOC, UB, UBMS, and VUB projects (see sections 402A(f), 402A(b)(3), 402B (TS), 402C (UB), 402F (EOC) of the HEA). For each grant competition, the Department will establish the minimum number of participants to be served by a grantee through the **Federal Register** notice inviting applications.

• Amending newly redesignated §§ 642.22 and 642.24 of the TRIO Training regulations to reflect current law and practice regarding: (1) The need for the project selection criteria and the process for ranking applications by priority; (2) the use of prior experience points in the ranking of applications for funding; and (3) the number of prior experience points that can be earned (see section 402G(2) of the HEA).

GEAR UP

• Redesignating § 694.15 as § 694.19 to accommodate the proposed addition of other regulatory provisions. Amending newly redesignated § 694.19 to provide that the Secretary award competitive preference priority points to an eligible applicant for a State GEAR UP grant that has both carried out a successful State GEAR UP grant prior to August 14, 2008, and demonstrated a prior commitment to early intervention leading to college access through collaboration and replication of successful strategies; and to specify how the Department determines whether a State GEAR UP grant has been "successful" (see section 404A(b)(3) of the HEA).

• Adding § 694.20 to explain when a GEAR UP grantee is allowed to provide services to students attending an institution of higher education (see section 404A(b)(2) of the HEA).

• Adding new § 694.24 to require grantees that continue to provide services to students through their first year of attendance at an institution of higher education, to the extent practicable, to coordinate with other campus programs in order not to duplicate services (see section 404A(b)(2) of the HEA).

• Amending § 694.7(a)(2) to require that a GEAR UP grantee make substantial progress towards meeting the matching percentage stated in its approved application for each year of the project period. Grantees are no longer required to meet the matching requirement each year of the project period (section 404C(b)(1) of the HEA).

• Adding new § 694.8 to: (1) Provide authority for the Secretary to approve a Partnership applicant's request for a waiver of up to 50 or 75 percent of the matching requirement for up to two years under certain circumstances; and (2) create a multiple-tiered system for different types of waiver requests (see section 404C(b)(2) of the HEA).

• Adding new § 694.8(b)(3) to specify that at the time of application, the Secretary may provide tentative approval of a Partnership applicant's request for a 50-percent waiver for the entire project period so that a Partnership applicant that meets the conditions for such a waiver has an opportunity to apply for a grant without needing to identify additional sources of match funding in the later years of the project period (see section 404C(b)(2) of the HEA).

• Adding new §§ 694.21 and 694.22 to specify required and allowable activities and separate these required and allowable activities into multiple regulatory sections (section 404D of the HEA).

• Adding new § 694.22(e) to specify that GEAR UP grantees may provide activities that support participating students to develop graduation and career plans, including career awareness and planning assistance as they relate to a rigorous academic curriculum (see section 404D(b)(5)(D) of the HEA).

• Adding newly redesignated §§ 694.13 and new 694.14 to clarify that GEAR UP funds may be used to support the costs of administering a scholarship program as well as the costs of the scholarships themselves (see sections 404E(a)(1) and 404D(b)(7) of the HEA).

• Adding new § 694.24 to describe the types of services that a grantee may provide to students in their first year of attendance at an institution of higher education and listing examples of these services (see section 404D of the HEA).

• Amending newly redesignated § 694.13(a) to specify the minimum amount of scholarship funding for an eligible student, and provide that the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount if an eligible student who is awarded a GEAR UP scholarship attends an institution of higher education on a less than full-time basis during any award year (see section 404E(d) of the HEA).

• Adding new § 694.14(b) to incorporate the statutory definition of the term *eligible student* (from section 404E(g) of the HEA) in the program regulations.

• Clarifying in new § 694.14(c)(2) the amount of funds that State grantees that do not receive a waiver of the requirement that States must expend at least 50 percent of their GEAR UP funding on scholarships must hold in reserve for scholarships and how States must use these funds (see section 404E(e) of the HEA).

• Clarifying in newly redesignated § 694.13(c) that scholarships must be made to all students who are eligible under the definition in § 694.13(d) and that a grantee may not impose additional eligibility criteria that would have the effect of limiting or denying a scholarship to an eligible student (see section 404E(e) and (g) of the HEA).

• Adding new 694.14(e) to specify that States awarding scholarships must provide information on the eligibility requirements for the scholarships to all participating students upon the students' entry into the GEAR UP program (see section 404E(c) of the HEA).

• Adding new 694.14(f) to specify that States must provide scholarship funds to all eligible students who attend an institution of higher education in the State, and may provide these scholarship funds to eligible students who attend institutions of higher education outside the State (see section 404E(e) and (g) of the HEA).

• Specifying in new § 694.14(g) that a State or Partnership that chooses to participate in the scholarship component in accordance with section 404E of the HEA may award continuation scholarships in successive award years to each student who received an initial scholarship and who is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education (see section 404E of the HEA).

• Amending newly redesignated § 694.15 to specify that a GEAR UP Partnership that does not participate in the GEAR UP scholarship component may provide financial assistance for postsecondary education using non-Federal funds, and those funds may be used to comply with the program's matching requirement (see section 404C(b) of the HEA).

• Adding new § 694.16 to specify the requirements for the return of scholarship funds. Specifically, (1) providing that scholarship funds held in reserve by States under §§ 694.12(b)(1) or 694.12(c) or by Partnerships under section 404D(b)(7) of the HEA that are not used by an eligible student within six years of the student's scheduled completion of secondary school may be redistributed by the grantee to other eligible students; (2) requiring the return of remaining Federal funds within 45 days after the six-year period for expending the scholarship funds expires; (3) requiring grantees to annually furnish information, as the Secretary may require, on the amount of Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of those funds to eligible students until these funds are fully expended or returned to the Secretary; and (4) providing that a scholarship fund under the GEAR UP program is subject to audit or monitoring by authorized representatives of the Secretary throughout the life of the fund (see section 404E(e)(4) of the HEA).

• Adding new § 694.25 to require grantees that receive initial grant awards after the passage of the HEOA to continue to serve students from a previous grant received by the grantee (see section 404A(b)(3)(B) of the HEA).

• Adding new § 694.25(a) to clarify whom a grantee must serve if not all students in the cohort attend the same school after the cohort completes the last grade level offered by the school at which the cohort began to receive GEAR UP services (see section 404B(d) of the HEA).

• Amending newly redesignated § 694.18 to specify that 21st Century Scholarship Certificates are to be provided by the grantees (rather than by the Secretary to the grantees), and must indicate the estimated amount of any scholarship that a student may be eligible to receive.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. The negotiated rulemaking committee did not reach consensus on the proposed regulations that were published on March 23, 2010. The Secretary invited comments on the proposed regulations by April 22, 2010. In response to the Secretary's invitation in the NPRM to the proposed

regulations, 455 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes, suggested changes that the law does not authorize the Secretary to make, or comments pertaining to issues that were not within the scope of the NPRM.

Part 206—Special Educational Programs for Students Whose Families Are Engaged in Migrant and Other Seasonal Farmwork—High School Equivalency Program (HEP) and College Assistance Migrant Program (CAMP)

Who May Benefit From HEP and CAMP? (34 CFR Part 206)

Comment: One commenter inquired as to whether HEP would only benefit farm workers and their families and stated that there were others, not necessarily in that group, who could potentially be helped by this program.

Discussion: We appreciate the commenter's view that HEP could potentially help individuals who are not migrant and seasonal farmworkers. However, section 418A of the HEA, which authorizes both HEP and CAMP, requires that program activities focus on migrant and seasonal farmworkers and their immediate family. The Department does not have the authority to expand this statutorily prescribed requirement.

Changes: None.

Types of Services for CAMP Projects (§ 206.10(b)(2))

Comment: None.

Discussion: In our review of § 206.10(b)(2), we realized that § 206.10(b)(2)(iv) contained a typographical error and we have corrected it.

Changes: In § 206.10(b)(2)(iv), we have removed the word "student" and added, in its place, the word "students" to correct a typographical error.

Prior Experience in HEP and CAMP (§ 206.31(a))

Comment: One commenter suggested that the Department revise the wording of a note that was included in the NPRM's preamble discussion of prior experience under HEP and CAMP. Specifically, the commenter suggested deleting the phrase "for the priority" from the following note, which appeared on page 13820 of the NPRM (75 FR 13814, 13820):

"**Note:** The TRIO programs have had a longstanding requirement that only applicants with an expiring TRIO project are eligible for the priority for prior experience. Consequently, in providing the same degree of consideration for prior experience as provided under the Federal TRIO programs, we view this aspect of proposed § 206.31(a) to be statutorily required."

Discussion: We appreciate the commenter's concern for clarifying this language from the preamble of the NPRM. In this notice of final regulations, we make changes, if appropriate, to the regulations themselves, not language from the preamble of the NPRM. Moreover, we do not believe that any change to the regulations themselves is necessary because § 206.31(a) refers only to the Secretary considering the applicant's experience in implementing an expiring HEP project; it does not use the phrase "for the priority".

Changes: None.

Federal TRIO Programs—34 CFR Parts 642 (Training Program for Federal TRIO Programs), 643 (Talent Search), 644 (Educational Opportunity Centers), 645 (Upward Bound Program), 646 (Student Support Services Program), 647 (Ronald E. McNair Postbaccalaureate Achievement Program)

Section 403(a) of the HEOA amended section 402A of the HEA to include a number of new requirements that apply across the Federal TRIO programs (*i.e.,* the Talent Search (TS), Upward Bound (UB), Student Support Services (SSS), Ronald E. McNair Postbaccalaureate Achievement (McNair), Educational Opportunity Centers (EOC), and Staff Development Activities (Training) programs). Additionally, section 403(b) through (g) of the HEOA amended sections 402B, 402C, 402D, 402E, 402F, and 402G, to make specific changes to the TS, UB, SSS, McNair, EOC, and Training programs, respectively.

We have organized the discussion of comments received on and responses to the proposed changes to the specific Federal TRIO program regulations by first addressing crosscutting issues by subject matter and then discussing program-specific issues on a program-by-program basis.

Our discussion of comments applicable to specific programs follows the order of the Department's regulations for those programs (*i.e.,* 34 CFR parts 642 (Training), 643 (TS), 644 (EOC), 645 (UB), 646 (SSS), and 647 (McNair)).

Number of Applications an Eligible Entity May Submit To Serve Different Campuses and Different Populations

Comment: One commenter expressed concern that an applicant that submitted a TRIO Program grant application to provide services to one of the different populations identified by the Secretary in the **Federal Register** notice inviting applications for one fiscal year competition would be ineligible to submit an application for a new grant award to continue the existing project if the population served by the existing project was not designated as an eligible population in the notice inviting applications for the next competition. The commenter suggested that the Department include language in the regulations to ensure that an applicant with an expiring grant will be eligible to apply for a new grant in a subsequent competition to serve the same population of students.

Discussion: As part of the HEOA, Congress significantly revised the definition of "eligible population" in section 402A(h)(2) of the HEA. To implement this statutory change, the regulations specify that, for each competition, the Department will designate in the **Federal Register** notice inviting applications for the competition, the different populations for which an entity may submit a separate application (see §§ 642.7 (Training) [1], 643.10(b) (TS), 644.10(b) (EOC), 645.20(b) (UB), 646.10(b) (SSS), and 647.10(b) (McNair).

Under these regulations, therefore, an entity that previously received a grant to serve a particular population would be eligible to submit an application for a new grant to continue serving the same population if that population is included as a designated population in the **Federal Register** notice inviting applications for the new competition. If the population served by the grantee is not designated for the new competition, the entity would not be eligible to apply for a grant to continue to serve the same population it served under the expiring grant. While an entity with an expiring grant serving another population could apply for a grant to serve one of the populations designated in the notice inviting applications for the new competition, the entity would not be eligible for PE points based on its expiring grant.

Changes: None.

[1] For the Training Program, the **Federal Register** notice inviting applications will include the statutory and other priorities that applicants must address for the competition. Training program grantees will provide training on the topics identified in the published priorities.

Designating Different Populations in the Federal Register Notice Inviting Applications

Comment: One commenter questioned whether designating different populations for each competition was consistent with the TRIO programs' goals. The commenter believed that this approach would politicize the application process because it would force applicants to constantly change the focus of their projects to meet the changing requirements of the times. Ultimately, the commenter expressed concern that the proposed approach would destabilize the programs because it would reduce the effectiveness of the grantees.

Discussion: We do not agree that the designation of different populations to be served for each competition will politicize the application process or reduce the effectiveness of the TRIO programs because most of the projects funded under any competition will be for traditional TRIO projects (*i.e.,* projects that provide services to eligible participants—low-income, first-generation college students, and students with disabilities—but that do not focus services on a specific population). For example, during the FY 2010 SSS grant competition only a small percentage of the applicants proposed projects to serve different populations that had distinct needs for specialized services that could not be addressed through a regular SSS project. As discussed in the NPRM, 75 FR at 13821–22, the designation of different populations for each competition will give the Department the flexibility to address changing national needs and to ensure that Federal funds are targeted to areas or populations most in need. The Secretary believes that it is appropriate to change the focus of the TRIO programs if the national needs change. That said, this does not mean that the Department will change the designated populations for each new competition.

Changes: None.

Clarification of the Term "*Designated Different Population*"

Comment: One commenter asked for clarification regarding what qualifies as a designated different population.

Discussion: Section 402A(c)(5) of the HEA, as amended by section 403(a)(2)(C) of the HEOA, provides that the Secretary may not limit the number of applications submitted by an eligible entity under any Federal TRIO program if the additional applications describe programs serving different populations or different campuses. Section 402A(h)(2) of the HEA defines "different population" as a group of individuals that an eligible entity desires to serve using a Federal TRIO grant and that is separate and distinct from any other population that the entity has applied to serve, or that, while sharing some of the same needs as another population, has distinct needs for specialized services. The definition sections of each of the TRIO program regulations will include the new statutory definition for "different population" for each program to which the term applies. In addition, each of the TRIO program regulations provide that the Secretary will designate, in the **Federal Register** notice inviting applications and other published application materials for each competition, the different populations for which an eligible entity can submit separate applications. Therefore, what qualifies as a designated different population for each grant competition will be determined by the Department and described in the **Federal Register** notice inviting applications for that competition. For example, under the FY 2010 SSS grant competition, the Secretary designated projects that serve five different populations: Individuals with disabilities, individuals for whom English is a second language, individuals pursing science, technology, engineering and math disciplines, individuals pursuing teacher preparation, and individuals pursuing health sciences.

Changes: None.

Definitions Applicable to More Than One Federal TRIO Program Definition of Financial and Economic Literacy (§§ 643.7, 644.7, 645.6, 646.7, 647.7)

Comment: One commenter suggested that providing education or counseling services designed to improve financial and economic literacy should be a required service for all TRIO programs. Multiple commenters noted that EOC projects do not have enough time or resources to provide education or counseling services to improve participants' knowledge about all of the examples of personal financial decision-making listed in the definition of *financial and economic literacy.*

Discussion: Under these regulations, all Federal TRIO programs—other than the Training program—include as a mandatory or permissible activity providing education or counseling services designed to improve the financial and economic literacy of participants (see §§ 643.4(a)(6) TS),[2] 644.4(e) (EOC), 645.11(a)(6) (UB), 646.4(a)(4) (SSS), and 647.4(b)(1) (McNair)). The definition of *financial and economic literacy* is consistent across programs. We intended the proposed definition to include a non-exhaustive list of examples of the types of knowledge that comprise knowledge about personal financial decision-making. We have made minor changes to this definition to make clear that the list of examples is not exhaustive and is not a list of mandatory activities.

Changes: For clarity we have changed the phrase "including but not limited to" to "which may include but is not limited to" in order to emphasize that the list of types of knowledge that may constitute knowledge about personal financial decision-making is not exhaustive and is not a list of mandatory activities.

Comment: A number of commenters recommended changes to the language used for some of the examples included in the definition of the term *financial and economic literacy.* One commenter suggested changing the reference to "secondary education" in § 646.7 (SSS) to "postsecondary education". Other commenters suggested that we add the term "postbaccalaureate" after the reference to "postsecondary", that we change the words "scholarship, grant and loan education" to "financial assistance education," and that we include the word "assistanceships" in the definition of *financial and economic literacy.*

Discussion: We generally agree with these requested changes because we believe that they help to clarify the types of knowledge one should have to be financially and economically literate. Therefore, we have revised §§ 643.7, 644.7, 645.6, 646.7, 647.7 to make these changes. With respect to the request to add the words "financial assistance education," we agree with the concept behind the comment but believe it is more appropriate to refer to "financial assistance" because it is knowledge about financial assistance, not financial assistance education, that is relevant.

Changes: In the definition of *financial and economic literacy* in § 646.7 (SSS), we have changed the reference to "secondary education" to "postsecondary education". In addition, in the definition of *financial and economic literacy* included in the regulations for the TS, EOC, UB, and McNair programs, we have added the term "postbaccalaureate" after the reference to "postsecondary", replaced the words "scholarship, grant and loan education" with the words "financial

[2] In the case of the TS program, projects must provide connections for participants to education or counseling services designed to improve the financial and economic literacy of the participants or the participants' parents, including financial planning for postsecondary education.

assistance," and included "assistanceships" as an example.

Definition of Homeless Children and Youth (§§ 642.6, 643.7, 644.7, 645.6, 646.7)

Comment: Multiple commenters asked for clarification of the definition of "youth". These commenters stated that the McKinney-Vento Homeless Assistance Act defines the age of children and youth as ending prior to being college aged. The commenters expressed concern that this definition would limit the services that TRIO programs could offer to these students. One commenter asked if homeless children and youth will be a separate group of eligible participants like first-generation or low-income students.

Discussion: The McKinney-Vento Act defines "homeless children and youths" in terms of what qualifies the individual as homeless, not by age.[3] Therefore, there is no cut-off age for the definition of "youth" in the McKinney-Vento Homeless Assistance Act.

Those TRIO programs that provide pre-college programs assist students who are individuals covered by the definition of homeless children and youth in the McKinney-Vento Homeless Assistance Act. In the SSS program, however, assistance for securing temporary housing during breaks in the academic year may be provided to students who are homeless children and youths or formerly homeless children or youths (see § 646.30(j)).

Finally, while section 402A(c)(6) of the HEA requires TRIO projects, as appropriate, to make services available to homeless children and youths, homeless children and youths are not a separate group of eligible participants. Therefore, homeless children and youths are only eligible if they also meet the program's participant eligibility criteria (e.g., low-income, first-generation).

Changes: None

Definition of Individual With a Disability (§§ 642.6, 643.7, 644.7, 645.6, and 646.7)

Comment: Multiple commenters requested that we broaden the definition of the term *individuals with disabilities* to mirror the language used in the Americans with Disabilities Act (ADA). Another commenter requested clarification on whether the inclusion of the term "individual with disabilities" means that a student with a documented disability or individualized education plan could participate in a TRIO project even if he or she does not meet one of the other eligibility criteria.

Discussion: The ADA, as revised by the ADA Amendments Act of 2008, defines the term "disability" to mean, with respect to an individual, (A) a physical or mental impairment that substantially limits one or more major life activities of such an individual, (B) a record of such an impairment or (C) being regarded as having such an "impairment." This definition also applies under Section 504 of the Rehabilitation Act of 1973, as amended (Section 504). We agree that it is appropriate to use a definition of an individual with a disability that incorporates the ADA's definition of "disability." Accordingly, we have changed the definition of *individual with disabilities* to be a definition of the term *individual with a disability* and we define *individual with a disability* to mean a person with a disability, as that term is defined in section 12102 of the ADA (42 U.S.C. 12101 *et seq.*).

With respect to the comment seeking clarification on whether the inclusion of the term individual with disabilities in these regulations means that a student with a documented disability or individualized education program could participate in a TRIO project even if he or she does not meet one of the other eligibility criteria, we note that—except under the SSS program—being an individual with a disability is not a separate and additional eligibility criterion, such as being a first-generation or low-income student. Therefore, under all but SSS, being an individual with a disability does not, on its own, make an individual eligible to participate in a TRIO project. It is important to note that adopting the ADA's definition of an individual with a disability does not mean that grant funds under these programs may be used to pay for services required by the ADA that are not directly related to the goals of the TRIO programs. However, this prohibition would not relieve the institution of their obligations under the ADA or Section 504. For example, it would not be appropriate to use SSS program funds to pay for a sign language interpreter for a student who is hard of hearing to participate in his or her Calculus class as required by the ADA or Section 504.

Changes: In §§ 642.6, 643.7, 644.7, 645.6, and 646.7 of the final regulations, we define *individual with a disability* to mean a person with a disability, as that term is defined in section 12102 of the ADA (42 U.S.C. 12101 *et seq.*).

Definition of Veteran (§§ 643.7, 644.7, and 645.6)

Comment: One commenter suggested that the proposed definition of veteran be modified to include National Guard veterans who served on active duty in Iraq and/or Afghanistan given that a large number of these individuals were called to duty in Iraq and Afghanistan and served for long tours of duty.

Discussion: National Guard veterans who served on active duty in Iraq and/or Afghanistan are included in the definition of veteran. These individuals qualify as veterans under the last two paragraphs of that definition (*i.e.,* the individual was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days, or the individual was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation on or after September 11, 2011).

Changes: None.

Evaluating Prior Experience—Outcome Criteria Definition of "High Quality Service Delivery" (§§ 642.20(b), 643.20(a)(2)(i), 644.20(a)(2)(i), 645.30(a)(2)(i), 646.20(a)(2)(i), 647.20(a)(2)(i))

Comment: Several commenters expressed concerns about the proposed regulations that would provide that the Secretary would consider an applicant's prior experience of "high quality service delivery" in deciding which new grants to make. Some commenters recommended that the phrase "high quality service delivery" be defined to provide projects with clear expectations and performance standards. Other commenters stated that, because the phrase "high quality service delivery" is

[3] Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act defines "homeless" as follows:

The term "homeless children and youths"—

(A) Means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1)); and

(B) includes—

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 103(a)(2)(C));

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

not defined, it should not be included in the regulations. One commenter argued that because project performance data is strictly quantitative in nature, a determination of a grantee's quality of service cannot be made.

Discussion: We disagree with the commenters' suggestion that the term "high quality service delivery" needs to be defined in the regulations. We also disagree that a grantee's quality of service cannot be determined based on project performance. As stated in section 402A(f)(1) of the HEA and in these regulations, the determination of an applicant's prior experience of "high quality service delivery" will be based on the outcome criteria for the specific program. Therefore, a grantee that met or exceeded its approved project objectives for its expiring grant would be considered to have delivered high quality services. The Department will use data provided by the grantee in the APR, as well as audit findings, site visit reports, and any other information received by the Department to determine if the grantee met or exceeded these objectives.

Changes: None.

Comment: None.

Discussion: In reviewing proposed §§ 643.20(a)(2)(i), 644.20(a)(2)(i), 645.30(a)(2)(i), 646.20(a)(2)(i), 647.20(a)(2)(i)), we determined that it would be clearer to have these sections refer to "outcome criteria" rather than to "criteria" only. This change aligns the regulatory language more closely with section 402A(f) of the HEA, which refers to the specific outcome criteria to be used to determine an entity's prior experience (PE) points under the TS, UB, SSS, McNair, and EOC programs.

Changes: We have amended §§ 643.20(a)(2)(i), 644.20(a)(2)(i), 645.30(a)(2)(i), 646.20(a)(2)(i), 647.20(a)(2)(i)) by adding the word "outcome" before the word "criteria".

Comment: None.

Discussion: Upon further review of §§ 643.20(a)(2)(i), 644.20(a)(2)(i), 645.30(a)(2)(i), 646.20(a)(2)(i), we determined that technical changes were needed in these sections. Because the HEA now permits entities to submit multiple applications to serve different populations, campuses, or both, it is important that the regulations clarify the conditions under which an entity may receive PE points for applications for new grants (depending on whether the new grant will serve the different populations, campuses, or both served under an expiring grant). The Department has revised these regulations to clarify that PE points are awarded only to the application for a new grant that proposes to continue to serve substantially the same populations *and* campuses that the applicant is serving under an expiring grant. Therefore, an entity will not receive PE points for (a) applications to serve different populations, even if the different populations are on the same campus as the population or populations served by the existing grant, or (b) applications to serve a different campus altogether.

Changes: We have amended §§ 643.20(a)(2)(i), 644.20(a)(2)(i), 645.30(a)(2)(i), and 646.20(a)(2)(i) by replacing the word "or" after the words "same populations" with the word "and."

Incorrect Annual Performance Report (APR) Data (§§ 642.22(a)(3), 643.22(a)(3), 644.22(a)(3), 645.32(a)(3), 646.22(a)(3), 647.22(a)(3))

Comment: The Department received numerous comments on the proposed regulatory language that would permit the Secretary to adjust a PE score or decide not to award PE points if other information indicates that the APR data used to calculate the applicant's PE are incorrect. Several commenters requested that the regulations be revised to take into consideration projects that knowingly provide fraudulent information and those that act in good faith but inadvertently provide data containing errors, so that the Department does not penalize projects for honest mistakes. Several commenters stated that Department officials have acknowledged that numerous projects have made data errors in their APRs, and these commenters believe that it is in the best interest of the Department and the projects to work to correct these errors, rather than not to award PE points to these projects.

Discussion: We understand the commenters' concern about data reporting errors potentially resulting in the loss of PE points for an applicant. The Department does not intend to use this authority to penalize applicants that make reporting errors despite their "good faith" efforts. However, because the Department cannot always tell whether an applicant intentionally provides false data or if the applicant made a mistake in data reporting, we believe it is appropriate for the Department to have the flexibility to address issues of concern in audit findings, site visits, or other information that identifies problems in a grantee's efforts to meet the established objectives on a case-by-case basis. For this reason, we decline to make any changes to the regulations to distinguish between projects that knowingly provide fraudulent information and those that act in good faith but inadvertently provide data containing errors.

Changes: None.

Notification of PE Points Awarded (§§ 642.22, 643.22, 644.22, 645.32, 646.22, 647.22)

Comment: Many commenters requested that the Department notify grantees of their PE points earned each project year within a certain amount of time (*e.g.,* 60 to 90 days) after the end of the grant period. They also recommended that the Department provide relevant comments to grantees that score less than the maximum 15 PE points, to assist the grantees in improving their projects in future years.

Discussion: We appreciate the commenters' suggestions on how to improve communication about project performance between the Department and grantees. The Department provides applicants with standardized objectives for the relevant TRIO program in the application materials for each TRIO competition. Applicants then must specify their performance targets, and grantees report on their progress in achieving approved objectives in their APR. At the conclusion of each competition, grantees receive a summary of the PE scoring by standardized objective for each of the three years assessed. Moreover, the APR for each program is designed so that grantees should be able to calculate their own annual PE scores. However, the Department will continue to perfect its assessment of PE and find ways to provide timely feedback to grantees on their projects' performance.

Changes: None.

PE Points for Financial and Economic Literacy (§§ 642.22, 643.22, 644.22, 645.32, 646.22, 647.22)

Comment: The Department received several comments recommending that PE points be granted for experience providing services to improve participants' financial and economic literacy as well as financial aid application support. Some commenters offered this recommendation for only a specific TRIO program. These commenters argued that services related to financial and economic literacy and financial aid support are required by the HEA, have been incorporated into certain of the TRIO programs' purposes, and are pivotal to helping participants prepare for college. Some commenters also noted that it makes sense to provide PE points for these services, because project staff spend a substantial amount of time engaged in these services.

Discussion: The Secretary acknowledges that the HEA emphasizes the importance of providing or connecting participants to services related to improving a participant's financial and economic literacy. However, the HEA does not list this activity as one of the outcome criteria to be used for PE points. To remain consistent with the statute, which requires that the Secretary determine an entity's prior experience based on the statutory outcome criteria, the Secretary is not adding PE criteria not included in section 402A(f) of the HEA.

Changes: None.

Timeline for Earning PE Points—Postsecondary Completion (§§ 643.22(d)(6) (TS), 645.32(e)(1)(vi) and (e)(2)(v) (UB))

Comment: Several commenters sought clarification on the timeframe in which UB and TS grantees will be eligible to earn the PE points associated with meeting their approved objectives for postsecondary degree completion, particularly if the criterion is evaluated after the second, third, and fourth program years, given the length of time it typically takes a student to complete a postsecondary degree. Some commenters requested an explanation of whether participants under an entity's expired or expiring grant may be counted toward meeting approved objectives for this criterion. One commenter recommended that grantees earn PE points for this criterion based on either postsecondary academic progress (persistence) or completion.

Discussion: We understand the commenters' concern that applicants may not be eligible for all the PE points available for each competition, due to the amount of time it takes to track enrollment in and completion of postsecondary education of the participants served in the applicants' expired or expiring grants. Under the UB program, some applicants would be eligible to earn PE points for participants they served under earlier grants who attain a postsecondary degree within the number of years specified in the approved objective. Because the Department has been collecting individual participant data through the UB APRs for several years, the Department will be able to match participant data from prior years to determine the extent to which UB participants completed programs of postsecondary education.

However, under the TS program, we have not been collecting data on the academic progress of TS participants through postsecondary completion as this is a new outcome criterion for this program. Therefore, the Department will not be able to match participant data from prior years to assess the extent to which TS participants completed programs of postsecondary education. Going forward, the Department will work with grantees to develop a new APR for the TS program that will capture the data needed to award PE points for postsecondary completion. The Department acknowledges that TS projects will not be eligible for the PE points for postsecondary completion for several years.

Finally, we have not accepted the commenter's suggestion that we award PE points under the postsecondary completion criteria based on the extent to which project participants were either still persisting in or had completed a program of postsecondary education because the requirement of the HEA is postsecondary completion, not progress or completion.

Changes: None.

Years Considered in PE Assessment (§§ 643.20(a)(2)(iii), 644.20(a)(2)(iii), 645.30(a)(2)(iii), 646.20(a)(2)(iii) 647.20(a)(2)(iv))

Comment: Multiple commenters expressed concern regarding the proposed regulation that would provide that the Secretary will designate in the **Federal Register** notice inviting applications and other published application materials for a competition which three years of the expiring five year grant period will be considered in the PE assessments for new awards. Several commenters stated that the regulations should specify which three years will be used, while a few others suggested clarifying that the middle three years (*i.e.,* years two through four) of the grant cycle would be considered. These commenters contended that including this information in the regulations would reduce confusion among grantees as to the timeframe evaluated for purposes of determining PE points. One commenter recommended using data for the four years preceding the date of application for the new competition. This commenter noted that such an approach would be consistent with the Department's current system in which the average rates of achievement for the preceding three years are used. Similarly, other commenters had concerns that the proposed use of three years of project data will fail to take into consideration two project years' worth of a project's performance.

Discussion: The HEA now provides that all TRIO grants will be awarded for five years, but the Secretary has determined that PE points should be assessed for only three of the five year project period. In making this determination, the Secretary took several factors into consideration. First, the Department's experience has demonstrated that, for a number of reasons, many first-time or new grantees do not meet their approved objectives for the first year of funding. Not using the first year of the grant cycle for PE points, therefore, will give new grantees time to effectively implement the project prior to having its performance evaluated for purposes of assessing PE. Second, evaluating performance from the last year of a project period to determine PE points for new awards presents a number of challenges. Applications for new grants are due about a year prior to the end of the current grant period and new awards are announced several months prior to the end of the grant period. Thus, it is not possible to consider a project's performance in the fifth year of an expiring grant prior to making funding decisions for the new grant competition because the APR data for the last year of the expiring grant would not be available for calculating PE points until several months after the new grant period begins.

For these reasons, we do not think it is appropriate or possible to use the first and fifth years of the expiring grant cycle to assess PE points for new competitions. Generally, we expect that the published application materials will designate the three middle years of the expiring grant (*i.e.,* project years two through four). However, designating the specific years to be considered in the application materials, rather than in the regulations, will give the Secretary flexibility to address unique situations on a competition-by-competition basis. For example, there may be situations when some grantees started their expiring grant period a year or more later than other grantees. In such a situation, the applicant's performance during the first three years, instead of the middle three years, of the expiring grant would be used to award PE points. The published application materials would designate the project years that would be used for PE (*e.g.,* 2007–08, 2008–09, and 2009–10) for all applicants in the competition.

Changes: None.

Use of Approved Versus Actual Number of Participants Served (§§ 645.32(d), 646.22(d), 647.22(d))

Comment: Some commenters expressed concerns about the proposal that the Secretary will use the approved number of participants, or the actual number of participants served in a given

year if that number of participants is greater than the approved number, as the denominator in calculating whether the applicant has met its approved objectives under its expiring grant to earn PE points for the new grant application. A few commenters argued that a grantee who does not serve the approved number of participants is penalized in two ways: First, by not receiving PE points for the criterion measuring whether the approved number was served, and, second, by not receiving any PE points at all if at least 90 percent of the approved number was not served. These commenters stated that using the approved number instead of actual number as the denominator in PE calculations is unnecessarily punitive. Furthermore, one commenter recommended that either the actual number of participants should be used as the denominator or the number of PE points associated with serving the approved number of participants should be reduced. This commenter argued that the number of points assigned to this criterion, combined with the proposed use of the approved number as the denominator, makes the penalty for projects that do not serve their approved number too severe. The commenter stated that this concern particularly applies to small projects, for which the commenter notes that one or two students can affect an objective by two or more percentage points.

Discussion: Grant award amounts and performance targets are based largely on the number of participants a project is funded to serve each year of the grant period. Therefore, we believe that, for those PE criteria applicable to all participants served in the project year, the denominator should be the greater of the approved number of participants to be served or the actual number of participants served. PE points are rewards, and give projects a competitive advantage in a subsequent grant competition. Therefore, it is reasonable to expect a grantee to meet the performance targets it proposed and that were approved through the grant process to earn the maximum number of PE points. Therefore, we do not accept the commenters' suggestion not to use the approved number as the denominator for calculating PE points for some objectives or to reduce the PE points a project can earn for serving its approved number of participants.

Changes: None.

PE Criterion Related to Number of Participants (§§ 642.22(d) and (e)(1); 643.22(c) and (d)(1); 644.22(c) and (d)(1); 645.32(c), (e)(1)(i), and (e)(2)(i)); 646.22(c) and (e)(1); 647.22(c) and (e)(1))

Comment: Several commenters expressed concern that the phrase "approved number of participants" in the proposed regulations means that a grantee would not receive PE points if the project served more than their approved number of participants. These commenters argued that it is difficult to ensure that a project only serves the exact number of participants that were proposed, as projects often accept more participants than they are funded to serve to ensure that at least the minimum number is met throughout the year. Two commenters further noted that the phrase "met or exceeded the entity's objectives" is used in several areas of the HEOA, suggesting that the spirit of the law is for projects to serve at least the funded number. Several commenters requested that the criterion be revised to reflect that the Department will examine whether the applicant provided services to "at least the approved number of participants" or to "no less than the approved number of participants."

One commenter suggested that PE points for serving the approved number of participants should be commensurate with the percentage of the approved number that was served. Two commenters suggested that the regulatory provision that states that the Secretary does not award PE points to a grantee that does not serve at least 90 percent of the approved number of participants conflicts with the separate regulatory provision that states that the Secretary does not award PE points for the criterion measuring whether the grantee served the approved number if the approved number is not served.

Discussion: The Department agrees that the use of the words "approved number" in the "Number of participants" PE criterion regulations may be confusing. We did not intend for this provision to imply that a project could not serve more than the approved number of participants. Therefore, we have accepted the commenters' recommendations to revise the regulatory language to make it clear that a project can serve more than the approved number of participants.

We note, however, that for a grantee to receive PE points for this criterion, the project must meet or exceed the approved number that it has been funded to serve; no partial credit will be given for this criterion to a grantee that served fewer than the approved number.

The commenters' concern that the PE criteria conflict with each other is based on a misunderstanding. The two criteria are complementary. First, to be eligible to receive *any* PE points for a given year, a grantee must have served at least 90 percent of the participants it was funded to serve. For example, if a project was funded to serve 100 participants but only served 85 participants (85 percent of the approved number), the grantee would receive no PE points for that project year because it did not serve at least 90 percent of its funded number. Second, if a grantee serves at least 90 percent of the number of participants it was funded to serve but did not serve 100 percent of the approved number of participants (*e.g.,* project was funded to serve 100 participants but only served 98 participants), the grantee would not receive any points for the "Number of participants" criterion. However, the grantee would be eligible to earn up to 12 PE points based on whether or not the project achieved its other PE objectives.

Changes: We have amended §§ 642.22(d); 643.22(c); 644.22(c); 645.32(c); 646.22(c); 647.22(c)) to clarify that the Secretary does not award PE points if the applicant did not serve at least the approved number of participants. In addition, we have amended the *Number of participants* criterion in §§ 642.22(e)(1), 643.22(d)(1), 644.22(d)(1), 645.32 (e)(1)(i) and (e)(2)(i); 646.22(e)(1); and 647.22(e)(1) to clarify that the award of PE points for that criterion is based on whether the applicant provided services to no less than the approved number of participants.

Review Process for Unsuccessful Federal TRIO Program Applicants Percentage of Funds Set Aside for Secondary Review Competition (§§ 642.25(d) (Training), 643.24(d) (TS), 644.24(d) (EOC), 645.35(d) (UB), 646.24(d) (SSS), and 647.24(d) (McNair))

Comment: Several commenters requested clarification of some of the procedures and processes proposed for the second review of unsuccessful grant applications. Several commenters wanted to know the percentage of competition funds that would be reserved for the second review or how the Department would determine the percentage of funds set aside for grants after the second review. Commenters also expressed concern that some of the funds reserved for awards after the second review might not be awarded and recommended that the regulations

be modified to allow for and explain the equitable disbursement of unused reserved funds.

Discussion: To implement the new statutory requirement that unsuccessful applicants may request a second review of their applications under certain conditions, the Department proposed and, through these final regulations, adopts a two-slate process. After the peer review of applications and the awarding of PE points, as applicable, the Department will rank all the applications. The Department then will establish a funding band to determine the percentage of the total funds allotted for the competition that will be set aside for the second review (for example, we might set aside six percent of the total funds allotted for the competition). The determination of the percentage of funds to be reserved for the second review and the applications to be included in the funding band will be based on the distribution of application scores. For example, we expect to include in the funding band all applications that scored within two or three points below the initial cut-off score.

The funding band for each competition will include all of the applications with a rank-order score that is below the lowest score of applications funded after the first review and that would be funded if the Secretary had 150 percent of the funds that were set aside for the second review (*e.g.* nine percent of funds).

The first slate of new awards will be made based on the rank-order of the applications using the amount of funds available for the competition minus the amount of funds set aside for the second review of unsuccessful applications (*e.g.,* six percent).

Only those unsuccessful applicants whose applications scored within the funding band will be eligible for the second review. In addition, those applicants eligible for the second review will have to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error (as defined in the regulations) in the review of its application.

If the Department determines that there was an administrative error in the review of an application (which includes mathematical errors in the calculation of PE points or assigning the earned PE points or the peer reviewers' scores to the wrong application) the Department will correct the error and adjust the score assigned to the application as appropriate. If the adjusted score assigned to the application would place the application above the cut-off score for funding under the first slate, the application will be funded (if funds are available) prior to the re-ranking of applications based on the second peer review of unsuccessful applications.

If there is an error in how the peer reviewers scored an application (see §§ 642.25(b)(3) (Training); 643.24(b)(3) (TS); 644.24(b)(3) (EOC); 645.35(b)(3) (UB); 646.24(b)(3) (SSS); and 647.24(b)(3) (McNair)), a second peer review panel will review the application. After all of the second reviews are completed, a second rank-order slate of applications in the funding band will be prepared. The rankings in the second slate will be based on the new reviewers' score for those applications that were read by a second peer review panel; any applicant in the funding band that did not request or receive a second review will be ranked based on its original score. Applications in the funding band will be funded based on the second rank order slate until all the available funds are committed.

The decision to use a funding band and the specific parameters for the funding band are based on the Department's experience. In the past, adjustments for administrative and scoring errors have resulted in a score increase of no more than two or three points; therefore, under these regulations, the funding band will include only those applications that have a reasonable chance of being funded if the second review of the application resulted in an adjustment to the score. By selecting those applications with an original score that is most likely to have a chance of being funded after a second review, the Department will be better able to effectively manage the grant competition and make timely funding decisions.

The funding band approach to the second review process ensures that eligible applicants have a meaningful opportunity to request a second review while ensuring that the Department can provide timely notice of grant awards.

It is important to note that not every application selected for inclusion in the funding band will be awarded a grant. As discussed elsewhere in this preamble, we will put aside an appropriate amount of funds for grants awarded after the second review, but those funds will not be sufficient to provide funding for all applicants in the funding band. However, this process will ensure that we obligate all of the funds available for new grants and that there is no lapse of funds.

Changes: None.

Number of Days To Prepare and Submit a Written Request for a Second Review (§§ 642.25(c)(5) and (6)(Training), 643.24(c)(5) and (c)(6)(TS), 644.24(c)(5) and (c)(6) (EOC), 645.35(c)(5) and (c)(6) (UB), 646.24(c)(5) and (c)(6) (SSS), and 647.24(c)(5) and (c)(6) (McNair))

Comment: Several commenters recommended that the Department revise the proposed regulations by increasing the 15 calendar days to prepare a written request for a second review to 30 to 45 calendar days. These commenters stated that 15 days is not enough time for unsuccessful applicants to receive and review the reader's evaluations and prepare an appropriate request for a secondary review to the Department. Five commenters expressed concern that the amount of time it takes to deliver and receive mail, especially for applicants in the Pacific, would reduce the amount of time applicants would have to respond and request a secondary review. Other commenters gave examples of circumstances that could interfere with an applicant's ability to respond within the proposed 15 day period, such as the need to get appropriate signatures, delays resulting from the institution being closed for vacations or furloughed days, or delays in getting the peer reviewers' comments and the assessments of PE points. Another commenter suggested that the Department provide a grantee with its PE score annually to provide more time in which to do the research needed to appeal the assigned PE score. One commenter also noted that the regulations seemed contradictory in providing that the applicant will have 15 calendar days to submit a written request but then also stating that the written request for a second review must be received by the Department by the due date and time established by the Secretary.

Discussion: We understand the time constraints institutions may face in submitting their request for a second review and supporting information in a timely manner. However, the statutory requirement for a second review process adds several new steps to the competition schedule. Consequently, we must compress many stages of the competition to incorporate these new procedures into the competition schedule so that we meet our legal obligation to commit all appropriated funds by the end of the fiscal year.

The Department will establish internal procedures to ensure that applicants in the funding band receive at least 15 days after receiving notification that their applications were not funded in which to submit a written

request for a second review. At the time of notification, these applicants will receive copies of the peer reviewers' written evaluations and, if applicable, a report detailing how the PE score was calculated. We will use multiple notification methods (*e.g.,* electronic mail, overnight mail) to ensure applicants will have at least 15 days from receipt of the notification in which to respond. Applicants will also be permitted to submit their responses electronically. Further, our Web site will provide applicants with updated information as to when funding decisions might be announced and the proposed schedule for the second review so applicants can ensure that staff are available to prepare a request for a second review, if appropriate.

In establishing a due date and time for receipt of the applicant's written request for a second review, the Department will give applicants at least 15 days in which to respond.

Changes: We have amended §§ 642.25(c)(5), 643.24(c)(5), 644.24(c)(5), 645.35(c)(5), 646.24(c)(5), and 647.24(c)(5) to clarify that unsuccessful applicants who are within the funding band will have at least 15 calendar days in which to submit a written request for a second review.

Technical or Administrative Errors (§§ 642.25(a)(3) (Training), 643.24(a)(3) (TS), 644.24(a)(3) (EOC), 645.35(a)(3) (UB), 646.24(a)(3)(SSS), and 647.24(a)(3) (McNair))

Comment: Three commenters suggested that if a technical or administrative error by the Department or a peer reviewer results in an application not being reviewed, the applicant should automatically receive a grant even if program funds are not available.

Discussion: We cannot accept the suggestion made by the commenters. If correcting a technical or administrative error results in the application receiving a score above the cut-off score for funding under the first slate, the application would be funded prior to the re-ranking of applications based on the second peer review of unsuccessful applications. Therefore, we do not anticipate a situation in which funds would not be available to fund these applications. However, we do not have the legal authority to commit funds that we do not have and the regulations must include the statement "provided funds are available".

Changes: None.

Criteria for Scoring Errors on Applications That Were Reviewed (§§ 642.25(b)(3) (Training), 643.24(b)(3) (TS), 644.24(b)(3) (EOC), 645.35(b)(3) (UB), 646.24(b)(3)(SSS), and 647.24(b)(3) (McNair))

Comment: One commenter argued that the criteria proposed in the regulations for demonstrating scoring errors in the evaluation of the application are too narrow and should include other criteria that take into account possibilities such as human error on the part of the reader. Another commenter asserted that the reader's professional judgment should be considered as a type of scoring error in determining whether or not an application is eligible for a secondary review. This commenter expressed the opinion that readers do not have the appropriate knowledge to adequately judge whether or not an applicant can meet the objectives set forth in the application. Another commenter was concerned about readers who may misread or misinterpret information provided in the application.

Discussion: We do not agree with these comments. We believe that the regulations appropriately define the type of error that should be considered a technical, administrative or scoring error and would warrant a second review of an application. We disagree with the suggestion that the professional judgment of the peer reviewers should be subject to review as a scoring error. The HEA requires that each application be reviewed by a panel of non-Federal peer reviewers. These experts have programmatic knowledge and experience in serving low-income, first-generation students and in administering student assistance programs. As required by Congress, we rely on their expertise to make judgments about the quality of the applications under review. The readers appropriately exercise their judgment in providing scores on the applications and a low score is not evidence of an error by the reviewer. We also do not agree that the reader's interpretation of an application should be a basis for review. It is the applicant's responsibility to make sure the information provided in the application is clear and understandable.

Changes: None.

Timely Notification of Applications Determined To Be Ineligible Because of a Technical or Administrative Error (§§ 642.25(a) (Training), 643.24(a) (TS), 644.24(a) (EOC), 645.35(a) (UB), 646.24(a) (SSS), and 647.24(a) (McNair))

Comment: One commenter asserted that the regulations should require the Secretary to provide timely notification to an applicant whose application was not reviewed because it was determined to be ineligible, so that the applicant would have sufficient time to appeal the decision prior to the conduct of the peer review process.

Discussion: To the extent feasible, the Department notifies applicants who were determined to be ineligible in writing prior to the start of the peer review of applications or as soon as possible thereafter. Under these regulations, if it is determined that the Department or the Department's agent made a technical or administrative error, as defined in the regulations, in making that determination the application will be evaluated and scored. If the total score assigned the application would have resulted in the funding of the application during the competition and the program has funds available, the application will be funded prior to the re-ranking and funding of applications after the second review.

Changes: None.

Final Decision (§§ 642.25(e) (Training), 643.24(e) (TS), 644.24(e) (EOC), 645.35(e) (UB), 646.24(e) (SSS), and 647.24(e) (McNair))

Comment: Two commenters expressed concern that scoring errors also could occur during the secondary review process. For this reason, the commenters suggested that applicants be allowed to appeal the decision of the secondary review process.

Discussion: The Secretary disagrees with the suggestion that an applicant should be permitted to appeal the decision of the secondary review process. The second review provides a formal process for addressing scoring errors made during the first review that might impact the funding of an application. Appealing the decision of the second review is beyond the requirements of the statute and would interfere with the timely awarding of grants under the competition.

Changes: None.

Eliminate the Second Review (§§ 642.25 (Training), 643.24 (TS), 644.24 (EOC), 645.35 (UB), 646.24 (SSS), and 647.24 (McNair))

Comment: One commenter requested that we remove from the regulations the

entire section on the review process for unsuccessful applicants because it would increase the Department's administrative burden and would increase administrative costs, resulting in fewer projects being funded and fewer students being served.

Discussion: The HEA requires the creation of the second review process for unsuccessful applications. The Department does not have the authority to eliminate this statutorily required process.

Changes: None.

Training Program for Federal TRIO Programs (34 CFR part 642) What is the Training Program for Federal TRIO Programs? (§ 642.1)

Comment: One commenter expressed concern that it is difficult for Training Program grantees to meet the minimum requirements for the number of TRIO professionals that they must train. The commenter suggested making awards in a way that allows grantees to structure training sessions to be more focused, such as training for specific programs (*e.g.,* for only Upward Bound staff or Talent Search staff), only new directors or staff, or only seasoned staff, to reduce the competition among grantees for the same audiences. In addition, the commenter urged the Department to ensure that TRIO professionals are able to take advantage of training opportunities by requiring directors to send staff to the trainings.

Discussion: Section 402G(b) of the HEA requires Training Program grantees to offer training annually for new directors of TRIO projects as well as annual training on topics specified in the statute and other topics chosen by the Secretary. If grantees are offering training to the same audiences and are unable to attract appropriate numbers of participants, rather than changing the requirements on the number of project staff a Training grant must serve, the Secretary may consider reducing the number of grants available under this program while still ensuring that training is available throughout the Nation. Although the Secretary hopes that TRIO professionals will be able to take advantage of these training opportunities, the Secretary does not want to require their participation. It is the responsibility of each TRIO director to determine which staff could benefit from the offered training and how much of the project budget should be used for this purpose and to make decisions about staff participation in trainings under the TRIO Training program accordingly.

Changes: None.

What activities does the Secretary assist? (§ 642.11)

Comment: One commenter suggested that the Department remove the requirement that Training Program projects offer training covering strategies for recruiting and serving hard-to-reach populations, as reflected in § 642.11(b)(5). The commenter maintained that it does not make sense to include this requirement because some of the TRIO programs, such as McNair and Upward Bound Math-Science (UBMS), are not required to serve these populations. The commenter suggested that the Department make this a permissible training topic that could be combined with other topics.

Discussion: In section 402G(b)(5) of the HEA, as amended by section 403(g) of the HEOA, Congress added training on strategies for recruiting and serving hard to reach populations to the list of required training that must be offered annually. Therefore, we do not have the authority to remove this requirement or to make it a permissive topic. The **Federal Register** notice inviting applications will provide applicants with additional guidance regarding the types of TRIO staff that should be offered training on this topic.

Changes: None.

How does the Secretary evaluate an application for a new award? (§ 642.20)

Comment: One commenter suggested that, in making awards under the Training Program, the Department should take into consideration the diversity of training topics and the opportunities for TRIO professionals to attend training. The commenter also suggested that the Secretary make only one award for each major training topic to ensure that comprehensive training is available for TRIO staff.

Discussion: For each competition for grants under the Training Program, the notice inviting applications will identify the training priorities (from the list of priorities in § 642.24) for the competition and the expected number of Training projects to be funded under each priority. Under section 402G(b) of the HEA, training must be offered each year for new project directors and for each of the topics listed in paragraphs (b)(1) through (b)(5) of that section and in § 642.11. The required topics provide the appropriate diversity and opportunities for training.

Changes: None.

What are the Secretary's priorities for funding? (§§ 642.7 and 642.24)

Comment: None.

Discussion: Upon further departmental review of § 642.7 and newly redesignated § 642.24, we have determined that the provisions should be clearer with regard to the implementation of the Secretary's authority to select and designate training priorities. Proposed § 642.7 stated that an applicant may submit more than one application for Training grants as long as each application described a project that addresses a different absolute priority designated in the **Federal Register** notice inviting applications. The absolute priorities are from the list of training priorities in newly redesignated § 642.24. We have made a change to § 642.24 to make this clearer. In addition, while § 642.7 states that the Secretary designates the absolute priorities in the **Federal Register** notice inviting applications, newly redesignated § 642.24, as proposed, did not include corresponding language. For the sake of clarity, therefore, we have added language to § 642.24 that states that the Secretary designates one or more of the priorities in § 642.24 in the **Federal Register** notice inviting applications for the competition.

Changes: We have added language to § 642.7 to clarify that the absolute priorities designated in the **Federal Register** notice inviting applications are from the list of training priorities in § 642.24. We also have added paragraph (c) to newly redesignated § 642.24 to clarify that, for each competition, the Secretary designates one or more training priorities in the **Federal Register** notice inviting applications.

Comment: Multiple commenters advocated expanding the Secretary's list of priorities for the Training Program to include additional priorities, such as the provision of counseling services designed to improve financial and economic literacy. The commenters argued that additional priorities should be included as priorities in § 642.24 to reflect the emphasis on these activities in the HEA.

Discussion: Section 642.11(b) reflects the list of training topics required by section 402G(b) of the HEA. Section 642.24 reflects the Secretary's statutory authority to designate—in a notice inviting applications for a competition—one or more subjects as training priorities for grantees. In exercising the authority provided in § 642.24, the Secretary may consider the priorities suggested by the commenters for future competitions.

Changes: None.

Talent Search (TS) Program (34 CFR Part 643)

The Secretary has changed the current TS Program regulations to implement

the changes made to the program by sections 403(a) and (b) of the HEOA. The HEOA made changes to the goals and purposes of the TS program through the addition of statutory outcome criteria and required activities. These HEOA changes require TS grantees to provide more intensive academic interventions than they have in the past.

As we discuss subsequently under the applicable sections of the regulations, the Department received many comments and questions about the new TS program requirements, particularly with regard to the requirements relating to a rigorous secondary school program of study. Numerous commenters expressed concerns that funding levels would be insufficient to provide the required services and activities to the number of students currently being served and recommended that, if additional funding were not available for TS, grantees should be permitted to reduce the number of students to be served. Some commenters suggested that the proposed regulations would require grantees to implement a two-tiered program of service delivery—the first tier would support participants completing a rigorous curriculum and the second tier would provide college preparatory education for those participants not taking a rigorous secondary school program of study.

The Department also received comments requesting additional guidance regarding the Department's expectations for the cost-effective delivery of services for students in a rigorous program of study.

As discussed in the NPRM, in light of the changes made to the HEA, the Department has removed from the regulations the requirement that a TS grantee must serve a specific minimum number of participants. Instead, the Secretary will identify the minimum number of participants a TS grantee must serve each year of a grant cycle in the **Federal Register** notice inviting applications for the grant competition. This approach will give the Department the flexibility to establish the minimum number of participants to be served based on the available resources and other priorities for each competition, and to adjust these numbers for subsequent competitions based on experience, changing priorities, and cost analyses.

Further, the Department acknowledges that some of the proposed regulations with regard to the rigorous program of study would impose a significant burden on grantees and could not be fully implemented without substantial increases in program funding or large reductions in the number of participants served. Therefore, as discussed in more detail in the following sections, we have revised many of the proposed regulations related to the rigorous program of study. For example, instead of requiring TS grantees to provide many of the services a participant may need to complete a rigorous program of study, the Department is encouraging all TS projects to work in a coordinated, collaborative, and cost-effective manner with the target schools or school system and other programs for disadvantaged students to provide TS participants with access to and assistance in completing a rigorous secondary school program of study.

The Department also plans to provide additional guidance to applicants on how to respond to the new program requirements and outcome criteria in the published application materials. In addition, the Department will conduct 10 pre-application workshops to assist persons interested in applying for TS grants and will post a list of frequently asked questions on the TRIO Programs Web site at: *http://www.ed.gov/about/offices/list/ope/trio/index.html.*

What is the Talent Search program? (§ 643.1)

Comment: Several commenters expressed dissatisfaction with the language that the Secretary proposed to add to this section. The commenters expressed concern that it appeared that the TS program is no longer focused on its historically targeted audiences of middle and high school students because TS projects are now expected to also "encourage" persons who have not completed postsecondary education to "complete such programs." The commenters argued that working with persons to complete a program of postsecondary education is beyond the scope of the TS program.

Discussion: We do not have the discretion to make the changes suggested by the commenters because the regulatory language at issue is required by section 402B(a)(3) of the HEA.

Changes: None.

Who is eligible for a grant? (§ 643.2)

Comment: Many commenters questioned the practicality or need to include secondary schools and community-based organizations as eligible grantees for the TS program and suggested that the regulations be modified to exclude these entities from being eligible applicants.

Discussion: We cannot make the changes required by the commenters. Congress amended section 402A(b)(1) of the HEA to eliminate the limitation on the eligibility of secondary schools and to include community-based organizations in the definition of public and private agencies that are eligible for the TS program.

Changes: None.

Who is eligible to participate in a project? (§ 643.3)

Comment: Several commenters recommended that the regulations retain the requirement, reflected in current § 643.3(a)(3)(ii) that a participant have the ability to complete a program of postsecondary education. Some commenters requested that the participant eligibility requirements concerning individuals receiving support to complete a rigorous secondary school program of study be removed from § 643.3(b). A majority of the comments on § 643.3 concerned the requirement that an individual is eligible to receive support to complete a rigorous secondary school program of study only if the individual is accepted into the TS program by the end of the first term of the tenth grade. Some of these commenters recommended that this provision be changed to allow individuals who are accepted into the TS program by the end of the 10th grade academic year. Another one of these commenters suggested that identifying students for a rigorous secondary school program of study in the 9th grade presents a challenge due to the mobility and attrition issues that TS projects encounter, which make it difficult to identify a cohort of students to follow for four years. This commenter noted that projects in rural States, in particular, have these challenges because the number of schools in which services can be provided would be small. The commenter suggested that we amend the regulations to identify an overall percentage of the total number of high school students served by a project who will complete a rigorous secondary school program of study by the end of their senior year. Other commenters also stated that this provision was too restrictive and recommended that TS projects be given more flexibility to recruit, select, and provide additional services for students among all grade levels. Some commenters argued that using TS funds for a rigorous secondary school program of study is a misplaced priority and that funds would be better utilized providing services aimed at the 6th through 8th grade population.

Discussion: We have not accepted the commenters' recommendation with regard to retaining § 643.3(a)(3)(ii) because we amended this provision to comply with the changes made by

section 403(b)(1)(B) of the HEOA to section 402B(a)(3) of the HEA.

However, in response to other comments, we have decided not to include in these final regulations the participant eligibility requirements for the rigorous secondary school program of study that were reflected in proposed § 643.3(b). We have been convinced by the commenters that this provision would have imposed a significant burden on grantees by adding additional participant eligibility criteria for those participants needing assistance in completing a rigorous secondary school program of study. Also, after considering the comments, we have decided that TS projects should encourage all participants, not just those in high school, to undertake a rigorous secondary school program of study and should coordinate and collaborate with the target schools or school system and other programs for disadvantaged students to provide all TS participants with access to and assistance in completing a rigorous secondary school program of study.

In response to the comment that using TS funds for a rigorous secondary school program of study is a misplaced priority and that funds would be better utilized providing services aimed at the 6th through 8th grade population, we note that section 402A(f)(3)(A)(iv) of the HEA now requires TS grantees to assist participants in completing a rigorous program of study; therefore, we require this assistance in the regulations. However, these final regulations reflect changes we have made to the proposed regulations that should help reduce the costs to the TS project of providing these services. Encouraging participants to pursue a rigorous program of study should be part of the services a TS project provides to participants in the 6th through 8th grades.

Changes: We have amended the regulations by removing proposed § 643.3(b). As a result, current § 643.3(b), which would have been redesignated as § 643.3(c), remains unchanged as § 643.3(b) in these final regulations.

What services does a project provide? (§ 643.4)

Comment: The majority of individuals who commented on § 643.4 suggested that the required services listed in § 643.4(a) were too burdensome, time intensive, cost prohibitive, or impractical for TS grantees and should be eliminated. One commenter suggested that these services should be allowable but not required. One commenter requested that we revise section § 643.4(b) to clarify that grantees may provide additional activities that are not included in the list of permissible services from the TRIO statute provided that these activities meet the goals of the TS program.

Discussion: Section 643.4(a) includes the list of "Required Services" for a TS project, as mandated by section 402B(b) of the HEA. We do not have the discretion to eliminate these required services or to make them permissible. However, a grantee may provide the required services itself or through linkages with other organizations. Moreover, while a grantee must make all of the required services listed in § 643.4(a) available to its participants, not all TS participants may need all of the services or may choose not to take advantage of them. We did not intend for the regulations to prohibit grantees from offering additional services to meet the goals of the program; grantees may offer additional services not explicitly mentioned as required or permissible. Therefore, we have revised § 643.4(b) to reflect that intent more clearly.

Changes: We have revised § 643.4(b) by adding paragraph (b)(8), which clarifies that a TS project may provide services other than those specified in § 643.4(b)(1) through (b)(7) that are designed to meet the purposes of the TS program.

What definitions apply? (§ 643.7)

Regular Secondary School Diploma

Comment: Several commenters suggested that the definition for the term *regular secondary school diploma* be removed from the TS regulations because the assumption would otherwise be that any secondary school diploma would be a regular diploma. Many commenters asked what criteria the Secretary will use to determine whether a diploma constitutes a regular secondary school diploma under this definition. Other commenters suggested that we revise § 643.7 to define the term *regular secondary school diploma* with more specificity. Several commenters indicated that beginning in 2014 a "regular" diploma within their State will be the same as a diploma for completing the State's rigorous secondary school program of study.

In addition, several commenters requested that the definition for the term *regular secondary school diploma* be revised to include a timeline for the "standard number of years" in which participants would complete secondary school. A number of the commenters suggested that there was some confusion as to whether the phrase "standard number of years," as used in §§ 643.21(a)(3) (selection criteria) and 643.22(d)(3) (criteria for calculating PE points) would be considered to end at the conclusion of the academic year or at the conclusion of a summer session. The commenters indicated that this difference would be significant due to the fact that some States require exit examinations. In these States, if a student does not graduate at the end of the academic year, he or she still has the opportunity to pass the examination during the summer. These commenters argued, therefore, that if the meaning of the phrase "standard number of years" includes the summer period, a project would be able to include as graduates those students who pass the examination in the summer. The commenters asked the Department to revise the definition of *regular secondary school diploma* to clarify whether to meet this definition a diploma must be obtained within the academic year.

Discussion: Because we recognize that State policies concerning the requirement for a regular secondary school diploma may differ, we proposed a regulatory definition for this term that is broad enough to encompass varying requirements for a regular secondary school diploma. We do not agree with the commenters' suggestion that this definition be removed; we believe that the definition clarifies for grantees that their respective State standards should be used to determine whether a participant has attained a regular secondary school diploma.

With regard to the comments concerning the meaning of the phrase "standard number of years," we acknowledge that there are a variety of State policies concerning graduation requirements, including exit examinations. We also appreciate that some States may not define what timeframe constitutes a "standard number of years" for high school graduation with a regular secondary school diploma; and, therefore, we should establish a consistent point of measurement for determining a grantee's performance under the outcome criterion for high school graduation with a regular secondary school diploma. The National Center for Education Statistics (NCES) generally measures "on time" high school graduation (*i.e.,* graduating within the standard number of years) as receiving a regular diploma within four years of entering ninth grade, which is consistent with the general approach to measurement and with high school graduation rates determined under the Elementary and Secondary Education Act of 1965, as amended (ESEA).

The Department interprets the standard number of years for high school graduation with a regular secondary school diploma generally to be one grade per year from the beginning of high school, which is usually ninth grade. Further, consistent with the ESEA regulations, in 34 CFR 200.19(b)(1)(iii), a student who passes the exit examinations for a regular high school diploma during the summer after the senior year would be considered to have graduated within the standard number of years. Finally, a student who graduates prior to the conclusion of a student's fourth (or final) year of high school would also be considered to have graduated within the standard number of years.

Changes: None.

Definition of Rigorous Secondary School Program of Study

Comment: Several commenters suggested that a dual enrollment program should be considered as meeting the TS definition of a *rigorous secondary school program of study.* The commenters also recommended that this definition be revised to include as a rigorous secondary school program of study a secondary school program in which a student completed at least two dual enrollment courses for which the student received a grade of "B−" or better and college credit. Another commenter suggested adding to the type of rigorous secondary school program of study described in paragraph (3)(iii) of the definition the requirement that students must successfully complete, at minimum, courses in Anatomy/Physiology, Physical Science, and Environmental Science. Another commenter asked whether the language in paragraph (3) of the definition that provides that a rigorous secondary school program of study include one year of a language other than English would be satisfied by computer science coursework.

Several commenters asked whether the types of programs described in paragraphs (3) and (4) of the definition of *rigorous secondary school program of study* are redundant. The commenters stated that the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE) requires the same coursework as that listed in the type of program described in paragraph (3) of the definition.

Therefore, under the WICHE standards, any student who completes a rigorous secondary school program of study under paragraph (4) of the definition would also have completed a rigorous secondary school program of study that satisfies paragraph (3) of the definition. Several commenters suggested that the definition of a *rigorous secondary school program of study* be amended to provide a common single definition instead of including several types of programs that meet this definition, so grant applications can be judged and scored using a common definition. Other commenters indicated that they believed that the presentation of the six types of programs that would meet the definition of a *rigorous secondary school program of study* suggests that an individual program of study would have to meet all six options to meet the definition. They suggested that the definition be clarified by including the word "or" after each of the first five paragraphs. Another commenter suggested that the Department add the words "one of the following" to the definition to clarify that any one of the listed options meets the definition of *rigorous secondary school program of study.*

Discussion: The Secretary disagrees with the commenters who suggested that completion of either a dual enrollment program or a secondary school program that includes two dual enrollment courses with a grade of B− or better should qualify as a rigorous secondary school program of study. We do not believe all dual enrollment programs or courses are rigorous enough to support either of these approaches. Of course, a dual enrollment program or secondary school program that includes dual enrollment courses that otherwise meets one of the criteria in the definition in the regulations would qualify as a rigorous secondary school program of study.

The Secretary also does not agree with the suggestion to add additional required coursework to the definition or with the suggestion to provide a single definition of a rigorous program of study. These suggestions would make the definition overly restrictive and might limit the States' authority to establish curricular standards.

A project, if using the criteria for a rigorous secondary school program of study in paragraph (3), cannot substitute a computer science course for one year of a language other than English. However, the specific course requirements for a rigorous secondary school program of study in paragraphs (1), (2), (4), (5), and (6) may differ from those in paragraph (3).

Further, we believe that the criteria provided in paragraphs (3) and (4) in the definition of a *rigorous secondary school program of study* are sufficiently different in content and should not be combined into a single criterion. While some programs may meet both paragraphs (3) and (4), this will not always be the case. We note, for example, that the WICHE course requirements are more specific than those described in paragraph (3) of the definition. Under paragraph (3) of the definition, a program of study must include three years of science, including one year each of at least two of the following courses: Biology, chemistry, and physics; in contrast, under WICHE requirements, a program of study must require that students complete courses in all three of these subjects. A program of study that meets paragraph (4) of the definition, therefore, will also meet the criteria under paragraph (3) of the definition, but the reverse is not true. Finally, we do not believe it is necessary to add the word "or" after each criterion in this definition. The definition provides that a program meeting any one of paragraphs (1) through (6) would satisfy the definition of *rigorous secondary school program of study.*

Changes: None.

Comment: Several commenters noted that the term "rigorous secondary school diploma" was not defined in the TS regulations.

Discussion: We inadvertently referred to "rigorous secondary school diploma" in the amendatory language when we meant "rigorous secondary school program of study," and have corrected this typographical error.

Change: We have corrected the typographical error in the amendatory language describing the changes to § 643.7(b).

What assurances must an applicant submit? (§ 643.11(a))

Comment: Some commenters objected to the proposed change, reflected in proposed § 643.11(a), that would have required a project to provide an assurance that at least two-thirds of the subset of participants receiving support to complete a rigorous secondary school program of study must be low-income individuals who are potential first-generation college students. The commenters argued that the requirement was an unnecessary burden and would be costly for TS projects, which serve large numbers of participants, because it would require the project to monitor the eligibility and services provided to this subset of participants separately.

Discussion: After reviewing the information provided by the commenters, the Secretary agrees that tracking the eligibility of participants in a rigorous secondary school program of study separately from other TS participants may be overly burdensome and costly to grantees so we have decided not to adopt the revisions we proposed for § 643.11(a).

Changes: In these final regulations, § 643.11(a) will not include the proposed addition of the words ", and at least two-thirds of the participants selected to receive support for a rigorous secondary school program of study." Instead, § 643.11(a) will remain substantively unchanged from current § 643.10(a).

Coordination Among Outreach Programs Serving Similar Populations (§ 643.11(b))

Comment: The Department received many comments regarding the language in proposed § 643.11(b), which would have required applicants to provide an assurance that individuals receiving project services will not receive the same services from another TRIO project, a GEAR UP project, or other programs serving similar populations. Several commenters argued that this provision goes beyond the statutory language and will restrict collaboration among programs. The commenters stated that collaboration is essential in the current economic climate.

Several commenters also expressed concerns about how this provision would be implemented. The commenters stated that participants may receive the same service from two programs, but at different times of the year or on different days of the week. Some commenters expressed concerns that the provision could negatively affect individuals who already participate in more than one program and who may have to stop receiving certain services. Many commenters argued that it would be difficult, if not impossible, for projects to track and record all of the services that participants may receive from other programs. Some commenters noted that, as proposed, § 643.11(b) could prevent participants from receiving specialized services, and that often services that appear duplicative can actually serve to reinforce important concepts. One commenter suggested that this provision could create competition among programs. A few commenters also suggested that this provision could impede a project's ability to comply with other sections of the HEA, such as exposing participants to institutions of higher education, cultural events, or academic programs.

In light of these concerns, many commenters recommended that the Department delete § 643.11(b) in its entirety. Others recommended striking the words "a GEAR UP project under 34 CFR part 694" and "or other programs serving similar populations." Some commenters noted that projects should consult with other programs to ensure minimal overlap of services and suggested that the language in this section be revised to permit a participant to enroll in one or more programs as long as the programs document which program will provide which services.

Discussion: We intended § 643.11(b) to help ensure that the limited funds available under the TRIO, GEAR UP, and other programs for disadvantaged students are used effectively and efficiently by minimizing the duplication of services. Because many of the same services are provided by TS, UB, GEAR UP, and other pre-college preparation programs, coordination of activities is essential to ensure that these programs reach as many students as possible.

Grantees are encouraged to share ideas and coordinate services and activities with other Federal and non-Federal programs serving similar populations, as long as each project maintains fiscal practices that ensure that funds are not comingled and that services provided are appropriately documented. For example, a TS project and a UB project may jointly conduct a field trip to a college campus for participants from both projects while assigning costs to each project based on the number of its participants and staff who attended.

To ensure effective coordination of services, we recommend that a project, when selecting target schools, determine if there is another TRIO, GEAR UP, or similar program at the school; and, if additional services are needed at the school, the project should develop collaboration plans to avoid duplication of services and competition among projects for participants. In selecting project participants, a project should also ask the student whether he or she is involved in similar college readiness programs so services can be coordinated.

Based on the comments, the Secretary has determined that proposed § 643.11(b) may be difficult to implement. Accordingly, we have revised the regulatory provision to address implementation problems like those raised by the commenters.

Changes: We have amended § 643.11(b) to require applicants to submit assurances that the project will collaborate with other Federal TRIO projects, GEAR UP projects, or programs serving similar populations that are serving the same target schools or target area to minimize the duplication of services and promote collaborations so that more students can be served.

What selection criteria does the Secretary use? Need for the project. (§ 643.21(a))

Comment: We received a number of comments on the requirement that, for certain criteria in § 643.21(a), the applicant provide data for "the most recent year for which data is available." These commenters suggested that the Department revise § 643.21 to require applicants to submit data for multiple years or to reinstate the current regulatory language requiring the applicant to provide the required data for the preceding three years to substantiate the basis of need.

Discussion: To reduce the burden on TS applicants, these final regulations only require a grantee to provide data on high school persistence (see § 643.21(a)(2)), graduation (see § 643.21(a)(3)), and postsecondary enrollment (see § 643.21(a)(4)) for the most recent year for which data are available. Based on our experience, these data remain fairly consistent over a three year period; therefore, we believe the most recent year's data should be sufficient for the peer reviewers to assess the extent of the need for the project.

Changes: None.

Comment: One commenter suggested that § 643.21(a)(1) should focus on students "enrolled in" or "participating in" the free or reduced price lunch program, as described in sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act, rather than students "eligible for" this program. This commenter also noted that applicants from areas such as the Republic of the Marshall Islands, the Federated States of Micronesia, and other outlying areas would not be able to respond to the criterion regarding eligibility for free or reduced price lunch.

Discussion: We used the words "eligible for" free or reduced priced lunch because reporting only on those "enrolled or participating" in this program may undercount the number of low-income students in the target schools because many secondary school students choose not to participate in the free or reduced priced lunch program. In responding to the selection criterion in § 643.21(a)(1), applicants may choose to report either the number or percentage of low-income families residing in the target area (see paragraph (a)(1)(i) of this section) *or* the number or percentage of students attending the target schools who are eligible for free or reduced priced lunch (see paragraph (a)(1)(i) of this section). Therefore, applicants from areas that do not have the free and reduced priced lunch

program may satisfy this criterion by providing data on the number or percentage of low-income families residing in the target area.

Changes: None.

Comment: One commenter stated that the TS program is critical to increasing high school persistence and postsecondary enrollment rates in target schools but argued that the criteria for determining the need for the project in § 643.21(a) worked against this goal. The commenter argued that these criteria penalize TS projects that are successful in helping the target schools increase their high school persistence and postsecondary enrollment rates when these projects apply for a new grant to continue to serve these schools. The commenter expressed concern that as the performance of these target schools improves, the need for the TS project, as defined in these criteria, diminishes. The commenter acknowledged the Department's need to establish the postsecondary enrollment and high school persistence rates for the purposes of benchmarking objectives, but recommended that: (1) The *Need* criteria for low postsecondary enrollment and high school persistence rates be removed from the *Need* section; and (2) that the points assigned for low high school persistence and postsecondary enrollment rates be redistributed among the other *Need* criteria.

Another commenter requested guidance on how applicants in States where attrition rates are not reported should respond to the high school persistence criterion in § 643.21(a)(2). Other commenters stated that data on graduation rates are not collected by their school districts and, therefore, are not available at the target schools, which would penalize applicants from those areas.

Several commenters suggested that the high school persistence and high school graduation criteria disadvantage projects serving rural schools that do not have high dropout rates and do not have low high school graduation rates but have low postsecondary enrollment rates and little access or low participation in courses needed to complete rigorous secondary school programs of study.

One commenter expressed concern about the criterion on low rates of students in the target schools who graduated high school with a regular secondary school diploma reflected in § 643.21(a)(3). The commenter believes TS applicants would be discouraged from selecting target schools that had high rates of students who graduated with a regular secondary school diploma as these schools would not demonstrate high need. Another commenter noted that in the commenter's State, the minimum graduation requirements almost guarantee a rigorous secondary school program of study for all graduates. This commenter expressed concern that TS applicants in areas that have these rigorous graduation requirements would be allowed fewer points for project need under § 643.21(a)(5) and that this result would be unfair to the students in those areas or States that have been proactive by setting high standards for high school graduation. Another commenter questioned the use of the term "regular" diploma noting that, beginning in 2014, a "regular" diploma in the commenter's State would be the same as a diploma for completing the State's rigorous curriculum. Those students not taking a rigorous secondary school program would receive a "modified" diploma. The commenter stated that by using the term "regular" in the regulations, all TS students in the State would have to meet the rigorous curriculum standards.

Discussion: The proposed criteria for evaluating the need for a TS project reflect the changes made by sections 403(a)(5) and 403(b)(1) of the HEOA to sections 402A(f)(3)(A) and 402B(a) of the HEA, respectively. The new criteria reflected in § 643.21(a) align with the purpose of the TS program and with the new statutory outcome criteria for the program. Therefore, we do not have the discretion to revise § 643.21(a) as requested by the commenter.

The selection criteria require the applicant to provide in the application the data the peer reviewers need to assess the extent to which an applicant's designated target area and target schools need the services of a TS project. Further, the data provided in the *Need* section of the application provide baseline data that the peer reviewers use to evaluate the appropriateness of the applicant's proposed project objectives (see § 643.21(b)) and the quality of the applicant's plan of operation for addressing the identified needs (see § 643.21(c)).

In responding to the selection criteria, an applicant is expected to present the required data and discuss how the data support the need for a TS project in the proposed target area and target schools. With regard to selection criteria for which the target schools do not collect the required information, the applicant, to the extent appropriate, may use other data sources (e.g., State or census data) and describe how these data relate to the criteria and demonstrate a need for a TS project in the target area and target schools. Although some applicants may have difficulty securing certain data, all applicants should be able to provide the data required for most of the criteria. The Department believes that it is the responsibility of applicants to judge the need for TS services among potential target schools and to present data that supports the need for a TS project in the proposed target schools.

We do not believe the *Need* criteria will disadvantage an applicant providing services in rural communities because the applicant can justify the need for a TS project by presenting their data in the context of the geographic area in which it is providing services. Further, the applicant does not need to compare its data with data from other geographic areas (e.g., urban schools).

The Secretary commends those States that have set high standards for high school graduation and the *Need* criteria in the TS regulations do not conflict with such standards. Under § 643.21(a)(5), an applicant can demonstrate a need for a TS project by providing data on the extent to which the target secondary schools do not offer their students the courses or academic support to complete a rigorous secondary school program of study *or* have low participation by low-income or first-generation students in such courses. Therefore, an applicant can show the need for a TS project in schools that have high academic standards for high school graduation if TS eligible students are not taking rigorous courses. The Secretary also believes that the extent to which TS eligible students succeed in completing rigorous courses is an important indicator of need. Therefore, we have added the extent to which low-income or first generation students in target secondary schools succeed in rigorous secondary school program of study courses as an indicator of need.

With regard to the commenter's concern about the use of the term "regular diploma," we do not have the discretion to change the regulatory language at issue because it is required by sections 402A(f)(3)(A)(iii) and (f)(3)(A)(iv) of the HEA, which mandate that the TS program include the following two measures: (1) The extent to which participants graduate from secondary school with a regular secondary school diploma in the standard number of years; and (2) the extent to which participants complete a rigorous secondary school program of study.

Changes: The Secretary has amended proposed § 643.21(a)(5) by adding the words "or low success" after the word "participation."

Comment: One commenter expressed concern that the Need criteria do not

adequately consider students' achievement and performance in their target schools. The commenter stated that proposed § 643.21(a) does not reflect the purpose of the TS program, which he believes is to promote equal educational access and to eliminate barriers to higher education for low-income students. The commenter suggested that persistence and graduation rates are not an accurate reflection of student performance and achievement within schools in the lowest income communities. The commenter suggested that in addition to the points awarded for low high school persistence, graduation, and college completion, points also should be given for low student achievement and low standardized test scores in the target schools or areas.

Discussion: We agree with the commenter that low academic achievement and low standardized test scores of students in the target schools are other indicators of need for a TS project. Therefore, we have revised the criteria in § 643.21(a)(6) to make these changes. We have also redistributed the points assigned to the *Need* criteria to better reflect the relative importance of each of the criteria.

Changes: We have revised the criteria in § 643.21(a)(6) to include low academic achievement and low standardized test scores of students enrolled in the target schools as examples of other indicators of need for a TS project. We have also reduced the number of points assigned to the criteria in § 643.21(a)(1)—high number or percentage of low-income families residing in the target area or low-income students attending the target schools—from six points to four points. Finally, we have increased the number of points assigned to the criteria in § 643.21(a)(6) from four points to six points.

What selection criteria does the Secretary use? Objectives. (§ 643.21(b))

Comment: Several commenters suggested that proposed § 643.21(b)(4) and (b)(5), which would require grantees to track participants through postsecondary completion is not within the scope or purpose or the TS program. These commenters asserted that the HEA only requires projects to encourage and prepare participants for "enrollment" into postsecondary programs. Some commenters also suggested that the tracking requirement for this criterion is unrealistic based on the high number of participants that are served by a TS project.

Several commenters requested clarification regarding whether grantees will need to track all graduates through postsecondary completion or just those who participated in a rigorous secondary school program of study. Several commenters suggested that grantees only be required to include in the random selection process for tracking postsecondary completion seniors that graduate from high school during the project year. Several commenters requested that a more feasible requirement would be to request postsecondary acceptance rates or "college going rates" because they believe that the criterion regarding tracking postsecondary enrollment and completion discriminates against high schools that do not track these outcomes and that there is no reasonable method to collect this data accurately.

Other commenters suggested that projects should not be held responsible for students' postsecondary degree attainment, which requires tracking for four to six years after each graduating class and will require projects to follow the academic progress of these students once they enter college even though the TS program is not providing any services during this time. These commenters expressed concern that this criterion does not consider the many factors that determine whether or not students will be successful in postsecondary education.

One commenter requested that we consider revising the regulations to avoid imposing mandatory, inefficient, and unreasonable tracking and sampling methods. Specifically, the commenter recommended that, because sampling and other tracking methods will increase the burden on programs, we should eliminate the sampling requirement altogether and instead limit tracking of postsecondary completion to only current year participants who complete secondary school during the current project year.

Discussion: Section 402A(f)(3)(A)(vi) of the HEA, as amended by section 403(a)(5) of the HEOA, requires the Department to use postsecondary education completion, if practicable, in evaluating the quality and effectiveness of a TS project. Because TS projects serve relatively large numbers of participants, we recognize that it may be difficult for the project to track all participants through completion of postsecondary education. Therefore, a TS project may track a randomly selected sample of its participants. The purpose of § 643.22(d)(6) is to reduce, not increase, the burden on grantees. A grantee, however, is not required to use a sample but may choose to track all participants that complete secondary schools and enroll in postsecondary education.

The Secretary plans, subject to meeting the requirements of the Paperwork Reduction Act of 1995, to establish standard objectives related to postsecondary completion and provide the sampling parameters in the **Federal Register** notice inviting applications and the application package for the TS program.

Changes: None.

What selection criteria does the Secretary use? Plan of Operation: The plan to identify and select eligible project participants. (§ 643.21(c)(2))

Comment: Some commenters requested that § 643.21(c)(2), regarding the applicant's plan for identifying and selecting eligible participants, be revised to track current § 643.21(c)(2), which requires applicants to have a plan to identify and select eligible participants and ensure their participation without regard to race, color, national origin, gender, or disability.

Discussion: In developing proposed § 643.21(c)(2), the Department elected not to retain the selection criterion requiring applicants to have a plan to ensure participants' participation without regard to race, color, national origin, gender or disability because we believed that this language was duplicative of other regulations. Every applicant for Federal financial assistance must submit an assurance to the Department that it will comply with the Federal civil rights laws (see 34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23). Further, grantees under the TRIO programs and other programs funded by the Department are required to comply with Federal laws that prohibit discrimination on the basis of race, color, national origin, sex, handicap, or age (see 34 CFR 75.500, § 643.6(a)(2)).

Changes: None.

What selection criteria does the Secretary use? Plan of Operation: The plan to identify and select eligible project participants, and the plan regarding a rigorous secondary school program of study. (§ 643.21(c)(2) and (4)) and Number of Participants (§ 643.32(b))

Comment: Some commenters applauded the Secretary for proposing to include in the selection criteria the requirement that applicants have a plan to identify and select eligible participants and to provide TS services for individuals who need them to complete a rigorous secondary school program of study. The commenters requested guidance from the Department on its expectations regarding the number or percentage of

participants that would have to be served in a rigorous program under these selection criteria.

Some commenters expressed concern that the selection criteria requiring grantees to assist students to complete a rigorous curriculum (§ 643.21(c)(4)) would place grantees serving rural areas at a serious disadvantage in comparison to those serving urban areas. The commenters argued that in order to serve the required number of participants, a TS project serving a rural area typically serves more target schools and a larger geographic area, which increases project costs, particularly staff travel costs. Further, the commenters noted that many small rural schools do not offer all the courses a student would need to complete a rigorous secondary school program of study.

Many commenters expressed concern that requiring grantees to assist students to complete a rigorous curriculum would add costs for a grantee. These commenters stated that providing these services would require grantees to hire staff with special skills needed to recruit, monitor, and track students in a rigorous curriculum program. The commenters suggested that, at the current funding level for this program, for a grantee to provide these types of rigorous curriculum services to at least 10 percent of the participants, it would need to reduce the number of participants from 600 (the currently required minimum) to 450. Other commenters noted that the increased costs of assisting students taking a rigorous curriculum under § 643.21(c)(4) and the new requirement to follow participants through postsecondary education in § 643.21(c)(5) would force current TS projects to serve fewer students than currently being served or reduce services.

Some commenters suggested that the selection criteria in § 643.21(c)(2) and (c)(4) will require projects to implement a two-tiered program of service delivery—the first tier would support the participants completing a rigorous curriculum and the second tier would provide college preparatory education for those participants not taking a rigorous secondary school program of study. The commenters argued that this two-tiered approach would force current projects to change their participant recruitment and selection strategies, hire additional staff, and reduce the number of students currently being served. These commenters also contended that, given the current budget crisis in local school districts, some projects would not be able to assist participants in completing a rigorous secondary school of study under § 643.21(c)(4) due to the unavailability of the curriculum and other resources.

Other commenters noted that the proposed changes requiring projects to provide intensive services appear to be very similar to the requirements of the Upward Bound program. Several commenters requested guidance regarding the delivery of services for students in a rigorous secondary school program of study who have different educational and developmental needs compared to traditional TS students.

Discussion: In amending the HEA, Congress substantially changed the purpose and goals of the TS program. By including in section 402A(f)(3)(A) of the HEA several new outcome criteria for evaluating the quality and effectiveness of TS projects, Congress effectively required all TS projects to expand the types of services provided. Prior to enactment of the HEOA, the statute did not prescribe any specific performance measures for TS projects; the current measures were established through regulations (see current § 643.22). The new statutory outcome criteria for assessing the success of a TS project include the following two new measures, which are not included in the current regulations: (1) The completion by participants of a rigorous secondary school program of study; and (2) to the extent practicable, completion by participants of postsecondary education. In addition, Congress amended section 402B of the HEA to require TS grantees to provide certain services; previously the HEA included only a list of "permissible" services that a grantee could choose to provide to participants. These final TS regulations appropriately reflect these statutory changes.

The Department acknowledges that many rural schools and low achieving high schools may not offer all of the courses needed to complete a rigorous secondary school program of study and recognizes that there will probably be some participants that will need more costly and intensive services, such as tutoring or tuition assistance to complete the requirements of a rigorous secondary school program of study.

In recognition of the additional costs that grantees likely will incur in providing the new services required by the HEOA, including the increased costs of assisting students taking a rigorous curriculum and following participants through postsecondary education, the Secretary revised § 643.32(b) by removing the requirement that grantees serve a specified minimum number of participants. Section 643.32(b) specifies that the Department will identify the minimum and maximum grant award amounts and the minimum number of participants a TS project must serve each year of the grant cycle in the **Federal Register** notice inviting applications for a competition. This practice will give the Department the flexibility to establish the minimum number of participants to be served based on the available resources and other priorities for each competition and to adjust these numbers for subsequent competitions based on our experience, changing priorities, and cost analyses.

The Department acknowledges that not all TS eligible students may be ready for a rigorous secondary school program of study. Therefore, the Secretary has revised proposed § 643.21(c)(4), which would have specified that we evaluate a TS applicant on a plan to provide services sufficient to enable TS participants to succeed in a rigorous program of study. Instead, the final regulations specify that we will evaluate a TS applicant on a plan to work in a coordinated, collaborative, and cost-effective manner as part of an overarching college access strategy with the target schools or school system and other programs for disadvantaged students to provide participants with access to and assistance in completing a rigorous secondary school program of study. We expect TS grantees to work with their target schools, students, and parents to explain the eligibility requirements for participation, and the services and activities that will be provided by the TS project and those services that will be provided through the target school or by other programs.

Further, because all TS participants will be encouraged to complete a rigorous curriculum, the Secretary has also revised proposed § 643.21(c)(2) by removing the requirement that an applicant present a plan for selecting individuals who would receive support to complete a rigorous secondary school program of study.

Although the new statutory outcome criteria for the TS program are somewhat similar to those for the UB program and will require new project goals and objectives for the TS program, the Department does not believe that Congress intended for the TS program to replicate or duplicate UB. For example, section 402C(c) of the HEA requires UB projects to provide instruction in mathematics through precalculus, laboratory science, foreign language, composition, and literature while TS projects need only provide "connections" to high quality academic tutoring services (section 402B(b)(1) of the HEA). The regulations properly reflect the differences between the programs.

Regarding the comment about students in a rigorous secondary school program of study who have different educational and developmental needs compared to traditional TS students, we recognize that students in a rigorous secondary school of study may have different educational and developmental needs than traditional TS students, most of whom have needed assistance in completing admission and financial aid applications, not academic support. Applicants for TS grants must design and implement new service delivery models that are consistent with the new statutory requirements and that balance intensity of services with strategic coordination with schools and other programs to carry out projects that are cost efficient and that best meet students' needs, including the needs of students in rigorous secondary school program of study.

Changes: We have amended proposed § 643.21(c)(2) to remove the selection criterion requiring an applicant to provide a plan for identifying and selecting participants for a rigorous secondary school program of study. Thus, final § 643.21(c)(2) requires only that an applicant provides a plan for identifying and selecting participants.

We also have removed the proposed criterion in § 643.21(c)(4) and replaced it with a criterion that requires an applicant to present a plan to work in a coordinated, collaborative, and cost-effective manner as part of an overarching college access strategy with the target schools or school system and other programs for disadvantaged students to provide participants with access to and assistance in completing a rigorous secondary school program of study.

In § 643.21(c)(5) we have removed from the proposed criterion the words "coordination with other programs for disadvantaged youth" to eliminate duplication of the provision we are adding to § 643.21(c)(4).

Finally, we have revised § 643.32(b) to specify that for each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the **Federal Register** notice inviting applications for a competition, and to state that through this notice, the Secretary provides the minimum and maximum grant award amounts for the competition.

What selection criteria does the Secretary use? Plan of Operation: The plan to follow former participants as they enter, continue in, and complete postsecondary education. (§ 643.21(c)(6))

Comment: Some commenters objected to the proposed criteria in § 643.21(c)(6) that would require TS applicants to have a plan to follow former participants as they progress in postsecondary education. These commenters suggested that it is not reasonable, practicable, or economically feasible for the Department to judge the success and effectiveness of a TS project on the basis of the degree to which participants enter, continue in, and complete postsecondary programs when the project cannot provide retention services during the participants' college years.

Discussion: Section 402A(f)(3)(A)(v) and (f)(3)(A)(vi) of the HEA includes the enrollment in and completion of postsecondary education as an outcome criterion for the TS Program. To implement these statutory requirements, § 643.21(c)(6) requires applicants to have a plan to achieve goals in these areas.

Changes: None.

Comment: Some commenters requested that we define the phrase "complete postsecondary education," as it is used in § 643.21(c)(6). In particular, these commenters asked if completion of vocational and technical degree programs and/or other community college degrees would constitute completion of postsecondary education under this selection criterion. The commenters suggested that if the standard is the completion of a four-year degree, a project could not count TS participants enrolling in and completing community and junior colleges and career technology programs.

Discussion: For purposes of § 643.21, the Secretary considers programs of postsecondary education to include vocational and technical degree programs, associate degree programs, as well as bachelor degree programs. Because TS participants may enroll in all types of postsecondary programs, the project should present a plan to follow a sample of former participants through completion of their programs of postsecondary education.

Changes: None.

What selection criteria does the Secretary use? Applicant and Community Support: Resources secured through written commitments. (§ 643.21(d)(2))

Comment: Several commenters requested clarification of the selection criteria requiring that TS applicants get commitments from the community. Some commenters asked if an applicant that is an institution of higher education must get commitments from institutions other than the host institution. Other commenters expressed concern that secondary schools would not be interested in becoming educational partners with university-based projects because secondary schools are now eligible to apply for TS grants. The commenters stated that secondary school applicants would have an unfair advantage in a TS competition, because they could operate a TS project without getting commitments from colleges and universities while an applicant that is an institution of higher education or community-based organization would need commitments from the secondary schools to effectively serve the secondary school students participating in the TS project. The commenters recommended that secondary schools be held to the same selection criteria as higher education institutions and other eligible entities.

Discussion: The intent of § 643.21(d)(2) is to ensure a fair and equitable competition by requiring that all applicants secure commitments from various entities within the community. The Secretary believes that schools and community organizations should secure commitments from institutions of higher education so that these organizations have the full scope of partners necessary to implement a successful TS program. The Secretary does not agree with the contention that possible applicants in the secondary school systems would not be interested in partnering with higher education institutions, community organizations, or others. Nonetheless, based on the comments received, the Secretary believes that the wording of proposed § 643.21(d)(2) may be unclear. For this reason, we have made clarifying changes to this provision.

Changes: We have revised proposed § 643.21(d)(2) to state that: (i) An applicant that is an institution of higher education must include in its application commitments from the target schools and community organizations; (ii) an applicant that is a secondary school must include in its application commitments from institutions of higher education, community organizations, and as appropriate, other secondary schools and the school district; and (iii) an applicant that is a community organization must include in its application commitments from the target schools and institutions of higher education.

How does the Secretary evaluate prior experience? (§ 643.22)

Comment: Some commenters asked that we revise § 643.22 to clarify the meaning of the term "prior participants" for purposes of the PE evaluation in § 643.22(d)(3) through (d)(5). These commenters requested that TS projects not be required to track prior participants through postsecondary completion. The commenters stated that a requirement to track prior participants after they participate in the program is an undue burden on a TS project given the number of students served and the amount of funding per participant. The commenters argued that grantees should not be required to track non-active participants who graduated from the program years earlier.

Several commenters also asked that § 643.22(d)(5) be changed to permit participants' postsecondary enrollment to be by the "fall or spring" term immediately following the school year, instead of by the "fall" term immediately following the school year because some participants may need to delay enrollment in postsecondary education.

Discussion: As noted earlier in this preamble, with the enactment of the HEOA, the HEA includes new outcome criteria for the TS program, including: Graduation from secondary school with a regular secondary school diploma in the standard number of years; the completion of a rigorous secondary school program of study; and postsecondary enrollment. The Department is required to use these criteria to assess the success of a TS project. However, the Department acknowledges that TS projects serve large numbers of participants each year and may not have the resources needed to track prior participants through high school and into postsecondary education. Therefore, the Department is revising § 643.22(d)(3), (d)(4), and (d)(5) by removing the requirement to track prior participants and clarifying, in § 643.22(d)(3) and (d)(4), that grantees must track participants served during the project year.

Further, we have decided to revise the outcome criterion in § 643.22(d)(5) to focus on participants' enrollment in programs of postsecondary education within the time period specified in the approved objective rather than stating in the regulation the time frame for measurement. The Secretary will, subject to meeting the requirements of the Paperwork Reduction Act of 1995, include in the application package for the TS programs a standard objective related to postsecondary enrollment that includes the time frame for measuring postsecondary enrollment. This will give the Secretary the flexibility to change the period of measurement for each grant competition based on changing situations.

We have also revised the outcome criterion in § 643.22(d)(6) to clarify that a grantee must track the postsecondary completion for only those participants who enrolled in a program of postsecondary education. The option to use a randomly selected sample of participants to track this postsecondary completion should reduce the reporting burden on grantees.

For consistency with the regulatory language used in § 643.22(d)(2), (d)(3) and (d)(6), we have deleted the words "the percentage of" in § 643.22(d)(4) and (d)(5). In addition, we have revised § 643.22(d)(4) by removing the words "who enrolled in and" before the words "completed a rigorous secondary school program of study" to be consistent with the changes we have made to §§ 643.3(b), 643.11(a), 643.21(c)(2) and (c)(4) and 643.32(b)(5), which now include additional participant eligibility and recordkeeping requirements for students in a rigorous program of study.

Changes: We have changed proposed § 643.22(d)(3), (d)(4), and (d)(5) by removing the reference to prior participants in each of these three provisions. In § 643.22(d)(3) and (d)(4), we have clarified that current participants are "participants served during the project year." In addition, in § 643.22(d)(4) and (d)(5), we have removed the words "the percentage of" and in § 643.22(d)(4) we have also removed the words "enrolled in and."

Further, we have changed proposed § 643.22(d)(5) by replacing the words "by the fall term immediately following the school year" with the words "within the time period specified in the approved objective" and have revised § 643.22(d)(6) by replacing the words "regarding the completion of" with the words "project participants who enrolled in and completed."

Comment: Some commenters stated that the 1.5 PE points in § 643.22(d)(6) for postsecondary completion should be reduced because there are many variables outside the control of the TS project that could affect this outcome. The commenters recommended that only one-half of one point (0.5 point) be assigned to this criterion because the participants' postsecondary completion may not be based on direct services the project provides to participants.

Discussion: The Secretary does not agree with the commenters' suggestion to reduce the points allocated to the postsecondary-completion criterion. The Secretary believes that one-half of one point is a negligible amount, which goes against the spirit of the HEA. The 1.5 points for this criterion in § 643.22(d)(6) represents only 10 percent of the total PE points a project could earn.

Changes: None.

What are allowable costs? (§ 643.30)

Comment: A number of commenters suggested including several additional costs to the list of allowable costs for the TS program in § 643.30. Some commenters recommended that we add as an allowable cost, participant meals while on field trips, in tutoring sessions, or at other events because many participants cannot afford to pay for meals while on field trips or at other project sponsored events. Some commenters recommended that we add transportation and meals for parents to attend certain workshops and college visits.

Other commenters suggested that we add an allowable cost provision for cultural events, including associated transportation, meals, and admission fees, because cultural events are permitted under § 643.4(b)(4) and TS participants would benefit from exposure to these events. Commenters also recommended that costs associated with hiring instructional staff, evening and weekend staff, or retraining or renegotiating contracts with current staff to provide tutoring for rigorous coursework, financial literacy programming, or college entrance exam preparation be allowable.

Commenters also suggested that testing fees, including general educational development (GED) exam fees, should be allowable, as these costs are increasing and TS projects are not always able to attain fee waivers.

Some commenters requested clarification regarding the Department's addition of the word "project" before the word "staff" in § 643.30(a). These commenters noted that the provision now appears to prohibit projects from paying meals and lodging for chaperones and part-time summer staff.

Discussion: Section 643.30(a) permits a project to pay transportation, meals, and, if necessary, lodging, for participants and staff in a number of situations, including for field trips to observe and meet with persons employed in various career fields. However, the TS program is a low cost per participant program and we do not believe adding meals as an allowable cost for all field trips, tutoring sessions, or other events, or adding transportation and meals for parents to attend certain workshops and college visits would be the best use of limited resources.

Section 643.30(c) establishes the conditions upon which a TS project may pay for college applications or entrance examinations. We have revised § 643.30(c) to include fees that are required for alternative education examinations, including the GED. Further, as one of the required services, a TS project must assist participants in preparing for college entrance examinations; however, because the TS program is a low cost per participant program, we do not believe it is reasonable for a TS project to pay a third party for college entrance exam preparation for individual participants.

Regarding an allowable cost provision for cultural events, the Department believes that field trips and campus visits, which are allowable costs, may have cultural benefits for participants. While we encourage grantees to incorporate cultural events into these types of trips, we do not agree that cultural events should be added to the regulations as a separate allowable cost category. While the Department understands the value of cultural events, we believe that adding them as an allowable cost would divert scarce resources away from direct college-access services. Connections to tutoring and financial and economic literacy services are required services of the TS program; therefore, costs associated with providing these services would be allowable, including hiring or retraining staff members to provide these services.

Nonetheless, the Department encourages grantees to seek low cost alternatives to hiring instructional staff, such as seeking connections to existing tutoring or financial literacy services for TS participants. Further, TS grantees should coordinate with the target schools and other organizations in the community to ensure that participants have access to the full range of services required for success.

Finally, the term project staff, as used in § 643.30(a), includes part-time staff, including summer staff, and volunteers responsible for chaperoning TS participants on field trips and campus visits; therefore project funds may be used to pay for these individuals' meals and lodging.

Changes: We have revised § 643.30(c) to include examination fees for alternative education programs if a waiver of the fee is unavailable and the fee is paid by the grantee to a third party on behalf of a participant.

Comment: One commenter noted that transportation costs for participants in a rigorous curriculum in rural areas would be costly and may use up limited TS funds. The commenter argued that level funding has damaged a TS project's ability to provide additional transportation costs, particularly in light of the costs of the fringe benefits required to be provided to TS staff as mandated by most State institutions. Other commenters argued that projects do not have sufficient funding to provide tuition for participants. Some commenters also noted that payment of tuition for a few participants may be perceived as discriminatory by participants pursuing regular secondary school diplomas.

Discussion: We appreciate the commenter's concern that the costs associated with transportation of participants in rural areas and payment of tuition would use up limited TS funding. We also appreciate commenters' concern that payment of tuition for a few participants may be perceived as discriminatory. On the other hand, during the negotiated rulemaking sessions, some non-Federal negotiators argued that allowing grantees to use grant funds for this purpose was necessary to meet the goals of the statute. As discussed earlier in this preamble, one of the new statutory outcome criteria for the TS program requires that TS projects report data on the completion by participants of a rigorous secondary school program of study that would make them eligible for grants under the Academic Competitiveness Grants (ACG) Program. Some non-Federal negotiators recommended that TS grantees be authorized to pay transportation and tuition costs for participants who are trying to complete a rigorous program, when courses required for the program are not offered at the secondary school the participant attends or at another local school. The Department decided to allow grantees to use program funds for this purpose. The regulations do not require TS grantees to provide tuition or transportation costs for participants but authorizes this expense as an allowable cost to assist students in completing a rigorous secondary school program of study.

Changes: None.

Comment: Some commenters suggested allowing TS program funds to be used to pay for "service agreements" for computer systems and related technology because many technology systems may require service agreements to cover repairs and software packages.

Discussion: We agree with the suggestion made by the commenters.

Changes: We have amended § 643.30(f) and (g) to include service agreements as an allowable cost.

Comment: A few commenters recommended that we revise § 643.30(h)(3) to allow TS funds to be used to pay for tuition costs for accredited courses offered online because the availability of online courses has increased and allowing TS funds to be used for these courses could increase student access to rigorous curriculum study. One commenter recommended revising § 643.30(h)(3) to allow TS funds to be used to pay for coursework that may be offered by a college at sites other than the college campus, such as online or at a secondary school campus. Other commenters suggested allowing costs for Advanced Placement (AP) and the Idaho Digital Learning Academy coursework as these options may be available at participants' high schools and may cost less than postsecondary tuition.

Some commenters noted that in the commenters' State, students must earn a grade of "C" or better in a series of courses to complete a rigorous secondary school program of study. Due to budget constraints, however, many high schools will not allow students to repeat a course in which the student earned a "D," since the student would still receive credit for the course. Despite receiving credit in this case, the student would not be eligible to complete a rigorous secondary school program of study, unless the student was able to repeat the course and earn a grade of "C" or better. The commenter recommended that projects be allowed to provide tuition assistance for participants under this circumstance.

One commenter noted that one reason participants may not have access to rigorous coursework is that available slots in the courses are full due to overcrowding in the district. This commenter noted that under the current regulations, TS projects may only use TS funds to pay tuition for participants if "the course or a similar course is not offered at the secondary school that the participant attends or at another school within the participant's school district," which would not allow projects to assist participants who are not able to take a course due to overcrowding. The commenter recommended that the regulations permit projects to provide tuition assistance for these participants to take the needed courses elsewhere.

One commenter requested clarification as to whether text books and lab fees are allowable costs. Another commenter requested clarification on whether all eight criteria listed in the regulations must be met for a project to provide tuition assistance.

Discussion: We agree with the proposal to revise § 643.30(h)(3) to allow TS grantees to pay for courses taken through an accredited institution

of higher education, including online courses and courses provided at a site other than the institution's campus, such as at a secondary school campus, provided the course meets all the conditions in § 643.30(h). Section 643.30(h)(3) does not authorize TS grantees to pay for courses provided by accredited institutions at the secondary school's campus if the course is generally available to students at the target schools through an arrangement between the school district and the institution of higher education (e.g., dual enrollment courses).

We do not agree that TS grant funds should be used to pay for Advanced Placement (AP) and other courses available through the participant's high school, for students to repeat courses to receive a higher grade, or for participants to enroll elsewhere in cases of overcrowded courses that are already offered at their schools or in their school districts. The purpose of § 643.30(h) is to allow grantees to pay the costs of courses that are part of a rigorous secondary school program of study only in exceptional situations in which a participant does not have access to a course or courses through his or her high school.

Furthermore, while we recognize that districts may face overcrowding for enrollment in some secondary school courses, we believe that applicants should partner closely with target schools and the school districts during pre-grant planning efforts to mitigate enrollment hurdles, to the extent practicable. We do not believe that limited project funds should be used to pay tuition for courses that are already offered in a participant's school or district. As part of the collaboration with the target schools, institutions of higher education and other community organizations, TS participants should be provided the same opportunities and access to rigorous courses as other students in the target schools.

Finally, project funds may be used to cover tuition and required textbooks and lab fees only if all eight criteria listed in § 643.30(h) have been met.

Changes: We have amended proposed § 643.30(h)(3) to authorize the use of TS funds to pay for courses taken through an accredited institution of higher education.

Comment: A few commenters recommended allowing TS projects to pay stipends to students in a rigorous secondary school program of study to help defray transportation costs when a student has to stay after school or obtain additional tutoring. The commenters requested that participant stipends be added to the list of allowable costs so that TS will offer benefits comparable to those in other programs such as GEAR UP and Upward Bound.

Discussion: The cost for transportation for participants to receive instruction, tutoring, or other services provided by the project that is part of a rigorous secondary school program of study is an allowable cost in § 643.30(a)(4). We do not agree with the proposal to authorize the use of TS funds to pay stipends to participants. Stipends are only permitted in the TRIO programs when they are specifically authorized by statute. The HEA does not authorize stipends in the TS program.

Changes: None.

What other requirements must a grantee meet?

Number of Participants

Comment: We received three comments on the proposal to remove the minimum number of participants from the regulations. One commenter noted that the provision would favor newer, smaller projects while another commenter expressed concern about the possible fluctuation in participant numbers from one grant cycle to the next which might jeopardize relationships with the target schools if the project had to reduce the number of student services. Another commenter hoped that the Department would consider the higher costs of providing services to participants taking a rigorous program of study and the varying cost of living indexes throughout the country in determining the minimum number of participants for a competition.

Discussion: In recognition of the additional costs that grantees likely will incur in providing the new services required or permitted by the HEOA, including the increased costs of assisting students taking a rigorous curriculum and following participants through postsecondary education, the Secretary is not including in § 643.32(b) the requirement that grantees serve a specified minimum number of participants. Instead, as discussed elsewhere in this preamble, we believe it is appropriate for the Secretary to identify the minimum and maximum grant award amounts and the minimum number of participants a TS project must serve each year of the grant cycle in the **Federal Register** notice inviting applications for a competition. This practice will give the Department the flexibility to establish the minimum number of participants to be served based on the available resources and priorities for each competition and to adjust these numbers for subsequent competitions based on our experience, changing priorities, and cost analyses.

Changes: We have revised § 643.32(b) to clarify that a grantee must serve at least the number of participants that the Secretary identifies in the application notice for the competition.

List of Courses Taken by Participants (proposed § 643.32(b)(5))

Comment: Commenters expressed concerns about proposed § 643.32(b)(5), which would have required TS grantees to maintain a list of courses taken by participants that receive support to complete a rigorous secondary school program of study. The commenters argued that this requirement would impose an additional burden on grantees and increase the costs of staff time for recordkeeping and the utilization of office resources.

Discussion: The Secretary agrees with the commenters that the requirement for a list of courses would impose a significant recordkeeping burden that would outweigh the benefits of the practice and, therefore, has deleted proposed § 643.32(b)(5).

Changes: The Secretary is not including proposed § 643.32(b)(5) in these final regulations.

Comment: None.

Discussion: Based on comments we received regarding proposed § 643.11(b), we have revised the required assurance in § 643.11(b). Because of the change to § 643.11(b), we believe it is necessary to add a new § 643.32(c)(5) to require that for each TS participant, the grantee, to the extent practicable, must maintain a record of any services the participant receives during the project year under other TRIO or federally funded programs that serve populations similar to those served under the TS program. This provision has been added to help ensure that the limited funds available under TRIO, GEAR UP, and other programs for disadvantaged students are used effectively and efficiently by minimizing the duplication of services through coordination of activities.

Change: A new § 643.32(c)(5) has been added, requiring grantees to maintain a record of any services TS participants receive during the project year from another TRIO program or federally funded program that serves populations similar to those served under the TS program.

Project Director (proposed § 643.32(c))

Comment: Many commenters suggested that proposed § 643.32(c), which restricts a grant program director from administering more than three programs, was confusing. One commenter also suggested that the

Department strike the words "one or two," so that project directors may administer more than three programs in order to foster collaboration and cost savings.

Discussion: The Secretary agrees that proposed § 643.32(c)(3) may have been confusing and has clarified the regulation. The Secretary, however, does not agree with the recommendation to permit a project director to administer more than three programs without receiving a waiver. We acknowledge that permitting a project director to administer more than one program encourages collaboration among the programs and may provide cost savings. However, project directors responsible for more than three programs may not be able to effectively manage each of the programs. In situations in which a grantee wants the project director to administer more than three TRIO or similar programs, the grantee must submit a detailed justification to the Secretary for approval.

Changes: We have revised proposed § 643.32(c)(3) (final § 643.32(d)(3)) to clarify the standard the Secretary will use to consider requests for a waiver of the restriction on the number of programs a project director may administer.

Educational Opportunity Centers (34 CFR Part 644)

Section 403(f) of the HEOA made changes to the requirements for the Educational Opportunity Centers (EOC) program in section 402F of the HEA. The HEA now includes a requirement that EOC projects be designed "to improve the financial literacy and economic literary of students" and education and counseling services "designed to improve the financial and economic literacy of students" as services an EOC project may provide.

The Department received several comments and questions about this new program requirement. The commenters expressed concern that EOC projects do not have sufficient time with participants to "improve" their financial and economic literacy, in addition to meeting all other programmatic requirements and needs of participants. Another commenter was concerned that the additional services required of EOC projects, in addition to the new populations to be served, will not be supported by increased funding. One commenter expressed the belief that the proposed regulations would require EOC grantees to focus on fully preparing adult participants for postsecondary education programs, where previously the program focused on simply providing information about opportunities to attend college and to assist participants with college admission and financial aid applications.

We address specific comments on the changes to the EOC program regulations in the following section. The Department also plans to provide applicants with additional guidance on the new program requirements through the published application materials. In addition, the Department will conduct 10 pre-application workshops to assist entities interested in applying for EOC grants and will post a list of frequently asked questions on the TRIO Programs Web site at: *http://www.ed.gov/about/offices/list/ope/trio/index.html.*

Educational Opportunity Centers (34 CFR Part 644)

What is the Educational Opportunity Centers program? (§ 644.1)

Comment: Several commenters stated that § 644.1 should be revised to specifically mention that EOC projects provide assistance for individuals who have dropped out of secondary schools because projects are assessed, in the objectives and prior experience sections, on their success in assisting participants without a secondary school diploma or its equivalent. Some commenters also expressed concerns that EOC projects do not have sufficient time with participants to "improve" their financial and economic literacy. These commenters suggested that the word "improve" in § 644.1 be changed to "provide."

Discussion: To ensure consistency between the statutory language in section 402F(a) of the HEA, which describes the program authority and services to be provided under the EOC program, and § 644.1, we decline to make the changes requested by the commenters.

Changes: None.

Who is eligible for a grant? (§ 644.2)

Comment: Several commenters questioned the fact that § 644.2 now includes secondary schools as eligible applicants. Specifically, they expressed concern that because the target population of EOC participants is adults, secondary schools would be less capable of operating an EOC project than organizations that serve primarily adult populations, such as immigrant education programs, employment agencies, or postsecondary institutions. Two commenters suggested that secondary schools should be allowed to receive an EOC grant only if there are no similar projects in the area designed to assist adult students.

Discussion: We do not have the authority to remove secondary schools from the list of eligible applicants or to limit their eligibility under this program because section 402A(b)(1) of the HEA specifically includes secondary schools among the entities eligible to receive EOC grants.

Changes: None.

What services may a project provide? (§ 644.4)

Comment: Some commenters expressed concern about § 644.4(e), which includes education and counseling services designed to improve the financial and economic literacy of participants as a permissible service for EOC grantees. One commenter wanted to know whether participants must be tested on their financial literacy to determine whether they have benefitted from the training. Another commenter expressed concern that the additional services for the new populations listed in § 644.4(k) would not be supported by increased funding.

Discussion: Section 644.4 reflects the statutory changes made to the list of services that an EOC project may provide, as specified in section 402F(b) of the HEA. An EOC project may, but is not required, to provide these services listed in § 644.4. While an EOC project may provide education and counseling services designed to improve the financial and economic literacy of participants, there is no requirement that participants be tested to determine if they benefitted from the services.

Changes: None.

What selection criteria does the Secretary use? (§ 644.21)

Objectives (§ 644.21(b))

Comment: A number of commenters stated that they believed that the point value assigned to the first two objectives in proposed § 644.21(b) (*i.e.,* (a) enrollment of participants who do not have a secondary school diploma or its recognized equivalent in programs leading to a secondary school diploma or its equivalent and (b) postsecondary enrollment) should be weighted less than or equal to the second two objectives (*i.e.,* financial aid assistance and college admissions assistance) because EOC staff spend most of their resources and time assisting participants with financial aid and college admission assistance. One commenter recommended reducing the points for the postsecondary enrollment objective to three points and increasing the points for financial assistance and college admission assistance objectives to one and one half points each.

One commenter expressed concern that the weighting of the points for the objective on enrollment in secondary education was less than for postsecondary enrollment and that this strongly suggested that working with persons without a secondary education diploma or its equivalent has a lesser value than focusing on postsecondary enrollment of participants. The commenter further stated that it would appear more equitable if greater value were placed on efforts to assist persons in continuing and completing their secondary education and to assist those same persons in enrolling in a postsecondary program. Therefore, the commenter recommended that we provide four points for enrolling in programs that lead to a secondary degree or its equivalent and two points for postsecondary enrollment.

Several commenters recommended that we revise the postsecondary enrollment objective in § 644.21(b)(2) and the related PE criterion in § 644.22(d)(2) by eliminating the restriction that the participants be secondary school graduates before enrolling in postsecondary education. The commenters recommended these changes because, they argued, many postsecondary institutions with open enrollment policies accept individuals who have not first obtained a high school diploma or its equivalent. Some commenters expressed concern that it would be difficult for projects to fulfill the postsecondary enrollment objective because many adult education programs are overbooked and underfunded, resulting in EOC participants being placed on waiting lists to either participate in adult education classes or take the GED exam.

Numerous commenters recommended that the word "student" in §§ 644.21(b)(3) and (b)(4) be replaced with the word "participant" to better reflect the population assisted by EOC grantees. One commenter also recommended that EOC grantees be evaluated on how many participants applied for financial aid, rather than how many participants were assisted with applications for financial aid, and on how many participants actually applied for admission, rather than how many participants were assisted with college applications.

Discussion: The objectives for an EOC project in § 644.21(b) and the related PE criterion in § 644.22(d) generally reflect the statutory outcome criteria in section 402A(f)(3)(E) of the HEA. With regard to the postsecondary enrollment objective in § 644.21(b)(2) and the related PE criterion in § 644.22(d)(2), the language referenced is in section 402A(f)(3)(E) of the HEA and cannot be changed as the commenters requested.

The Secretary agrees with the commenters' recommendation to increase the number of points assigned to the student financial aid and the college admission objectives, but we do not agree that the points assigned to these two criteria should be equal to or greater than the points assigned to the postsecondary enrollment criterion. Further, we do not agree with the commenter that the points for the secondary school diploma objective should be equal to or greater than the postsecondary enrollment objective since postsecondary enrollment is the primary goal of the program. Nonetheless, we have reduced the number of points assigned to the postsecondary enrollment objective and increased the points assigned to the financial aid and college admission objectives. While we agree that assisting participants in completing financial aid and college admission applications are valuable services of the program, they are not the ultimate goal of EOC. We believe that educational attainment is the mission of the program and, that secondary school completion and postsecondary enrollment are the more important performance measures for the program and should be rewarded accordingly.

The objectives for an EOC project in § 644.21(b) and the related PE criterion in § 644.22(d) generally reflect the language used for the statutory outcome criteria in section 402A(f)(3)(E) of the HEA. With regard to the postsecondary enrollment objective in § 644.21(b)(2) and the related PE criterion in § 644.22(d)(2), the language referenced is in section 402A(f)(3)(E) and cannot be changed as the commenters requested.

We have responded to the comment about eliminating the restriction that the participants be secondary school graduates before enrolling in postsecondary education in the preamble discussion section for comments on § 644.22(d)(2) through (d)(5) later in this preamble.

Finally, the Secretary agrees with the suggestion to change § 644.21(b)(3) and (b)(4) to better reflect the intent of the objective, which is to measure the extent to which participants completed financial aid and college admission applications. This change is consistent with the statutory language in section 402A(f)(3)(E)(iv) of the HEA.

Changes: The Secretary has revised the wording of the proposed objectives in § 644.21(b)(1) through (b)(5) to refer to: (1) Secondary school diploma or equivalent, (2) Postsecondary enrollment, (3) Financial aid applications, and (4) College admission applications. The Secretary has also revised § 644.21(b) by reducing the number of points assigned to the postsecondary enrollment objective to three points (see paragraph (b)(2)) and increasing the number of points for the financial aid applications and the college admission applications to 1.5 points each (see paragraphs (b)(3) and (b)(4), respectively).

What selection criteria does the Secretary use? Applicant and community support § 644.21(d)

Comment: All of the comments regarding our proposed changes to § 644.21(d) recommended that we not require EOC applicants to obtain commitments from secondary schools. The commenters argued that because most EOC participants are adults, most EOC projects do not work with secondary schools; therefore, it does not make sense to require EOC projects to secure commitments from secondary schools.

Discussion: The Secretary agrees with the commenters and has decided not to specifically evaluate the extent to which the applicant secures commitments of support from secondary schools. Further, the Secretary has decided that current § 644.21(d)(2) remains appropriate for the EOC program. The Department believes that this provision is appropriate because it allows, but does not require, the Secretary to consider the extent to which an applicant secures commitments from entities that may include secondary schools or institutions of higher education. We continue to believe that secondary schools and institutions of higher education may be able to offer assistance and resources to help an EOC project achieve its goals. For example, a secondary school or college may make its computer lab available for adult students to use in the evenings. Therefore, the Secretary encourages each EOC project to solicit commitments from many organizations within the community it serves, including, if appropriate, secondary schools.

Changes: We are not including the proposed changes to § 644.21(d) in the final regulations.

How does the Secretary evaluate prior experience?—Secondary school diploma; Postsecondary enrollment; Financial Aid Applications; College Admission Applications (§ 644.22(d)(2) through (d)(5))

Comment: A number of commenters expressed concern that awarding PE points for the number of participants

who receive a secondary school diploma conflicts with the selection criteria that focuses on the enrollment of participants in programs leading to a secondary school diploma or its equivalent. In addition, some commenters stated that it would be difficult for projects to meet this objective because many adult education programs are overbooked and underfunded, resulting in EOC participants being placed on waiting lists to participate in adult education classes and to take the GED exam.

Some commenters noted that while some postsecondary institutions permit attendance without a high school diploma, students who enroll this way cannot be counted as EOC successes if the project is only permitted to measure the number of participants who enroll "in programs leading to a secondary school diploma or its equivalent." The commenters suggested that the prior experience criterion in § 644.22(d)(2) be changed to refer to the number of participants who enroll in a continuing education program, so that the criterion includes participants without a high school diploma who enroll in secondary or postsecondary education. Alternatively, one commenter recommended that the Department eliminate this criterion entirely. Other commenters noted that § 644.22(d)(2) prevents projects from counting a participant who enrolls in postsecondary education prior to attaining a high school diploma as a success under the postsecondary enrollment, financial aid assistance, or college admission assistance criteria, which would use high school graduation or its equivalent in their calculations

Regarding the postsecondary enrollment criterion in § 644.22(d)(3), one commenter expressed concern that the phrase "secondary school graduates" in this criterion would preclude projects from counting a student who directly enrolls in postsecondary education, prior to attaining a high school diploma, as a success under the criterion. Several other commenters recommended extending the time period specified in this criterion (*i.e.,* the fall term immediately following the school year) in which a participant must enroll in a program of postsecondary education. Specifically, the commenters thought the period used to calculate this criterion consider the following factors: Many EOC participants enroll in community colleges, which are currently deferring admissions to the spring semester because of overcrowding; EOC participants enroll in nontraditional programs with rolling admissions dates that are not necessarily in the fall; and EOC participants often have greater burdens than the typical TRIO participants and, as a result, take longer to get into postsecondary programs than do low-income, first-generation students who did not drop out of high school.

Some commenters argued that the point value assigned to the postsecondary enrollment criterion in § 644.22(d)(3) should be less than or equal to the other objectives. A number of commenters also argued that the point value assigned to the financial aid and college admission criteria in § 644.22(d)(4) and (d)(5) should have the same or greater value than the other criteria because financial aid and college admissions assistance are key services and EOC staff spend the majority of their time assisting participants in these areas.

One commenter suggested that the Department change the point value assigned to the postsecondary enrollment criterion in § 644.22(d)(3) to four points and increase the point value for financial aid and college admissions assistance in § 644.22(d)(4) and (d)(5) to two and one half points each.

Discussion: We agree with the commenters that the proposed secondary school graduation objective criterion, under the selection criteria in § 644.21(b), should be changed to align with the PE outcome measures. (See the discussion and changes for § 644.21(b) earlier in this preamble.) We do not, however, agree with the commenters' suggestion that the Department remove or substantively revise the outcome criterion in § 644.22(d)(3) because this outcome criterion reflects the criterion described in section 402A(f)(3)(E)(ii) of the HEA.

While we sympathize with the concerns of the commenters who find that it is more difficult for the populations served by EOC projects to achieve educational goals because of the many barriers they face, the purpose of PE points is to reward the applicants who have met or exceeded their approved objectives. Applicants are expected to propose objectives that are ambitious and attainable given the plan they develop to address the needs of the target population in their application. The applicant's objectives should take into consideration known barriers to success, such as waitlists for participation in adult education programs in the applicant's target area.

Section 402A(f)(3)(E)(ii) of the HEA specifies that, for the postsecondary enrollment criterion, participants must be secondary school graduates. However, the financial aid and college admission applications criteria in the statute (see section 402A(f)(3)(E)(iv) of the HEA) do not require participants to be secondary school graduates; therefore, a project may count individuals who are not secondary school graduates for the purposes of these objectives.

In response to the comment about extending the time period in § 644.22(a)(3), the Department has decided to change the wording in § 644.22(d)(2) by adding after the word "equivalent" the words "within the time period specified in the approved objective" and, in § 644.22(d)(3), by removing the words "by the fall term immediately following the school year" and adding, in their place, the words "within the time period specified in the approved objective." The Secretary plans, subject to meeting the requirements of the Paperwork Reduction Act of 1995, to establish standard objectives for completion of secondary school and postsecondary enrollment that will include the time frame for measurement.

Recipients of regular secondary school diplomas or other equivalent degrees or certificates, including GEDs, are considered secondary school graduates for purposes of § 644.22(a)(3).

We agree with the commenters' recommendation to redistribute the weights for the PE criteria by reducing the number of points assigned to postsecondary enrollment and increasing the points assigned to financial aid assistance and college admission assistance. However, we do not agree that the points assigned to the financial aid assistance and college admission assistance criteria should be equal to or greater than the points assigned to the postsecondary enrollment criterion. As we mentioned earlier in this preamble, while assisting participants in completing financial aid and college admission applications is a valuable service of the program, it is not the ultimate goal of EOC. We believe that educational attainment is the mission of the program and therefore we believe secondary school completion and postsecondary enrollment are the most important performance measures for the program and should be rewarded accordingly. We have reduced the number of points for the postsecondary enrollment criterion in § 644.22(d)(3) to five points and increased the points assigned to the financial aid assistance and college admission assistance criteria in § 644.22(d)(4) and (d)(5) to two points each.

Further, to be consistent with the changes we made to the objectives in §§ 644.21(b)(3) and (b)(4), we have

revised the PE criteria related to financial aid and college admission assistance in § 644.22(d)(4) and (d)(5). Because EOC projects will report on program outcomes annually, in § 644.22(d)(2) and (d)(3), we have clarified that the objective applies only to "participants served during the project year." In § 644.22(d)(2) we have revised the wording of the criterion to clarify that we will be measuring the extent to which participants receive a secondary school diploma.

Changes: We have modified § 644.22(d)(2) to provide that we will consider whether the applicant met or exceeded its approved objective with regard to participants served during the project year who do not have a secondary school diploma or its equivalent who will receive a secondary school diploma or its equivalent within the time period specified in the approved objective.

In § 644.22(d)(3), we have changed the weight from 6 points to 5 points. We also have changed this section to provide that we will consider whether the applicant met or exceeded its approved objective with regard to the secondary school graduates served during the project year who enroll in programs of postsecondary education within the time period specified in the approved objective.

In § 644.22(d)(4), we have changed the weight from 1.5 points to 2 points. We also have revised this section to provide that we will consider whether the applicant met or exceeded its objective regarding participants applying for financial aid.

Finally, in § 644.22(d)(5), we have changed the weight from 1.5 points to 2 points. We also have amended § 644.22(d)(5) to provide that we will consider whether the applicant met or exceeded its objective regarding participants applying for college admission.

What are allowable costs? (§ 644.30)

Comment: One commenter suggested adding admissions fees to the allowable costs in § 644.30(a) and removing the requirement that a grantee obtain specific prior approval from the Secretary from this provision. The commenter argued that EOC project directors, like project directors in other TRIO programs, should have the authority to use EOC funds to pay for transportation, meals, admissions fees, and lodging when they determine these expenses are necessary and appropriate. One commenter suggested that we add service agreements as an allowable cost in § 644.30(f) because many technology systems may require service agreement to cover repairs and software packages. Several commenters argued that testing fees and the cost of tutoring for the general education development (GED) exam should be allowable costs for the program.

Discussion: Because EOC is a very low cost per participant program, the Secretary does not agree with the commenter's suggestion to include admissions fees as an allowable cost. The other allowable costs in § 644.30(a)—transportation, meals, and, with specific prior approval of the Secretary, lodging—are only allowable under the specific circumstances listed in the regulation. Furthermore, we do not agree with the commenter's recommendation to remove the provision that requires grantees to receive prior approval from the Secretary to use project funds to pay for lodging. Because payments for lodging divert scarce resources from direct college access services to participants, we believe that the expense is only justified in exceptional circumstances.

Section 644.30(c) establishes the conditions upon which an EOC project may pay for college applications or entrance examinations. In response to public comments, we have revised § 643.30(c) to include examination fees for alternative education programs. We also agree with the suggestion to include a service agreement as an allowable cost in § 644.30(f).

Changes: We have revised § 644.30(c) to include examination fees for alternative education programs as an allowable cost if a waiver of the fee is unavailable. We have also revised § 644.30(f) to include a service agreement as an allowable cost.

What other requirements must a grantee meet?

Number of Participants

Comment: None.

Discussion: As discussed in the preamble discussion regarding number of participants for the TS program, we believe it is appropriate for the Secretary to identify the minimum and maximum grant award amounts and the minimum number of participants a project must serve each year of the grant cycle in the **Federal Register** notice inviting applications for a competition. We believe this is true for EOC projects (along with UB, SSS and McNair projects) as well. This practice will give the Department the flexibility to establish the minimum number of participants to be served based on the available resources and other priorities for each competition and to adjust these numbers for subsequent competitions based on our experience, changing priorities, and cost analyses.

Changes: We have revised § 644.32(b) to clarify that a grantee must serve at least the number of participants that the Secretary identifies in the **Federal Register** notice inviting applications for the competition, and to state that through this notice, the Secretary provides the minimum and maximum grant award amounts for the competition.

Coordination Among Outreach Programs Serving Similar Populations (new § 644.32(c)(4))

Comment: None.

Discussion: Based on comments we received on proposed § 643.11(b) for the Talent Search program, we have added a provision regarding the coordination of efforts necessary for students served by more than one TRIO or other federally funded program to the additional requirements a grantee must meet under § 644.32(c)(4). Accordingly, § 644.32(c)(4) now requires an EOC grantee, to the extent practicable, to maintain a record of any services an EOC participant receives during the project year from another Federal TRIO program or other federally funded program serving similar populations. This change will help ensure that the limited funds available under TRIO and other programs for disadvantaged populations are used effectively and efficiently by minimizing the duplication of services through coordination of activities.

Change: A new § 644.32(c)(4) has been added to require grantees to maintain a record of any services EOC participants receive during the project year from another Federal TRIO program or other federally supported program serving similar populations.

Project Director (final § 644.32(d)(3))

Comment: None.

Discussion: For the reasons discussed in the preamble section on *Project Director* under the TS program (proposed § 643.32(c)(3), final § 643.32(d)(3)), we have revised proposed § 644.32(c)(3) (final § 644.32(d)(3)).

Changes: We have revised proposed § 644.32(c)(3) (final § 644.32(db)(3)) to clarify the standard the Secretary will use to consider requests for a waiver of the restriction on the number of programs a project director may administer.

Upward Bound (UB) Program (34 CFR Part 645)

Who is eligible for a grant? (§ 645.2)

Comment: Several commenters expressed concerns about the eligibility of secondary schools to apply for UB funding and the impact this change would have on the UB program. Specifically, commenters were concerned with how secondary schools might use UB funding. For example, some commenters questioned whether secondary schools would be able to fully implement an UB project for the intended population of students and expressed concern that secondary schools would try to use the UB funds to support activities and services for students not eligible for UB or to fund programs or initiatives previously supported with State or local funding. One commenter recommended making a secondary school eligible only if there is no institution of higher education that is interested in and capable of conducting a UB program in the target area. The commenter argued that this proposal would allow some secondary schools to be eligible for grants but would retain the current program structure in which UB grants are awarded primarily to postsecondary institutions.

Discussion: The Department does not have the authority to make the changes recommended by the commenters because the HEOA amended section 402A(b)(1) of the HEA to eliminate the restriction on the eligibility of a secondary school to receive UB grants. The commenters' suggestions are inconsistent with the HEA.

Changes: None.

Who is eligible to participate in an Upward Bound Project? (§ 645.3)

Comment: One commenter noted that, to reflect the HEA, § 645.3 should be amended to include as eligible participants individuals who are at high-risk of academic failure. One commenter also noted that although section 402C(e)(5) of the HEA states that no student will be denied participation in an UB project because he or she will enter the project after the ninth grade, § 645.3(d) still includes the requirement that a participant, at the time of initial selection, must not have entered the twelfth grade. In addition, one commenter suggested adding "not currently enrolled in postsecondary education" to the participant eligibility criteria for VUB participants to clarify that veterans currently enrolled in postsecondary education are not eligible project participants.

Discussion: We agree that § 645.3(b) needs to be amended to include an individual who has a high risk for academic failure as an eligible UB participant (see definitions in § 645.6 for *individual who has a high risk for academic failure* and a *veteran who has a high risk for academic failure).* We also agree with the commenter that we need to amend § 645.3(d); therefore, we have removed the words "but has not entered the twelfth grade." Therefore, if a senior is otherwise eligible, he or she could participate in an UB program during his or her last year of high school.

Nonetheless, the Secretary encourages regular UB and UBMS projects to select students before their senior year. A recent report entitled *Upward Bound and Upward Bound Math-Science Program Outcomes for Participants Expected to Graduate High School in 2004–05* [4] concluded that one consistent predictor of postsecondary enrollment among regular UB and UBMS participants is the length of their participation in the UB program. Those students who participated in the program longer were more likely to continue on to postsecondary education. For example, 55.3 percent of those who participated in the program for less than one year went on to college compared with 91.2 percent of those who participated for three years or more.

With regard to the commenter's recommendation regarding veterans in postsecondary education, we have not made any changes to this section of the final regulations because this issue was not addressed in the NPRM. However, it is the Department's view that VUB projects should not serve individuals enrolled in postsecondary education as the statutory goal of the UB program is to "generate the skills and motivation necessary for success in education beyond secondary school." Veterans served by VUB who enroll in postsecondary education can be served by the SSS program or other programs designed to provide academic support services for individuals enrolled in programs of postsecondary education.

Changes: We have added a new paragraph (b)(3) to § 645.3 to include as eligible participants individuals who have a high risk for academic failure, and we have removed § 645.3(d) which required that participants be initially selected to participate in the UB program prior to entering the twelfth grade.

[4] Report available at: *http://www2.ed.gov/about/offices/list/ope/trio/ub-ubms-outcomes-2004.doc.*

What definitions apply to the Upward Bound Program? (§ 645.6)

Comment: Comments were received concerning several definitions. Some commenters requested that the Department add definitions for the terms "postsecondary completion," "postsecondary," "postsecondary institution," and "postsecondary degree." Several comments were received regarding the definition of the term *individual who has a high risk for academic failure.* A few commenters requested clarification on whether one or all four of the "high risk" criteria in the definition had to be met for an individual to meet the definition. Other commenters expressed concern that the proposed criteria for high risk include using grade point averages (GPAs) (see paragraph (4) of the definition) and the State assessments in reading, language arts, and math (see paragraphs (1) and (2) of the definition) because these measures are not standard across the country.

Some commenters also questioned the proposed criteria related to the math courses completed by the ninth grade (see paragraph (3) of the definition). These commenters stated that most incoming ninth graders have not taken geometry and thus, almost all ninth graders could qualify for UB based on this definition. A few commenters suggested that qualifiers are needed in this paragraph to take into account the wide variety of math course sequences utilized by high schools and because situations can occur that may cause a participant to be deemed high risk even if he or she is on track to graduate. For instance, one commenter argued that, based on the proposed definition, a tenth grade student could be selected to participate in the UB project because he or she had not completed geometry until the end of the tenth grade, even though the student was making normal progress in completing the sequence of math courses needed for high school graduation and postsecondary enrollment.

A few commenters stated that the definition of *individual who has a high-risk for academic failure* should be removed because UB already requires that two-thirds of all participants be both low income and first generation. These commenters suggested that this definition would create an additional burden on grantees to monitor and select an additional student subgroup, and might compromise the program mission by opening eligibility to students who are not low income or first generation and moving the program

from college preparation to drop-out prevention.

We also received many comments on the definition of a *rigorous secondary school program of study*. We address these comments in detail in the summary of comments, discussion, and changes sections for § 643.7 (TS program) earlier in this preamble.

Discussion: The Department believes the terms "postsecondary completion," "postsecondary," "postsecondary institution," and "postsecondary degree" are commonly understood and therefore do not need to be defined in these regulations. However, when these terms are used in the standard PE objective, the Department will provide additional guidance in the published application materials as to how these terms apply to the PE outcome criteria.

With regard to the definition of the term *individual who has a high risk for academic failure* (regular UB participant), we use the word "or" between paragraphs (3) and (4) of the definition to convey that an individual only needs to meet one of the criteria to be considered an individual who has a high risk for academic failure.

We do not view the fact that State assessments are not standardized across the country to be a problem because individuals who do not meet proficiency levels on their State's tests or who have low GPAs are at risk of not completing high school or not being prepared for postsecondary education. We acknowledge that the traditional sequence of high school math courses includes taking algebra in ninth grade and geometry in tenth grade; therefore, a student should not be considered an individual who has a high risk for academic failure if he or she does not complete geometry until the end of tenth grade.

Changes: We have revised paragraph (3) of the definition of *individual who has a high risk for academic failure* to clarify that a student is at high risk for academic failure if he or she has not successfully completed pre-algebra or algebra by the beginning of the tenth grade.

What services do all Upward Bound projects provide? (§ 645.11)

Comment: A large number of commenters recommended that, under proposed § 645.11(a)(1) and (a)(2), the term "postsecondary" be deleted. In the case of proposed § 645.11(a)(1), the commenters believed that academic tutoring provided in high school seldom has a direct impact on student success in postsecondary level coursework. Commenters also stated that the regulations are unclear as to the timeframe in which the tutoring must be provided; they asked whether it would be while the student is enrolled in high school or in a postsecondary program, or both. In the case of proposed § 645.11(a)(2), the commenters expressed concern that there are so many postsecondary institutions that UB participants attend, it would be hard to provide advice and assistance for specific course selection and that it would be best for participants to receive this service from the postsecondary institution. Commenters also stated that it was unclear whether UB staff would be required to continue to advise a student on postsecondary course selection after the student graduates from the UB program, whether there would be additional funding to provide the services, and whether served students who graduated would be counted in the number of students served each year.

Several commenters expressed concerns about proposed § 645.11(a)(5), which would require that UB projects provide high school dropouts guidance and assistance in secondary school reentry, alternative education and GED programs, and entry into postsecondary education. Some asked that the section be eliminated because UB projects do not usually serve dropouts. Other commenters asked for further guidance on how the services would be provided and whether individuals receiving these services would be considered UB participants. In regard to proposed § 645.11(b)(4) and (b)(5), one commenter indicated that it is too difficult to provide instruction in composition and literature in the summer and it should be left up to the program to decide which instruction to do. Another commenter suggested replacing the term "foreign language" with "world language" or "second language."

Under proposed § 645.11(a)(6), commenters requested clarification on the financial and economic literacy services that grantees must provide to students' parents.

Discussion: This section of the regulations includes the statutory list of "Required Services" a UB project must provide under section 402C(b) of the HEA. We cannot include in these regulations changes that would alter the statutory requirements. The Department, however, plans to provide applicants with additional written guidance on how to respond to the new program requirements and the evaluation criteria in the published application materials.

Changes: None.

What services may regular Upward Bound and Upward Bound Math-Science projects provide? (§ 645.12)

Comment: One commenter suggested including language to state that a project may provide other activities designed to meet the purposes of the legislation because this could encourage new and innovative approaches. A few commenters lauded on-campus residential programs as being the most important UB activity and recommended that the applications that propose a summer on-campus residential program be given additional points in the application process. One commenter also suggested that on-campus residential programs be designated as a required service.

Discussion: Section 645.12 includes the statutory list of "Permissible Services" an UB project may provide. The regulations do not prohibit grantees from offering additional services to meet the goals of the program, and grantees may offer additional services not explicitly mentioned as required or permissible. We have revised § 645.12 to reflect that intent more clearly.

Changes: We have revised § 645.12 by adding a new paragraph (g) to state that grantees may provide other services that are consistent with the purposes and goals of the UB program.

What additional services may Veterans Upward Bound projects provide? (§ 645.15(d))

Comment: Several commenters asked whether the additional services that Veterans Upward Bound projects provide are mandatory or permissible.

In addition, one commenter suggested eliminating § 645.15(d) because it appeared to be redundant with the requirements in § 645.11(b), which requires that all UB grantees, including VUB grantees, provide instruction in mathematics through pre-calculus and in laboratory science. The commenter also recommended adding to the list of additional services for VUB grantees in § 645.15: exposure to cultural events, academic programs, and other activities not usually available to disadvantaged veterans because these services are permissible for the low-income, first-generation students served by UB and UBMS projects. The commenter argued that providing these opportunities and experiences would positively influence a veteran's postsecondary and career decisions.

Discussion: We agree that the section heading of § 645.15 incorrectly suggests that the services in the regulations are required services. We have revised the section heading to clarify that the

services are voluntary. Because section 402C(c) of the HEA requires all UB projects to provide math and science instruction and section 402C(d) of the HEA further permits math and science preparation for veterans, we understand why some commenters viewed the new language in § 645.15(d) as being redundant with § 645.11(b). However, § 645.15(d) refers to special services that could supplement the project's instructional program in math and science. Accordingly and to be consistent with the statutory language, we are not changing § 645.15(d).

The Secretary does not agree with the request to include in § 645.15 exposure to cultural events, academic programs, and other activities. The list of permissible services in section 402C(d) of the HEA only identifies one of the permissible services as applicable specifically to veterans (see section 402C(d)(6) of the HEA) and that service is the one reflected in § 645.15(d). Further, section 402C(d)(1) of the HEA is clear that services, such as exposure to cultural events, are meant specifically for disadvantaged youth.

Changes: We have revised the section heading for § 645.15 by replacing the word "do" with the word "may" to clarify that the listed services are voluntary.

How many applications for an Upward Bound award may an eligible applicant submit? (§ 645.20)

Comment: One commenter requested that § 645.20 clarify what qualifies as "another designated different population."

Discussion: As provided in § 645.20(b), the Secretary will designate, in the **Federal Register** notice inviting applications, the different populations for which an applicant may submit a separate application. This provision gives the Department the flexibility to designate the different populations for each competition based upon changing national needs.

Changes: None.

What assurances must an applicant include in an application? Participant Eligibility (§ 645.21)

Comment: Several commenters stated that allowing one-third of participants to be eligible based upon a high risk for academic failure would change the fundamental purpose of the UB program with regard to participant eligibility for services. Many commenters stated that adding the high risk for academic failure assurance in § 645.21(a)(2) would open the door for children of affluent families to receive services over more needy students.

Discussion: Section 402C(e)(1) of the HEA states that not less than two-thirds of youth participating in the project must be low-income individuals who are first generation college students and that the remaining participants must be low-income individuals, first generation college students, or students who have a high risk for academic failure. Section 645.21 reflects this statutory requirement. We note, however, that students who have a high risk for academic failure are just one of the groups that can be included in the one-third calculation. Therefore, a UB project is not required to serve students who have high risk of academic failure and may choose to serve only low-income and potential first-generation college students.

Changes: None.

What assurances must an applicant include in an application? Coordination Among Outreach Programs Serving Similar Populations (§§ 645.21(a)(4), (b)(4), and (c)(3))

Comment: None.

Discussion: Based on comments we received on proposed § 643.11(b) for the Talent Search program—(Coordination Among Outreach Programs Serving Similar Populations), we have revised § 645.21(a)(4), (b)(4), and (c)(3), regarding the coordination of efforts necessary to minimize the duplication of services and promote collaborations so that more students can be served. We believe that these changes, which we have made across the TRIO programs, will help ensure that the limited funds available under TRIO and other programs for disadvantaged students are used effectively and efficiently by minimizing the duplication of services through coordination of activities.

Changes: We have revised § 645.21(a)(4), (b)(4) and (c)(3) to clarify that UB projects must collaborate with other Federal TRIO projects, GEAR UP projects, or programs serving similar populations that are serving the same target schools or target area to minimize the duplication of services and promote collaborations so that more students can be served.

What selection criteria does the Secretary use? Objectives (Academic Performance) (§ 645.31(b)(1)(i) and (b)(1)(ii))

Comment: Several commenters expressed concerns regarding the selection criteria in § 645.31(b)(1)(i) (Academic performance, as measured by grade point average (GPA)) and § 645.31(b)(1)(ii) (Academic performance, as measured by standardized test scores). The commenters argued that the points assigned for the GPA objective should be reduced. The commenters stated that it is difficult to increase GPAs of high-risk students by even a small percentage. Also, as students undertake a more rigorous curriculum their GPAs may increase or decrease over time. Commenters also asked if the projects could use a weighted GPA for those students taking rigorous courses. One commenter expressed concern over using State assessments, on a national level, as a measurement of performance because of the differences in State assessments throughout the country. The commenter recommended that the Department disseminate a list of approved standardized tests to promote consistency among projects reporting from one year to the next.

Discussion: We do not agree with the commenters' suggestion to reduce the points assigned to the academic performance as measured by GPA criterion. The 1.5 points for this criterion represents only 10 percent of the total PE points a project could earn; reducing the points further would go against the goals of the HEA.

The cumulative GPA for this selection criteria should be calculated on all courses taken based on a four-point scale. The GPA may be weighted for students completing honors or Advanced Placement courses. If the target schools use other scales, the GPA should be converted to the extent possible to a four-point scale.

In regard to the commenter's suggestion regarding § 645.31(b)(1)(ii) the Department does not believe it is appropriate to provide a list of approved standardized tests because we do not have the authority to regulate State assessments.

Changes: None.

What selection criteria does the Secretary use? Objectives (Secondary school graduation and completion of rigorous secondary school program of study) (§ 645.31(b)(1)(iii) and (b)(1)(iv))

Comment: In § 645.31(b)(1)(iii) (Secondary school graduation), one commenter recommended inserting the words "retention and" after the words "Secondary school" and before "graduation" to more accurately reflect the language in the statute. Another commenter suggested adding "or a GED diploma" after "regular secondary school diploma", to mirror § 645.11(a)(5)(iii), which includes entry into general educational development (GED) programs as a required service.

In regard to § 645.31(b)(1)(iv) (Completion of rigorous secondary school program of study), several

commenters stated that assisting students to complete a rigorous secondary school program of study might not be realistic for all participants, given that some UB grantees work with English Language Learners (ELL) and high-risk students. The commenters stated that the distinct needs of these populations were not adequately considered when imposing completion of a rigorous secondary school program of study as one of the program's outcome criteria. One commenter argued that this criterion may have the unintended consequence of limiting a project's ability to enroll these groups of students. Another commenter noted that some students do not complete a rigorous program because their educational goals include a technical or associate's degree, and their school system places them on a non-rigorous graduation track. Another commenter stated that the goal of completing a rigorous secondary school program of study is for participants to be eligible for the Academic Competitiveness Grants (ACG); however, this grant program is being phased-out. The commenter asked whether the criteria for the rigorous secondary school program of study will remain, even if the participants will no longer be eligible for ACG.

Discussion: We agree with the recommendation to add the words "retention and" to the secondary school graduation criterion in § 645.31(b)(1)(iii) to be consistent with the outcome criterion in the statute and the PE criterion in § 645.32(e)(1)(iii). However, to remain consistent with the statutory language regarding the UB program outcomes in section 402A(f)(3)(B) of the HEA, we do not agree with the recommendation to add the words "or a GED diploma".

Under § 645.31(b)(1)(iv) (Completion of a rigorous secondary school program of study), we are not requiring projects to serve only participants in a rigorous secondary school program of study. The Department agrees that some English Language Learners, high-risk students, or students in a vocational program of study might not be ready to undertake a rigorous secondary school program of study or may not find such a rigorous program of study relevant to their educational goals. However, to be consistent with statutory intent, the UB project should encourage all UB students to undertake a rigorous curriculum. In addition, section 402A(f)(3)(A)(iv) of the HEA states that the participants who complete a rigorous secondary school program of study should be eligible for programs such as ACG. Therefore, the discontinuation of ACG does not impact the requirement related to a rigorous secondary school program of study as defined in § 645.6.

Changes: We have amended § 645.31(b)(1)(iii) to refer to secondary school retention and graduation.

What selection criteria does the Secretary use? Objectives (Postsecondary completion) (§ 645.31(b)(1)(vi))

Comments: In regard to the criterion in § 645.31(b)(1)(vi) (Postsecondary completion), several commenters suggested that postsecondary completion should include a baccalaureate degree, associate's degree, or a certificate of completion of a postsecondary program. Other commenters asked if the definition of postsecondary completion, as used in this criterion, included the attainment of a four-year or two-year degree. If either degree is satisfactory, one commenter stated that a project that sent students to a two-year institution versus a four-year institution would be able to establish a more ambitious objective due to the fact that it is easier to track participants for two years rather than for four years. Many commenters argued that UB is not authorized or funded to continue working with students once they complete the project. In addition, some commenters stated that a program geared toward high school students should not be held responsible for a participant's completion of a postsecondary education. The commenters suggested that persistence in postsecondary education was a better measurement of project success. Commenters also stated that there are no selection criteria for the *Plan of Operation* or *Budget* sections of the application to address on-going follow-up support of graduates. One commenter requested that the Department clarify how it will determine the parameters and number or percentages for tracking participants.

Discussion: Section 402A(f)(3)(A)(vi) of the HEA requires the Department to use the postsecondary completion criterion, to the extent practicable, in evaluating the quality and effectiveness of a UB project. Due to the UB program's intensive, college-preparatory nature, we do not agree with the commenters who suggest that any postsecondary credential, including a certificate, should be included in postsecondary completion measurements. For the purpose of awarding PE points for projects' success under the postsecondary completion outcome criterion, the Department considers a program of postsecondary education to be a combination of courses and related activities whose curriculum is designed primarily for students who are beyond the compulsory age for high school and which leads to the attainment of an associate's or bachelor's degree, and which excludes postsecondary certificates and vocational and adult basic education programs.

The Secretary plans, subject to meeting the requirements of the Paperwork Reduction Act of 1995, to establish a standard objective related to postsecondary completion in the application package for the UB program. Further, each applicant will establish in its application the project's target with regard to postsecondary completion. The baseline data the applicant provides in the *Need* section of the application will provide the peer reviewers with the information needed to assess the extent to which the applicant's target for the objective is both ambitious and attainable.

We understand the commenters' concerns about not having the authority or resources to provide follow-up support for UB graduates as they progress through postsecondary education; however, the new statutory outcome criteria effectively requires that UB projects track the academic progress of participants through postsecondary completion. Section 645.31(c)(10) (Plan of Operation) requires applicants to have a follow-up plan for tracking graduates of UB projects as they enter and continue in postsecondary education. Further, § 645.31(f) (Budget and cost effectiveness) requires applicants to be evaluated on the extent to which the budget for the project is adequate to support planned project services and activities. Therefore, an applicant may include in the proposed budget for the project costs related to tracking the academic progress of former participants through postsecondary education.

Changes: None.

What selection criteria does the Secretary use? Applicant and Community Support: Resources secured through written commitments (§ 645.31(d)(2))

Comment: None.

Discussion: Based on comments we received on proposed § 643.21(d)(2) (Applicant and community support) for the TS program, we have revised § 645.31(d)(2) to ensure consistency across programs. A detailed discussion of the comments and rationale for the changes is included earlier in this preamble, in the summary of comments, discussion, and changes related to § 643.21(d)(2).

Changes: We have revised § 645.31(d)(2) to provide that the Secretary will evaluate the applicant and community support for the proposed project on the basis on the extent to which the applicant can show that it has resources secured through written commitments from community partners. This section also requires that: (i) An applicant that is an institution of higher education must include in its application commitments from the target schools and community organizations; (ii) an applicant that is a secondary school must include in its commitments from institutions of higher education, community organizations, and, as appropriate, other secondary schools and the school district; and (iii) an applicant that is a community organization must include in its application commitments from the target schools and institutions of higher education.

How does the Secretary evaluate prior experience? Regular Upward Bound and Upward Bound Math and Science Centers (§ 645.32(e)(1))

Comment: In regard to proposed § 645.32(e)(1)(ii)(A) (Academic Performance, as measured by grade point average (GPA)), one commenter suggested that the GPA of 2.5 be changed to 2.0 to be consistent with the Federal Pell Grant's requirement that students who receive financial aid maintain a 2.0 GPA. Several commenters requested clarification on whether the GPA standard was weighted or not weighted.

In regard to proposed § 645.32(e)(1)(ii)(B) (Academic Performance, as measured by standardized test scores), one commenter requested that the Department publish an approved list of standardized tests to provide for consistency in reporting among grantees. The commenter stated that the differences in the various State assessments do not allow for consistent measurements of performance of UB projects.

In regard to proposed § 645.32(e)(1)(iii), which defines PE points for secondary school retention and graduation, one commenter suggested that we add the phrase "or a general educational development (GED) diploma" after the phrase "regular secondary school diploma".

In regard to proposed § 645.32(e)(1)(iv), which defines PE points for a rigorous secondary school program of study, one commenter stated that it is impossible for grantees to ensure that students complete a rigorous secondary school program of study, given that some school districts do not offer rigorous courses. Another commenter emphasized that this PE criterion would limit the ability of projects to work with a high-risk population, as this population may not have the ability to undertake a rigorous secondary school program of study.

Several commenters asked that § 645.32(e)(1)(v) be changed to permit participants' postsecondary enrollment to take place by the fall or spring term immediately following the school year, instead of by the fall term. Commenters stated that some participants need to delay enrollment in postsecondary education for several reasons, including the need to work to support their efforts to enroll, family responsibilities, changes in the economy, and the fact that institutions may be granting acceptance for the spring semester instead of the fall semester due to budget cuts and the large number of applicants. These commenters argued that their recommended change would allow grantees to count summer graduates and GED recipients who matriculate in the spring in the relevant calculations for PE points.

In regard to proposed § 645.32(e)(1)(vi), which discusses the PE criteria based on postsecondary completion, several commenters stated that tracking participants through postsecondary completion is impractical. These commenters stated that postsecondary completion should not be assessed as part of PE, due to the fact that UB grantees do not provide services during the participant's postsecondary tenure and also because it is difficult to accurately track participants who may drop out, enroll in several different institutions consecutively or simultaneously, or use different names to enroll. Commenters suggested using postsecondary persistence instead of postsecondary completion as the PE criterion. If the criterion remains, the commenters recommended changing the point value to 0.5.

Discussion: In response to the commenters' recommendation that we permit participants' postsecondary enrollment to take place by the fall or spring term immediately following the school year, instead of by the fall term, we have decided to remove from the proposed regulations the point of measurement (*e.g.,* fall term). Further, we also have decided to remove from § 645.32(e)(1)(ii)(A) and (e)(1)(ii)(B) (*e.g.,* State assessments) the GPA standard (*e.g.,* 2.5). Instead, the Department will establish the point of measurement and the standards for measuring academic performance when establishing the standard PE objectives for each grant competition. These changes will give the Department the flexibility to adjust the standards of measurement and period of measurement for UB PE objectives based on changing conditions. The Secretary plans, subject to meeting the requirements of the Paperwork Reduction Act of 1995, to establish standard objectives for each of the PE criteria in the application package for the UB program.

With regard to the requests for clarification regarding the cumulative GPA, as discussed in the response to comments regarding § 645.31(b)(1)(i) (Objectives), the GPA should be calculated on all courses taken based on a four-point scale. The GPA may be weighted for students completing honors or Advanced Placement courses. If the target schools use other scales, the GPA should be converted to the extent possible to a four-point scale.

With regard to proposed § 645.32(e)(1)(iv), regarding completion of a rigorous secondary school program of study, we acknowledge that not all UB participants may be ready to undertake a rigorous secondary school program of study; however, UB participants should be encouraged to complete a rigorous secondary school program of study because research suggests that students who take rigorous classes in high school are more likely to enroll in and complete postsecondary education which are the goals of the UB program. A 2003 GAO report, for instance, reported that students taking a highly rigorous secondary school program of study were 1.7 times more likely to earn a bachelor's degree than students who took a basic high school curriculum.[5]

With regard to the postsecondary completion criterion in proposed § 645.32(e)(1)(vi), section 402A(f)(3)(A)(vi) of the HEA requires the Department to use this criterion, to the extent practicable, in evaluating the quality and effectiveness of an UB project for the purpose of assessing PE. The Secretary does not agree with the commenters' suggestion to lower the points allocated to the postsecondary completion criterion. The 1.5 points represent only 10 percent of the total PE points a project can earn and is an appropriate value to place on this criterion.

We have made a number of clarifying changes to § 645.32(e)(1)(ii) through (vi). First, we have clarified that when we

[5] GAO, "Additional Efforts Could Help Education With its Education Goals," May 2003, available at *http://www.gao.gov/new.items/d03568.pdf.*

refer to "project participants" or "current participants", we mean those participants served during the project year. For consistency with the regulatory language used for the PE criteria in § 643.22 (TS) and § 644.22 (EOC), we have deleted the words "the percentage of" where it appeared in proposed § 645.32(e)(1)(ii) through (vi).

Changes: The Secretary has amended § 645.32(e)(1)(ii) through (vi) to provide that for purposes of the PE evaluation of Regular Upward Bound and Upward Bound Math and Science Centers grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

Academic Performance (§ 645.32(e)(1)(ii))

(A) Whether the applicant met or exceeded its approved objective with regard to participants served during the project year who had a cumulative GPA at the end of the school year that was not less than the GPA specified in the approved objective. (1.5 points)

(B) Whether the applicant met or exceeded its approved objective with regard to participants served during the project period who met the academic performance levels on standardized tests as specified in the approved objectives. (1.5 points)

Secondary School Retention and Graduation (645.32(e)(1)(iii))

Whether the applicant met or exceeded its approved objective with regard to participants served during the project year who returned the next school year to secondary school or graduated from secondary school with a regular secondary school diploma. (3 points)

Rigorous Secondary School Program of Study (§ 645.32(e)(1)(iv))

Whether the applicant met or exceeded its approved objective with regard to current and prior participants with an expected high school graduation date in the school year who completed a rigorous secondary school program of study. (1.5 points)

Postsecondary Enrollment (§ 645.32(e)(1)(v))

Whether the applicant met or exceeded its approved objective with regard to current and prior participants with an expected high school graduation date in the school year who enrolled in a program of postsecondary education within the time period specified in the approved objective. (3 points)

Postsecondary Completion (§ 645.32(e)(1)(vi))

Whether the applicant met or exceeded its approved objective with regard to postsecondary enrollees who attained a postsecondary degree within the number of years specified in the approved objective. (1.5 points)

How does the Secretary evaluate prior experience? Veterans Upward Bound (VUB) (§ 645.32(d)(2) and (e)(2))

Comment: Several commenters requested that the Department use the number of VUB participants that completed the project during the project year, instead of the approved number of participants or the actual number of participants served in a given year, if greater than the approved number of participants, as the denominator for the academic improvement on a standardized test criterion for PE points in § 645.32(e)(2)(ii). One commenter argued that VUB is an open-entry, open-exit program and that veterans who enroll may not be able to complete all needed academic services during a single reporting period, for a variety of reasons. Requiring veterans to take a post-test prior to receiving all appropriate academic services would not yield an accurate assessment of the grantee's success. The commenter contended that because all participants will not be able to take a pre-test, receive all necessary services, and take a post-test during a single project year, this criterion should only measure those participants that completed the project during the reporting period.

With regard to the postsecondary enrollment criterion for PE points, several commenters requested that § 645.32(e)(2)(iv) be changed to permit participants' postsecondary enrollment by the fall or spring term immediately following program completion. The change would allow projects to count program graduates who matriculate to postsecondary education on a non-traditional timeline.

Discussion: For the reasons set forth in the preceding section, we have made a number of clarifying changes to § 645.32(e)(2) to mirror the changes we made in § 645.32(e)(1). These changes clarify that the criteria relate to participants served during the project year and that the Department will establish the point of measurement for the postsecondary enrollment and postsecondary completion criteria when establishing the standard PE objectives for each grant competition. Further, the changes clarify that for § 645.32(e)(2)(ii) (Academic improvement on standardized tests) will be assessed only for those participants who completed the VUB program during the project year.

Changes: The Secretary has amended § 645.32(e)(2) to provide that, for purposes of the PE evaluation of Veterans Upward Bound grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

Academic Improvement on Standardized Test (§ 645.32(e)(2)(ii))

Whether the applicant met or exceeded its approved objective with regard to participants served during the project year who completed their Veterans Upward Bound educational program during the project year and who improved their academic performance as measured by a standardized test taken by participants before and after receiving services from the project. (3 points)

Education Program Retention and Completion (§ 645.32(e)(2)(iii))

Whether the applicant met or exceeded its approved objective with regard to participants who were served during the project year who remained in or completed their Veterans Upward Bound educational program. (3 points)

Postsecondary enrollment (§ 645.32(e)(2)(iv))

Whether the applicant met or exceeded its approved objective with regard to the participants who completed their Veterans Upward Bound educational program and enrolled in an institution of higher education within the time period specified in the approved objective. (3 points)

Postsecondary completion (§ 645.32(e)(2)(v))

Whether the applicant met or exceeded its approved objective with regard to postsecondary enrollees who completed a program of postsecondary education within the number of years specified in the approved objective. (3 points)

What are allowable costs? (§ 645.40)

Comment: Several commenters suggested that § 645.40(i) be changed to permit a grantee to pay tuition costs for up to six credit hours of postsecondary courses in an academic year or summer session for a student if tuition waivers are unavailable. These commenters argued that such a change would encourage dual enrollment for UB students still in high school. Current regulations permit the payment of tuition for postsecondary credit only for

participants of the UB summer bridge component. The commenters noted that this change is especially necessary if the target schools served by the UB program do not provide a rigorous course of study. Commenters suggested that because UB projects, like TS projects, will be evaluated on the extent to which participants complete a rigorous secondary school program of study, UB projects should be allowed to pay for tuition, when needed, for secondary students taking a rigorous curriculum.

In addition, commenters suggested adding the phrase "service agreement" after the word "lease" in proposed § 645.40(n) and (o) because many technology systems may require repairs and software packages that are provided pursuant to service agreements.

Finally, one commenter recommended revising § 645.40(i) that permits UB projects to pay tuition costs for postsecondary credit courses for participants in the summer bridge program by striking the phrase "at the host institution" and adding "educational supplies for participants" to this provision.

Discussion: The Department agrees that UB projects should be permitted to pay tuition costs, in certain situations, for participants taking a rigorous secondary school program of study, but does not agree that all dual enrollment courses should be considered part of a rigorous secondary school program of study. In addition, the Department agrees to add payment for a service agreement to the allowable costs.

We do not agree with the commenter's recommendations to remove the phrase "at the host institution" from § 645.40(i)). Students participating in the summer bridge program are still UB participants; therefore, we believe the UB project will continue to provide services to these students while they are taking postsecondary courses during the summer bridge program. Therefore, we believe these UB bridge participants should take courses at the host institution where the project can provide additional support services. The costs for required textbooks and lab fees for bridge students taking postsecondary courses are allowable.

Changes: We have amended proposed § 645.40(n) and (o) to add the cost of an equipment service agreement as an allowable cost. We also have amended § 643.40 by adding a new paragraph (q) to allow UB projects to pay, under certain conditions, the tuition for courses that will allow project participants to complete a rigorous secondary school program of study.

What are Upward Bound stipends? (§ 645.42)

Comment: Several commenters requested that the $40 stipend that may be paid to participants be increased to $60. One commenter suggested increasing the $60 stipend, which is available during the summer school recess, to $80. The commenter also recommended that work-study positions be made available year-round and that a participant should be able to get the $300 stipend for any three months during the year. The commenter argued that these changes would increase participation in the work-study component and thereby increase program retention and persistence.

Discussion: Section 402C(f) of the HEA provides that youth participating in a UB project may be paid stipends not in excess of $60 per month during the summer school recess, for a period not to exceed three months. During the remaining months, youth participating in the project may receive stipends not in excess of $40. The HEA does not limit work-study to the summer school recess; it only stipulates that the stipend of $300 per month for youth participating in a work-study position may only be provided during the months of June, July, and August. We cannot include in these regulations changes that would alter the stipend dollar amount or timing of payment as provided in the HEA.

Changes: None.

What other requirements must a grantee meet? (§ 645.43)

Number of Participants (§ 645.43(a))

Comment: None.

Discussion: As discussed in the preamble discussion on the number of participants under the TS program, we believe it is appropriate for the Secretary to identify the minimum and maximum grant award amounts and the minimum number of participants a project must serve each year of the grant cycle in the **Federal Register** notice inviting applications for a competition. We believe this is true for UB projects (along with EOC, SSS and McNair projects) as well. This practice will give the Department the flexibility to establish the minimum number of participants to be served based on the available resources and other priorities for each competition and to adjust these numbers for subsequent competitions based on our experience, changing priorities, and cost analyses.

Changes: We have revised § 645.43(a) to clarify that a grantee must serve at least the number of participants that the Secretary identifies in the **Federal Register** notice inviting applications for the competition, and to state that through this notice, the Secretary provides the minimum and maximum grant award amounts for the competition.

Project Director (Final § 645.43(b)(3))

Comment: None.

Discussion: For the reasons discussed in the section of this preamble on *Project Director* under the TS program (proposed § 643.32(c)(3), final § 643.32(d)(3)), we have revised proposed § 645.43(a)(3) (final § 645.43(b)(3)).

Changes: We have revised proposed § 645.43(a)(3) (final § 645.43(b)(3)) to clarify the standard the Secretary will use to consider requests for a waiver of the restriction on the number of programs a project director may administer.

Coordination Among Outreach Programs Serving Similar Populations (New § 645.43(c)(5))

Comment: None.

Discussion: For the reasons discussed under *Coordination Among Outreach Programs Serving Similar Populations* (§§ 645.21(a)(4), (b)(4), and (c)(3)), we have added language to § 645.43 (What other requirements must a grantee meet?) to require UB grantees to maintain, to the extent practicable, a record of the services UB participants received during the project period from another TRIO program or other program serving the same populations as the UB program. We believe that these changes, which we have made across the TRIO programs, will help ensure that the limited funds available under TRIO and other programs for disadvantaged students are used effectively and efficiently by minimizing the duplication of services through coordination of activities.

Changes: We have added new § 645.43(c)(5) to require UB grantees to maintain, to the extent practicable, a record of any services UB participants receive during the project year from other Federal TRIO or federally funded programs serving the same populations as the UB program.

Student Support Services (SSS) (34 CFR Part 646)

What is the Student Support Services program? (§ 646.1)

Comment: One commenter recommended that the proposed reference to "college" in paragraph (a) be replaced by a reference to "postsecondary educational institution." In addition, multiple commenters asked that the Department retain the current

references to low-income and first-generation students to highlight the target population of the SSS Program. These commenters asked that we not include the reference to "groups that are traditionally underrepresented in postsecondary education," as reflected in proposed § 646.1(c) as this reference could dilute the focus of the program.

Discussion: The language in § 646.1 has been changed to more closely track the language in section 402D(a) of the HEA. This statutory language appropriately reflects the focus of this program; for this reason, we do not believe any changes to this regulatory provision are necessary.

Changes: None.

What activities and services does a project provide? Required Services (§ 646.4(a))

Comment: Six commenters requested minor changes to the SSS list of required services in § 646.4(a) to specify who should provide the services. For example, one commenter noted that assistance in completing financial aid applications could be provided by SSS advisors directly or in collaboration with staff in the financial aid office. Several commenters requested additional language specifying that graduate and professional school enrollment is an activity specific to four-year institutions. Two commenters requested that we change the language in proposed § 646.4(a)(5) and (a)(6) from "obtaining financial assistance for enrollment in" to "applying for financial aid." Two other commenters asked that we add specific language to this section to clarify that support for financial aid assistance and postsecondary course counseling could be given directly by TRIO professionals or through other services with the assistance of other offices as part of other services they provide.

Discussion: We recognize that SSS projects may work with other offices and programs at the institution to provide the required services. However, we do not think it is necessary to regulate who specifically must provide the services or how those services must be provided. An applicant for a SSS grant must include its plan to provide services that address the goals and objectives of the project in the *Plan of Operation* section of its application (see § 646.21(c)(4)).

To clarify that graduate and professional school enrollment is an activity specific to four-year institutions, we have added language to § 646.4(a)(5) that refers to participants enrolled in four-year institutions of higher education. This language will parallel the structure in paragraph (a)(6), which refers specifically to students enrolled in two-year institutions of higher education.

We decline to revise this section to focus only on helping students with "applying for financial aid," as requested by some commenters. The language in this section mirrors section 402D(b)(5) and (b)(6) of the HEA. In addition, although applying for financial aid may be the most important step in assisting a student in obtaining financial aid, the student may require assistance after the student submits his or her financial aid application; such assistance could include helping the student understand or accept a financial aid award. Therefore, we think it is important to retain the proposed regulatory language, which is broader and covers helping students in obtaining financial aid, because it encourages SSS grantees to continue assisting students throughout the entire financial aid process.

Changes: We have revised § 646.4(a)(5) to refer to activities designed to assist participants enrolled in four-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, graduate and professional programs.

Permissible Services (§ 646.4(b))

Comment: Many commenters requested that we revise § 646.4(b) to clarify that grantees may provide additional activities that are not included in the list of permissible services in the HEA, provided that such activities assist grantees to meet the goals of the SSS program. These commenters expressed concern that, without such regulatory language, SSS projects could not offer these additional activities.

Discussion: Section 646.4(b) incorporates language from section 402D(c) of the HEA, which lists permissible services a SSS project may provide. The regulations do not prohibit grantees from offering additional services to meet the goals of the program, and grantees may offer additional services not explicitly listed as required or permissible. We have revised § 646.4(b) to reflect that intent more clearly.

Changes: We have revised § 646.4 by adding a new paragraph (b)(7) to specifically state that SSS projects provide other services that are consistent with the purposes and goals of the SSS program.

What definitions apply? First Generation College Student (§ 646.7(b))

Comment: Commenters asked whether a student whose parent has a baccalaureate degree from a country other than the United States meets the definition of *first generation college student* in § 646.7(b). The commenters noted that other countries may have different requirements for a baccalaureate degree that may not be equivalent to a U.S. baccalaureate degree. In addition, these commenters expressed concern that individuals who received their degrees in another country may be unable to assist their children with college entry and financial aid requirements for U.S. institutions of higher education, and that the SSS project could address this problem.

Discussion: Under the TRIO Programs, the definition of *first-generation college student* is used to determine if an individual is eligible to participate in a TRIO project, the purpose of which is to identify individuals from families in which there is no family history of successfully pursuing a bachelor's degree. For individuals whose parents earned a bachelor's degree in another country, there is a family history of success in higher education, regardless of whether the requirements to receive the baccalaureate degree were different than those in the United States. For this reason, we do not believe that a student who has a parent with a baccalaureate degree from outside the United States should be eligible to participate in the SSS program.

Changes: None.

What definitions apply? Low-Income Individual (§ 646.7(b))

Comment: One commenter requested clarification as to what years' tax documents should be used to determine whether a student meets the definition of the term *low-income individual* under § 646.7(b). The commenter suggested that the Department provide a chart to assist grantees in finding the information needed for them to determine an individual's low-income status. The commenter stated that doing so would help avoid confusion that occurs when the tax and calendar years do not match up with the academic year.

Discussion: To document low-income status, tax documents from the calendar year preceding the academic year in which the student will begin to receive services should be used. For example, students who initially participate in a SSS project in the 2009–2010 academic year will have their low-income status

determined by using tax documents submitted to the Internal Revenue Service (IRS) for calendar year 2008. Also, the Department annually posts, on the TRIO Web site, a chart on Annual Income Levels for use by grantees in determining student eligibility. A grantee is only required to verify a student's low-income status prior to providing the first service to that student.

Changes: None.

What assurances and other information must an applicant include in an application? SSS coordination with other projects (§ 646.11)

Comment: Some commenters recommended that the SSS regulations require an applicant to provide an assurance that individuals receiving services from another SSS project will not receive the same services under the applicant's proposed project. The commenters argued that such an assurance would allow projects to serve more participants and, especially in light of the addition of new types of SSS projects, would prevent SSS projects on the same campus from serving the same students, and, therefore, fewer students overall. Furthermore, the commenters noted that the assurance would mirror a similar assurance required under the regulations for the TS, EOC, and UB programs.

Discussion: We agree with the commenters. Current TRIO regulations that establish age and academic level criteria for participation in each program ensure that there is no overlap in services between SSS and the pre-college TRIO programs, such as regular UB. However, it is now possible that a single institution could have multiple SSS projects and a McNair project. We are, therefore, adding language, in § 646.11(c), to address the commenters' concern. This new language, clarifies that a student receiving benefits from one SSS project is not eligible to receive services from another SSS project at any one time. Further, under § 646.11(c), the SSS project must collaborate with other SSS and McNair projects and other State and institutional programs at the grantee-institution so that more students can be served. Under this provision, a student may leave one SSS project and join another at the same institution, as long as the student's participation in each project is only counted for the performance period during the time he or she is actually receiving services from that particular project.

Changes: We have amended § 646.11 to include a new paragraph (c) that requires an applicant to assure the Secretary in the application that a student will not be served by more than one SSS project at any one time and that the SSS project will collaborate with other SSS and McNair projects and other State and institutional programs at the grantee-institution so that more students can be served.

What assurances and other information must an applicant include in an application? Providing Financial Assistance to Participants (§ 646.11(b))

Comment: A number of commenters requested that the Secretary change § 646.11(b)(1) to eliminate the requirement that applicant describe their efforts and past history in meeting the full financial need of each student in the project to requiring an applicant to offer each student sufficient financial assistance to meet their full financial need. The commenters stated that it is unreasonable to expect SSS projects to have sufficient funding to meet the full financial need of each student in the project. One commenter recommended adding a selection criterion that would evaluate the extent to which an institution has made efforts to meet the financial need of participants and to reduce the loan burden on participants.

Discussion: The language in § 646.11(b) referenced by the commenters is from section 402D(e)(6) of the HEA and cannot be changed as the commenters requested. With respect to the second comment, section 402D(e) of the HEA requires the Secretary to consider the institution's effort and, where applicable, past history in providing sufficient financial assistance to meet the full financial need of each student in the project and in maintaining the loan burden of each student at a manageable level. Because Federal grant aid is often insufficient to meet a student's full financial need, SSS students may be offered large amounts of loans to meet their financial needs for attendance at the grantee institution. Under current § 646.21(d)(3) (Institutional commitment), the Secretary evaluates the extent to which the applicant has demonstrated a commitment to minimize the dependence on student loans in developing financial aid packages for project participants by committing institutional resources, to the extent possible. We believe the regulation adequately addresses the commenter's concern and that no further changes are necessary.

Changes: None.

What assurances and other information must an applicant include in an application? Consultations between SSS project and financial aid office in awarding of grant aid.

Comments: Several commenters recommended that § 646.30(i) (Allowable cost—grant aid) be revised to incorporate the statutory language regarding the required consultation between the SSS project and their institution's financial aid office to determine the students who are eligible for grant aid and the amount of grant aid to be awarded (see section 402D(d)(1) of the HEA). The commenters noted that, while awarding financial aid is the responsibility of the financial aid office, the grant aid can only be awarded to SSS participants and, therefore, the SSS Director should be consulted with respect to which students should receive the grant aid and the amount of the grant aid awards.

Discussion: We agree with the commenters' concern that the regulations should require consultation between the SSS project and the financial aid office in the awarding of grant aid, but believe it would be better to include this requirement as an assurance in § 646.11, rather than as an allowable cost under § 646.30(i).

Changes: We have amended § 646.11 to include a new paragraph (d) that requires an applicant to assure the Secretary in the application that the institution's financial aid office will consult with the SSS project with respect to which SSS participants should receive grant aid and the amount of the grant aid awards.

Certificate or Degree Completion and Transfer to a Four-Year Institution (§§ 646.21(b)(3)(ii) and 646.22(e)(5))

Comment: A number of commenters requested that the Department revise the evaluation criterion in § 646.21(b)(3)(ii), related to the applicant's proposed objectives, that would award up to 2 points for certificate or degree completion and transfer to a four-year institution so that the criterion only evaluated whether participants transfer to four-year institutions. The commenters indicated that, in many cases, it is in the student's best interest to transfer to a four-year institution prior to receiving a certificate or degree from the two-year institution.

One commenter stated that it would not be feasible for an applicant to collect data on transfers to four-year institutions or graduate and professional school enrollment because by the time this data can be collected, the student has left the institution and may have

severed ties with the school. One commenter asked for clarification on whether retention in postsecondary education for purposes of the selection criteria means retention at the grantee institution or in any institution of higher education.

Discussion: Sections 646.21(b)(3)(ii) and 646.22(e)(5) are based on statutory language from section 402A(f)(3)(C)(ii)(II) of the HEA. Section 402A(f)(3)(C)(ii)(II) of the HEA specifically includes, as outcome criteria, both certificate or degree completion and transfer to a four-year institution prior to receiving a certificate or degree from the two-year institution. For this reason, we cannot make the change requested by the commenters.

With regard to the retention objective (see § 646.22(e)(2) and (e)(3)), a grantee is only required to report on participants served during the project year who: (1) Graduate from the grantee institution during the project year; (2) transfer from a two-year to a four-year institution during the project year; or persist at the grantee institution into the fall term of the next academic year. With regard to the good standing objective (see § 646.22(e)(3)), a grantee is only required to report on participants served during the project year.

Changes: We have revised § 646.22(e)(2) to clarify that the Secretary evaluates the applicant's retention and good standing objectives based on participants served during the project year. We have also revised § 646.22(e)(4) and (e)(5) (degree completion) to clarify that the objectives include current and prior year participants who are still enrolled at the grantee institution. In addition, for consistency with the regulatory language used for the PE criteria in the other TRIO programs, we have removed the words "the percentage of" from § 646.22(e)(2), (e)(3), (e)(4), and (e)(5).

What are allowable costs? (§ 646.30)

Comment: Six commenters requested that we specify that a SSS project may pay for lodging and meals for participants and staff participating in project-sponsored educational and cultural activities. One commenter noted that adding this language to § 646.30(e), for example, would allow SSS participants to participate in State and regional leadership conferences, which are held over the weekend and require overnight lodging. The commenter also noted that for projects in rural or remote locations many educational and cultural activities require overnight lodging.

Discussion: The Secretary acknowledges that participation in some educational and cultural activities may require overnight travel (*e.g.,* State or regional leadership conferences). However, we also believe that the use of project funds for these activities must be limited to ensure that sufficient project funds are available to provide academic support services. Therefore, the Secretary will require a project to obtain prior approval for educational and cultural trips that require overnight travel.

Changes: We have revised § 646.30(e) to include, as an allowable cost, transportation and, with prior approval of the Secretary, meals and lodging for participants and staff during approved educational and cultural activities sponsored by the project.

Comment: Many commenters requested the removal of the four percent cap on the amount a project may spend on professional development travel under § 646.30(g). The commenters stated that this cap is inconsistent with other TRIO programs, which do not have a professional development cap.

Discussion: The Secretary does not agree with the commenter's suggestion. This provision provides grantees with clear parameters regarding the percentage of project funds we believe are sufficient for professional development travel for staff. In addition, in unusual situations, a grantee may ask the Secretary to approve a higher percentage to address unique circumstances (*e.g.,* high cost of travel in some areas, new staff that could benefit from more professional development). We acknowledge that this limitation is not included in the regulations for the other TRIO programs. However, we do not believe it is appropriate to add this provision to the other program regulations at this time because the NPRM did not suggest we were considering applying this restriction to all of the programs. Nonetheless, we encourage all TRIO projects to limit the amount of funds spent on professional development travel to no more than four percent of staff salaries and may consider proposing a provision like this for the regulations for the other TRIO programs at a later date.

Changes: None.

Comment: One commenter suggested adding the phrase "service agreement" after the word "lease" in § 646.30(f), because many technology systems may require repairs and software packages and those repairs and software packages may be made available through service agreements.

Discussion: We agree with the suggestion to include service agreements as an allowable cost in § 646.30(f).

Changes: We have revised § 646.30(f) to include service agreements for equipment.

Comment: One commenter suggested that we add a new paragraph (k) to § 646.30 to include as an allowable cost admission application fees for project participants who complete a certificate or degree before continuing to another higher education institution if the certain conditions exist. The commenter noted that such language would be consistent with the regulations for the TS program, which, like SSS, aims to assist students in securing admission to the next level of academic study.

Discussion: We disagree with the commenter's recommendation. Unlike the participants in the TS program, SSS participants are enrolled in postsecondary programs and are eligible to receive financial aid to cover their cost of attendance at the institution. Further, this recommendation is inconsistent with § 646.31(b) (Unallowable costs), which prohibits the use of grant funds for tuition, fees, stipends, and other forms of direct financial support, except for grant aid under § 646.30(i), for staff or participants.

Changes: None.

Comment: Two commenters requested that the Department clarify the use of funds allowed under § 646.30(i). In particular, the commenters asked whether awarding rant aid to students who are in their first two years of postsecondary education means students who are in their first two academic years, or students in their freshman and sophomore years, based on credits hours earned.

Discussion: The reference to the first two years of postsecondary education in section 402D(d)(2) of the HEA refers to the student's first two years of postsecondary education attendance, not the student's grade level classification (e.g., freshman or sophomore).

Changes: None.

Comment: A number of commenters requested that we define the term "breaks," used in § 646.30(j). Under that section, paying for temporary housing during breaks in the academic year, for students who are homeless children and youths or were formerly homeless children and youths and students who are foster care youth, is considered an allowable cost. Some commenters were confused as to whether the term "breaks" includes only holiday breaks between semesters, or if the term also includes the entire summer semester. One individual requested that

disconnected youth be included in this paragraph as well. The commenters also asked that the Department clarify that homeless adult SSS participants, who are not formerly homeless youth, are eligible for temporary housing support. Specifically, these commenters recommended that § 646.30(j) be revised to include, in addition to students who are homeless children and youth or were formally homeless children and youth and students who are foster care youth, any SSS participant who is considered homeless.

Discussion: Section 402D(c)(5) of the HEA allows SSS projects to use grant funds to secure temporary housing during breaks in the academic year. The term "breaks" in the academic year means any period of time between semesters or quarters within the same academic year but does not typically include the normal summer break between academic years. However, if the participant is enrolled for the summer term, "breaks" would include the period of time between the spring and summer terms and between the summer and fall terms.

The Secretary does not agree with the recommendation to add disconnected youth or homeless adult SSS participants, who are not formerly homeless youth to § 646.30(j), as this would go beyond the statutory intent, which specifically references the definitions in the McKinney-Vento Homeless Assistance Act. Further, the Secretary does not believe that SSS projects will have sufficient funds to provide temporary housing assistance for many participants and provide the academic support services required under § 646.4. Therefore, the Secretary does not believe it is in the best interest of the program to expand the populations eligible for temporary housing assistance; instead the Secretary encourages SSS project to collaborate with other programs at the institution or within the community to meet the housing needs of eligible participants.

Changes: None.

What other requirements must a grantee meet? (§ 646.32)

Number of Participants (new § 646.32(a))

Comment: None.

Discussion: As discussed in the preamble discussion regarding the number of participants under the TS program, we believe it is appropriate for the Secretary to identify the minimum and maximum grant award amounts and the minimum number of participants that TRIO projects, including SSS projects, must serve each year of the grant cycle in the **Federal Register** notice inviting applications for a competition. This practice will give the Department the flexibility to establish the minimum number of participants to be served based on the available resources and other priorities for each competition and to adjust these numbers for subsequent competitions based on our experience, changing priorities, and cost analyses.

Changes: We have revised § 646.32 by redesignating current paragraphs (a) through (d) as paragraphs (b) through (e) and adding a new paragraph (a). New paragraph (a) clarifies that a grantee must serve at least the number of participants that the Secretary identifies in the application notice for the competition, and states that through this notice, the Secretary provides the minimum and maximum grant award amounts for the competition.

Coordination of Services (new paragraph § 646.32(c)(5)).

Comment: None.

Discussion: Based on comments we received on proposed § 643.11(b) for the Talent Search program—(Coordination Among Outreach Programs Serving Similar Populations), we have added a provision regarding the coordination of efforts necessary for students served by more than one Federal TRIO or other federally funded program to the additional requirements a grantee must meet under § 646.32(c)(5). Accordingly, § 646.32(c)(5) now requires the SSS grantee to maintain, to the extent practicable, a record of any services SSS participants receive during the project year from another Federal TRIO program or other federally funded programs serving similar populations. This change will help ensure that the limited funds available under TRIO and other programs for disadvantaged students are used effectively and efficiently by minimizing the duplication of services through coordination of activities.

Change: A new § 646.32(c)(5) has been added to require grantees to maintain, to the extent practicable, a record of any services SSS participants receive during the project year by other Federal TRIO or federally funded programs that serve similar populations.

Project Director (proposed § 646.32(c); final § 646.32(d))

Comment: None.

Discussion: For the reasons discussed in the preamble section on *Project Director* under the TS program (proposed § 643.32(c)(3), final § 643.32(d)(3)), we have revised proposed § 646.32(c) (final § 646.32(d)).

Changes: We have revised proposed § 646.32(c) (final § 646.32(d)) to clarify the standard the Secretary will use to consider requests for a waiver of the restriction on the number of programs a project director may administer.

Ronald E. McNair Postbaccalaureate Achievement (McNair) Program (34 CFR part 647)

What activities and services does a project provide? (§ 647.4)

Comment: Several commenters suggested a variety of changes to § 647.4. First, commenters recommended that the Department explicitly permit grantees to use grant funds for other activities or services that meet the goals of the program, to make it clear that grantees may go beyond the scope of the activities listed in the regulations. In addition, a number of commenters contended that tutoring should be moved from a required activity under § 647.4(a) to a permissible activity under § 647.4(b); these commenters argued that most McNair Scholars will not require tutoring. The commenters further suggested that the regulations should specify that tutoring may be offered directly or by referral, as needed, and also that tutoring may include peer tutoring, in addition to tutoring by a graduate student or other professional.

Finally, a few commenters requested clarification of the requirement that a McNair grantee provide summer internships for students. The commenters asked whether the internship must specifically be a research internship, be distinct from any other internship required for the completion of a degree or certificate, and whether the internship must be distinct from the research or other scholarly activities required under § 647.4(a).

Discussion: Section 647.4(b) incorporates section 402E(c) of the HEA, which lists permissible services a McNair project may provide. The regulations do not prohibit grantees from offering additional services to meet the goals of the program, and grantees may offer additional services not explicitly mentioned as required or permissible. We have revised § 647.4(b) to reflect that intent more clearly.

With regard to the comments concerning tutoring, we note that, under section 402E(b)(4) of the HEA, tutoring is a required service in the McNair program. However, a grantee may offer tutoring itself, or through linkages with other offices at an institution or another

entity. While grantees must make tutoring available, individual participants may choose whether or not to take advantage of this service.

Finally, one of the required services that a McNair grantee must provide are summer internships that advance the purpose of the McNair program, to prepare disadvantaged college students for doctoral study (see section 402E(b)(2) of the HEA). Internships do not necessarily have to involve research, but must assist students in preparing for doctoral work. There is no requirement that the summer internships be in addition to internships that may be required to complete a degree. However, internships are a separate and unique activity (see section 402E(b)(2) of the HEA) offered by a McNair grantee and may not also be counted as an opportunity for research or other scholarly activities (see section 402E(b)(1) of the HEA). The HEA clearly separates these two required activities and McNair programs must offer both.

Changes: We have revised § 647.4(b) by adding a new paragraph (b)(4) that would allow a McNair grantee to provide other services that are consistent with the purposes and goals of the McNair program.

What Definitions Apply? (§ 647.7)

Definition of Low-income

Comment: One commenter requested clarification of the definition of the term *low-income individuals* in § 647.7. The commenter recommended that the Department provide a chart or other language that clarifies the income levels that should be used in making this determination, and also that a project should use the same chart throughout an entire grant cycle.

Discussion: We did not propose any changes to the definition of *low-income individual* in the NPRM. However, the commenter does not appear to be requesting a change to this definition. Rather, the commenter seems to be seeking additional information on how to determine whether an individual meets this definition. To document low-income status, tax documents for the calendar year preceding the academic year in which the student will begin to receive services should be used. For example, students who initially participate in a McNair project in 2009–2010 academic year will have their low-income status determined by using tax documents submitted to the IRS for calendar year 2008. Also, the Department annually posts, on the TRIO Web site, a chart on Annual Income Levels for use by grantees in determining student eligibility. A grantee is only required to verify a student's low-income status prior to providing the first service to that student.

Changes: None.

Definition of Research or Scholarly Activity

Comment: Many commenters stated that the definition of *research or scholarly activity* in § 647.7 should be expanded to include examples such as developing a research proposal, implementing reporting, presenting and publishing research, and attendance at professional conferences. They argued that adding these activities as examples in the definition would clarify that "research" encompasses a range of scholarly activities that are more rigorous than typically available to undergraduates in a classroom setting.

Discussion: The Department agrees with the commenters that "research" may include a wide variety of scholarly activities, and we intend for the defined term *research or scholarly activity* to include activities such as those mentioned by the commenter. These examples are appropriate parts of a doctoral program and accordingly, could satisfy the requirement for research or scholarly activity under the McNair program. However, because there are so many examples of activities that could be covered in this definition, we are not including any examples in the regulations, but may include them in non-regulatory guidance.

Changes: None.

What assurances must an applicant submit? McNair coordination with other projects (newly redesignated § 647.11)

Comment: None.

Discussion: Based on comments we received regarding coordination of services for other TRIO Programs (see the TS, EOC, UB, and SSS discussions in this preamble), we believe it is also necessary to add a new paragraph (d) to the McNair assurances in newly redesignated § 647.11 to clarify that a student receiving benefits from a McNair project is not eligible to receive services from another McNair project at any one time. Further, we believe that it is appropriate to require each McNair project to provide an assurance it will collaborate with other McNair and SSS projects and other State and institutional programs at the grantee-institution, including those supporting undergraduate research, so that more students can be served. This change will allow McNair projects to serve more participants and reduce duplication of services, and it mirrors a similar assurance under the regulations for the TS, EOC, UB, and SSS programs. Furthermore, it is consistent with current TRIO regulations that establish age and academic level criteria for participation in each program to minimize overlap in services among programs.

Changes: We have amended newly redesignated § 647.11 to include a new paragraph (d) that requires an applicant to submit as part of its application, assurances that a student will not be served by more than one McNair project at any one time and that the McNair project will collaborate with other McNair and SSS projects and other State and institutional programs at the grantee-institution, including those supporting undergraduate research, so that more students can be served.

What selection criteria does the Secretary use? (§ 647.21(b))

Comment: We received a number of comments on the selection criteria proposed for the McNair program. First, many commenters suggested that we add "or scholarly activity" after the word "research" in proposed § 647.21 to maintain consistency with the activities and services a McNair project must provide.

Second, multiple commenters stated that the emphasis on Bachelor of Arts/Bachelor of Sciences degree attainment should not be lost with the added focus on graduate degree enrollment and attainment. These commenters recommended that the regulations for this program retain attainment of undergraduate degrees in the selection criteria; they suggested that we alter the point distribution to show that both this goal and the newly added criteria of success in helping students to enroll in and continue enrollment in graduate study are critical elements to the program.

Third, many commenters expressed concern about the new selection criteria that relate to continued enrollment in graduate study and doctoral degree attainment. These commenters suggested removing one or both of these criteria for a variety of reasons. Some expressed concern that the criteria were unclear, while others argued that these criteria should be removed from the regulations because, rather than applying to current scholars, these criteria apply to program alumni, on whom programs may not spend funds and over whom they have no control.

Discussion: First, with respect to the suggestion that we add the words "or scholarly activity" after the word "research" in § 647.21, we agree that this change is appropriate to ensure

consistency across the regulations for this program. For this reason, we are making this change.

Second, with regard to the comments concerning the appropriateness of focusing on Bachelor of Arts/Bachelor of Science degrees, we note that the HEOA made changes to the McNair program to better align the outcome criteria with the explicit goal of preparing students for success in graduate programs leading to doctoral degrees, including continued enrollment in graduate school and doctoral degree attainment. In doing so, Congress did not use the same criteria as in the current regulations (*e.g.,* attainment of a baccalaureate degree); therefore, we have used the statutory criteria. We have also decided not to change the point distribution related to these selection criteria, as we have determined that the proposed points correctly reflect the statutory goals of the program.

Third, the regulations that include the new selection criteria that relate to continued enrollment in graduate study and doctoral degree attainment appropriately reflect the statute. Section 402A(f)(3)(D)(iv) of the HEA, as amended by section 403(a)(5) of the HEOA, requires the Department to use the attainment of doctoral degrees by former participants in evaluating the quality and effectiveness of a McNair project.

Changes: We have amended § 647.21(b)(1) to add the words "or scholarly activity" after the word "research".

How does the Secretary evaluate prior experience? (§ 647.22)

Comment: Numerous commenters expressed concern about the proposed point distribution for evaluating prior experience in making awards for the McNair program. Multiple commenters expressed concern that the points are weighted too heavily on graduate school enrollment and continued enrollment in graduate school through doctoral degree attainment. These commenters argued that it does not make sense to give so many points and emphasis to areas over which a grantee has little control, as the points would be based on alumni participants instead of current scholars. Further, the commenters stated that the difficulties and costs in tracking students for these criteria merit awarding a lower point value for them. One commenter requested that the language in § 647.22(e)(3) through (e)(5) be clarified to ensure that current McNair participants are not counted in the calculation of prior experience because those individuals would not have been able to participate in graduate educational opportunities at that point in their academic careers. Multiple commenters requested that the regulations reflect a reapportionment of the PE points to focus more on the direct contact, activities, and time that the project spends with current applicants, rather than focusing on the success of students who are no longer current McNair participants. The commenters contended that it was unfair to place so much emphasis on the graduate success of a student, when grantees are not allowed to provide services to those students.

Other commenters requested that the Department clarify what is meant by the term "doctoral level degree" for purposes of calculating PE points. They urged the Department to consider other degrees besides a doctor of philosophy (Ph.D.) as a doctoral level degree; for instance, they argued that a doctor of education (ED.D), doctor of psychology (Psy.D), or doctor of social work (D.S.W.) should be considered a doctoral level degree. Further, one commenter suggested that, instead of requiring a doctoral level degree, the regulations should use the terminal degree in the field in which the degree is sought, arguing, for example, that a master of fine arts degree is the highest degree available for that particular field.

Finally, a few commenters suggested some changes to the regulatory language to clarify various provisions. Specifically, commenters recommended changing "research and scholarly activities" in proposed § 647.22(e)(2) to "research or scholarly activities" to maintain consistency with other sections in these regulations. Further, one commenter recommended adding the word "current" before the word "participants" in § 647.22(e)(1) through (e)(5).

Discussion: We disagree with the commenters' suggestions about redistributing the PE points among the criteria. Most (sixty percent) of the PE points are awarded based on the expected outcomes for participants served during the project year (see § 647.22(e)(1), (e)(2), and (e)(3)). The remaining points (6 out of a possible 15 points) are awarded based on the extent to which prior participants are moving toward achieving the main goal of the McNair program, which is attainment of doctoral degrees (see the program outcome criteria in section 402A(f)(3)(D) of the HEA).

With regard to the comments requesting clarification of what is considered a doctoral level degree, the Department agrees that this term is not limited to a doctor of philosophy. Other research intensive doctoral degrees, such as a doctor of education (Ed.D.), a doctor of psychology (Psy.D.), and a doctor of social work (D.S.W.) are appropriate to the goals of the program. However, the purpose of the McNair program is to encourage research at the doctoral level, and we, therefore, disagree with the suggestion that using the terminal degree in the field is sufficient.

Because the Department agrees with the commenters that changing the reference to "research and scholarly activities" in § 647.22(e)(2) to "research or scholarly activities" will ensure greater consistency across sections, we will make this change. Finally, we agree that we should clarify that the criteria in § 647.22(e)(2) and (e)(3) apply to "current participants"; however, instead of using the phrase "current year" we have decided to add the words "served during the project year" after the word "participants." However, § 647.22(e)(4) and (e)(5) relates to prior participants, and we will not be making any change to these paragraphs.

Changes: We have amended § 647.22(e)(2) to change the reference from "research and scholarly activities" to "research or scholarly activities". We have also amended § 647.22(e)(2) and (e)(3) by adding "served during the project year" after the word "participants."

What are allowable costs? (§ 647.30)

Comments: Two commenters suggested adding the phrase "service agreement" after the word "lease" in § 647.30(d), because many technology systems may require repairs and software packages that are made pursuant to service agreements.

Discussion: We agree with the commenters who recommended that we include service agreements as an allowable cost in § 647.30(d) and have revised the regulations accordingly.

Changes: We have revised § 647.30(d) to include to include service agreements for equipment.

What other requirements must a grantee meet? (§ 647.32)

Number of Participants (new § 647.32(a))

Comment: None.

Discussion: As discussed in the preamble discussion regarding number of participants under the TS program, we believe it is appropriate for the Secretary to identify the minimum and maximum grant award amounts and the minimum number of participants TRIO projects, including McNair projects, must serve each year of the grant cycle in the **Federal Register** notice inviting

applications for a competition. This practice will give the Department the flexibility to establish the number of participants to be served based on the available resources and other priorities for each competition and to adjust these numbers for subsequent competitions based on our experience, changing priorities, and cost analyses.

Change: We have revised § 647.32 by redesignating paragraphs (a), (b), (c), and (d) as paragraphs (b), (c), (d), and (e), respectively and adding a new paragraph (a). New paragraph (a) clarifies that a grantee must serve at least the number of participants that the Secretary identifies in the application notice for the competition, and states that through this notice, the Secretary provides the minimum and maximum grant award amounts for the competition.

Coordination of Services (new § 647.32(c)(5))

Comment: None.

Discussion: Based on comments we received on proposed § 643.11(b) for the Talent Search program—(Coordination Among Outreach Programs Serving Similar Populations), we have added a provision regarding the coordination of efforts necessary for students served by more than one Federal TRIO or other federally funded program to the additional requirements a grantee must meet under § 647.32(c)(5). We have also added a new McNair assurance requiring the coordination of efforts for students served by more than one Federal TRIO Program or other state or institutional program (see discussion regarding newly redesignated § 647.11(d)). Accordingly, § 647.32(c)(5) now requires the McNair grantee to maintain, to the extent practicable, a record of any services McNair participants receive during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the McNair program. This change will help ensure that the limited funds available under TRIO and other programs for disadvantaged students are used effectively and efficiently by minimizing the duplication of services through coordination of activities.

Change: We have added a new § 647.32(c)(5) to require grantees to maintain, to the extent practicable, records documenting any services the participant receives during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the McNair program.

Project Director (proposed § 647.32(d); final § 647.32(e))

Comments: We received a few comments requesting that we remove the requirement that a project employ a full-time project director.

Discussion: The McNair program regulations do not require McNair projects to employ a full-time project director. While we did make changes to parallel sections of the regulations for other TRIO programs, we did not propose any changes to § 647.32(e) of these regulations. Accordingly, no changes are necessary in response to these comments.

Changes: None.

Part 694—Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP)

Changes in the Cohort (§ 694.4)

Comment: One commenter asked how GEAR UP services would be provided to cohort students who move to non-participating schools after they complete the last grade level offered in a school.

Discussion: Section 694.4 addresses which students a State or Partnership must serve under GEAR UP when there are changes in the cohort. Specifically, this section of the regulations requires that a GEAR UP grantee continue to provide services to at least those students in the cohort who, after completing the last grade level offered by the school at which the cohort began to receive GEAR UP services, attend one or more participating schools that together enroll a substantial majority of the students in the cohort.

In response to the comment, we intend the term "participating schools" in § 694.4(b)(2) to refer to schools that students in a cohort attend after completing the last grade level offered by the school at which the cohort began to receive GEAR UP services.

Based on the language in § 694.4, including our use of the term "participating schools," we assume that when the commenter uses the term "non-participating schools" it does so to refer to schools that enroll no (or very few) students who have left the school at which their cohort began to receive GEAR UP services. Thus, we interpret the comment to be asking whether services must be provided to students in a cohort who, after completing the last grade level offered by the school at which the cohort began to receive GEAR UP services, move to a school that enrolls no (or very few) students from the cohort. While a GEAR UP grantee certainly could provide these students with GEAR UP services, nothing in this section requires it to do so.

We appreciate that the commenter may be concerned that GEAR UP students be able to continue to receive services regardless of what school they attend. However, we believe that an LEA would likely encounter both logistical and financial challenges that would be difficult to overcome if the LEA were required to continue to provide GEAR UP services to each student in a cohort regardless of where the student may later enroll and how many other GEAR UP students also attend that school. We believe that the language of proposed § 694.4, which we adopt in this final notice, creates the right balance for when an LEA must continue to provide GEAR UP services to these students.

Changes: None.

Waiver of Matching Requirements (§§ 694.8 and 694.9)

Comment: One commenter suggested that proposed §§ 694.8 and 694.9 may not be consistent with section 404C(b)(2) of the HEA, which was amended by section 404c(3)(C) of the HEOA. The commenter interprets this statutory section as authorizing either a State or a Partnership to apply for match relief either at the time of application or subsequent to receiving the grant award. The commenter observed that the proposed regulations do not authorize a State to seek such relief, and requested that we revise the final regulations to explain how a State may do so.

Discussion: The Secretary believes that the best statutory interpretation of the language in section 404C(b)(2) of the HEA is that the Department's authority to grant relief from the program's matching requirement to GEAR UP applicants and grantees extends to Partnerships but not to States. While section 404C(b)(2) of the HEA authorizes approval of "an eligible entity's request for a reduced match percentage," this language follows the lead sentence of the paragraph, which authorizes the Secretary, by regulation, to modify the minimum 50 percent match requirement only "for eligible entities described in section 404A(c)(2)" (*i.e.,* Partnerships). Based on this language, we do not interpret the HEA to allow States to apply for match relief either at the time of application or subsequent to the grant award.

Moreover, we believe that granting permission only to Partnerships to seek this reduced match percentage represents a reasonable approach given the greater capacity States have to provide matching contributions. We also note that during negotiated

rulemaking none of the non-Federal negotiators expressed a contrary view, or urged that the language of our proposed §§ 694.8 and 694.9 be modified to reflect the availability of waiver relief for State applicants or grantees.

Changes: None.

What priorities does the Secretary establish for a GEAR UP grant? (§ 694.19)

Comment: One commenter suggested that the proposed criteria for awarding competitive preference priority points for State applicants also be used for awarding competitive preference priority points to Partnership applicants.

Discussion: We appreciate the commenter's request that the proposed criteria for awarding competitive preference priority points to State applicants also be applied to Partnership applicants. Section 404A(b)(3) of the HEA mandates that, in making awards to State grant applicants, the Secretary must give priority to eligible applicants that carried out successful GEAR UP projects immediately before enactment of the HEOA and have a prior, demonstrated commitment to early intervention leading to college access. Because this provision only references applicability to State applicants, we believe that Congress intended it only to apply those entities and not to Partnership applicants. Therefore, the Department does not have the authority to make the change requested by the commenter.

Changes: None.

Services to students who were served under a previous GEAR UP grant (§ 694.25)

Comment: One commenter noted that summer enrichment programs would help those students who were served under a prior GEAR UP grant, but who had not yet graduated, to better prepare for postsecondary education. The commenter seemed to suggest that we revise § 694.25 to acknowledge the importance of these programs.

Discussion: The Secretary agrees with the commenter on the importance of summer programs, particularly for those students who did not graduate from high school with members of their cohort. However, such programs are already specifically authorized in § 694.22(i), and this is only one of many GEAR UP activities and strategies for helping these particular GEAR UP students to succeed. Moreover, the purpose of § 694.25 is to clarify when students who are still in secondary schools who were served under a prior GEAR UP grant need to continue to receive services under a new grant—not to specify what services grantees should provide to meet these students' needs.

Changes: None.

Executive Order 12866

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 set forth in the Executive order. Pursuant to the Executive order, it has been determined that this regulatory action will have an annual effect on the economy of more than $100 million because the amount of government transfers provided through these discretionary grant programs will exceed that amount. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(1) of the Executive order.

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

In assessing the potential costs and benefits of this regulatory action, we have determined that the benefits of the regulations justify the costs.

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

HEP and CAMP Programs

The Secretary has concluded that there is no need to discuss the changes to the regulations for HEP and CAMP in the *Regulatory Impact Analysis* because the changes to regulations for these programs were minor. The most significant changes to these regulations address who can be considered an immediate family member of a migrant individual in order to be eligible for program services. The Department determined that providing clarity to the term "immediate family member" would help ensure there is a uniform standard of eligibility for these programs.

Federal Trio Programs

Need for Federal Regulatory Action

- These Federal TRIO program regulations are needed to implement provisions of the HEOA, which changed certain features of the TRIO program. In developing these regulations, the Secretary has endeavored to regulate only where necessary: *Number of Applications:* The HEA stipulates that entities may submit multiple applications for grants under each TRIO program "if the additional applications describe programs serving different populations or different campuses." The HEA, as amended by the HEOA, defines the terms "different population" and "different campus."

- *Section 643.22(d): Rigorous Secondary School Program of Study:* The HEOA modified the HEA's outcome criteria for Talent Search by adding the completion of a "rigorous secondary school program of study" as one of the criteria to be considered in calculating prior experience points.

- *Section 643.32: Changes to Minimum Number of Participants Served in Talent Search:* In order to provide it with greater flexibility to establish the minimum number of participants in each TS grant competition, the Department has decided to eliminate the current regulatory requirement that TS projects serve a minimum number of individuals.

- *Sections 643.30 (TS), 644.30 (EOC), 645.40 (UB), 646.30 (SSS), 647.30 (McNair): Changes to Allowable Costs (Computer Hardware and Software):* The requirement that grantees must seek prior approval for purchases of computer equipment was not addressed in the statute. However, based on comments received during negotiated rulemaking and the public comment period, the Department has decided to change its allowable cost regulations with respect to the purchase of computer equipment.

Regulatory Alternatives Considered

Sections 643.7 and 643.10 (TS); 644.7 and 644.10 (EOC); 645.6 and 645.20 (UB); 646.7 and 646.10 (SSS); and 647.7 and 647.10 (McNair): Number of Applications: Different Campuses and Different Populations

The HEA stipulates that entities may submit multiple applications "if the additional applications describe programs serving different populations or different campuses." Section 402A(h)(1) and (2) of the HEA defines "different campus" and "different population." A "different campus" is defined as a site of an institution of higher education that: Is geographically apart from the main campus of the institution; is permanent in nature; and offers courses in educational programs leading to a degree, certificate, or other recognized credential. A "different population" is defined in section 402A(h)(2) of the HEA as a group of individuals that an eligible entity desires to serve through an application for a TRIO grant that is: Separate and distinct from any other population that the entity has applied for a TRIO grant to serve; and while sharing some of the same needs as another population that the entity has applied to serve, has distinct needs for specialized services.

The regulations clarify that, for the purposes of the TS and UB programs, applicants will be allowed to submit multiple applications if they plan to serve different target schools. For the SSS and McNair programs, applicants can submit multiple applications if they propose to serve different campuses.

These final regulations establish a definition of "different campus" that is different from the definition of "different campus" currently in the SSS regulations. Current SSS regulations require a "different campus" to have separate budget and hiring authority to be an eligible applicant. However, the HEA, as amended by HEOA, defined "different campus" as a site of an institution of higher education that is: "Geographically apart from the main campus of the institution," "permanent," and one that offers courses leading to an educational credential. These regulations, therefore, use the definition from the HEA.

With respect to the implementation of the HEA's definition of "different population," initially, the Department proposed to implement this definitional change consistent with its current practice. Currently, all of the TRIO programs—except for SSS—prohibit an applicant from submitting an application proposing to serve a different population within the same target area, school, campus, etc. The SSS program allows an entity to submit a separate application to serve individuals with disabilities. However, during the negotiated rulemaking sessions, the non-Federal negotiators disagreed with this approach and argued that the HEA permits applicants to submit multiple applications that propose to serve different populations, even in the same target area, school, or campus. The Secretary has adopted this latter view. Under these final regulations, therefore, an applicant planning to serve a separate population will be permitted under certain circumstances to apply for a separate grant to serve the population even if it also applies to serve a different population of students on the same campus.

While grantees must be able to serve more students and to tailor services to meet the distinct needs of different populations, the Department needs to establish some limitations on the number of separate applications an eligible entity may submit for each competition. Without such limitations, adding the definition of the term *different population* to the regulations could have the unintended consequence of disproportionately increasing funding at some institutions, agencies, and organizations that submit several applications while limiting the funds available to expand program services to other areas, schools, and institutions. To mitigate this risk and to ensure fairness and consistency in the application process, the Department has amended the regulations for each of the TRIO programs to provide that the Department will define, for each competition, the different populations for which an eligible entity can submit separate applications and publish this information in the **Federal Register** notice inviting applications and other application materials for the competition.

This approach gives the Department the flexibility to designate the different populations for each competition based on changing national needs. It also permits the Department to more effectively manage the program competitions within the available resources.

For these reasons, under the final regulations, an entity applying for more than one grant under the TS, EOC, and UB programs may submit separate applications to serve different target areas and different target schools, and may also submit separate applications to serve one or more of the different populations designated in the **Federal Register** notice inviting applications. Entities applying for grants under the SSS and McNair programs will now be able to submit separate applications to serve different campuses and may also submit separate applications to serve one or more of the different populations designated in the **Federal Register** notice inviting applications for the competition.

These regulatory changes are expected to increase the number of grant applications for SSS (and other TRIO) grants. For the SSS program, the Department estimates an increase of about 450 applicants (from 1,200 to 1,650) for each competition. With 450 new applicants devoting approximately 34 hours to the process, the Department estimates that the amount of money spent on applications by applicants will increase by $742,950. (Note, however, that the cost to individual applicants is not expected to increase).

INCREASE IN AGGREGATE APPLICANT COSTS

Burden	Calculations	Estimated increase
Professional Staff	(450 additional applications * 27 hours * $30 per hour) + Overhead at 50% of salary	$546,750
Clerical Staff	(450 additional applications * 7 hours * $12 per hour) + Overhead at 50% of salary	56,700
Use of Computer Equipment	450 additional applications * ($200 for computer time + $10 for printing)	94,500
Operation Cost	450 additional applications * $100 cost of finding and maintaining application materials.	45,000
Total		742,950

Note: Cost estimations are based on the "Supporting Statement for the Application for Grants Under the Student Support Services Program, HEOA of 2008, Title IV–A."

In addition, the cost of administering the SSS grant competition will likely increase. In particular, the Department estimates that variable costs of processing and reviewing applications will increase by 37.5 percent. The cost of retaining outside reviewers should increase to $555,000 from $404,000 while application processing costs should increase from approximately $25,000 to $34,560. Costs associated with staff time for conducting the supervised review process are expected to increase from $377,000 to $518,000. Finally, costs associated with financing workshops, field reading, and slate preparation are expected to increase from $917,000 to $1,260,625. In sum, the Department estimates the expected increase in grant applications to increase administration costs by approximately $646,000.

INCREASE IN COST TO FEDERAL GOVERNMENT

Burden	Calculations	Estimated increase
Field reviewers	Proportional increase in field reviewers as a result of increase in applications * $1,100 ($1,000 honorarium, $100 for expenses).	$151,364
Processing applications	Proportional increase in staff or staff hours as a result of increase in applications	9,426
Contractor logistical support for workshops, achieving prior unfunded applications, application processing, field reading and slate preparation.	Proportional increase in contract costs as a result of increase in applications	343,807
Staff time for conducting supervised review.	Proportional increase in staff or staff hours as a result of increase in applications	141,382
Total		645,978

Note: Cost estimations are based on the "Supporting Statement for the Application for Grants Under the Student Support Services Program, HEOA of 2008, Title IV–A."

The primary beneficiaries of the regulatory change related to different populations will be students with special needs. To the extent that college completion strategies vary across different populations of students, allowing applicants to submit separate applications for different populations should increase the delivery of the right kinds of services to students. SSS projects geared specifically towards ESL students, for instance, should be able to provide highly specialized services to these students in a more efficient and effective manner than would a general SSS project.

Section 643.30: Rigorous Secondary School Program of Study Adding Tuition as an Allowable Cost in the TS program:

The HEOA modified the outcome criteria for the TS program. These outcome criteria are used to determine the award of prior experience points for grantees that choose to apply for future awards. One of the new outcome criteria added to the statute requires grantees to report on the number of all TS participants who complete a rigorous secondary school program of study that will make the students eligible for Academic Competitiveness Grants (ACG). This new statutory criterion in and of itself does not require that TS projects provide more intensive services: It could be interpreted simply as requiring the Department to track whether TS students, with proper counseling on course selection and with referrals to tutoring services, enroll in the coursework that would qualify them for an ACG grant. (In most States, students can qualify for an ACG grant if they complete four years of English; three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics; three years of science, including at least two of three specific courses, biology, chemistry, and physics; three years of social studies; and one year of a language other than English. In addition, under the ACG program, there are other options for meeting the rigorous course of study requirement, including taking International Baccalaureate or Advanced Placement courses.)

A number of commenters on the proposed regulations contended some schools served by TS grantees do not provide the type of curriculum necessary for students to meet the ACG program's requirements for a "rigorous secondary school program of study." Consequently, they argued, grantees serving students in these schools would be at a disadvantage with respect to meeting this criterion. They specifically requested that grantees be permitted to use grant funds to enable participants in the TS program to attend classes at other schools to help grantees satisfactorily meet this new outcome criterion.

The Department has decided to allow TS grantees to use grant funds to pay a participant's tuition for a course that is part of a rigorous secondary school program of study if a similar course is not offered at a school within his or her school district provided that several conditions are met. The Department also has decided to allow TS grantees to pay for a student's transportation to a school not regularly attended by that student for that student to take a course that is part of a rigorous secondary school program of study.

To determine the impact of these regulations, we need to estimate the number of TS participants who do not have access to a rigorous secondary school program of study at their high school and the cost of providing these participants with the requisite curriculum (through payment of tuition and transportation costs to locations at which the participants will receive instruction). We also need to estimate the extent to which grantees that are serving schools with these participants will elect to incur these costs.

According to recent program data from the ACG 2007–2008 End of the Year Report, 54 percent of ACG recipients qualified under a rigorous coursework component, 41 percent under a State designated curriculum, and four percent under the Advanced Placement or International Baccalaureate Program courses. The Department asked the public for data on the extent to which rigorous coursework offerings that would meet the ACG requirements are not available at the schools or areas that are targeted under the TS program and the number of potential TS participants in these schools or areas that would be unable to meet the requirements because of the unavailability of the curriculum. The only data we received from the public

with respect to the availability of rigorous curricula at TS schools described the availability of such course offerings at the Portland Public Schools and the Hillsboro School District. According to the commenter providing these data, the secondary schools in these districts now provide a curriculum that meets the third definition of a rigorous secondary school program in these regulations and, by the 2011–2012 academic year, all these schools will be required to provide such a curriculum. Although we do not have national data on the number of affected students, we do have some data on the cost of providing tuition assistance. Based on data collected by the American Association of Community Colleges (AACC) in 2008, we estimate that the cost of providing a student with one course per semester, including required textbooks, would be approximately $560 to $1,280. AACC data indicate that the per credit costs for public community colleges range from about $20 in California to $180 in Vermont. This compares to an average grantee cost per TS participant of approximately $402 in 2008, which means that the opportunity cost of providing tuition for one TS participant to take one class at a community college is roughly equal to what it costs on average to serve 1 to 3 additional participants under the TS program prior to the enactment of HEOA. Because we do not know the extent to which grantees will elect to use funds for this purpose or the actual costs of providing access to this coursework, we asked current TS grantees to provide estimates regarding the amount of the project budget that might be used for tuition and the estimated number of participants that might benefit each year from this service if the grantee elected to provide it. A few grantees responded to this request, but their comments were based on an expectation that the new regulations would introduce a two-tiered system of service-provision in which grantees would concentrate on providing a rigorous secondary school program of study to only 10 percent of its participants. In these final regulations, the Department is clarifying that TS grantees will collaborate and coordinate with their target schools to provide access to and assistance in completing a rigorous secondary school program of study for all participants (see § 643.21(c)(4)). With respect to the benefits of this regulatory change, the Secretary believes that students enrolled in schools with curricula that do not meet the State's definition of a rigorous secondary school program of study will be the primary beneficiaries. TS participants in schools that do not offer all of the coursework needed to meet the requirements of a rigorous secondary school program of study (*e.g.,* they do not offer a physics or chemistry course) may be afforded the opportunity to take such coursework through an institution of higher education. Given the body of research suggesting that students who take rigorous classes in high school are more likely to enroll in and complete postsecondary education, providing this benefit to TS participants could improve their educational outcomes. A 2003 GAO report, for instance, reported that students taking a highly rigorous secondary school program of study were 1.7 times more likely to earn a bachelor's degree than students who took a basic high school curriculum.[6] However, grantees will need to balance the costs of providing these opportunities to individual students with the expected educational benefits to avoid an unnecessary increase in the cost of successful outcomes under this program.

Section 643.32: Changes to the Minimum Number of Participants Served in TS

Current TS regulations require that any grantee receiving an award of $180,000 or more must serve a minimum of 600 individuals. In these final regulations, the Department removes this requirement that TS projects serve a minimum number of individuals.

The Department has decided to take this action to provide it flexibility in each competition to establish the minimum number of participants that must be served, and to adjust these numbers in subsequent competitions based on experience, cost analyses, and other factors.

The Department is committed to encouraging TS grantees to identify and adopt the most cost-effective strategies to help disadvantaged youth complete secondary school programs, enroll in or reenter education programs at the postsecondary level, and complete postsecondary education programs. The Department intends to design future TS grant competitions to achieve this objective. Grant competition notices will set parameters that are consistent with the statute to encourage adoption of cost effective practices using the best available evidence. This will include setting a minimum number of program participants for each competition to promote adoption of cost-effective practices.

In accordance with § 643.32(b) of the final regulations, the Secretary will specify the number of participants a TS project will be expected to serve each year of the grant cycle through the **Federal Register** notice inviting applications for a competition. Through this notice, the Secretary will also provide the minimum and maximum grant award amounts for the project period.

Sections 643.30 (TS), 644.30 (EOC), 645.40 (UB), 646.30 (SSS), 647.30 (McNair): Changes to Allowable Costs (Computer Hardware and Software)

Under the final regulations, TRIO projects no longer are required to obtain the Secretary's approval before purchasing computer and software equipment. This regulatory change eliminates administrative costs associated with obtaining this approval.

GEAR UP

Need for Federal Regulatory Action

The final GEAR UP regulations are needed to implement provisions of the HEOA, which changed certain features of the GEAR UP program. The Secretary has endeavored to regulate only where necessary, and in ways that to the extent possible reflect the recommendations of the non-Federal negotiators. The statutory changes that have prompted us to make changes in these regulations follows:

- *Section 694.19—Priority:* Section 404A(b)(3)(A) of the HEA now requires that priority be given to those States that have "carried out successful [GEAR UP] programs" prior to enactment of the HEOA, and have a "prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies."
- *Section 694.8—Waiver of Matching Requirements:* Section 404C(b)(2) of the HEA, as amended by the HEOA, permits the Secretary to waive the matching requirement for a Partnership in whole or in part if, at the time of application, the Partnership demonstrates significant economic hardship that precludes it from meeting the matching requirement, or requests that its contributions to the scholarship fund under section 404E of the HEA be matched on a two-for-one basis. Section 404C(b)(2) of the HEA also permits the Secretary to waive the matching requirement for any Partnership grantee that demonstrates that the matching funds described in its application are not available and that it

[6] GAO, "Additional Efforts Could Help Education With its Education Goals," May 2003, available at *http://www.gao.gov/new.items/d03568.pdf.*

has exhausted all revenues for replacing these matching funds.

• *Sections §§ 694.12 and 694.14—Scholarship Component:* Section 404E(e)(1) of the HEA, as amended by the HEOA, requires each State grantee to reserve an amount of money that is not less than the minimum scholarship amount described in section 404E(d) of the HEA, multiplied by the number of students the grantee estimates will complete a secondary school diploma or its equivalent as may be required for the students' admission and enrollment at an institution of higher education. The Department interprets this new statutory provision along with the new requirement in section 404E(d) of the HEA that all eligible students (as defined in section 404E(g) of the HEA), whether served by a State or Partnership grantee, who enroll in an institution of higher education receive at least the minimum Federal Pell Grant award, to require any GEAR UP grantee subject to the section 404E requirements to provide this minimum award to all GEAR UP students enrolled in an institution of higher education. This statutory change led the Department to revisit its current regulations governing the provision of continuation scholarships.

• *Section § 694.16—Return of Unused Scholarship Funds:* Section 404E(e)(4)(A) of the HEA, as amended by the HEOA, now requires State grantees either to redistribute to other eligible students scholarship funds that are not used by eligible students within six years of the student's completion of secondary school or return those funds to the Secretary for distribution to other grantees in accordance with the funding rules described in section 404B(a) of the HEA.

Regulatory Alternatives Considered

Section 694.19: Priority

Final § 694.19 clarifies how the Department will implement the statute's requirement that priority in making awards be given to those States that meet the following elements: (1) Prior to enactment of the HEOA have "carried out successful GEAR UP programs" and (2) have a "prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies." While the Department could seek to implement this statutory priority by having applicants address in their applications how they met of these elements, we believe that imposing this kind of data burden is unnecessary.

Instead, we will rely, where possible, on reports that applicants previously submitted in implementing their prior GEAR UP projects. Thus, to implement this statutory priority, the Department will grant "priority preference points" to State applicants, based, in part, on their prior submission of data, including outcome data, about their projects and other information available to the Department. At present, the Department is considering implementing the second element of the priority, which concerns a prior, demonstrated commitment to early intervention leading to college access, through review of the new GEAR UP application itself given that we do not know how else the Department would obtain the information it needs to determine the extent to which applicants would meet the second element of the priority. Moreover, should the Department determine that it needs applicants to provide more information on this second element in their applications, the Department believes that the additional burden would be very small, and that the costs of this additional administrative burden would be far outweighed by the benefits of ensuring that the Department is able to give priority to the most deserving State applicants.

Sections 694.8 and 694.9: Waiver of Matching Requirements

Consistent with section 404C(b) of the HEA, as amended by the HEOA, these new sections specify the circumstances in which the Secretary will consider requests from applicants for a waiver of GEAR UP's matching requirement based on significant economic hardship, and from grantees based on the unavailability of matching funds as described in section 404C(b)(2)(A) and (b)(2)(B) of the HEA. (Section 404C(b)(2)(A)(ii) of the HEA also authorizes a Partnership applicant to request that contributions to scholarship funds established under section 404E of the HEA be matched on two-to-one basis, but final § 694.8(c) simply repeats this statutory provision.)

The final regulations governing waiver requests by applicants (§ 694.8) and by grantees (§ 694.9) provide significant benefit to the public, and do so in numerous ways. First, they provide that the Secretary will entertain waiver requests of significant amounts from applicants and grantees—up to 75 percent for up to two years in the case of an applicant that demonstrates a significant economic hardship stemming from a specific, exceptional, or uncontrollable event, and up to 50 percent for up to two years in the case of an applicant with a pre-existing and on-going significant economic hardship that precludes the applicant from meeting the matching requirement. Second, by providing clarifying examples of the kinds of economic situations and events that would give rise to approval of an applicant's or grantee's waiver requests, the final regulations advise the public of the considerations the Secretary will examine upon receipt of a waiver request.

Finally, for an applicant in an area that faces chronic economic challenges expected to affect the life of the GEAR UP project, § 694.8(b)(3) permits the Secretary to grant tentative approval of the waiver for the entire project period, subject to the Partnership's submission of documentation every two years that confirms (1) the continued economic hardship, and (2) the Partnership's continuing and unsuccessful attempts to secure matching contributions. This regulatory provision both eliminates the applicant's need to prepare a non-Federal budget as part of its application, and upon initial approval of the waiver request, provides a basis for predicting whether or not the Secretary will extend the waiver in future years.

Thus, these regulatory provisions provide a substantial benefit to grantees meeting the new criteria. For example, in 2009, the average GEAR UP grant award made to a Partnership was approximately $1.1 million. Because, absent a waiver, GEAR UP grantees must match the amount of Federal expenditures, the average annual matching requirement for a Partnership was also $1.1 million in 2009. However, under §§ 694.8(b) and 694.9(a)(1), a Partnership-applicant that can demonstrate an ongoing significant economic hardship that precludes it from meeting the matching requirement, or a Partnership grantee that can demonstrate that its matching contributions are no longer available and that it has exhausted all funds and sources of potential replacement contributions, could receive a waiver up to 50 percent, or on average up to $600,000 per year. And, under §§ 694.8(a) and 694.9(a)(2), a Partnership that can demonstrate the unavailability of match due to an uncontrollable event such as a natural disaster that has had a devastating impact on members of the Partnership and the community in which they operate may receive a waiver of up to 75 percent—thus creating a benefit (*i.e.,* a lessened private commitment) on average of up to $900,000 per year. Given the current national economic climate, such waiver requests seem likely. Moreover, for grantees that

would not be able to continue operating their GEAR UP projects without these waivers, these regulations enable the participating students to continue to receive GEAR UP services, albeit at a reduced level given the smaller matching contributions.

In considering the amount of match subject to possible waiver, the non-Federal negotiators opposed waivers of greater size. They stressed the importance of a vibrant and committed partnership in GEAR UP projects required partners to maintain a commitment of their own resources to help provide needed GEAR UP services. Moreover, the non-Federal negotiators also noted that even under current economic conditions, partners committed to the GEAR UP projects should be able to secure substantial in-kind matching contributions. Accordingly, they rejected options under which the Secretary might provide a waiver of the matching contributions for one or more years of the project because of economic conditions or a one-time exceptional or uncontrollable event waiver of up to 100 percent.

We agree with the non-Federal negotiators on this issue. We believe that our decision to allow the Secretary to grant waivers of the program's matching requirement of up to 50 and 75 percent strikes the right balance between (a) providing relief where circumstances beyond the control of a Partnership affect its ability to maintain its required match, and (b) the need for members of the Partnership to be truly committed to helping to provide the services that participating GEAR UP students need.

Sections 694.12 and 694.14: Scholarship Component

Final § 694.14(g) makes the requirement in prior § 694.10(d) that grantees participating in the scholarship component must grant continuation scholarships to each student who was granted an initial scholarship (and who remains eligible) inapplicable to grantees that receive their initial GEAR UP awards on or after August 14, 2008. Our decision to remove this financial burden from these grantees recognizes that by requiring each eligible student to receive at least the Federal Pell Grant minimum award, section 404E of the HEA, as amended by the HEOA, will leave grantees with insufficient scholarship funds to meet the current regulatory requirement. While GEAR UP students may bear a corresponding cost by not having these continuation awards available to them, this cost results from the new statutory requirement that all eligible students receive at least the Pell Grant minimum award. Because the minimum scholarship amount is equal to the minimum Federal Pell Grant award, which is defined in section 401(b)(4) of the HEA as 10 percent of the maximum Pell Grant award, the benefit to grantees as a result of final § 694.14(g) is equal to at least 10 percent of the appropriated maximum Pell grant award in a given year, multiplied by the number of individuals the grantee determines will not receive continuation awards. Importantly, because removing the continuation award requirement from the GEAR UP regulations only applies to new awards, no GEAR UP students in newly funded projects will have the expectation of receiving a GEAR UP continuation scholarship.

Section 694.16: Return of Unused Scholarship Funds

Section 404E(e)(4)(A)(ii) of HEA, as amended by the HEOA, requires grantees to return to the Secretary any scholarship funds that remain after they have first redistributed unused funds to eligible students. To enable the Department to monitor these scholarship accounts and ensure that Federal funds reserved for scholarships are expended as intended, the Department has added § 694.16(c), which requires grantees participating in the scholarship component of the program to provide annual information, as the Secretary may require, on the amount of Federal and non-Federal funds reserved for GEAR UP scholarships, and the disbursement of those scholarship funds to eligible GEAR UP students. These annual reports will need to be submitted until all of the funds are either disbursed or returned to the Secretary.

This requirement imposes an administrative burden on the grantees. Grantees will be able to charge some of these administrative costs to their award of Federal GEAR UP grant funds because some of these annual reports will be prepared and submitted during the project period. Other annual reports will need to be prepared and submitted after the six-or seven-year GEAR UP project period has ended (by which time it is possible that the Partnerships have dissolved). In order to pay the costs of post-project reports, grantees may (1) reserve additional amounts during each project period for the future costs of preparing and submitting post-project reports, or (2) authorize those administering the GEAR UP scholarship accounts to deduct such amount from the amount held in reserve for GEAR UP scholarships (assuming that all eligible students will still be able to receive a minimum Federal Pell Grant award).

Because the Department has not yet established detailed reporting requirements for this regulatory provision, it is difficult to estimate the costs that grantees could charge to GEAR UP funds. However, based on all available information, the Secretary believes that the costs introduced by this regulatory provision are justified by the Department's need to have the necessary information to monitor the millions of dollars of Federal funds obligated to GEAR UP scholarship accounts.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the Federal payments to be made to institutions of higher education, public and private agencies and organizations, and secondary schools under these programs as a result of this regulatory action. Expenditures are classified as transfers to those entities.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers (in millions)
Annual Monetized Transfers.	$1,233
From Whom to Whom	Federal Government to institutions of higher education, public and private agencies and organizations, and secondary schools.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant impact on a substantial number of small entities. The regulations affect institutions of higher education, States, LEAs, and nonprofit organizations.

The Regulatory Flexibility Act defines three types of "small entities." They include "small businesses," which have the same meaning as "small business concern" under section 3 of the Small Business Act and includes firms that are "independently owned and operated" and "not dominant in its field of operation." The U.S. Small Business Administration further defines small business by developing size standards

by industry. The definition of small business includes for-profit schools with total annual revenue below $7,000,000. The definition of small entity also includes "small organizations," which are defined as "any not-for-profit enterprise which is independently owned and operated and not dominant in its field," and "small governmental jurisdictions," which include schools districts under 50,000.

HEP and CAMP

The Secretary believes that the minor changes reflected in the HEP and CAMP regulations will not affect small entities.

Federal TRIO Programs

The Secretary believes that the regulations for the Federal TRIO Programs will not adversely impact any small entities receiving TRIO grants. The Department has determined that approximately 141 of the 2,887 TRIO grantees are defined as "small entities" under the U.S. Small Business Administration's size standards. Of these 141 entities, 133 are nonprofit organizations that receive less than $5,000,000 in total annual revenue, 7 are LEAs or tribes with jurisdictions containing fewer than 50,000 people, and one is a secondary school. The Secretary believes that the final Federal TRIO regulations will not negatively impact these small entities and, in fact, believes that small grantees will benefit from these regulations. For example, the removal of the minimum students served requirement under the TS program will benefit small entities, whose typically smaller budgets make it difficult to serve large numbers of students. In addition, the elimination of the requirement for grantees to obtain the Secretary's approval before purchasing computer equipment will benefit small grantees, in particular, because administrative costs for these grantees are most burdensome. Most importantly, given that TRIO programs are competitive grant programs, all costs of participating are reimbursed by the grant.

GEAR UP

The Secretary believes that the final GEAR UP regulations will not adversely impact any small entities receiving GEAR UP grants. The 42 States receiving grants are not small entities because each State has a population exceeding 50,000. Thirty of the fiscal agents for the 154 Partnership grants are LEAs; according to the U.S. Census Bureau, 6 of these LEAs have jurisdiction over an area with fewer than 50,000 residents, and as such, are defined as "small entities" under the U.S. Small Business Administration size standards. However, the Secretary believes that these small entities will not be adversely impacted by the regulations. In accordance with statutory changes, the regulations regarding matching requirement waivers should particularly benefit small fiscal agents, which are more vulnerable to economic hardship than large fiscal agents, and, therefore, more likely to qualify for waivers.

Paperwork Reduction Act of 1995

Sections 642.21, 642.22, and 642.25 of the Training Program for Federal TRIO Programs (Training) regulations; §§ 643.21, 643.22, 643.24 and 643.32 of the Talent Search (TS) regulations; §§ 644.21, 644.22, 644.24, and 644.32 of the Educational Opportunity Centers (EOC) regulations; §§ 645.31; 645.32, 645.35, and 645.43 of the Upward Bound (UB) regulations; §§ 646.11, 646.21, 646.22, 646.24, 646.32, and 646.33 of the Student Support Services (SSS) regulations; §§ 647.21, 647.22 and 647.24 of the Ronald E. McNair Postbaccalaureate Achievement Program (McNair); and §§ 694.7, 694.8, 694.9, 694.14, 694.19, and 694.20 of the GEAR UP regulations contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

Parts 642, 643, 644, 645, 646, 647—Federal TRIO Programs

Recent grant application packages for the Training, SSS, TS, EOC, UB, and McNair programs have been or will be discontinued; new application packages for these programs will be developed prior to their next competitions, and will reflect the regulatory changes included in these final regulations. For each new application, a separate 30-day **Federal Register** notice will be published to solicit comments on the new application prior to the next scheduled competition for the program.

Likewise, any regulatory changes applicable to the annual performance reports (APRs) will affect grants awarded under competitions conducted after the enactment of the HEOA. The APRs for the first year of a new grant will be due approximately 15 months after the beginning of the new grant period. Until new grants are awarded, the Department will continue to use the existing APR for the program. A new APR for each program that addresses the new HEOA requirements will be developed for the new grant period. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form for each program prior to its usage.

Sections 642.21 and 642.25 (Training)—Selection criteria the Secretary uses to evaluate an application for a new grant and the second review process for unsuccessful applicants.

The final regulations for the Training program amend the selection criteria the Secretary uses to evaluate an application for a new grant to conform to current practice. Further, section 402A(c)(8)(C) of the HEA established a formal second review process for unsuccessful TRIO applicants. Therefore, the final regulations include a new section that establishes processes and procedures for a second review of unsuccessful applications. The new application will include the changes to the selection criteria and describe the processes and procedures for the second review of unsuccessful applications.

Specifically, these regulations remove the *Need* criterion from the selection criteria for the Training program (current § 642.31(f)) to conform to current practice. An applicant for a Training grant now will need to address one of the absolute priorities established in the **Federal Register** notice inviting applications for the competition. With the absolute priorities, the Department will establish the "need" for the proposed training; thus, the *Need* selection criterion is no longer necessary. This regulatory change will reduce the amount of information an applicant must include in its application.

In addition, the application will describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the final regulations, only those applicants in the proposed "funding band" will be eligible to request a second review. As described in the regulations, the Department will notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's prior experience (PE) scores, if applicable. The applicant will be given at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant must provide evidence

demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, is not permitted to submit any additional data or information related to the criteria used to evaluate the quality of the application that was not included in its original application.

The regulatory change to the selection criteria reduces the amount of information an applicant must include in its application, resulting in an estimated burden reduction of 240 hours. In addition, we estimate that approximately 10 percent of the applications received under each competition for Training grants will score within the "funding band." For each applicant in the "funding band" that requests a second review, we estimate an additional burden of two hours for a burden increase of 12 hours, which includes the time an applicant would need to review the peer reviewers' evaluations and, if applicable, the PE assessment and submit a written request for a second review.

Taken together, the regulatory changes reflected in §§ 642.21 and 642.25 will result in a net total burden reduction of 228 hours, reflected in OMB Control Number 1840–NEW1.

Sections 643.21 and 643.24 (TS)—Selection criteria the Secretary uses to evaluate an application for a new grant and the second review process for unsuccessful applicants.

The final regulations amend the selection criteria the Secretary uses to evaluate an application for a new TS grant to address statutory changes resulting from the HEOA. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, added requirements for a formal second review process for unsuccessful applicants. Therefore, the final regulations add a new section that establishes processes and procedures for a second review of unsuccessful applications. The new application will include the changes to the selection criteria and the processes and procedures for the second review of unsuccessful applications.

The HEOA made significant changes to the purpose and goals of the TS program as reflected in changes to applicant eligibility, the list of required and permissible services, and the outcome criteria. To better align the selection criteria with these statutory changes, we revised the following selection criteria: § 643.21(a) (Need for the project); 643.21(b) (Objectives); 643.21(c) (Plan of operation); and 643.21(d) (Applicant and community support).

In addition, the application for TS competitions will describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the regulations, only those applicants in the proposed "funding band" will be eligible to request a second review. As described in the final regulations, the Department will notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's PE scores, if applicable. The applicant will be given at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant will need to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, will not be able to submit any additional data or information related to the criteria used to evaluate the quality of the application that was not included in its original application.

The Department does not expect the changes to the TS selection criteria to increase an applicant's paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for TS grants will score within the "funding band". For each applicant in the "funding band" that requests a second review, we estimate an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers' evaluations and, if applicable, the PE assessment and submit a written request for a second review. This will result in a total burden increase of 60 hours for the revised application, which will be reflected in a new OMB Control Number 1840–NEW2. The Department has already solicited public comments in a separate 30-day **Federal Register** notice that was published on August 5, 2010 (75 FR 37415) on the new application process that will be used for the FY 2011 competition for new TS grants; the estimated deadline date for receiving applications for this competition is December 2010.

Sections 644.21 and 644.24 (EOC)—Selection criteria the Secretary uses to evaluate an application for a new grant and the second review process for unsuccessful applicants.

The final regulations for the EOC program amend the selection criteria the Secretary uses to evaluate an application for a new grant to address statutory changes resulting from the HEOA. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, added requirements for a formal second review process for unsuccessful applicants. Therefore, the final regulations will establish processes and procedures for a second review of unsuccessful applications. The new grant application for the EOC program will include the changes to the selection criteria and describe the processes and procedures for the second review of unsuccessful applications.

Revisions in the selection criteria are needed to address the statutory changes resulting from the HEOA. The HEOA made changes to the outcome criteria. To better align the selection criteria with these statutory changes, we revised the selection criteria in § 644.21(b) (Objectives). The revised selection criteria replace existing criteria.

In addition, the EOC grant application will describe the procedures an unsuccessful applicant would need to follow to request a second review of its application. Under these regulations, only those applicants in the "funding band" will be eligible to request a second review. As described in the regulations, the Department will notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's PE scores, if applicable. The applicant will be given at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant will need to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, will not be able to submit any additional data or information related to the criteria used to evaluate the quality of the application that was not included in its original application.

The Department does not expect these changes to the selection criteria will increase an applicant's paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for EOC grants will score within the "funding band." For each applicant in the "funding band" that requests a second review, we estimate an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers' evaluations and, if applicable, the PE assessment and submit a written request for a second review. This will result in a total burden increase of 20 hours for the revised application, which will be reflected in a new OMB Control Number 1840–NEW3. A separate 30-day **Federal Register** notice will be published to solicit public comment on the new application form to be used for the next competition for new EOC grants currently scheduled for winter 2011.

Sections 645.31 and 645.35 (UB)—Selection criteria the Secretary uses to evaluate an application for a new grant and the second review process for unsuccessful applicants.

The final UB regulations amend the selection criteria the Secretary uses to evaluate an application for a new grant to address statutory changes resulting from the HEOA. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, added requirements for a formal second review process for unsuccessful applicants. Therefore, the final regulations establish processes and procedures for a second review of unsuccessful applications. The new application for UB grant competitions will include the changes to the selection criteria and describe the processes and procedures for the second review of unsuccessful applications.

The HEOA made changes to applicant eligibility and the outcome criteria. To better align the selection criteria with these statutory changes, we revised the following selection criteria: §§ 645.31(b) (Objectives) and 645.31(d)(2) (Applicant and community support). The revised selection criteria replace the criteria in current §§ 645.31(b) and 645.31(d)(2).

In addition, the application will describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the regulations, only those applicants in the "funding band" will be eligible to request a second review. As described in the final regulations, the Department will notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's PE scores, if applicable. The applicant will be given at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant will need to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, will not be permitted to submit any additional data or information related to the criteria used to evaluate the quality of the application that was not included in its original application.

The Department does not expect these changes to the selection criteria to increase an applicant's paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for UB grants will score within the "funding band." For each applicant in the "funding band" that requests a second review, we estimate an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers' evaluations and, if applicable, the PE assessment and submit a written request for a second review. This will result in a total burden increase of 80 hours for the revised application, which will be reflected in a new OMB Control Number 1840–NEW4.

A separate 30-day **Federal Register** notice will be published to solicit public comment on the new application form to be used for the next competition for new UB grants currently scheduled for fall 2011.

Sections 646.11, 646.21 and 646.24 (SSS)—The assurances and other information an applicant must include in an application, the selection criteria the Secretary uses to evaluate an application for a new grant and the second review process for unsuccessful applicants.

The final SSS regulations amend the selection criteria the Secretary uses to evaluate an application for a new grant to address statutory changes resulting from the HEOA and add the statutory requirement that an applicant include in its application a description of its efforts in providing participants with sufficient financial assistance. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, has added requirements for a formal second review process for unsuccessful applicants. Therefore, the final regulations include a new section that establishes processes and procedures for a second review of unsuccessful applications. The new application will include the changes to the selection criteria and describe the processes and procedures for the second review of unsuccessful applications.

The HEOA made changes to the outcome criteria. To better align the selection criteria with these statutory changes and current practice, we revised § 646.21(b) (Objectives). In addition, we have revised § 646.11 to include the requirement that the applicant discuss in its application its efforts to provide participants sufficient financial assistance.

The application for SSS grants will describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the SSS regulations, only those applicants in the "funding band" are eligible to request a second review. As described in the regulations, the Department will notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's PE scores, if applicable. The applicant will be given at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant must provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative, or scoring error in the processing or review of the application. The applicant, however, will not be permitted to submit any additional data or information related to the criteria used to evaluate the quality of the application that was not included in its original application.

The Department does not expect the changes to the SSS selection criteria or the assurances that an applicant must provide in its application will increase an applicant's paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for SSS grants will score within the "funding band" and be eligible for a second review. For each applicant in the "funding band" that requests a second review, we estimate

an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers' evaluations and, if applicable, the PE assessment and submit a written request for a second review. This will result in a total burden increase of 66 hours for the revised application, which will be reflected in a new OMB Control Number 1840–NEW5.

A separate 30-day **Federal Register** notice will be published to solicit public comment on the new application form to be used for the next competition for new SSS grants currently scheduled for fall 2014.

Sections 647.21 and 647.24 (McNair)—Selection criteria the Secretary uses to evaluate an application for a new grant and the second review process for unsuccessful applicants.

The final McNair regulations amend the selection criteria the Secretary uses to evaluate an application for a new grant to address statutory changes resulting from the HEOA. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, added requirements for a formal second review final for unsuccessful applicants. Therefore, the final McNair regulations establish processes and procedures for a second review of unsuccessful applications. The new application will describe the changes to the selection criteria and the processes and procedures for the second review of unsuccessful applications.

The HEOA made changes to the outcome criteria. To better align the selection criteria for McNair with these statutory changes and current practice, we revised § 647.21(b) (Objectives).

In addition, the McNair grant application will describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the final regulations, only those applicants in the "funding band" will be eligible to request a second review. As described in the final regulations, the Department will notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's PE scores, if applicable. The applicant will be given at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant will need to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, will not be permitted to submit any additional data or information related to the criteria used to evaluate the quality of the application that was not included in its original application.

The Department does not expect the changes to the selection criteria for the McNair program to increase an applicant's paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for McNair grants will score within the "funding band." For each applicant in the "funding band" that requests a second review, we estimate an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers' evaluations and, if applicable, the PE assessment and submit a written request for a second review. This will result in a total burden increase of 16 hours for the revised application, which will be reflected in a new OMB Control Number 1840–NEW6. A separate 30-day **Federal Register** notice will be published to solicit public comment on the new application form for the next competition for new McNair grants currently scheduled for winter 2012.

Section 642.22 (Training)—How does the Secretary evaluate prior experience?

The HEA does not establish specific outcome criteria for the Training program; the program outcome criteria for evaluating a grantee's PE are established in the regulations.

Under the final regulations for the Training program, we will award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its APRs. The regulations amend the PE criteria the Secretary uses to award PE points as follows.

For Training (Newly redesignated § 642.20 and 642.22), we clarified the PE criteria and updated the regulations to reflect the maximum number of PE points a Training program grantee may earn. The maximum number of points changes from 8 points to 15 points.

The burden hour estimate associated with this APR is reported under OMB Control Number 1894–0003, the Department's generic performance report Standard 524B form. The Department does not expect the changes reflected in this provision to increase burden.

Sections 643.22 and 643.32 (TS)—How does the Secretary evaluate prior experience? and New recordkeeping requirement.

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria to be used to determine an entity's PE of high quality service delivery and for the purpose of reporting annually to Congress on the performance of the TS program. Prior to the enactment of the HEOA, the PE criteria were established only in the regulations.

Under the final TS regulations, we will award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its APRs. The regulations amend the criteria the Secretary uses to award PE points.

The final TS regulations amend the PE criteria to address statutory changes resulting from the HEOA. The new statutory outcome and PE criteria for TS require grantees to report on: (1) Secondary school persistence of participants; (2) secondary school graduation of participants with regular secondary school diploma; (3) secondary school graduation of participants in a rigorous secondary school program of study; (4) the postsecondary enrollment of participants; and (5) the postsecondary completion of participants.

We also amended the recordkeeping requirements in § 643.32(c) to require that a TS grantee, to the extent practicable, keep a record of any services its participants receive during the project year from another Federal TRIO program or other federally funded program serving similar populations.

Currently one APR form is used for both the TS and EOC programs. Because of the changes to TS, the Department plans to develop a new APR for TS. The Department expects the reporting and recordkeeping requirements for TS to increase the reporting burden for this new data collection to 16 hours for each grantee. This will result in a total burden increase of 7,520 hours for the new APR, which will be reflected in a new OMB Control Number 1840–NEW7. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in fall 2012.

Sections 644.22 and 644.32 (EOC)—How does the Secretary evaluate prior experience? and New recordkeeping requirement.

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria to be used to determine an entity's PE of high quality service delivery and for the purpose of reporting annually to Congress on the performance of the EOC program. Prior to the HEOA, the PE criteria were established only in the regulations.

Under the final EOC regulations, we will award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its APRs. The final regulations amend the criteria the Secretary uses to award PE points.

We also amended the recordkeeping requirements in § 644.32(c) to require that an EOC grantee, to the extent practicable, keep a record of any services its participants receive during the project year from another Federal TRIO program or other federally funded program serving similar populations.

The new statutory PE criteria are similar to the current regulatory PE criteria for the EOC program (see current § 644.22); therefore, the Department does not expect the changes in § 644.22 to increase the burden on an EOC grantee. However, the Department expects the new recordkeeping requirements for EOC to increase the reporting burden by 2 hours per grantee (248 total hours). However, when a new TS APR is developed, the current TS/EOC form will not be used by TS grantees; therefore, we expect a burden decrease for this data collection of 2,820 hours; therefore, the net reduction in burden hours will be 2,572, which will be reflected in a new OMB Control Number 1840–NEW8.

A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in fall 2012.

Sections 645.32 and 645.43 (UB)—How does the Secretary evaluate prior experience? and New recordkeeping requirement.

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria to be used to determine an entity's PE of high quality service delivery and for the purpose of reporting annually to Congress on the performance of the UB program. Prior to the enactment of the HEOA, the PE criteria were established only in the regulations.

Under the final regulations for the UB program, we award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its APR. The final regulations amend the criteria the Secretary uses to award PE points.

Revisions in the PE criteria are needed to address statutory changes resulting from the HEOA. The new statutory outcome PE criteria for UB require grantees to report on: (1) The academic performance of participants; (2) secondary school retention and graduation of participants; (3) completion by participants of a rigorous secondary school program of study; (4) the postsecondary enrollment of participants; and (5) the postsecondary completion of participants.

We also amended the recordkeeping requirements in § 645.43(c) to require that an UB grantee, to the extent practicable, keep a record of any services its participants receive during the project year from another Federal TRIO program or other federally funded program serving similar populations.

The Department expects the new requirements that a grantee report on the completion of a rigorous secondary school program of study and postsecondary completion of participants and the new recordkeeping requirements to increase the reporting burden for this data collection by eight hours for each grantee. This will result in a total burden increase of 9,144 hours for the revised APR, which will be reflected in a new OMB Control Number 1840–NEW9.

A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in fall 2013.

Sections 646.22, 646.32 and 646.33 (SSS)—How does the Secretary evaluate prior experience? New recordkeeping requirement and Addition of the statutory matching requirements for grantees that use Federal SSS funds for Grant aid.

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria to be used to determine an entity's prior experience of high quality service delivery and for the purpose of reporting annually to Congress on the performance of the SSS program. Prior to the HEOA, the PE criteria were established only in the regulations.

Under the final regulations for the SSS program, we award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its APR. The final regulations amend the criteria the Secretary uses to award PE points.

Revisions in the PE criteria are needed to address statutory changes resulting from the HEOA. The statutory outcome PE criteria for the SSS program requires grantees to report on baccalaureate degree competition for participants at four-year institutions and certificate and associate degree completion and transfers to four-year institutions for participants at two-year institutions. The Department expects that these requirements for tracking the academic progress of SSS participants through degree completion to increase the reporting burden by six hours for each grantee.

We have amended the recordkeeping requirements in § 646.32(c) to require that a SSS grantee, to the extent practicable, keep a record of any services its participants receive during the project year from another Federal TRIO program or other federally funded program serving similar populations. We estimated that this new recordkeeping requirement will increase the reporting burden by two hours per grantee.

We also added new § 646.33 to incorporate the statutory provisions that permit a grantee to use Federal grant funds to provide grant aid to students. Many grantees that use program funds for grant aid must provide a non-Federal match, in cash, of not less than 33 percent of the Federal funds used for grant aid. A grant recipient that is an institution of higher education eligible to receive funds under part A or B of title III or title V of the HEA is not required to match the Federal funds used for grant aid. For those grantees that are required to provide matching funds for grant aid (estimated at 50 percent of SSS grantees), we estimate that these regulations will increase the burden by two hours per grantee.

The combined increase will result in a total burden increase of 9,234 hours for the revised APR, which will be reflected in a new OMB Control Number 1840–NEW10. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in fall 2011.

Sections 647.22 and 647.32 (McNair)—How does the Secretary evaluate prior experience? and New recordkeeping requirement.

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria for the McNair program to be used to determine an entity's PE of high quality service delivery and for the purpose of reporting annually to Congress on the performance of the McNair program. Prior to the HEOA, the PE criteria were established only in the regulations.

Under the final regulations for the McNair program, we award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its APR. The regulations amend the criteria the Secretary uses to award PE points.

The Department expects the new statutory requirements that include long-term tracking of the academic progress of McNair participants through completion of the doctoral degree will increase the reporting burden for this data collection by four hours per grantee. We have also amended the recordkeeping requirements in § 647.32(c) to require that a McNair grantee, to the extent practicable, keep a record of any services its participants receive during the project year from another Federal TRIO program or other federally funded program serving similar populations. We estimated that this new recordkeeping requirement will increase the reporting burden by two hours per grantee.

The combined increase will result in a total burden increase of 1,200 hours for the revised APR, which will be reflected in a new OMB Control Number 1840–NEW11. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in either fall 2013.

Part 694—GEAR UP

Sections 694.7, 694.8 and 694.9—Matching Requirements for GEAR UP grants

The final regulations provide that an applicant for GEAR UP funding must state in its application the percentage of the cost of the GEAR UP project that the applicant will provide from non-Federal funds. The final regulations also provide that the Secretary may waive a portion of the matching requirement in response to a grantee's written request for a waiver of the match. The final regulations further provide the conditions that must be met for the Secretary to approve a request to waive a portion of the matching requirement and that if the Secretary grants a tentative waiver to a new grantee for the full project period because of a pre-existing or ongoing economic hardship, the recipient will need to submit documentation every two years to demonstrate that conditions have not changed.

The final regulations will provide that an applicant for GEAR UP funding must state in its application the percentage of the cost of the GEAR UP project that the application will provide from non-Federal funds. We estimate that this requirement will increase burden by 12.5 hours for each GEAR UP applicant in OMB Control Number 1840–New12, for a total burden increase of 6,250 hours, based on 500 applicants. A separate 30-day **Federal Register** notice will be published to solicit public comment on the revised application form prior to its usage, currently estimated to be spring 2011.

The final regulations also will provide that the Secretary may waive a portion of the matching requirement in response to a written request for a waiver of the match. This written request can be included in the application or submitted separately. If granted a waiver of the matching requirement, GEAR UP grantees will spend significantly less time collecting and documenting matching funds. We estimate that the final changes will decrease burden by 500 hours for each GEAR UP grantee in OMB Control Number 1840–NEW13, resulting in a total burden decrease of 7,860 hours, and likewise in OMB Control Number 1840–NEW14, resulting in a total burden decrease of 5,625. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the revised APR and FPR forms prior to their usage, currently estimated to be spring 2012.

Section 694.16(c)—Scholarship Reporting Requirements

The final regulations require grantees whose initial GEAR UP grant awards were made on or after August 14, 2008 and grantees whose initial GEAR UP grant awards were made prior to August 14, 2008, but who, pursuant to § 694.12(b)(2), elect to make scholarships pursuant to the HEOA requirements, to furnish information as the Secretary may require on the amount of any Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds. Reporting will be required until these funds are fully expended or, if Federal funds, returned to the Secretary.

We estimate that these final changes will increase burden by 400 hours for each GEAR UP grantee in OMB Control Number 1840–NEW13, resulting in a total burden increase of 8,760, and by 800 hours for each grantee in OMB Control Number 1840–NEW14, resulting in a total burden increase of 6,925. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the revised APR and FPR forms prior to their usage, currently estimated to be spring 2012.

Section 694.19—What priorities does the Secretary establish for a GEAR UP grant?

The final regulations will provide that the Secretary awards competitive preference priority points to an eligible applicant for a State grant that has carried out a successful State GEAR UP grant prior to August 14, 2008 and has a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

Applicants will respond to these priorities as part of their applications in OMB Control Number 1840–NEW12, which will increase total burden by 6,250 hours. A separate 30-day **Federal Register** notice will be published to solicit public comment on the revised application form prior to its usage, currently estimated to be spring 2011.

Section 694.20—When may a GEAR UP grantee provide services to students attending an institution of higher education?

Under the final regulations, GEAR UP applicants will be permitted to request in their applications a seventh year of funding so that the State or Partnership may continue to provide services to students through their first year of attendance at an institution of higher education.

We estimate that the final changes will increase burden by 300 hours in OMB Control Number 1840–NEW12 for each GEAR UP applicant for a total burden increase of 150,000 hours. A separate 30-day **Federal Register** notice will be published to solicit public comment on the revised application form prior to its usage, currently estimated to be spring 2011.

Consistent with this discussion, the following chart describes the sections of the final regulations involving information collections, the information being collected, and the collections that the Department will submit to OMB for

approval and public comment under the Paperwork Reduction Act of 1995.

Regulation section	Information section	Collection OMB control number
Sections 642.21 and 642.25 (Training).	The final regulations amend the selection criteria the Secretary uses to evaluate an application for a Training grant. The final regulations add a new section that establishes processes and procedures for a review of unsuccessful applications.	1840–NEW1 (Training This is a new collection. The final regulations will affect applicant burden in two ways. First, the elimination of the *Need* selection criterion reduces the amount of information an applicant must include in its application, resulting in an estimated burden reduction of 240 hours. Additionally, the final regulatory processes and procedures for a second review of unsuccessful applications will lead to an estimated burden increase of 12 hours (or, an estimated two burden hour increase for each of the estimated six applicants that will fall within an estimated 10 percent funding band under the second review process). In total, there will be an estimated decrease in burden of 228 hours.
Sections 643.21 and 643.24 (TS).	The final regulations amend the selection criteria the Secretary uses to evaluate an application for a TS grant. The final regulations also add a new section that establishes processes and procedures for a review of unsuccessful applications.	1840–NEW2 (TS) This will be a new collection. The Department has already solicited public comments in a separate 30-day **Federal Register** notice that was published August 5, 2010 on the new application process that will be used for the FY 2011 competition for new TS grants; the estimated deadline date for receiving applications is December 2010. The Department does not expect that changes to the selection criteria will change an applicant's paperwork burden. The final regulatory processes and procedures for a second review of unsuccessful applications will lead to an estimated burden increase of 60 hours (or, an estimated two burden hour increase for each of the estimated 30 applicants that will fall within an estimated two percent funding band under the second review process). In total, there will be an estimated burden increase of 60 hours.
Sections 644.21 and 644.24 (EOC).	The final regulations amend the selection criteria the Secretary uses to evaluate an application for an EOC grant. The final regulations add a new section that establishes processes and procedures for a review of unsuccessful applications.	1840–NEW3 (EOC) This will be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for winter 2011. The Department does not expect that the final amendments to the selection criteria will change an applicant's paperwork burden. The final regulatory processes and procedures for a second review of unsuccessful applications will lead to an estimated burden increase of 20 hours (or, an estimated two burden hour increase for each of the estimated 10 applicants that will fall within an estimated two percent funding band under the second review process). In total, there will be an estimated burden increase of 20 hours.
Sections 645.31 and 645.35 (UB).	The final regulations amend the selection criteria the Secretary uses to evaluate an application for a UB grant. The final regulations also add a new section that establishes processes and procedures for a review of unsuccessful applications.	1840–NEW4 (UB) This will be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2011. The Department does not expect that final amendments to the selection criteria will change an applicant's paperwork burden. The final regulatory processes and procedures for a second review of unsuccessful applications will lead to an estimated burden increase of 80 hours (or, an estimated two burden hour increase for each of the estimated 40 applicants that will fall within an estimated two percent funding band under the second review process). In total, there will be an estimated burden increase of 80 hours.
Sections 646.11; 646.21 and 646.24 (SSS).	The final regulations amend the selection criteria the Secretary uses to evaluate an application for a SSS grant and amend the assurance and other information an applicant must include in its application. The final regulations also add a new section that establishes processes and procedures for a review of unsuccessful applications.	1840–NEW5 (SSS) This will be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2014.

Regulation section	Information section	Collection OMB control number
		The Department does not expect that amendments to the selection criteria or the assurance that an applicant must describe in its application regarding its efforts to provide participants with sufficient financial assistance will change an applicant's paperwork burden. The final regulatory processes and procedures for a second review of unsuccessful applications will lead to an estimated burden increase of 66 hours (or, an estimated two burden hour increase for each of the estimated 33 applicants that will fall within an estimated two percent funding band under the second review process). In total, there will be an estimated burden increase of 66 hours.
Sections 647.21 and 647.24 (McNair).	The final regulations amend the selection criteria the Secretary uses to evaluate an application for a McNair grant. The regulations also add a new section that establishes processes and procedures for a review of unsuccessful applications.	1840–NEW6 (McNair) This will be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for winter 2012. The Department does not expect that amendments to the selection criteria will change an applicant's paperwork burden. The final regulatory processes and procedures for a second review of unsuccessful applications will lead to an estimated burden increase of 16 hours (or, an estimated two burden hour increase for each of the estimated eight applicants that will fall within an estimated two percent funding band under the second review process). In total, there will be an estimated burden increase of 16 hours.
Section 642.22 (Training).	The final regulations amend the PE criteria the Secretary uses to award PE points. Under the final regulations, we award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its annual performance report.	1894–0003 (Training) The Department will continue to use the Department's generic performance report for the Training program. The final changes reflected in this provision are editorial in nature. There will be no increase in estimated burden hours.
Sections 643.22 (TS) and 643.32.	The final regulations amend the PE criteria the Secretary uses to award PE points. Under the final regulations we award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its annual performance report.	1840–NEW7 (TS) This will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new TS grants. The revised APR is needed for fall 2012 data collection. The final regulations will increase grantee data collection and reporting requirements in two ways. First, the final regulatory amendments to the PE criteria, which address statutory changes that expand outcome and PE criteria for TS grantees to include such measures as the postsecondary completion of participants, are expected to increase grantees' reporting burden.
	The final regulations also amend the recordkeeping requirements for TS	Additionally, the final regulatory amendments to recordkeeping requirements will require that a TS grantee document the services a student, who is served by more than one TRIO or other federally funded program, is receiving from another program during the project year. This is a new data collection that also will increase grantees' burden hours. The Department expects these two changes to result in an increase of 16 burden hours per grantee. In total, for 470 grantees, there will be an estimated burden increase of 7,520 hours.
Sections 644.22 and 644.32 (EOC).	The final regulations amend the PE criteria the Secretary uses to award PE points. Under the final regulations we award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its annual performance report.	1840–NEW8 (EOC) This will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new EOC grants.The revised APR is needed for fall 2012 data collection.
	The final regulations also amend the recordkeeping requirements for EOC.	Because the new statutory PE criteria are similar to the current regulatory PE criteria, the Department does not expect the changes to affect the burden on EOC grantees.

Regulation section	Information section	Collection OMB control number
		However, the final regulatory amendments to the record-keeping requirements will require that an EOC grantee document the services a student, who is served by more than one TRIO or other federally funded program, is receiving from another program during the project year. This is a new data collection that will increase grantee's burden hours by two hours per grantee (248 total hours for 124 grantees). However, when a new TS APR is developed, the current TS/EOC form will not be used by TS grantees; therefore, we expect a burden decrease for this data collection of 2,820 hours; the net reduction in burden hours will be 2,572, which will be reflected in a new OMB Control Number 1840–NEW8.
Sections 645.32 and 645.43 (UB).	The final regulations amend the PE criteria the Secretary uses to award PE points. Under the final regulations we award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its annual performance report. The final regulations also amend the recordkeeping requirements for UB.	1840–NEW9 (UB) This will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new UB grants.The revised APR is needed for fall 2013 data collection. The final regulatory amendments to the PE criteria, which address statutory changes that expand outcome and PE criteria for UB grantees to include such measures as the postsecondary completion of participants, are expected to increase grantees' reporting burden. The Department expects changes to result in an increase of six burden hours per grantee. The final regulatory amendments to recordkeeping requirements will require that a UB grantee document the services a student, who is served by more than one TRIO or other federally funded program, is receiving from another program during the project year. This is a new data collection that also will increase a grantee's burden by an estimated two hours. In total, there will be an estimated burden increase of eight hours per grantee for a total increase of 9,144 hours for 1,143 grantees.
Sections 646.22, 646.32 and 646.33 (SSS).	The final regulations amend the PE criteria the Secretary uses to award PE points. Under the final regulations we award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its annual performance report. The final regulations amend the recordkeeping requirements for SSS and also add a new section on matching requirements for SSS.	1840–NEW10 (SSS) This will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new SSS grants. The revised APR is needed for fall 2011 data collection. The final regulations will increase grantee data collection and reporting requirements in three ways. First, the regulatory amendments to the PE criteria, which address statutory requirements for tracking the academic progress of SSS participants through degree completion, will increase the reporting burden by six hours for each grantee. Second, the final regulatory amendments to recordkeeping requirements will require that a SSS grantee document the services a student, who is served by more than one TRIO or other federally funded program, is receiving from another program during the project year. This is a new data collection that also will increase a grantee's burden by an estimated two hours. Additionally, for those grantees that are required to provide matching funds for grant aid (estimated at 50 percent of SSS grantees), the final regulations will increase burden by an estimated two hours per grantee. In total, there will be an estimated burden increase of 9,234 hours for 1,026 grantees.
Sections 647.22 and 647.32 (McNair).	The final regulations amend the PE criteria the Secretary uses to award PE points. Under the final regulations we award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its annual performance report.	1840–NEW11 (McNair) This will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new McNair grants. The revised APR is needed for fall 2013 data collection. The regulatory amendments to the PE criteria, which address statutory requirements for long-term tracking of the academic progress of McNair participants through completion of the doctoral degree, will increase the reporting burden by four hours for each grantee.

Regulation section	Information section	Collection OMB control number
		Further, the final regulatory amendments to recordkeeping requirements will require that a McNair grantee document the services a student, who is served by more than one TRIO or other federally funded program, is receiving from another program during the project year. This is a new data collection that also will increase a grantee's burden by an estimated two hours. In total, there will be an estimated burden increase of six hours per grantee for a total of 1,200 hours for 200 grantees.
694.7, 694.8, and 694.9 GEAR UP.	The final regulations will provide that an applicant for GEAR UP funding must state in its application the percentage of the cost of the GEAR UP project that the application will provide from non-Federal funds. The final regulations also will provide that the Secretary may waive a portion of the matching requirement in response to a written request for a waiver of the match. This written request can be included in the application or submitted separately. The final regulations will also provide the conditions that must be met for the Secretary to approve a request to waive a portion of the matching requirement.	1840–NEW12 This will be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for spring 2011. In total, there will be an estimated burden increase of 12.5 hours per applicant for an estimated 500 applicants. There will be an estimated burden increase of 6,250 hours. 1840–NEW13 This will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new GEAR UP grants. If granted a waiver of the matching requirement, GEAR UP grantees will spend significantly less time collecting and documenting matching funds. In total, there will be an estimated burden decrease of 46.5 hours per grantee for an estimated 169 grantees. There will be an estimated burden decrease of 7,860 hours. 1840–NEW14 This will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new GEAR UP grants. The final regulations provide that an applicant for GEAR UP funding must state in its application the percentage of the cost of the GEAR UP project that the applicant will provide from non-Federal funds. The final regulations also provide that the Secretary may waive a portion of the matching requirement in response to a grantee's written request for a waiver of the match. The final regulations further provide the conditions that must be met for the Secretary to approve a request to waive a portion of the matching requirement and that if the Secretary grants a tentative waiver to a new grantee for the full project period because of a pre-existing or ongoing economic hardship, the recipient will need to submit documentation every two years to demonstrate that conditions have not changed. In total, there will be an estimated burden decrease of 56.25 per grantee for an estimated 100 grantees.There will be an estimated burden decrease of 5,625 hours.
694.16	The final regulations will require grantees whose initial GEAR UP grant awards were made on or after August 14, 2008 and grantees whose initial GEAR UP grant awards were made prior to August 14, 2008 but who, pursuant to § 694.12(b)(2), elect to use the § 694.14 requirements (rather than the § 694.13 requirements) to furnish information on the amount of any Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds until these funds are fully expended or returned to the Secretary.	1840–NEW13 This will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new GEAR UP grants. In total, there will be an estimated burden increase of 87.6 hours per grantee for an estimated 100 grantees. There will be an estimated burden increase of 8,760 hours. 1840–NEW14 This will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new GEAR grants. There will be an estimated burden increase of 6,925 hours.

Regulation section	Information section	Collection OMB control number
		The final regulations require grantees whose initial GEAR UP grant awards were made on or after August 14, 2008 and grantees whose initial GEAR UP grant awards were made prior to August 14, 2008, to provide information as the Secretary may require on the amount of any Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds. Reporting will be required until these funds are fully expended or, if Federal funds, returned to the Secretary.
694.19	The final regulations provide that the Secretary awards competitive preference priority points to an eligible applicant for a State grant that has carried out a successful State GEAR UP grant prior to August 14, 2008 and has a prior, demonstrated commitment to early intervention, leading to college access through collaboration and replication of successful strategies.	1840–NEW12 This will be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for spring 2011. In total, there will be an estimated burden increase of 5 hours per applicant for an estimated 43 applicants. There will be an estimated burden increase of 215 hours. The final regulations will provide that the Secretary awards competitive preference priority points to an eligible applicant for a State grant that has carried out a successful State GEAR UP grant prior to August 14, 2008 and has a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.
694.20	The final regulations permit GEAR UP applicants to request in their applications a seventh year of funding so that the State or Partnership may continue to provide services to students through their first year of attendance at an institution of higher education.	1840–NEW12 This will be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for spring 2011. In total, there will be an estimated burden increase of 300 hours for each applicant for an estimated 500 applicants. There will be an estimated burden increase of 150,000 hours.

Intergovernmental Review

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

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, and based on our own 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.

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(Catalog of Federal Domestic Assistance Numbers HEP/CAMP: 84.141A, 84.149A; TRIO: 84.042A, 84.044A, 84.047A, 84.047M, 84.047V, 84.066A, 84.103A, 84.217A; GEAR UP: 84.334A, 84.334S.)

List of Subjects in 34 CFR Parts 206, 642, 643, 644, 645, 646, 647, and 694

Colleges and universities, Disadvantaged students, Educational programs, Discretionary grants, Reporting and recordkeeping requirements, Training.

Dated: September 23, 2010.

Arne Duncan,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 206, 642, 643, 644, 645, 646, 647, and 694 of title 34 of the Code of Federal Regulations as follows:

PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCY PROGRAM AND COLLEGE ASSISTANCE MIGRANT PROGRAM

■ 1. The authority citation for part 206 continues to read as follows:

Authority: 20 U.S.C. 1070d–2, unless otherwise noted.

■ 2. Section 206.3 is amended by:

■ A. In paragraph (a)(1), removing the word "parent" and adding, in its place, the words "immediate family member".

■ B. Revising paragraph (a)(2).

The revision reads as follows:

§ 206.3 Who is eligible to participate in a project?

(a) * * *

(2) The person must have participated (with respect to HEP within the last 24 months), or be eligible to participate, in programs under 34 CFR part 200, subpart C (Title I—Migrant Education Program) or 20 CFR part 633 (Employment and Training Administration, Department of Labor—Migrant and Seasonal Farmworker Programs).

* * * * *

■ 3. Section 206.4 is amended by:
■ A. Redesignating paragraphs (a)(6) and (a)(7) as paragraphs (a)(7) and (a)(8), respectively.
■ B. Adding a new paragraph (a)(6).
■ C. Adding new paragraphs (a)(9) through (a)(11).

The additions read as follows:

§ 206.4 What regulations apply to these programs?

* * * * *

(a) * * *

(6) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

* * * * *

(9) 34 CFR part 97 (Protection of Human Subjects).

(10) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing).

(11) 34 CFR part 99 (Family Educational Rights and Privacy).

* * * * *

■ 4. Section 206.5 is amended by:
■ A. Redesignating paragraphs (c)(5), (c)(6), and (c)(7) as paragraphs (c)(6), (c)(7), and (c)(8), respectively.
■ B. Adding a new paragraph (c)(5).
■ C. In newly redesignated paragraph (c)(7), removing the citation "(c)(7)" and adding, in its place, the citation "(c)(8)".
■ D. Revising newly redesignated paragraph (c)(8).
■ E. In paragraph (d)—
■ 1. Removing the citation "34 CFR 201.3" and adding, in its place, the citation "34 CFR 200.81"; and
■ 2. Removing the words "Chapter 1" and adding, in their place, the words "Title I".

The addition and revisions read as follows:

§ 206.5 What definitions apply to these programs?

* * * * *

(c) * * *

(5) *Immediate family member* means one or more of the following:

(i) A spouse.

(ii) A parent, step-parent, adoptive parent, foster parent, or anyone with guardianship.

(iii) Any person who—

(A) Claims the individual as a dependent on a Federal income tax return for either of the previous two years, or

(B) Resides in the same household as the individual, supports that individual financially, and is a relative of that individual.

* * * * *

(8) *Seasonal farmworker* means a person whose primary employment was in farmwork on a temporary or seasonal basis (that is, not a constant year-round activity) for a period of at least 75 days within the past 24 months.

* * * * *

■ 5. Section 206.10 is amended by:
■ A. In paragraph (b)(1)(iii)(B), adding the words "(including preparation for college entrance examinations)" after the word "program".
■ B. In paragraph (b)(1)(v), removing the words "Weekly stipends" and adding, in their place, the word "Stipends".
■ C. In paragraph (b)(1)(viii), adding the words "(such as transportation and child care)" after the word "services".
■ D. In paragraph (b)(1), adding a new paragraph (ix).
■ E. In paragraph (b)(2)(ii) introductory text, adding the words "to improve placement, persistence, and retention in postsecondary education" after the word "services".
■ F. In paragraph (b)(2)(ii)(A), by—
■ 1. Removing the word "and"; and
■ 2. Adding the words "economic education, or personal finance" before the word "counseling".
■ G. In paragraph (b)(2)(iv), removing the word "student" and adding, in its place, the word "students".
■ H. Redesignating paragraph (b)(2)(vi) as paragraph (b)(2)(vii).
■ I. Adding a new paragraph (b)(2)(vi).
■ J. In newly redesignated paragraph (b)(2)(vii), removing the words "support services", and adding, in their place, the words "essential supportive services (such as transportation and child care),".

The additions read as follows:

§ 206.10 What types of services may be provided?

* * * * *

(b) * * *

(1) * * *

(ix) Other activities to improve persistence and retention in postsecondary education.

(2)* * *

(vi) Internships.

* * * * *

■ 6. Section 206.11 is amended by:
■ A. In paragraph (b)(1), removing the word "and" after the punctuation";".
■ B. In paragraph (b)(2), removing the punctuation "." after the word "aid" and adding, in its place, the words ", and coordinating those services, assistance, and aid with other non-program services, assistance, and aid, including services, assistance, and aid provided by community-based organizations, which may include mentoring and guidance; and".
■ C. Adding a new paragraph (b)(3).

The addition reads as follows:

§ 206.11 What types of CAMP services must be provided?

* * * * *

(b) * * *

(3) For students attending two-year institutions of higher education, encouraging the students to transfer to four-year institutions of higher education, where appropriate, and monitoring the rate of transfer of those students.

* * * * *

§ 206.20 [Amended]

■ 7. Section 206.20(b)(2) is amended by removing the amount "$150,000" and adding, in its place, the amount "$180,000".
■ 8. Section 206.31 is added to subpart D of part 206 to read as follows:

§ 206.31 How does the Secretary evaluate points for prior experience for HEP and CAMP service delivery?

(a) In the case of an applicant for a HEP award, the Secretary considers the applicant's experience in implementing an expiring HEP project with respect to—

(1) Whether the applicant served the number of participants described in its approved application;

(2) The extent to which the applicant met or exceeded its funded objectives with regard to project participants, including the targeted number and percentage of—

(i) Participants who received a general educational development (GED) credential; and

(ii) GED credential recipients who were reported as entering postsecondary education programs, career positions, or the military; and

(3) The extent to which the applicant met the administrative requirements, including recordkeeping, reporting, and financial accountability under the terms of the previously funded award.

(b) In the case of an applicant for a CAMP award, the Secretary considers the applicant's experience in implementing an expiring CAMP project with respect to—

(1) Whether the applicant served the number of participants described in its approved application;

(2) The extent to which the applicant met or exceeded its funded objectives with regard to project participants, including the targeted number and percentage of participants who—

(i) Successfully completed the first year of college; and

(ii) Continued to be enrolled in postsecondary education after completing their first year of college; and

(3) The extent to which the applicant met the administrative requirements, including recordkeeping, reporting, and financial accountability under the terms of the previously funded award.

(Authority: 20 U.S.C. 1070d–2(e))

PART 642—TRAINING PROGRAM FOR FEDERAL TRIO PROGRAMS

■ 9. The authority citation for part 642 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–17, unless otherwise noted.

Subpart A of Part 642 [Amended]

■ 10. Section 642.1 is revised to read as follows:

§ 642.1 What is the Training Program for Federal TRIO Programs?

The Training Program for Federal TRIO programs, referred to in these regulations as the Training program, provides Federal financial assistance to train the leadership personnel and staff employed in, or preparing for employment in, Federal TRIO program projects.

(Authority: 20 U.S.C. 1070a–17)

■ 11. Section 642.2 is amended by revising the section heading to read as follows:

§ 642.2 Who are eligible applicants?

* * * * *

■ 12. Section 642.3 is amended by:
■ A. Revising the section heading.
■ B. In paragraph (a), adding the word "funded" after the word "projects".
■ C. In paragraph (b) by removing the words "staff or"; adding the words "or staff" after the word "personnel"; and adding the word "funded" after the word "projects".

The revision reads as follows:

§ 642.3 Who are eligible participants?

* * * * *

§§ 642.4 and 642.5 [Redesignated as §§ 642.5 and 642.6]

■ 13. Sections 642.4 and 642.5 are redesignated as §§ 642.5 and 642.6.

■ 14. A new § 642.4 is added to read as follows:

§ 642.4 How long is a project period?

A project period under the Training program is two years.

(Authority: 20 U.S.C. 1070a–11(b))

■ 15. Newly redesignated § 642.5 is amended by:
■ A. Revising the section heading.
■ B. Revising paragraph (a).

The revisions read as follows:

§ 642.5 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

■ 16. Newly redesignated § 642.6 is amended by:
■ A. Revising the section heading.
■ B. In paragraph (b) by revising the introductory text; revising definitions of "Federal TRIO programs", "Institution of higher education", "Leadership personnel"; adding, in alphabetical order, new definitions for "Foster care youth", "Homeless children and youth", "Individual with a disability", and "Veteran"; and removing the authority citation following the definition of "Federal TRIO programs"; and
■ C. Adding an authority citation at the end of the section.

The revisions and additions read as follows:

§ 642.6 What definitions apply?

* * * * *

(b) *Definitions that apply to this part.*

* * * * *

Federal TRIO programs means those programs authorized under section 402A of the Act: the Upward Bound, Talent Search, Student Support Services, Educational Opportunity Centers, and Ronald E. McNair Postbaccalaureate Achievement programs.

Foster care youth means youth who are in foster care or who are aging out of the foster care system.

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

Individual with a disability means a person who has a disability, as that term is defined in section 12102 of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

* * * * *

Institution of higher education means an educational institution as defined in sections 101 and 102 of the Act.

Leadership personnel means project directors, coordinators, and other individuals involved with the supervision and direction of projects funded under the Federal TRIO programs.

Veteran means a person who—

(1) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(2) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(3) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(4) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

(Authority: 20 U.S.C. 1001 *et seq.,* 1070a–11, 1070(b), 1088, and 1141)

17. Section 642.7 is added to subpart A of part 642 to read as follows:

§ 642.7 How many applications may an eligible applicant submit?

An applicant may submit more than one application for Training grants as long as each application describes a project that addresses a different absolute priority from § 642.24 that is designated in the **Federal Register** notice inviting applications.

(Authority: 20 U.S.C. 1221e–3)

18. Subpart B of part 642 is revised to read as follows:

Subpart B—What Types of Projects and Activities Does the Secretary Assist Under This Program?

Sec.

642.10 What types of projects does the Secretary assist?

642.11 What activities does the Secretary assist?

642.12 What activities may a project conduct?

Subpart B—What Types of Projects and Activities Does the Secretary Assist Under This Program?

§ 642.10 What types of projects does the Secretary assist?

The Secretary assists projects that train the leadership personnel and staff of projects funded under the Federal TRIO Programs to enable them to operate those projects more effectively.

(Authority: 20 U.S.C. 1070a–17)

§ 642.11 What activities does the Secretary assist?

(a) Each year, one or more Training Program projects must provide training for new project directors.

(b) Each year, one or more Training Program projects must offer training covering the following topics:

(1) The legislative and regulatory requirements for operating projects funded under the Federal TRIO programs.

(2) Assisting students to receive adequate financial aid from programs assisted under title IV of the Act and from other programs.

(3) The design and operation of model programs for projects funded under the Federal TRIO programs.

(4) The use of appropriate educational technology in the operation of projects funded under the Federal TRIO programs.

(5) Strategies for recruiting and serving hard-to-reach populations, including students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

(Authority: 20 U.S.C. 1070a–17)

§ 642.12 What activities may a project conduct?

A Training program project may include on-site training, on-line training, conferences, internships, seminars, workshops, and the publication of manuals designed to improve the operations of Federal TRIO program projects.

(Authority: 20 U.S.C. 1070a–17(b))

PART 642—[AMENDED]

■ 19. Part 642 is amended by redesignating subparts D and E as subparts C and D, respectively.

Subpart C of Part 642 [Amended]

§§ 642.30, 642.31, 642.32, 642.33, and 642.34 [Redesignated as §§ 642.20, 642.21, 642.22, 642.23, and 642.24]

■ 20. Newly redesignated subpart C of part 642 is amended by redesignating §§ 642.30, 642.31, 642.32, 642.33, and 642.34 as §§ 642.20, 642.21, 642.22, 642.23, and 642.24, respectively.

■ 21. Newly redesignated § 642.20 is amended by:

■ A. Revising the section heading.

■ B. In the introductory text of paragraph (a), removing the citation "§ 642.31" and adding, in its place, the citation "§ 642.21".

■ C. In paragraph (a)(1), removing the number "100" and adding, in its place, the number "75".

■ D. Revising paragraph (b).

■ E. Adding new paragraphs (c), (d), and (e).

The additions and revisions read as follows:

§ 642.20 How does the Secretary evaluate an application for a new award?

* * * * *

(b) In addition, for an applicant who is conducting a Training program in the fiscal year immediately prior to the fiscal year for which the applicant is applying, the Secretary evaluates the applicant's prior experience (PE) of high quality service delivery, as provided in § 642.22, based on the applicant's performance during the first project year of that expiring Training program grant.

(c) The Secretary selects applications for funding within each specific absolute priority established for the competition in rank order on the basis of the score received by the application in the peer review process.

(d) Within each specific absolute priority, if there are insufficient funds to fund all applications at the next peer review score, the Secretary adds the PE points awarded under § 642.22 to the peer review score to determine an adjusted total score for those applications. The Secretary makes awards at the next peer review score to the applications that have the highest total adjusted score.

(e) In the event a tie score still exists, the Secretary will select for funding the applicant that has the greatest capacity to provide training to eligible participants in all regions of the Nation, consistent with § 642.23.

* * * * *

■ 22. Newly redesignated § 642.21 is amended by:

■ A. Revising the section heading.

■ B. Revising paragraph (a)(2)(v)(C).

■ C. Revising paragraph (b)(2)(iv)(C).

■ D. Removing paragraph (f).

■ E. Adding an OMB control number parenthetical after the last paragraph in the section.

The revisions and addition read as follows:

§ 642.21 What selection criteria does the Secretary use?

* * * * *

(a) * * *

(2) * * *

(v) * * *

(C) Individuals with disabilities; and

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(C) Individuals with disabilities; and

* * * * *

(Approved by the Office of Management and Budget under control number 1840—NEW1)

* * * * *

■ 23. Newly redesignated § 642.22 is revised to read as follows:

§ 642.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 642.20(b), the Secretary—

(1) Evaluates the applicant's performance under its expiring Training program grant;

(2) To determine the number of PE points to be awarded, uses the approved project objectives for the applicant's expiring Training program grant and the information the applicant submitted in its annual performance report (APR); and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicate the APR data used to calculate PE are incorrect.

(b)(1) The Secretary may add from 1 to 15 points to the point score obtained on the basis of the selection criteria in § 642.21, based on the applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (e) of this section.

(2) The maximum possible score for each criterion is indicated in the parentheses preceding the criterion.

(c) The Secretary awards no PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(d) For the criterion specified in paragraph (e)(1) of this section (Number of participants), the Secretary awards no PE points if the applicant did not serve at least the approved number of participants.

(e) The Secretary evaluates the applicant's PE on the basis of the following criteria:

(1) (4 points) *Number of participants.* Whether the applicant provided training to no less than the approved number of participants.

(2) *Training objectives.* Whether the applicant met or exceeded its objectives for:

(i) (4 points) Assisting the participants in developing increased qualifications and skills to meet the needs of disadvantaged students.

(ii) (4 points) Providing the participants with an increased knowledge and understanding of the Federal TRIO programs.

(3) (3 points) *Administrative requirements.* Whether the applicant met all the administrative requirements under the terms of the expiring grant, including recordkeeping, reporting, and financial accountability.

(Approved by the Office of Management and Budget under control number 1894–0003)

(Authority: 20 U.S.C. 1070a–11)

■ 24. Newly redesignated § 642.23 is amended by revising the section heading to read as follows:

§ 642.23 How does the Secretary ensure geographic distribution of awards?

* * * * *

■ 25. Newly redesignated § 642.24 is revised to read as follows:

§ 642.24 What are the Secretary's priorities for funding?

(a) The Secretary, after consultation with regional and State professional associations of persons having special knowledge with respect to the training of Special Programs personnel, may select one or more of the following subjects as training priorities:

(1) Basic skills instruction in reading, mathematics, written and oral communication, and study skills.

(2) Counseling.

(3) Assessment of student needs.

(4) Academic tests and testing.

(5) College and university admissions policies and procedures.

(6) Cultural enrichment programs.

(7) Career planning.

(8) Tutorial programs.

(9) Retention and graduation strategies.

(10) Strategies for preparing students for doctoral studies.

(11) Project evaluation.

(12) Budget management.

(13) Personnel management.

(14) Reporting student and project performance.

(15) Coordinating project activities with other available resources and activities.

(16) General project management for new directors.

(17) Statutory and regulatory requirements for the operation of projects funded under the Federal TRIO programs.

(18) Assisting students in receiving adequate financial aid from programs assisted under title IV of the Act and from other programs.

(19) The design and operation of model programs for projects funded under the Federal TRIO programs.

(20) The use of appropriate educational technology in the operation of projects funded under the Federal TRIO programs.

(21) Strategies for recruiting and serving hard to reach populations, including students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

(b) The Secretary annually funds training on the subjects listed in paragraphs (a)(17), (a)(18), (a)(19), (a)(20), and (a)(21) of this section.

(c) The Secretary designates one or more of the training priorities from paragraph (a) of this section in the **Federal Register** notice inviting applications for the competition.

(Authority: 20 U.S.C. 1070a–11 and 1070a–17)

■ 26. Section 642.25 is added to subpart C of part 642 to read as follows:

§ 642.25 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be

awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 642.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as provided in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to a designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW1)

(Authority: 20 U.S.C. 1070a–11)

■ 27. A new § 642.26 is added to subpart C of part 642 to read as follows:

§ 642.26 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233, for a new grant; and

(2) 34 CFR 75.253, for the second year of a project period.

(b) The Secretary uses the available funds to set the amount of the grant at the lesser of—

(1) 170,000; or

(2) The amount requested by the applicant.

Subpart D of Part 642 [Amended]

§§ 642.40 and 642.41 [Redesignated as §§ 642.30 and 642.31]

■ 28. Newly redesignated subpart D of part 642 is amended by redesignating §§ 642.40 and 642.41 as §§ 642.30 and 642.31, respectively.

■ 29. Newly redesignated § 642.30 is amended by:

■ A. Revising the section heading.

■ B. In paragraph (d), removing the words "if approved in writing by the Secretary".

The revision reads as follow:

§ 642.30 What are allowable costs?

* * * * *

■ 30. Newly redesignated § 642.31 is amended by revising the section heading to read as follows:

§ 642.31 What are unallowable costs?

* * * * *

PART 643—TALENT SEARCH

■ 31. The authority citation for part 643 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–12, unless otherwise noted.

■ 32. Section 643.1 is amended by:

■ A. In paragraph (b), adding the words ", and facilitate the application for," after the word "of".

■ B. Revising paragraph (c).

The revision reads as follows:

§ 643.1 What is the Talent Search program?

* * * * *

(c) Encourage persons who have not completed education programs at the secondary or postsecondary level to enter or reenter and complete these programs.

* * * * *

■ 33. Section 643.2 is amended by:

■ A. In the introductory text, adding the word "entities" after the word "following".
■ B. In paragraph (b), adding the words ", including a community-based organization with experience in serving disadvantaged youth" after the word "organization".
■ C. Removing paragraph (d).
■ D. Redesignating paragraph (c) as paragraph (d).
■ E. Adding a new paragraph (c).
■ F. In newly redesignated paragraph (d), removing the words "paragraphs (a) and (b)" and adding, in their place, the words "paragraphs (a), (b), and (c)".

The addition reads as follows:

§ 643.2 Who is eligible for a grant?

* * * * *

(c) A secondary school.

* * * * *

■ 34. Section 643.3 is amended by:
■ A. In paragraph (a)(3)(i), removing the words ", has potential for a program of postsecondary education, and needs one or more of the services provided by the project in order to undertake such a program".
■ B. In paragraph (a)(3)(ii), removing the words ", has the ability to complete such a program, and needs one or more of the services provided by the project to reenter such a program".

* * * * *

■ 35. Section 643.4 is revised to read as follows:

§ 643.4 What services does a project provide?

(a) A Talent Search project must provide the following services:

(1) Connections for participants to high quality academic tutoring services to enable the participants to complete secondary or postsecondary courses.

(2) Advice and assistance in secondary school course selection and, if applicable, initial postsecondary course selection.

(3) Assistance in preparing for college entrance examinations and completing college admission applications.

(4)(i) Information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and on resources for locating public and private scholarships; and

(ii) Assistance in completing financial aid applications, including the Free Application for Federal Student Aid (FAFSA).

(5) Guidance on and assistance in—

(i) Secondary school reentry;

(ii) Alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma;

(iii) Entry into general educational development (GED) programs; or

(iv) Entry into postsecondary education.

(6) Connections for participants to education or counseling services designed to improve the financial and economic literacy of the participants or the participants' parents, including financial planning for postsecondary education.

(b) A Talent Search project may provide services such as the following:

(1) Academic tutoring, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects.

(2) Personal and career counseling or activities.

(3) Information and activities designed to acquaint youth with the range of career options available to the youth.

(4) Exposure to the campuses of institutions of higher education, as well as to cultural events, academic programs, and other sites or activities not usually available to disadvantaged youth.

(5) Workshops and counseling for families of participants served.

(6) Mentoring programs involving elementary or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons.

(7) Programs and activities as described in this section that are specially designed for participants who are limited English proficient, from groups that are traditionally underrepresented in postsecondary education, individuals with disabilities, homeless children and youths, foster care youth, or other disconnected participants.

(8) Other activities designed to meet the purposes of the Talent Search Program in § 643.1.

(Authority: 20 U.S.C. 1070a–12)

■ 36. Section 643.5 is revised to read as follows:

§ 643.5 How long is a project period?

A project period under the Talent Search program is five years.

(Authority: 20 U.S.C. 1070a–11)

■ 37. Section 643.6 is amended by revising paragraph (a) to read as follows:

§ 643.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

■ 38. Section 643.7(b) is amended by:
■ A. Revising the definition of "Institution of higher education".
■ B. Revising the definition of "Veteran".
■ C. Adding, in alphabetical order, new definitions for "Different population", "Financial and economic literacy", "Foster care youth", "Homeless children and youth", "Individual with a disability", "Regular secondary school diploma", and "Rigorous secondary school program of study".

The revisions and additions read as follows:

§ 643.7 What definitions apply?

* * * * *

(b) * * *

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Talent Search program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, which may include but is not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (*e.g.,* loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary or postbaccalaureate education (*e.g.,* spending, saving, personal budgeting);

(4) College cost of attendance (*e.g.,* public vs. private, tuition vs. fees, personal costs);

(5) Financial assistance (*e.g.,* searches, application processes, and differences between private and government loans, assistanceships); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

Foster care youth means youth who are in foster care or are aging out of the foster care system.

* * * * *

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

Individual with a disability means a person who has a disability, as that term is defined in section 12102 of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

* * * * *

Regular secondary school diploma means a level attained by individuals who meet or exceed the coursework and performance standards for high school completion established by the individual's State.

Rigorous secondary school program of study means a program of study that is—

(1) Established by a state educational agency (SEA) or local educational agency (LEA) and recognized as a rigorous secondary school program of study by the Secretary through the process described in 34 CFR 691.16(a) through 691.16(c) for the Academic Competitiveness Grant (ACG) Program;

(2) An advanced or honors secondary school program established by States and in existence for the 2004–2005 school year or later school years;

(3) Any secondary school program in which a student successfully completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: Biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English;

(4) A secondary school program identified by a State-level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado;

(5) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of a "4" or higher on the examinations for at least two of those courses; or

(6) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of "3" or higher on the College Board's Advanced Placement Program Exams for at least two of those courses.

* * * * *

Veteran means a person who—

(1) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(2) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(3) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(4) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

* * * * *

Subpart B—How Does One Apply for an Award?

■ 39. Subpart B of part 643 is amended by revising the subpart heading to read as set forth above.

§ 643.10 [Redesignated as § 643.11]

■ 39a. Redesignate § 643.10 as § 643.11.

■ 40. A new § 643.10 is added to Subpart B to read as follows:

§ 643.10 How many applications may an eligible applicant submit?

(a) An applicant may submit more than one application for Talent Search grants as long as each application describes a project that serves a different target area or target schools, or another designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and the other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–12; 1221e–3)

■ 41. Newly redesignated § 643.11 is amended by:

■ A. In the introductory text, removing the word "shall" and adding, in its place, the word "must".

■ B. Revising paragraph (b).

The revision reads as follows:

§ 643.11 What assurances must an applicant submit?

* * * * *

(b) The project will collaborate with other Federal TRIO projects, GEAR UP projects, or programs serving similar populations that are serving the same target schools or target area in order to minimize the duplication of services and promote collaborations so that more students can be served.

* * * * *

■ 42. Section 643.20 is amended by:

■ A. In paragraph (a)(2)(i), removing the word "or" after the words "same populations" and adding, in its place, the word "and"; removing the words "in delivering services" and adding, in their place, the words "of high quality service delivery; and adding the word "outcome" before the word "criteria".

■ B. In paragraph (a)(2)(ii), adding the word "total" after the word "maximum" the first time it appears.

■ C. Adding paragraphs (a)(2)(iii) through (a)(2)(v).

■ D. Removing paragraph (a)(3).

■ E. In paragraph (b), removing the words "through (3)" and adding, in their place, the words "and (a)(2)".

■ F. Revising paragraph (d).

The additions and revision read as follows:

§ 643.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

■ 43. Section 643.21 is amended by:

■ A. Revising paragraphs (a), (b), and (c).

■ B. Revising paragraph (d)(2).

■ C. In the OMB control number parenthetical following paragraph (g), removing the numbers "1840–0549" and adding, in their place, the numbers "1840–0065".

The revisions read as follows:

§ 643.21 What selection criteria does the Secretary use?

* * * * *

(a) *Need for the project* (24 points). The Secretary evaluates the need for a Talent Search project in the proposed target area on the basis of the extent to

which the application contains clear evidence of the following:

(1) (4 points) A high number or high percentage of the following—

(i) Low-income families residing in the target area; or

(ii) Students attending the target schools who are eligible for free or reduced priced lunch as described in sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act.

(2) (2 points) Low rates of high school persistence among individuals in the target schools as evidenced by the annual student persistence rates in the proposed target schools for the most recent year for which data are available.

(3) (4 points) Low rates of students in the target school or schools who graduate high school with a regular secondary school diploma in the standard number of years for the most recent year for which data are available.

(4) (6 points) Low postsecondary enrollment and completion rates among individuals in the target area and schools as evidenced by—

(i) Low rates of enrollment in programs of postsecondary education by graduates of the target schools in the most recent year for which data are available; and

(ii) A high number or high percentage of individuals residing in the target area with education completion levels below the baccalaureate degree level.

(5) (2 points) The extent to which the target secondary schools do not offer their students the courses or academic support to complete a rigorous secondary school program of study or have low participation or low success by low-income or first generation students in such courses.

(6) (6 points) Other indicators of need for a TS project, including low academic achievement and low standardized test scores of students enrolled in the target schools, a high ratio of students to school counselors in the target schools, and the presence of unaddressed academic or socio-economic problems of eligible individuals, including foster care youth and homeless children and youth in the target schools or the target area.

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) (2 points) Secondary school persistence.

(2) (2 points) Secondary school graduation (regular secondary school diploma).

(3) (1 point) Secondary school graduation (rigorous secondary school program of study).

(4) (2 points) Postsecondary education enrollment.

(5) (1 point) Postsecondary degree attainment.

(c) *Plan of operation* (30 points). The Secretary evaluates the quality of the applicant's plan of operation on the basis of the following:

(1) (3 points) The plan to inform the residents, schools, and community organizations in the target area of the purpose, objectives, and services of the project and the eligibility requirements for participation in the project.

(2) (3 points) The plan to identify and select eligible project participants.

(3) (10 points) The plan for providing the services delineated in § 643.4 as appropriate based on the project's assessment of each participant's need for services.

(4) (6 points) The plan to work in a coordinated, collaborative, and cost-effective manner as part of an overarching college access strategy with the target schools or school system and other programs for disadvantaged students to provide participants with access to and assistance in completing a rigorous secondary school program of study.

(5) (6 points) The plan, including timelines, personnel, and other resources, to ensure the proper and efficient administration of the project, including the project's organizational structure; the time commitment of key project staff; and financial, personnel, and records management.

(6) (2 points) The plan to follow former participants as they enter, continue in, and complete postsecondary education.

(d) * * *

(2) (8 points) Resources secured through written commitments from community partners.

(i) An applicant that is an institution of higher education must include in its application commitments from the target schools and community organizations;

(ii) An applicant that is a secondary school must include in its commitments from institutions of higher education, community organizations, and, as appropriate, other secondary schools and the school district; and

(iii) An applicant that is a community organization must include in its application commitments from the target schools and institutions of higher education.

* * * * *

■ 44. Section 643.22 is revised to read as follows:

§ 643.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 643.20(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Talent Search project;

(2) Uses the approved project objectives for the applicant's expiring Talent Search grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) The Secretary does not award any PE points for the criterion specified in paragraph (d)(1) of this section (Number of participants) if the applicant did not serve at least the approved number of participants.

(d) For purposes of the evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) *Number of participants.* Whether the applicant provided services to no less than the approved number of participants.

(2) (3 points) *Secondary school persistence.* Whether the applicant met or exceeded its objective regarding the continued secondary school enrollment of participants.

(3) (3 points) *Secondary school graduation* (regular secondary school diploma). Whether the applicant met or exceeded its objective regarding the graduation of participants served during the project year from secondary school with a regular secondary school diploma in the standard number of years.

(4) (1.5 points) *Secondary school graduation* (rigorous secondary school program of study). Whether the applicant met or exceeded its objective regarding the graduation of participants

served during the project year who completed a rigorous secondary school program of study.

(5) (3 points) *Postsecondary enrollment.* Whether the applicant met or exceeded its objective regarding the participants expected to graduate from high school in the school year who enrolled in an institution of higher education within the time period specified in the approved objective.

(6) (1.5 points) *Postsecondary completion.* Whether the applicant met or exceeded its objective regarding project participants who enrolled in and completed a program of postsecondary education within the number of years specified in the approved objective. The applicant may determine success in meeting the objective by using a randomly selected sample of participants in accordance with the parameters established by the Secretary in the **Federal Register** notice inviting applications or other published application materials for the competition.

(Approved by the Office of Management and Budget under control number 1840—NEW7)

(Authority: 20 U.S.C. 1070a–12)

§ 643.23 [Amended]

■ 45. Section 643.23 is amended by:

■ A. In the introductory text of paragraph (b), removing the words "beginning in fiscal year 1994".

■ B. In paragraph (b)(1), removing the amount "$180,000" and adding, in its place, the amount "$200,000".

■ 46. A new § 643.24 is added to subpart C of part 643 to read as follows:

§ 643.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 643.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as provided in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has at least 15 calendar days

after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW2)

(Authority: 20 U.S.C. 1070a–11)

■ 47. Section 643.30 is amended by:

■ A. In the introductory text, removing the words "34 CFR part 74, subpart Q" and adding, in their place, the words "34 CFR 74.27, 75.530, and 80.22, as applicable".

■ B. In the introductory text of paragraph (a), adding the word "project" before the word "staff".

■ C. In paragraph (a)(1), removing the words "to obtain information relating to the admission of participants to those institutions".

■ D. In paragraph (a)(2), removing the word "and".

■ E. In paragraph (a)(3), adding the words "for participants" after the word "trips"; removing the words "in the target area"; and removing the punctuation "." at the end of the paragraph and adding, in its place, the words "; and".

■ F. Adding a new paragraph (a)(4).

■ G. In paragraph (b), adding the words "and test preparation programs for participants" after the word "materials".

■ H. Revising paragraph (c) introductory text.

■ I. Revising paragraph (f).

■ J. Adding new paragraphs (g) and (h).

The revisions and additions read as follows:

§ 643.30 What are allowable costs?

* * * * *

(a) * * *

(4) Transportation to institutions of higher education, secondary schools not attended by the participants, or other locations at which the participant receives instruction that is part of a rigorous secondary school program of study.

* * * * *

(c) Fees required for admission applications for postsecondary education, college entrance examinations, or alternative education examinations if—

* * * * *

(f) Purchase, lease, or rental of computer hardware, software, and other equipment, service agreements for such equipment, and supplies that support the delivery of services to participants, including technology used by participants in a rigorous secondary school program of study.

(g) Purchase, lease, service agreement, or rental of computer equipment and software needed for project administration and recordkeeping.

(h) Tuition costs for a course that is part of a rigorous secondary school program of study if—

(1) The course or a similar course is not offered at the secondary school that the participant attends or at another school within the school district;

(2) The grantee demonstrates to the Secretary's satisfaction that using grant funds is the most cost-effective way to deliver the course or courses necessary for the completion of a rigorous secondary school program of study for program participants;

(3) The course is taken through an accredited institution of higher education;

(4) The course is comparable in content and rigor to courses that are part of a rigorous secondary school program of study as defined in § 643.7(b);

(5) The secondary school accepts the course as meeting one or more of the course requirements for obtaining a regular secondary school diploma;

(6) A waiver of the tuition costs is unavailable;

(7) The tuition is paid with Talent Search grant funds to an institution of higher education on behalf of a participant; and

(8) The Talent Search project pays for no more than the equivalent of two courses for a participant each school year.

■ 48. Section 643.31 is amended in paragraph (a) by removing the phrase "Tuition, stipends," and by adding, in its place, the word "Stipends".

■ 49. Section 643.32 is amended by:

■ A. Revising paragraph (b).
■ B. In paragraph (c) introductory text, removing the word "shall" and adding, in its place, the word "must".
■ C. In paragraph (c)(3), removing the word "and".
■ D. In paragraph (c)(4), removing the punctuation "." and adding, in its place, the words "; and".
■ E. Adding a new paragraph (c)(5).
■ F. Revising paragraph (d).
■ G. In the OMB control number parenthetical following paragraph (d), removing the numbers "1840–0549" and adding, in their place, the numbers "1840–NEW2".

The revisions read as follows:

§ 643.32 What other requirements must a grantee meet?

* * * * *

(b) *Number of Participants.* For each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the **Federal Register** notice inviting applications for a competition. Through this notice, the Secretary also provides the minimum and maximum grant award amounts for the competition.

* * * * *

(c) * * *

(5) To the extent practicable, any services the TS participant receives during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the TS program.

(d) *Project director.* (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (d)(1) of this section if the applicant demonstrates that the project director will be able to effectively administer more than three programs and that this arrangement would promote effective coordination between the TS program and other Federal TRIO Programs (sections 402B through 402F of the HEA) or similar programs funded through other sources.

* * * * *

PART 644—EDUCATIONAL OPPORTUNITY CENTERS

■ 50. The authority citation for part 644 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–16, unless otherwise noted.

■ 51. Section 644.1 is amended by:
■ A. In the introductory text, removing the words "to provide".
■ B. In paragraph (a), removing the word "Information" and adding, in its place, the words "To provide information"; removing the word "for" and adding, in its place, the word "to"; and removing the word "and" that appears after the punctuation ";".
■ C. In paragraph (b), removing the word "Assistance" and adding, in its place, the words "To provide assistance"; and removing the punctuation "." at the end of the sentence and adding, in its place, the word "; and".
■ D. Adding a new paragraph (c).

The addition reads as follows:

§ 644.1 What is the Educational Opportunity Centers program?

* * * * *

(c) To improve the financial and economic literacy of participants on topics such as—

(1) Basic personal income, household money management, and financial planning skills; and

(2) Basic economic decision-making skills.

* * * * *

■ 52. Section 644.2 is amended by:
■ A. In the introductory text of the section, adding the word "entities" after the word "following".
■ B. In paragraph (b), adding the words ", including a community-based organization with experience in serving disadvantaged youth" after the word "organization".
■ C. Removing paragraph (d).
■ D. Redesignating paragraph (c) as paragraph (d).
■ E. Adding a new paragraph (c).
■ F. In newly redesignated paragraph (d), removing the word "and" before the citation "(b)" and adding, in its place, the punctuation ","; and adding the words ", and (c)" after the citation "(b)".

The addition reads as follows:

§ 644.2 Who is eligible for a grant?

* * * * *

(c) A secondary school.

* * * * *

■ 53. Section 644.4 is amended by:
■ A. Redesignating paragraphs (e), (f), (g), (h), (i), (j), and (k) as paragraphs (f), (g), (h), (i), (j), (k), and (l), respectively.
■ B. Adding a new paragraph (e).
■ C. In newly redesignated paragraph (g), removing the word "Personal" and adding, in its place, the words "Individualized personal, career, and academic".
■ D. Revising newly redesignated paragraph (k).

The addition and revision read as follows:

§ 644.4 What services may a project provide?

* * * * *

(e) Education or counseling services designed to improve the financial and economic literacy of participants.

* * * * *

(k) Programs and activities described in this section that are specially designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary education, participants who are individuals with disabilities, participants who are homeless children and youth, participants who are foster care youth, or other disconnected participants.

* * * * *

■ 54. Section 644.5 is revised to read as follows:

§ 644.5 How long is a project period?

A project period under the Educational Opportunity Centers program is five years.

(Authority: 20 U.S.C. 1070a–11)

■ 55. Section 644.6 is amended by revising paragraph (a) to read as follows:

§ 644.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

■ 56. Section 644.7(b) is amended by:
■ A. Adding, in alphabetical order, new definitions for "Different population", "Financial and economic literacy", "Foster care youth", "Homeless children and youth", and "Individual with a disability".
■ B. Revising the definition of "Institution of higher education".
■ C. Revising the definition of "Veteran".

The additions and revisions read as follows:

§ 644.7 What definitions apply?

* * * * *

(b) * * *

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Educational Opportunity Centers program and that—

(i) Is separate and distinct from any other population that the entity has

applied for a grant under this chapter to serve; or

(ii) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, which may include but is not limited to knowledge about—

(i) Personal and family budget planning;

(ii) Understanding credit building principles to meet long-term and short-term goals (*e.g.,* loan to debt ratio, credit scoring, negative impacts on credit scores);

(iii) Cost planning for postsecondary or postbaccalaureate education (*e.g.,* spending, saving, personal budgeting);

(iv) College cost of attendance (*e.g.,* public vs. private, tuition vs. fees, personal costs);

(v) Financial assistance (*e.g.,* searches, application processes, and differences between private and government loans, assistanceships); and

(vi) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

Foster care youth means youth who are in foster care or are aging out of the foster care system.

* * * * *

Homeless children and youth means those persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

Individual with a disability means a person who has a disability, as that term is defined in section 12102 of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

* * * * *

Veteran means a person who—

(i) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(ii) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(iii) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(iv) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

* * * * *

Subpart B—How Does One Apply for an Award?

■ 57. The heading for subpart B of part 644 is revised to read as set forth above.

§ 644.10 [Redesignated as § 644.11]

■ 58. In subpart B of part 644, § 644.10 is redesignated as § 644.11.

■ 59. A new § 644.10 is added to subpart B of part 644 to read as follows:

§ 644.10 How many applications may an eligible applicant submit?

(a) An applicant may submit more than one application for Educational Opportunity Centers grants as long as each application describes a project that serves a different target area or another designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–11, 1221e–3)

■ 60. Newly redesignated § 644.11 is amended by:

■ A. In the introductory text, removing the word "shall" and adding, in its place, the word "must".

■ B. Revising paragraph (b).

The revision reads as follows:

§ 644.11 What assurances must an applicant submit?

* * * * *

(b) The project will collaborate with other Federal TRIO projects, GEAR UP projects, or programs serving similar populations that are serving the same target schools or target area in order to minimize the duplication of services and promote collaborations so that more students can be served.

* * * * *

■ 61. Section 644.20 is amended by:

■ A. In paragraph (a)(2)(i), removing the word "or" after the words "same populations" and adding, in its place, the word "and"; removing the words "in delivering services" and adding, in their place, the words "of high quality service delivery; and adding the word "outcome" before the word "criteria".

■ B. In paragraph (a)(2)(ii), adding the word "total" after the word "maximum" the first time it appears.

■ C. Adding new paragraphs (a)(2)(iii) through (a)(2)(v).

■ D. Removing paragraph (a)(3).

■ E. In paragraph (b), removing the words "paragraphs (a)(1) through (3)" and adding, in their place, the words "paragraph (a)".

■ F. Revising paragraph (d).

The revision and additions read as follows:

§ 644.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

■ 62. Section 644.21 is amended by:

■ A. Revising paragraph (b).

■ B. In the OMB control number parenthetical following paragraph (g), removing the numbers "1840–0065" and adding, in their place, the numbers "1840–NEW3".

The revision reads as follows:

§ 644.21 What selection criteria does the Secretary use?

* * * * *

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) (2 points) Secondary school diploma or equivalent.

(2) (3 points) Postsecondary enrollment.

(3) (1.5 points) Financial aid applications.

(4) (1.5 points) College admission applications.

* * * * *

■ 63. Section 644.22 is revised to read as follows:

§ 644.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 644.20(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Educational Opportunity Centers project;

(2) Uses the approved project objectives for the applicant's expiring Educational Opportunity Centers grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE points are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) The Secretary does not award PE points for the criterion specified in paragraph (d)(1) of this section (Number of participants) if the applicant did not serve at least the approved number of participants.

(d) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) *Number of participants.* Whether the applicant provided services to no less than the approved number of participants.

(2) (3 points) *Secondary school diploma.* Whether the applicant met or exceeded its approved objective with regard to participants served during the project year who do not have a secondary school diploma or its equivalent who receive a secondary school diploma or its equivalent within the time period specified in the approved objective.

(3) (5 points) *Postsecondary enrollment.* Whether the applicant met or exceeded its approved objective with regard to the secondary school graduates served during the project year who enroll in programs of postsecondary education within the time period specified in the approved objective.

(4) (2 points) *Financial aid applications.* Whether the applicant met or exceeded its objective regarding participants applying for financial aid.

(5) (2 points) *College admission applications.* Whether the applicant met or exceeded its objective regarding participants applying for college admission.

(Approved by the Office of Management and Budget under control number 1840–NEW8)

(Authority: 20 U.S.C. 1070a–16)

■ 64. Section 644.23 is amended by:

■ A. In the introductory text of paragraph (b), removing the words "beginning in fiscal year 1994".

■ B. Revising paragraph (b)(1).

The revision reads as follows:

§ 644.23 How does the Secretary set the amount of a grant?

* * * * *

(b) * * *

(1) $200,000; or

* * * * *

■ 65. Section 644.24 is added to subpart C of part 644 to read as follows:

§ 644.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information

needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 644.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as provided in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840—NEW3)

(Authority: 20 U.S.C. 1070a–11)

■ 66. Section 644.30 is amended by:

■ A. In the introductory text, removing the words "34 CFR part 74, subpart Q" and adding, in their place, the words "34 CFR 74.27, 75.530, and 80.22, as applicable".

■ B. In the introductory text of paragraph (a), adding the word "project" before the word "staff".

■ C. In paragraph (a)(1), removing the words "to obtain information relating to the admission of participants to those institutions".

■ D. Revising paragraph (a)(3).

■ E. In paragraph (b), adding the words "and test preparation programs for participants" after the word "materials".

■ F. Revising paragraph (c) introductory text.

■ G. Revising paragraph (f).

The revisions read as follows:

§ 644.30 What are allowable costs?

* * * * *

(a) * * *

(3) Field trips for participants to observe and meet with persons who are employed in various career fields and can act as role models for participants.

* * * * *

(c) Fees required for admission applications for postsecondary education, college entrance examinations, or alternative education examinations if—

* * * * *

(f) Purchase, lease, or rental of computer hardware, software, and other equipment, service agreements for such equipment, and supplies for participant development, project administration, or project recordkeeping.

* * * * *

■ 67. Section 644.32 is amended by:

■ A. Revising paragraph (b).

■ B. In paragraph (c) introductory text, removing the word "shall" and adding, in its place, the word "must".

■ C. In paragraph (c)(2), removing the word "and".

■ D. In paragraph (c)(3), removing the punctuation "." and adding, in its place, the words "; and".

■ E. Adding a new paragraph (c)(4).
■ F. Revising paragraph (d).
■ G. In the OMB control number parenthetical following paragraph (d), removing the numbers "1840–0065" and adding, in their place, the numbers "1840—NEW8".

The revisions and addition reads as follows:

§ 644.32 What other requirements must a grantee meet?

* * * * *

(b) *Number of Participants.* For each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the **Federal Register** notice inviting applications for a competition. Through this notice, the Secretary also provides the minimum and maximum grant award amounts for the competition.

(c) * * *

(4) To the extent practicable, any services the participant receives during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the EOC program.

(d) *Project director.* (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (d)(1) of this section if the applicant demonstrates that that the project director will be able to effectively administer more than three programs and that this arrangement would promote effective coordination between the program and other Federal TRIO programs (sections 402B through 402F of the HEA) and similar programs funded through other sources.

* * * * *

PART 645—UPWARD BOUND PROGRAM

■ 68. The authority citation for part 645 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–13, unless otherwise noted.

■ 69. Section 645.2 is amended by:
■ A. In paragraph (a), removing the word "Institutions" and adding, in its place, the words "An institution".
■ B. Revising paragraphs (b), (c), and (d).

The revisions read as follows:

§ 645.2 Who is eligible for a grant?

* * * * *

(b) A public or private agency or organization, including a community-based organization with experience in serving disadvantaged youth.

(c) A secondary school.

(d) A combination of the types of institutions, agencies, and organizations described in paragraphs (a), (b), and (c) of this section.

* * * * *

■ 70. Section 645.3 is amended by:
■ A. In paragraph (b)(1), removing the word "or" after the punctuation ";";
■ B. In paragraph (b)(2), removing the punctuation "." and adding, in its place, the word "; or";
■ C. Adding a new paragraph (b)(3).
■ D. In paragraph (d), removing the words "but has not entered the twelfth grade".

The addition reads as follows:

§ 645.3 Who is eligible to participate in an Upward Bound project?

* * * * *

(b) * * *

(3) An individual who has a high risk for academic failure.

* * * * *

■ 71. Section 645.4 is amended by:
■ A. Revising the section heading.
■ B. Removing paragraph (a).
■ C. Redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c), respectively.

The revision reads as follows:

§ 645.4 What are the grantee requirements for documenting the low-income and first-generation status of participants?

* * * * *

■ 72. Section 645.5 is amended by revising paragraph (a) to read as follows:

§ 645.5 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

■ 73. Section 645.6(b) is amended by:
■ A. Revising the definition of "Institution of higher education".
■ B. Revising the definition of "Veteran".
■ C. Adding, in alphabetical order, new definitions for "Different population", "Financial and economic literacy", "Foster care youth", "Homeless children and youth", "Individual who has a high risk for academic failure", "Individual with a disability", "Regular secondary school diploma", "Rigorous secondary school program of study", and "Veteran who has a high risk for academic failure".

The revisions and additions read as follows:

§ 645.6 What definitions apply to the Upward Bound Program?

* * * * *

(b) * * *

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Upward Bound program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

* * * * *

Financial and economic literacy means knowledge about personal financial decision-making, which may include but is not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (*e.g.,* loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary or postbaccalaureate education (*e.g.,* spending, saving, personal budgeting);

(4) College cost of attendance (*e.g.,* public vs. private, tuition vs. fees, personal costs);

(5) Financial assistance (*e.g.,* searches, application processes, and differences between private and government loans, assistanceships); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

Foster care youth means youth who are in foster care or are aging out of the foster care system.

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

* * * * *

Individual who has a high risk for academic failure (regular Upward Bound participant) means an individual who—

(1) Has not achieved at the proficient level on State assessments in reading or language arts;

(2) Has not achieved at the proficient level on State assessments in math;

(3) Has not successfully completed pre-algebra or algebra by the beginning of the tenth grade; or

(4) Has a grade point average of 2.5 or less (on a 4.0 scale) for the most recent school year for which grade point averages are available.

Individual with a disability means a person who has a disability, as that term is defined in section 12102 of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

* * * * *

Regular secondary school diploma means a diploma attained by individuals who meet or exceed the coursework and performance standards for high school completion established by the individual's State.

Rigorous secondary school program of study means a program of study that is—

(1) Established by a State educational agency (SEA) or local educational agency (LEA) and recognized as a rigorous secondary school program of study by the Secretary through the process described in 34 CFR 691.16(a) through (c) for the Academic Competitiveness Grant (ACG) Program;

(2) An advanced or honors secondary school program established by States and in existence for the 2004–2005 school year or later school years;

(3) Any secondary school program in which a student successfully completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English;

(4) A secondary school program identified by a State-level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado;

(5) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of a "4" or higher on the examinations for at least two of those courses; or

(6) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of "3" or higher on the College Board's Advanced Placement Program Exams for at least two of those courses.

* * * * *

Veteran means a person who—

(1) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(2) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(3) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(4) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

Veteran who has a high risk for academic failure means a veteran who—

(1) Has been out of high school or dropped out of a program of postsecondary education for five or more years;

(2) Has scored on standardized tests below the level that demonstrates a likelihood of success in a program of postsecondary education; or

(3) Meets the definition of an individual with a disability as defined in § 645.6(b).

* * * * *

■ 74. Section 645.11 is revised to read as follows:

§ 645.11 What services do all Upward Bound projects provide?

(a) Any project assisted under this part must provide—

(1) Academic tutoring to enable students to complete secondary or postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects;

(2) Advice and assistance in secondary and postsecondary course selection;

(3) Assistance in preparing for college entrance examinations and completing college admission applications;

(4)(i) Information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and

(ii) Assistance in completing financial aid applications, including the Free Application for Federal Student Aid;

(5) Guidance on and assistance in—

(i) Secondary school reentry;

(ii) Alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma;

(iii) Entry into general educational development (GED) programs; or

(iv) Entry into postsecondary education; and

(6) Education or counseling services designed to improve the financial and economic literacy of students or the students' parents, including financial planning for postsecondary education.

(b) Any project that has received funds under this part for at least two years must include as part of its core curriculum in the next and succeeding years, instruction in—

(1) Mathematics through pre-calculus;

(2) Laboratory science;

(3) Foreign language;

(4) Composition; and

(5) Literature.

(Authority: 20 U.S.C. 1070a–13)

§§ 645.12, 645.13, and 645.14 [Redesignated as §§ 645.13, 645.14, and 645.15]

■ 75. Sections 645.12, 645.13, and 645.14 of subpart B of part 645 are redesignated as §§ 645.13, 645.14, and 645.15 of subpart B of part 645, respectively.

■ 76. A new § 645.12 is added to subpart B of part 645 to read as follows:

§ 645.12 What services may regular Upward Bound and Upward Bound Math-Science projects provide?

Any project assisted under this part may provide such services as—

(a) Exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth;

(b) Information, activities, and instruction designed to acquaint youth participating in the project with the range of career options available to the youth;

(c) On-campus residential programs;

(d) Mentoring programs involving elementary school or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons;

(e) Work-study positions where youth participating in the project are exposed to careers requiring a postsecondary degree;

(f) Programs and activities as described in § 645.11 that are specially designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary

education, participants who are individuals with disabilities, participants who are homeless children and youths, participants in or who are aging out of foster care, or other disconnected participants; and

(g) Other activities designed to meet the purposes of the Upward Bound program in § 645.1.

(Authority: 20 U.S.C. 1070a–13)

■ 77. Newly redesignated § 645.15 is amended by—

■ A. Revising the section heading.

■ B. In the introductory text, removing the words "§ 645.11(a) and may be provided under § 645.11(b)" and adding, in their place, the citation "§ 645.11".

■ C. In paragraph (b), removing the word "and".

■ D. In paragraph (c), removing the punctuation "." and adding, in its place, the word "; and".

■ E. Adding a new paragraph (d).

The revision and addition read as follows:

§ 645.15 What additional services may Veterans Upward Bound projects provide?

* * * * *

(d) Provide special services, including mathematics and science preparation, to enable veterans to make the transition to postsecondary education.

* * * * *

■ 78. Section 645.20 is revised to read as follows:

§ 645.20 How many applications for an Upward Bound award may an eligible applicant submit?

(a) An applicant may submit more than one application as long as each application describes a project that serves a different target area or target school, or another designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–13, 1221e–3)

■ 79. Section 645.21 is revised to read as follows:

§ 645.21 What assurances must an applicant include in an application?

(a) An applicant for a Regular Upward Bound award must assure the Secretary that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be low-income individuals, potential first-generation college students, or individuals who have a high risk for academic failure;

(3) No student will be denied participation in a project because the student would enter the project after the 9th grade; and

(4) The project will collaborate with other Federal TRIO projects, GEAR UP projects, or programs serving similar populations that are serving the same target schools or target area in order to minimize the duplication of services and promote collaborations so that more students can be served.

(b) An applicant for an Upward Bound Math and Science Centers award must assure the Secretary that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be either low-income individuals or potential first-generation college students;

(3) No student will be denied participation in a project because the student would enter the project after the 9th grade; and

(4) The project will collaborate with other Federal TRIO projects, GEAR UP projects, or programs serving similar populations that are serving the same target schools or target area in order to minimize the duplication of services and promote collaborations so that more students can be served.

(c) An applicant for a Veterans Upward Bound award must assure the Secretary that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be low-income individuals, potential first-generation college students, or veterans who have a high risk for academic failure; and

(3) The project will collaborate with other Federal TRIO projects or programs serving similar populations in the target area in order to minimize the duplication of services and promote collaborations so that more students can be served.

(Authority: 20 U.S.C. 1070a–13)

■ 80. Section 645.30 is amended by:

■ A. In paragraph (a)(2)(i), removing the word "or" after the words "same target population" and adding, in its place, the word "and"; removing the words "in delivering services" and adding, in their place, the words "of high quality service delivery"; and adding the word "outcome" before the word "criteria".

■ B. In paragraph (a)(2)(ii), adding the word "total" after the word "maximum" the first time it appears.

■ C. Adding new paragraphs (a)(2)(iii) through (a)(2)(v).

■ D. Revising paragraph (d).

The additions and revision read as follows:

§ 645.30 How does the Secretary decide which grants to make?

(a) * * *

(2) * * *

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

■ 81. Section 645.31 is amended by:

■ A. Revising paragraph (b).

■ B. Revising paragraph (d)(2).

The revisions read as follows:

§ 645.31 What selection criteria does the Secretary use?

* * * * *

(b) *Objectives* (9 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) For Regular Upward Bound and Upward Bound Math and Science Centers—

(i) (1 point) Academic performance (GPA);

(ii) (1 point) Academic performance (standardized test scores);

(iii) (2 points) Secondary school retention and graduation (with regular secondary school diploma);

(iv) (1 point) Completion of rigorous secondary school program of study;

(v) (3 points) Postsecondary enrollment; and

(vi) (1 point) Postsecondary completion.

(2) For Veterans Upward Bound—

(i) (2 points) Academic performance (standardized test scores);

(ii) (3 points) Education program retention and completion;

(iii) (3 points) Postsecondary enrollment; and

(iv) (1 point) Postsecondary completion.

* * * * *

(d) * * *

(2) Resources secured through written commitments from community partners.

(i) An applicant that is an institution of higher education must include in its application commitments from the target schools and community organizations;

(ii) An applicant that is a secondary school must include in its commitments from institutions of higher education, community organizations, and, as appropriate, other secondary schools and the school district;

(iii) An applicant that is a community organization must include in its application commitments from the target schools and institutions of higher education.

* * * * *

■ 82. Section 645.32 is revised to read as follows:

§ 645.32 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 645.30(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Upward Bound project;

(2) Uses the approved project objectives for the applicant's expiring Upward Bound grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award any PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE points are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) The Secretary does not award PE points for the criteria specified in paragraphs (e)(1)(i) and (e)(2)(i) of this section (Number of participants) if the applicant did not serve at least the approved number of participants.

(d) The Secretary uses the approved number of participants, or the actual number of participants served in a given year if greater than the approved number of participants, as the denominator for calculating whether the applicant has met its approved objectives related to the following PE criteria:

(1) Regular Upward Bound and Upward Bound Math and Science Centers PE criteria in paragraph (e)(1)(ii) of this section (Academic performance) and paragraph (e)(1)(iii) of this section (Secondary school retention and graduation).

(2) Veterans Upward Bound PE criteria in paragraph (e)(2)(iii) of this section (Education program retention and completion).

(e) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) *Regular Upward Bound and Upward Bound Math and Science Centers.*

(i) (3 points) *Number of participants.* Whether the applicant provided services to no less than the approved number of participants.

(ii) *Academic Performance.* (A) (1.5 points) Whether the applicant met or exceeded its approved objective with regard to participants served during the project year who had a cumulative GPA at the end of the school year that was not less than the GPA specified in the approved objective.

(B) (1.5 points) Whether the applicant met or exceeded its approved objective with regard to participants served during the project period who met the academic performance levels on standardized tests as specified in the approved objectives.

(iii) (3 points) *Secondary school retention and graduation.* Whether the applicant met or exceeded its approved objective with regard to participants served during the project year who returned the next school year or graduated from secondary school with a regular secondary school diploma.

(iv) (1.5 points) *Rigorous secondary school program of study.* Whether the applicant met or exceeded its approved objective with regard to current and prior participants with an expected high school graduation date in the school year who completed a rigorous secondary school program of study.

(v) (3 points) *Postsecondary enrollment.* Whether the applicant met or exceeded its approved objective with regard current and prior participants with an expected high school graduation date in the school year who enrolled in a program of postsecondary education within the time period specified in the approved objective.

(vi) (1.5 points) *Postsecondary completion.* Whether the applicant met or exceeded its approved objective with regard to participants who enrolled in a program of postsecondary education and attained a postsecondary degree within the number of years specified in the approved objective.

(2) *Veterans Upward Bound.*

(i) (3 points) *Number of participants.* Whether the applicant provided services to no less than the approved number of participants.

(ii) (3 points) *Academic improvement on standardized test.* Whether the applicant met or exceeded its approved objective with regard to participants who completed their Veterans Upward Bound educational program during the project year and who improved their academic performance as measured by a standardized test taken by participants before and after receiving services from the project.

(iii) (3 points) *Education program retention and completion.* Whether the applicant met or exceeded its approved objective with regard to participants served during the project year who remained in or completed their Veterans Upward Bound educational program.

(iv) (3 points) *Postsecondary enrollment.* Whether the applicant met or exceeded its approved objective with regard to participants who completed their Veterans Upward Bound educational program and enrolled in an institution of higher education within the time period specified in the approved objective.

(v) (3 points) *Postsecondary completion.* Whether the applicant met or exceeded its approved objective with regard to participants who enrolled in and completed a program of postsecondary education within the number of years specified in the approved objective.

(Approved by the Office of Management and Budget under control number 1840–NEW9)

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

§ 645.33 [Amended]

■ 83. Section 645.33 is amended by, in paragraph (b)(1), removing the amount "$190,000" and adding, in its place, the amount "$200,000".

■ 84. Section 645.34 is revised to read as follows:

§ 645.34 How long is a project period?

A project period under the Upward Bound program is five years.

(Authority: 20 U.S.C. 1070a–11)

■ 85. A new § 645.35 is added to subpart D of part 645 to read as follows:

§ 645.35 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 645.30 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as provided in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds

available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW4)

(Authority: 20 U.S.C. 1070a–11)

■ 86. Section 645.40 is amended by:

■ A. In the introductory text, removing the words "34 CFR part 74, subpart Q" and adding, in their place, the words "34 CFR 74.27, 75.530, and 80.22, as applicable".

■ B. Revising paragraph (n).

■ C. Redesignating paragraph (o) as paragraph (p).

■ D. Adding new paragraph (o).

■ E. Adding new paragraph (q).

The revision and additions read as follows:

§ 645.40 What are allowable costs?

* * * * *

(n) Purchase, lease, or rental of computer hardware, software, and other equipment, service agreements for such equipment, and supplies that support the delivery of services to participants, including technology used by participants in a rigorous secondary school program of study.

(o) Purchase, lease, or rental of computer equipment and software, service agreements for such equipment, and supplies needed for project administration and recordkeeping.

* * * * *

(q) Tuition costs for a course that is part of a rigorous secondary school program of study if—

(1) The course or a similar course is not offered at the secondary school that the participant attends or at another school within the school district;

(2) The grantee demonstrates to the Secretary's satisfaction that using grant funds is the most cost-effective way to deliver the course or courses necessary for the completion of a rigorous secondary school program of study for program participants;

(3) The course is taken through an accredited institution of higher education;

(4) The course is comparable in content and rigor to courses that are part of a rigorous secondary school program of study as defined in § 645.6(b);

(5) The secondary school accepts the course as meeting one or more of the course requirements for obtaining a regular secondary school diploma;

(6) A waiver of the tuition costs is unavailable;

(7) The tuition is paid with Upward Bound grant funds to an institution of higher education on behalf of a participant; and

(8) The Upward Bound project pays for no more than the equivalent of two courses for a participant each school year.

* * * * *

■ 87. Section 645.42 is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 645.42 What are Upward Bound stipends?

* * * * *

(d) * * *

(1) * * *

(ii) The stipend may not exceed $60 per month for the summer school recess for a period not to exceed three months, except that youth participating in a work-study position may be paid $300 per month during the summer school recess.

* * * * *

■ 88. Section 645.43 is amended by:

■ A. Revising paragraph (a).

■ B. Revising paragraph (b).

■ C. In paragraph (c) introductory text, removing the word "shall" and adding, in its place, the word "must".

■ D. In paragraph (c)(4), removing the punctuation "." and adding, in its place, the words "; and".

■ E. Adding a new paragraph (c)(5).

■ F. Adding an OMB control number parenthetical following paragraph (c).

The additions read as follows:

§ 645.43 What other requirements must a grantee meet?

(a) *Number of Participants.* For each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the **Federal Register** notice inviting applications for a competition. Through this notice, the Secretary also provides the minimum and maximum grant award amounts for the competition.

(b) *Project director.* (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (b)(1) of this section if the applicant demonstrates that the project director will be able to effectively administer more than three programs and that this arrangement would promote effective coordination between the program and other Federal TRIO programs (sections 402B through 402F of the HEA) and similar programs funded through other sources.

(c) * * *

(5) To the extent practicable, any services the participant receives during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the UB program.

(Approved by the Office of Management and Budget under control number 1840–NEW9)

* * * * *

PART 646—STUDENT SUPPORT SERVICES

■ 89. The authority citation for part 646 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–14, unless otherwise noted.

■ 90. Section 646.1 is amended by:
■ A. In paragraph (a), adding the word "college" before the word "retention".
■ B. Revising paragraph (c).
■ C. Adding new paragraph (d).

The revision and addition read as follows:

§ 646.1 What is the Student Support Services program?

* * * * *

(c) Foster an institutional climate supportive of the success of students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, individuals with disabilities, homeless children and youth, foster care youth, or other disconnected students; and

(d) Improve the financial and economic literacy of students in areas such as—

(1) Basic personal income, household money management, and financial planning skills; and

(2) Basic economic decision-making skills.

* * * * *

■ 91. Section 646.4 is revised to read as follows:

§ 646.4 What activities and services does a project provide?

(a) A Student Support Services project must provide the following services:

(1) Academic tutoring, directly or through other services provided by the institution, to enable students to complete postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects.

(2) Advice and assistance in postsecondary course selection.

(3)(i) Information on both the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and

(ii) Assistance in completing financial aid applications, including the Free Application for Federal Student Aid.

(4) Education or counseling services designed to improve the financial and economic literacy of students, including financial planning for postsecondary education.

(5) Activities designed to assist participants enrolled in four-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, graduate and professional programs.

(6) Activities designed to assist students enrolled in two-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, a four-year program of postsecondary education.

(b) A Student Support Services project may provide the following services:

(1) Individualized counseling for personal, career, and academic matters provided by assigned counselors.

(2) Information, activities, and instruction designed to acquaint students participating in the project with the range of career options available to the students.

(3) Exposure to cultural events and academic programs not usually available to disadvantaged students.

(4) Mentoring programs involving faculty or upper class students, or a combination thereof.

(5) Securing temporary housing during breaks in the academic year for—

(i) Students who are homeless children and youths or were formerly homeless children and youths; and

(ii) Foster care youths.

(6) Programs and activities as described in paragraph (a) of this section or paragraphs (b)(1) through (b)(4) of this section that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

(7) Other activities designed to meet the purposes of the Student Support Services Program in § 646.1.

(Authority: 20 U.S.C. 1070a–14)

■ 92. Section 646.5 is revised to read as follows:

§ 646.5 How long is a project period?

A project period under the Student Support Services program is five years.

(Authority: 20 U.S.C. 1070a–11)

■ 93. Section 646.6 is amended by revising paragraph (a) to read as follows:

§ 646.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

■ 94. Section 646.7 is amended by:
■ A. Removing paragraph (a).
■ B. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.
■ C. In newly redesignated paragraph (b), revising the definition of "Different campus"; removing the definition of "Different population of participants"; revising the definition of "Individual with a disability"; and adding, in alphabetical order, new definitions for "Different population", "Financial and economic literacy", "First generation college student", "Foster care youth", "Homeless children and youth", "Institution of higher education", and "Low-income individual".

The revisions and additions read as follows:

§ 646.7 What definitions apply?

* * * * *

(b) * * *

Different campus means a site of an institution of higher education that—

(1) Is geographically apart from the main campus of the institution;

(2) Is permanent in nature; and

(3) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential.

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Student Support Services program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, which may include but is not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (*e.g.*, loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary or postbaccalaureate education (e.g., spending, saving, personal budgeting);

(4) College cost of attendance (*e.g.*, public vs. private, tuition vs. fees, personal costs);

(5) Financial assistance (*e.g.,* searches, application processes, differences between private and government loans, assistanceships); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

First generation college student means—

(1) A student neither of whose natural or adoptive parents received a baccalaureate degree;

(2) A student who, prior to the age of 18, regularly resided with and received support from only one parent and whose supporting parent did not receive a baccalaureate degree; or

(3) An individual who, prior to the age of 18, did not regularly reside with or receive support from a natural or an adoptive parent.

Foster care youth means youth who are in foster care or are aging out of the foster care system.

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 1143a).

Individual with a disability means a person who has a disability, as that term is defined in section 12102 of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

Institution of higher education means an educational institution as defined in sections 101 and 102 of the Act.

* * * * *

Low-income individual means an individual whose family's taxable income did not exceed 150 percent of the poverty level amount in the calendar year preceding the year in which the individual initially participated in the project. The poverty level amount is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

* * * * *

■ 95. Subpart B of part 646 is revised to read as follows:

Subpart B—How Does One Apply for an Award?

Sec.

Subpart B—How Does One Apply for an Award?

§ 646.10 How many applications may an eligible applicant submit and for what different populations may an eligible application be submitted?

(a) An eligible applicant may submit more than one application as long as each application describes a project that serves a different campus or a designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14; 20 U.S.C. 1221e–3)

§ 646.11 What assurances and other information must an applicant include in an application?

(a) An applicant must assure the Secretary in the application that—

(1) Not less than two-thirds of the project participants will be—

(i) Low-income individuals who are first generation college students; or

(ii) Individuals with disabilities;

(2) The remaining project participants will be low-income individuals, first generation college students, or individuals with disabilities; and

(3) Not less than one-third of the individuals with disabilities served also will be low-income individuals.

(b) The applicant must describe in the application its efforts, and where applicable, past history, in—

(1) Providing sufficient financial assistance to meet the full financial need of each student in the project; and

(2) Maintaining the loan burden of each student in the project at a manageable level.

(c) The applicant must assure the Secretary in the application that a student will not be served by more than one SSS project at any one time and that the SSS project will collaborate with other SSS and McNair projects and other State and institutional programs at the grantee-institution so that more students can be served.

(d) The applicant must assure the Secretary in the application that the institution's financial aid office will consult with the SSS project with respect to which SSS participants should receive grant aid and the amount of the grant aid awards.

(Approved by the Office of Management and Budget under control number 1840–NEW5)

(Authority: 20 U.S.C. 1070a–14)

■ 96. Section 646.20 is amended by:

■ A. In paragraph (a)(2)(i), removing the word "or" after the words "same population" and adding, in its place, the word "and"; removing the words "in delivering services" and adding, in their place, the words "of high quality service delivery; and adding the word "outcome" before the word "criteria".

■ B. Revising paragraph (a)(2)(ii).

■ C. Adding new paragraphs (a)(2)(iii) through (a)(2)(v).

■ D. Revising paragraph (d).

The revisions and additions read as follows:

§ 646.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(ii) The maximum total score for all the criteria in § 646.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

■ 97. Section 646.21 is amended by:

■ A. Revising paragraph (b).

■ B. Revising the OMB control number at the end of the section.

The revisions read as follows:

§ 646.21 What selection criteria does the Secretary use to evaluate an application?

* * * * *

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's proposed objectives in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources.

(1) (3 points) Retention in postsecondary education.

(2) (2 points) In good academic standing at grantee institution.

(3) Two-year institutions only. (i) (1 point) Certificate or degree completion; and

(ii) (2 points) Certificate or degree completion and transfer to a four-year institution.

(4) Four-year institutions only. (3 points) Completion of a baccalaureate degree.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–NEW5)

* * * * *

■ 98. Section 646.22 is revised to read as follows:

§ 646.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 646.20(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Student Support Services project;

(2) Uses the approved project objectives for the applicant's expiring Student Support Services grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of prior PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE points are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) The Secretary does not award PE points for the criterion specified in paragraph (e)(1) of this section (Number of participants) if the applicant did not serve at least the approved number of participants.

(d) The Secretary uses the approved number of participants, or the actual number of participants served in a given year if greater than the approved number of participants, as the denominator for calculating whether the applicant has met its approved objectives related to paragraph (e)(2) of this section (Postsecondary retention) and paragraph (e)(3) of this section (Good academic standing).

(e) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) *Number of participants.* Whether the applicant provided services to no less than the approved number of participants.

(2) (4 points) *Postsecondary retention.* Whether the applicant met or exceeded its objective regarding the participants served during the project year who continue to be enrolled in a program of postsecondary education from one academic year to the beginning of the next academic year or who complete a program of postsecondary education at the grantee institution during the academic year or transfer from a two-year institution to a four-year institution during the academic year.

(3) (4 points) *Good academic standing.* Whether the applicant met or exceeded its objective regarding the participants served during the project year who are in good academic standing at the grantee institution.

(4) (4 points) *Degree completion (for an applicant institution of higher education offering primarily a baccalaureate or higher degree).* Whether the applicant met or exceeded its objective regarding the current and prior participants receiving a baccalaureate degree at the grantee institution within the specified number of years.

(5) *Degree completion and transfer (for an applicant institution of higher education offering primarily an associate degree).* Whether the applicant met or exceeded its objectives regarding the current and prior participants at the grantee institution who—

(i) (2 points) Complete a degree or certificate within the number of years specified in the approved objective; and

(ii) (2 points) Transfer within the number of years specified in the approved objective to institutions of higher education that offer baccalaureate degrees.

(Approved by the Office of Management and Budget under control number 1840–NEW10)

(Authority: 20 U.S.C. 1070a–11; 1070a–14)

§ 646.23 [Amended]

■ 99. Section 646.23(b)(1) is amended by removing the amount "$170,000" and adding, in its place, the amount "$200,000".

■ 100. A new § 646.24 is added to subpart C of part 646 to read as follows:

§ 646.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the

wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 646.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as provided in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW5)

(Authority: 20 U.S.C. 1070a–11)

■ 101. Section 646.30 is amended by:

■ A. In the introductory text, removing the words "34 CFR part 74, subpart Q" and adding, in their place, the words "34 CFR 74.27, 75.530, and 80.22, as applicable".

■ B. Revising paragraph (e)

■ C. Revising paragraph (f).

■ D. Adding new paragraphs (i) and (j).

The revisions and additions read as follows:

§ 646.30 What are allowable costs?

* * * * *

(e) Transportation and, with the prior approval of the Secretary, meals and lodging for participants and staff during approved educational and cultural activities sponsored by the project.

(f) Purchase, lease, or rental of computer hardware, software, and other equipment, service agreements for such equipment, and supplies for participant development, project administration, or project recordkeeping.

* * * * *

(i) Grant aid to eligible students who—

(1) Are in their first two years of postsecondary education and who are receiving Federal Pell Grants under

subpart 1 of part A of title IV of the Act; or

(2) Have completed their first two years of postsecondary education and who are receiving Federal Pell Grants under subpart 1 of part A of title IV of the Act if the institution demonstrates to the satisfaction of the Secretary that—

(i) These students are at high risk of dropping out; and

(ii) It will first meet the needs of all its eligible first- and second-year students for services under this paragraph.

(j) Temporary housing during breaks in the academic year for—

(1) Students who are homeless children and youths or were formerly homeless children and youths; and

(2) Students who are foster care youth.

* * * * *

§ 646.31 [Amended]

■ 102. Section 646.31(b) is amended by adding the words ", except for Grant aid under § 646.30(i)" after the word "support".

§ 646.32 [Amended]

■ 103. Section 646.32 is amended by:

■ A. Redesignating paragraphs (a), (b), (c), and (d) as paragraphs (b), (c), and (d), and (e) respectively.

■ B. Adding a new paragraph (a).

■ C. In newly redesignated paragraph (b)(2), removing the words "Higher Education".

■ D. In newly redesignated paragraph (b), removing paragraph (b)(3).

■ E. In newly redesignated paragraph (c) introductory text, removing the word "shall" and adding, in its place, the word "must".

■ F. In newly redesignated paragraph (c)(3), removing the word "and".

■ G. In newly redesignated paragraph (c)(4), removing the punctuation "." and adding, in its place, the words "; and".

■ H. Adding a new paragraph (c)(5).

■ I. Revising newly redesignated paragraph (d).

■ J. In the OMB control number parenthetical following paragraph (e), removing the numbers "1840–0017" and adding, in their place, the numbers "1840–NEW5".

The revisions and additions read as follows:

§ 646.32 What other requirements must a grantee meet?

(a) *Number of Participants.* For each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the **Federal Register** notice inviting applications for a competition. Through this notice, the Secretary also provides the minimum and maximum grant award amounts for the competition.

* * * * *

(c) * * *

(5) To the extent practicable, any services the participant receives during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the SSS program.

(d) *Project director.* (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (d)(1) of this section if the applicant demonstrates that the project director will be able to effectively administer more than three programs and that this arrangement would promote effective coordination between the program and other Federal TRIO programs (sections 402B through 402F of the HEA) or similar programs funded through other sources.

* * * * *

■ 104. Section 646.33 is added to subpart D of part 646 to read as follows:

§ 646.33 What are the matching requirements for a grantee that uses Student Support Services program funds for student grant aid?

(a) Except for grantees described in paragraph (b) of this section, a grantee that uses Student Support Services program funds for grant aid to eligible students described in § 646.30(i) must—

(1) Match the Federal funds used for grant aid, in cash, from non-Federal funds, in an amount that is not less than 33 percent of the total amount of Federal grant funds used for Grant aid; and

(2) Use no more than 20 percent of the Federal program funds awarded the grantee each year for grant aid.

(b) A grant recipient that is an institution of higher education eligible to receive funds under part A or B of title III or title V of the HEA, as amended, is not required to match the Federal funds used for grant aid.

(Approved by the Office of Management and Budget under control number 1840–NEW10)

(Authority: 20 U.S.C. 1070a–11)

PART 647—RONALD E. MCNAIR POSTBACCALAUREATE ACHIEVEMENT PROGRAM

■ 105. The authority citation for part 647 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–15, unless otherwise noted.

■ 106. Section 647.4 is revised to read as follows:

§ 647.4 What activities and services does a project provide?

(a) A McNair project must provide the following services and activities:

(1) Opportunities for research or other scholarly activities at the grantee institution or at graduate centers that are designed to provide students with effective preparation for doctoral study.

(2) Summer internships.

(3) Seminars and other educational activities designed to prepare students for doctoral study.

(4) Tutoring.

(5) Academic counseling.

(6) Assistance to students in securing admission to, and financial assistance for, enrollment in graduate programs.

(b) A McNair project may provide the following services and activities:

(1) Education or counseling services designed to improve the financial and economic literacy of students, including financial planning for postsecondary education.

(2) Mentoring programs involving faculty members at institutions of higher education, students, or a combination of faculty members and students.

(3) Exposure to cultural events and academic programs not usually available to disadvantaged students.

(4) Other activities designed to meet the purpose of the McNair Program in § 647.1.

(Authority: 20 U.S.C. 1070a–15)

■ 107. Section 647.5 is revised to read as follows:

§ 647.5 How long is a project period?

A project period under the McNair program is five years.

(Authority: 20 U.S.C. 1070a–11)

■ 108. Section 647.6 is amended by revising paragraph (a) to read as follows:

§ 647.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

■ 109. Section 647.7(b) is amended by:

■ A. Removing the definition of "Summer internship".

■ B. In the definition of "Graduate center", revising the introductory text.
■ C. Revising the definition of "Groups underrepresented in graduate education".
■ D. Revising the definition of "Institution of higher education".
■ E. Adding, in alphabetical order, new definitions for "Different campus", "Different population", "Financial and economic literacy", and "Research or scholarly activity".

The revisions and additions read as follows:

§ 647.7 What definitions apply?

* * * * *

(b) * * *

Different campus means a site of an institution of higher education that—

(1) Is geographically apart from the main campus of the institution;

(2) Is permanent in nature; and

(3) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential.

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the McNair TRIO program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, which may include but is not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit-building principles to meet long-term and short-term goals (*e.g.,* loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary or postbaccalaureate education (e.g., spending, saving, personal budgeting);

(4) College cost of attendance (*e.g.,* public vs. private, tuition vs. fees, personal costs);

(5) Financial assistance (*e.g.,* searches, application processes, and differences between private and government loans, assistanceships); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

* * * * *

Graduate center means an institution of higher education as defined in sections 101 and 102 of the HEA; and that—

* * * * *

Groups underrepresented in graduate education. The following ethnic and racial groups are considered underrepresented in graduate education: Black (non-Hispanic), Hispanic, American Indian, Alaskan Native (as defined in section 7306 of the Elementary and Secondary Education Act of 1965, as amended (ESEA)), Native Hawaiians (as defined in section 7207 of the ESEA), and Native American Pacific Islanders (as defined in section 320 of the HEA).

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

* * * * *

Research or scholarly activity means an educational activity that is more rigorous than is typically available to undergraduates in a classroom setting, that is definitive in its start and end dates, contains appropriate benchmarks for completion of various components, and is conducted under the guidance of an appropriate faculty member with experience in the relevant discipline.

* * * * *

Subpart B—How Does One Apply for an Award?

■ 110. Subpart B of part 647 is amended by revising the subpart heading to read as set forth above.

§ 647.10 [Redesignated as § 647.11]

■ 110a. Redesignate § 647.10 as § 647.11.

■ 111. Section 647.10 is added to subpart B of part 647 to read as follows:

§ 647.10 How many applications may an eligible applicant submit?

(a) An applicant may submit more than one application for McNair grants as long as each application describes a project that serves a different campus or a designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and the other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–15; 20 U.S.C. 1221e–3))

■ 112. Newly redesignated § 647.11 is amended by adding paragraph (d) to read as follows:

§ 647.11 What assurances must an applicant submit?

* * * * *

(d) A student will not be served by more than one McNair project at any one time and that the McNair project will collaborate with other McNair and SSS projects and other State and institutional programs at the grantee-institution, including those supporting undergraduate research, so that more students can be served.

* * * * *

(Authority: 20 U.S.C. 1070a–15; 20 U.S.C. 1221e–3))

■ 113. Section 647.20 is amended by:
■ A. In paragraph (a)(2)(i), adding the words "of high quality service delivery" after the words "prior experience" and adding the word "outcome" before the word "criteria".
■ B. Revising paragraph (a)(2)(ii).
■ C. Adding new paragraphs (a)(2)(iv), (a)(2)(v), and (a)(2)(vi).
■ D. Revising paragraph (d).

The revisions and additions read as follows:

§ 647.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(ii) The maximum total score for all the criteria in § 647.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

* * * * *

(iv) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(v) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(vi) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

■ 114. Section 647.21 is amended by:
■ A. Revising paragraph (b).
■ B. Adding an OMB control number parenthetical following paragraph (d).

The revision and addition read as follows:

§ 647.21 What selection criteria does the Secretary use?

* * * * *

(b) *Objectives* (9 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) (2 points) Research or scholarly activity.

(2) (3 points) Enrollment in a graduate program.

(3) (2 points) Continued enrollment in graduate study.

(4) (2 points) Doctoral degree attainment.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–NEW6)

* * * * *

■ 115. Section 647.22 is revised to read as follows:

§ 647.22 How does the Secretary evaluate prior experience?

(a) In the case of an applicant described in § 647.20(a)(2)(i), the Secretary—

(1) Evaluates an applicant's performance under its expiring McNair project;

(2) Uses the approved project objectives for the applicant's expiring McNair grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) The Secretary does not award any PE points for the criteria specified in paragraph (e)(1) of this section (Number of participants) if the applicant did not serve at least the approved number of participants.

(d) The Secretary uses the approved number of participants, or the actual number of participants served in a given year if greater than the approved number of participants, as the denominator for calculating whether the applicant has met its approved objective related to paragraph (e)(2) of this section (Research and scholarly activities).

(e) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) *Number of participants.* Whether the applicant provided services to no less than the approved number of participants.

(2) (3 points) *Research or scholarly activities.* Whether the applicant met or exceeded its objective for providing participants served during the project year with appropriate research and scholarly activities each academic year.

(3) (3 points) *Graduate school enrollment.* Whether the applicant met or exceeded its objective with regard to the acceptance and enrollment in graduate programs of participants served during the project year who complete the baccalaureate program during the academic year.

(4) (4 points) *Continued enrollment in graduate school.* Whether the applicant met or exceeded its objective with regard to the continued enrollment in graduate school of prior participants.

(5) (2 points) *Doctoral degree attainment.* Whether the applicant met or exceeded its objective with regard to the attainment of doctoral level degrees of prior participants in the specified number of years.

(Approved by the Office of Management and Budget under control number 1840–NEW11)

(Authority: 20 U.S.C. 1070a–11 and 1070a–15)

§ 647.23 [Amended]

■ 116. Section 647.23 is amended by:

■ A. In paragraph (b), introductory text, removing the words "beginning in fiscal year 1995".

■ B. In paragraph (b)(1), removing the amount "$190,000" and adding, in its place, the amount "$200,000".

■ 117. Section 647.24 is added to subpart C of part 647 to read as follows:

§ 647.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's

agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 647.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as provided in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to a designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW6)

(Authority: 20 U.S.C. 1070a–11)

■ 118. Section 647.30 amended by:

■ A. In paragraph (b), removing the amount "$2,400" and, adding, in its place, the amount "$2,800".

■ B. Revising paragraph (d).

The revision reads as follows:

§ 647.30 What are allowable costs?

* * * * *

(d) Purchase, lease, or rental of computer hardware, software, and other equipment, service agreements for such equipment, and supplies for participant development, project administration, or project recordkeeping.

■ 119. Section 647.32 is amended by:

■ A. Redesignating paragraphs (a), (b), (c), and (d) as (b), (c), (d), and (e), respectively.

■ B. Adding a new paragraph (a).

■ C. In newly redesignated paragraph (c), adding a new paragraph (c)(5).

■ D. Adding an OMB control number parenthetical following newly-redesignated paragraph (e).

The addition and revisions read as follows:

§ 647.32 What other requirements must a grantee meet?

(a) *Number of Participants.* For each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the **Federal Register** notice inviting applications for a competition. Through this notice, the Secretary also provides the minimum and maximum grant award amounts for the competition.

* * * * *

(c) * * *

(5) To the extent practicable, any services the participant receives during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the McNair program.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–NEW11)

* * * * *

PART 694—GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)

■ 120. The authority citation for Part 694 continues to read as follows:

Authority: 20 U.S.C. 1070a–21 to 1070a–28.

■ 121. Section 694.1 is amended by revising paragraph (a) introductory text to read as follows:

§ 694.1 What is the maximum amount that the Secretary may award each fiscal year to a Partnership or a State under this program?

(a) *Partnership grants.* The Secretary may establish the maximum amount that may be awarded each fiscal year for a GEAR UP Partnership grant in a notice published in the **Federal Register**. The maximum amount for which a Partnership may apply may not exceed the lesser of the maximum amount established by the Secretary, if applicable, or the amount calculated by multiplying—

* * * * *

■ 122. Section 694.4 is amended by revising paragraph (b)(2) to read as follows:

§ 694.4 Which students must a State or Partnership serve when there are changes in the cohort?

* * * * *

(b) * * *

(2) Must continue to provide GEAR UP services to at least those students in the cohort who attend one or more participating schools that together enroll a substantial majority of the students in the cohort.

* * * * *

■ 123. Section 694.7 is revised to read as follows:

§ 694.7 What are the matching requirements for a GEAR UP grant?

(a) In order to be eligible for GEAR UP funding—

(1) An applicant must state in its application the percentage of the cost of the GEAR UP project the applicant will provide for each year from non-Federal funds, subject to the requirements in paragraph (b) of this section; and

(2) A grantee must make substantial progress towards meeting the matching percentage stated in its approved application for each year of the project period.

(b) Except as provided in §§ 694.8 and 694.9, the non-Federal share of the cost of the GEAR UP project must be not less than 50 percent of the total cost of the project (i.e., one dollar of non-Federal contributions for every one dollar of Federal funds obligated for the project) over the project period.

(c) The non-Federal share of the cost of a GEAR UP project may be provided in cash or in-kind.

(Authority: 20 U.S.C. 1070a–23)

■ 124. Part 694 is amended by redesignating §§ 694.8, 694.9, 694.10, 694.11, 694.12, 694.13, and 694.15 as follows:

Old section	New section
§ 694.8	§ 694.10
§ 694.9	§ 694.11
§ 694.10	§ 694.13
§ 694.11	§ 694.15
§ 694.12	§ 694.17
§ 694.13	§ 694.18
§ 694.15	§ 694.19

■ 125. New § 694.8 is added to read as follows:

§ 694.8 Under what conditions may the Secretary approve a request from a Partnership applying for a GEAR UP grant to waive a portion of the matching requirement?

(a) The Secretary may approve a Partnership applicant's request for a waiver of up to 75 percent of the matching requirement for up to two years if the applicant demonstrates in its application a significant economic hardship that stems from a specific, exceptional, or uncontrollable event, such as a natural disaster, that has a devastating effect on the members of the Partnership and the community in which the project would operate.

(b)(1) The Secretary may approve a Partnership applicant's request to waive up to 50 percent of the matching requirement for up to two years if the applicant demonstrates in its application a pre-existing and an on-going significant economic hardship that precludes the applicant from meeting its matching requirement.

(2) In determining whether an applicant is experiencing an on-going economic hardship that is significant enough to justify a waiver under this paragraph, the Secretary considers documentation of such factors as:

(i) Severe distress in the local economy of the community to be served by the grant (*e.g.,* there are few employers in the local area, large employers have left the local area, or significant reductions in employment in the local area).

(ii) Local unemployment rates that are higher than the national average.

(iii) Low or decreasing revenues for State and County governments in the area to be served by the grant.

(iv) Significant reductions in the budgets of institutions of higher education that are participating in the grant.

(v) Other data that reflect a significant economic hardship for the geographical area served by the applicant.

(3) At the time of application, the Secretary may provide tentative approval of an applicant's request for a waiver under paragraph (b)(1) of this section for all remaining years of the project period. Grantees that receive tentative approval of a waiver for more than two years under this paragraph must submit to the Secretary every two years by such time as the Secretary may direct documentation that demonstrates that—

(i) The significant economic hardship upon which the waiver was granted still exists; and

(ii) The grantee tried diligently, but unsuccessfully, to obtain contributions needed to meet the matching requirement.

(c) The Secretary may approve a Partnership applicant's request in its application to match its contributions to its scholarship fund, established under section 404E of the HEA, on the basis of two non-Federal dollars for every one Federal dollar of GEAR UP funds.

(d) The Secretary may approve a request by a Partnership applicant that has three or fewer institutions of higher education as members to waive up to 70 percent of the matching requirement if the Partnership applicant includes—

(1) A fiscal agent that is eligible to receive funds under title V, or Part B of

title III, or section 316 or 317 of the HEA, or a local educational agency;

(2) Only participating schools with a 7th grade cohort in which at least 75 percent of the students are eligible for free or reduced-price lunch under the Richard B. Russell National School Lunch Act; and

(3) Only local educational agencies in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the Richard B. Russell National School Lunch Act.

(Authority: 20 U.S.C. 1070a–23)

■ 126. New § 694.9 is added to read as follows:

§ 694.9 Under what conditions may the Secretary approve a request from a Partnership that has received a GEAR UP grant to waive a portion of the matching requirement?

(a) After a grant is awarded, the Secretary may approve a Partnership grantee's written request for a waiver of up to—

(1) 50 percent of the matching requirement for up to two years if the grantee demonstrates that—

(i) The matching contributions described for those two years in the grantee's approved application are no longer available; and

(ii) The grantee has exhausted all funds and sources of potential contributions for replacing the matching funds.

(2) 75 percent of the matching requirement for up to two years if the grantee demonstrates that matching contributions from the original application are no longer available due to an uncontrollable event, such as a natural disaster, that has a devastating economic effect on members of the Partnership and the community in which the project would operate.

(b) In determining whether the grantee has exhausted all funds and sources of potential contributions for replacing matching funds, the Secretary considers the grantee's documentation of key factors such as the following and their direct impact on the grantee:

(1) A reduction of revenues from State government, County government, or the local educational agency (LEA).

(2) An increase in local unemployment rates.

(3) Significant reductions in the operating budgets of institutions of higher education that are participating in the grant.

(4) A reduction of business activity in the local area (*e.g.,* large employers have left the local area).

(5) Other data that reflect a significant decrease in resources available to the grantee in the local geographical area served by the grantee.

(c) If a grantee has received one or more waivers under this section or under § 694.8, the grantee may request an additional waiver of the matching requirement under this section no earlier than 60 days before the expiration of the grantee's existing waiver.

(d) The Secretary may grant an additional waiver request for up to 50 percent of the matching requirement for a period of up to two years beyond the expiration of any previous waiver.

(Authority: 20 U.S.C. 1070a–23)

■ 127. New § 694.12 is added to read as follows:

§ 694.12 Under what conditions do State and Partnership GEAR UP grantees make section 404E scholarship awards?

(a)(1) *State Grantees.* All State grantees must establish or maintain a financial assistance program that awards section 404E scholarships to students in accordance with the requirements of § 694.13 or § 694.14, as applicable.

(2) *Partnership Grantees.* Partnerships may, but are not required, to award scholarships to eligible students. If a Partnership awards scholarships to eligible students pursuant to section 404E of the HEA, it must comply with the requirements of § 694.13 or § 694.14, as applicable.

(b)(1) *Section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008.* A State or Partnership grantee making section 404E scholarship awards using funds from GEAR UP grant awards that were made prior to August 14, 2008, must provide such scholarship awards in accordance with the requirements of § 694.13 unless it elects to provide the scholarships in accordance with the requirements of § 694.14 pursuant to paragraph (b)(2) of this section.

(2) *Election to use § 694.14 requirements.* A State or Partnership grantee making section 404E scholarship awards using funds from GEAR UP grant awards that were made prior to August 14, 2008, may provide such scholarship awards in accordance with the requirements of § 694.14 (rather than the requirements of § 694.13) provided that the grantee—

(i) Informs the Secretary, in writing, of its election to make the section 404E scholarship awards in accordance with the requirements of § 694.14; and

(ii) Such election does not decrease the amount of the scholarship promised to any individual student under the grant.

(c) *Section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made on or after August 14, 2008.* A State or Partnership grantee making section 404E scholarship awards using funds from GEAR UP grant awards that were made on or after August 14, 2008, must provide such scholarship awards in accordance with the requirements of § 694.14.

(Authority: 20 U.S.C. 1070a–25)

■ 128. Newly redesignated § 694.13 is revised to read as follows:

§ 694.13 What are the requirements concerning section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008?

The following requirements apply to section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008 unless the grantee elects to provide such scholarship awards in accordance with the requirements of § 694.14 pursuant to § 694.12(b)(2).

(a)(1) The maximum scholarship amount that an eligible student may receive under this section must be established by the grantee.

(2) The minimum scholarship amount that an eligible student receives in a fiscal year pursuant to this section must not be less than the lesser of—

(i) 75 percent of the average cost of attendance for an in-State student, in a four-year program of instruction, at public institutions of higher education in the student's State; or

(ii) The maximum Federal Pell Grant award funded under section 401 of the HEA for the award year in which the scholarship is awarded.

(3) If an eligible student who is awarded a GEAR UP scholarship attends an institution of higher education on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount, but in no case may the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

(b) Scholarships provided under this section may not be considered for the purpose of awarding Federal grant assistance under title IV of the HEA, except that in no case may the total amount of student financial assistance awarded to a student under title IV of the HEA exceed the student's total cost of attendance.

(c) Grantees providing section 404E scholarship awards in accordance with this section—

(1) Must award GEAR UP scholarships first to students who will receive, or are eligible to receive, a Federal Pell Grant during the award year in which the GEAR UP scholarship is being awarded; and

(2) May, if GEAR UP scholarship funds remain after awarding scholarships to students under paragraph (c)(1) of this section, award GEAR UP scholarships to other eligible students (*i.e.,* students who are not eligible to receive a Federal Pell Grant) after considering the need of those students for GEAR UP scholarships.

(d) For purposes of this section, an eligible student is a student who—

(1) Is less than 22 years old at the time of award of the student's first GEAR UP scholarship;

(2) Has received a secondary school diploma or its recognized equivalent on or after January 1, 1993;

(3) Is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education that is located within the State's boundaries, except that, at the grantee's option, a State or Partnership may offer scholarships to students who attend institutions of higher education outside the State; and

(4) Has participated in activities under § 694.21 or § 694.22.

(e) A State using a priority approach may award scholarships under paragraph (a) of this section to eligible students identified by priority at any time during the grant award period rather than reserving scholarship funds for use only in the seventh year of a project or after the grant award period.

(f) A State or a Partnership that makes scholarship awards from GEAR UP funds in accordance with this section must award continuation scholarships in successive award years to each student who received an initial scholarship and who is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

■ 129. Section 694.14 is revised to read as follows:

§ 694.14 What are the requirements concerning section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made on or after August 14, 2008?

The following requirements apply to section 404E scholarship awards provided by grantees whose initial GEAR UP grant awards were made on or after August 14, 2008 and any section 404E scholarship awards for grantees whose initial GEAR UP grant awards were issued prior to August 14, 2008, but who, pursuant to § 694.12(b)(2), elected to use the § 694.14 requirements (rather than the § 694.13 requirements).

(a)(1) The maximum scholarship amount that an eligible student may receive under section 404E of the HEA must be established by the grantee.

(2) The minimum scholarship amount that an eligible student receives in a fiscal year must not be less than the minimum Federal Pell Grant award under section 401 of the HEA at the time of award.

(3) If an eligible student who is awarded a GEAR UP scholarship attends an institution of higher education on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount, but in no case may the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

(b) For purposes of this section, an eligible student is a student who—

(1) Is less than 22 years old at the time of award of the first GEAR UP scholarship;

(2) Has received a secondary school diploma or its recognized equivalent on or after January 1, 1993;

(3) Is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education that is located within the State's boundaries, except that, at the grantee's option, a State or Partnership may offer scholarships to students who attend institutions of higher education outside the State; and

(4) Has participated in the activities required under § 694.21.

(c)(1) By the time students who have received services from a State grant have completed the twelfth grade, a State that has not received a waiver under section 404E(b)(2) of the HEA of the requirement to spend at least 50 percent of its GEAR UP funds on scholarships must have in reserve an amount that is not less than the minimum Federal Pell Grant multiplied by the number of students the State estimates will enroll in an institution of higher education.

(2) Consistent with paragraph (a) of this section and § 694.16(a), States must use funds held in reserve to make scholarships to eligible students.

(3) Scholarships must be made to all students who are eligible under the definition in paragraph (b) of this section. A grantee may not impose additional eligibility criteria that would have the effect of limiting or denying a scholarship to an eligible student.

(d) A State using a priority approach may award scholarships under paragraph (a) of this section to eligible students identified by priority at any time during the grant award period rather than reserving scholarship funds for use only in the seventh year of a project or after the grant award period.

(e) States providing scholarships must provide information on the eligibility requirements for the scholarships to all participating students upon the students' entry into the GEAR UP program.

(f) A State must provide scholarship funds as described in this section to all eligible students who attend an institution of higher education in the State, and may provide these scholarship funds to eligible students who attend institutions of higher education outside the State.

(g) A State or a Partnership that chooses to participate in the scholarship component in accordance with section 404E of the HEA may award continuation scholarships in successive award years to each student who received an initial scholarship and who is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education.

(h) A GEAR UP scholarship, provided under section 404E of the HEA, may not be considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA, except that in no case may the total amount of student financial assistance awarded to a student under title IV of the HEA exceed the student's total cost of attendance.

(Authority: 20 U.S.C. 1070a–25)

■ 130. Newly redesignated § 694.15 is revised to read as follows:

§ 694.15 May a Partnership that does not award scholarships under section 404E of the HEA provide, as part of a GEAR UP project, financial assistance for postsecondary education using non-Federal funds?

A GEAR UP Partnership that does not participate in the GEAR UP scholarship component may provide financial assistance for postsecondary education with non-Federal funds, and those funds may be used to satisfy the matching requirement.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

■ 131. Section 694.16 is added to read as follows:

§ 694.16 What are the requirements for redistribution or return of scholarship funds not awarded to a project's eligible students?

The following requirements apply only to section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made on or after August 14, 2008, and to any section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008, but who, pursuant to § 694.12(b)(2), elect to use the § 694.14 requirements (rather than the § 694.13 requirements):

(a) Scholarship funds held in reserve by States under § 694.14(c) or by Partnerships under section 404D(b)(7) of the HEA that are not used by eligible students as defined in § 694.14(b) within six years of the students' scheduled completion of secondary school may be redistributed by the grantee to other eligible students.

(b) Any Federal scholarship funds that are not used by eligible students within six years of the students' scheduled completion of secondary school, and are not redistributed by the grantee to other eligible students, must be returned to the Secretary within 45 days after the six-year period for expending the scholarship funds expires.

(c) Grantees that reserve funds for scholarships must annually furnish information, as the Secretary may require, on the amount of Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds to eligible students until these funds are fully expended or returned to the Secretary.

(d) A scholarship fund is subject to audit or monitoring by authorized representatives of the Secretary throughout the life of the fund.

(Authority: 20 U.S.C. 1070a–25(e))

■ 132. Newly redesignated § 694.18 is revised to read as follows:

§ 694.18 What requirements must be met by a Partnership or State participating in GEAR UP with respect to 21st Century Scholarship Certificates?

(a) A State or Partnership must provide, in accordance with procedures the Secretary may specify, a 21st Century Scholar Certificate to each student participating in its GEAR UP project.

(b) 21st Century Scholarship Certificates must be personalized and indicate the amount of Federal financial aid for college and the estimated amount of any scholarship provided under section 404E of the HEA, if applicable, that a student may be eligible to receive.

(Authority: 20 U.S.C. 1070a–26)

■ 133. Newly redesignated § 694.19 is revised to read as follows:

§ 694.19 What priorities does the Secretary establish for a GEAR UP grant?

The Secretary awards competitive preference priority points to an eligible applicant for a State grant that has both—

(a) Carried out a successful State GEAR UP grant prior to August 14, 2008, determined on the basis of data (including outcome data) submitted by the applicant as part of its annual and final performance reports, and the applicant's history of compliance with applicable statutory and regulatory requirements; and

(b) A prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

(Authority: 20 U.S.C. 1070a–21(b))

■ 134. New § 694.20 is added to read as follows:

§ 694.20 When may a GEAR UP grantee provide services to students attending an institution of higher education?

(a) The Secretary authorizes an eligible State or Partnership to provide GEAR UP services to students attending an institution of higher education if the State or Partnership—

(1) Applies for and receives a new GEAR UP award after August 14, 2008, and

(2) In its application, requested a seventh year so that it may continue to provide services to students through their first year of attendance at an institution of higher education.

(b) A State grantee that uses a priority (rather than or in addition to a cohort) approach to identify participating students may, consistent with its approved application and at any time during the project period, provide services to students during their first year of attendance at an institution of higher education, provided that the grantee continues to provide all required services throughout the Federal budget period to GEAR UP students still enrolled in a local educational agency.

(c) If a grantee is awarded a seven year grant, consistent with the grantee's approved application, during the seventh year of the grant the grantee—

(1) Must provide services to students in their first year of attendance at an institution of higher education; and

(2) May choose to provide services to high school students who have yet to graduate.

(d) Grantees that continue to provide services under this part to students through their first year of attendance at an institution of higher education must, to the extent practicable, coordinate with other campus programs, including academic support services to enhance, not duplicate service.

(Authority: 20 U.S.C. 1070a–21(b)(2))

■ 135. New § 694.21 is added to read as follows:

§ 694.21 What are required activities for GEAR UP projects?

A grantee must provide comprehensive mentoring, outreach, and supportive services to students participating in the GEAR UP program. These services must include the following activities:

(a) Providing information regarding financial aid for postsecondary education to eligible participating students.

(b) Encouraging student enrollment in rigorous and challenging curricula and coursework, in order to reduce the need for remedial coursework at the postsecondary level.

(c) Implementing activities to improve the number of participating students who—

(1) Obtain a secondary school diploma, and

(2) Complete applications for, and enroll in, a program of postsecondary education.

(d) In the case of a State grantee that has not received a 100-percent waiver under section 404E(b)(2) of the HEA, providing scholarships in accordance with section 404E of the HEA.

(Authority: 20 U.S.C. 1070a–24(a))

■ 136. New § 694.22 is added to read as follows:

§ 694.22 What other activities may all GEAR UP projects provide?

A grantee may use grant funds to carry out one or more of the following services and activities:

(a) Providing tutors and mentors, who may include adults or former participants in a GEAR UP program, for eligible students.

(b) Conducting outreach activities to recruit priority students (identified in section 404D(d) of the HEA) to participate in program activities.

(c) Providing supportive services to eligible students.

(d) Supporting the development or implementation of rigorous academic curricula, which may include college

preparatory, Advanced Placement, or International Baccalaureate programs, and providing participating students access to rigorous core academic courses that reflect challenging State academic standards.

(e) Supporting dual or concurrent enrollment programs between the secondary school and institution of higher education partners of a GEAR UP Partnership, and other activities that support participating students in—

(1) Meeting challenging State academic standards;

(2) Successfully applying for postsecondary education;

(3) Successfully applying for student financial aid; and

(4) Developing graduation and career plans, including career awareness and planning assistance as they relate to a rigorous academic curriculum.

(f) Providing special programs or tutoring in science, technology, engineering, or mathematics.

(g) For Partnerships, providing scholarships described in section 404E of the HEA, and for all grantees providing appropriate administrative support for GEAR UP scholarships.

(h) Introducing eligible students to institutions of higher education, through trips and school-based sessions.

(i) Providing an intensive extended school day, school year, or summer program that offers—

(1) Additional academic classes; or

(2) Assistance with college admission applications.

(j) Providing other activities designed to ensure secondary school completion and postsecondary education enrollment of at-risk children, such as:

(1) Identification of at-risk children.

(2) After-school and summer tutoring.

(3) Assistance to at-risk children in obtaining summer jobs.

(4) Academic counseling.

(5) Financial and economic literacy education or counseling.

(6) Volunteer and parent involvement.

(7) Encouraging former or current participants of a GEAR UP program to serve as peer counselors.

(8) Skills assessments.

(9) Personal and family counseling, and home visits.

(10) Staff development.

(11) Programs and activities that are specially designed for students who are limited English proficient.

(k) Enabling eligible students to enroll in Advanced Placement or International Baccalaureate courses, or college entrance examination preparation courses.

(l) Providing services to eligible students in the participating cohort described in § 694.3 through the first year of attendance at an institution of higher education.

(m) Fostering and improving parent and family involvement in elementary and secondary education by promoting the advantages of a college education, and emphasizing academic admission requirements and the need to take college preparation courses, through parent engagement and leadership activities.

(n) Disseminating information that promotes the importance of higher education, explains college preparation and admission requirements, and raises awareness of the resources and services provided by the eligible entities to eligible students, their families, and communities.

(o) For a GEAR UP Partnership grant, in the event that matching funds described in the approved application are no longer available, engaging other potential partners in a collaborative manner to provide matching resources and to participate in other activities authorized in §§ 694.21, 694.22, and 694.23.

(Authority: 20 U.S.C. 1070a–24(b))

■ 137. New § 694.23 is added to read as follows:

§ 694.23 What additional activities are allowable for State GEAR UP projects?

In addition to the required and permissible activities identified in §§ 694.21 and 694.22, a State may use grant funds to carry out one or more of the following services and activities:

(a) Providing technical assistance to—

(1) Secondary schools that are located within the State; or

(2) Partnerships that are eligible to apply for a GEAR UP grant and that are located within the State.

(b) Providing professional development opportunities to individuals working with eligible cohorts of students.

(c) Providing administrative support to help build the capacity of Partnerships to compete for and manage grants awarded under the GEAR UP program.

(d) Providing strategies and activities that align efforts in the State to prepare eligible students to attend and succeed in postsecondary education, which may include the development of graduation and career plans.

(e) Disseminating information on the use of scientifically valid research and best practices to improve services for eligible students.

(f)(1) Disseminating information on effective coursework and support services that assist students in achieving the goals described in paragraph (f)(2)(ii) of this section, and

(2) Identifying and disseminating information on best practices with respect to—

(i) Increasing parental involvement; and

(ii) Preparing students, including students with disabilities and students who are limited English proficient, to succeed academically in, and prepare financially for, postsecondary education.

(g) Working to align State academic standards and curricula with the expectations of postsecondary institutions and employers.

(h) Developing alternatives to traditional secondary school that give students a head start on attaining a recognized postsecondary credential (including an industry-recognized certificate, an apprenticeship, or an associate's or a bachelor's degree), including school designs that give students early exposure to college-level courses and experiences and allow students to earn transferable college credits or an associate's degree at the same time as a secondary school diploma.

(i) Creating community college programs for individuals who have dropped out of high school that are personalized drop-out recovery programs, and that allow drop-outs to complete a secondary school diploma and begin college-level work.

(Authority: 20 U.S.C. 1070a–24)

■ 138. New § 694.24 is added to read as follows:

§ 694.24 What services may a GEAR UP project provide to students in their first year at an institution of higher education?

Consistent with their approved applications and § 694.20, a grantee may provide any services to students in their first year of attendance at an institution of higher education that will help those students succeed in school, and that do not duplicate services otherwise available to them. Examples of services that may be provided include—

(a) Orientation services including introduction to on-campus services and resources;

(b) On-going counseling to students either in person or though electronic or other means of correspondence;

(c) Assistance with course selection for the second year of postsecondary education;

(d) Assistance with choosing and declaring an academic major;

(e) Assistance regarding academic, social, and personal areas of need;

(f) Referrals to providers of appropriate services;

(g) Tutoring, mentoring, and supplemental academic support;

(h) Assistance with financial planning;

(i) Career counseling and advising services; or

(j) Advising students about transferring to other schools.

(Authority: 20 U.S.C. 1070a–24)

■ 139. New § 694.25 is added to read as follows:

§ 694.25 Are GEAR UP grantees required to provide services to students who were served under a previous GEAR UP grant?

If a Partnership or State is awarded a GEAR UP grant on or after August 14, 2008 (i.e., initial grant), the grant ends before all students who received GEAR UP services under the grant have completed the twelfth grade, and the grantee receives a new award in a subsequent GEAR UP competition (i.e., new grant), the grantee must—

(a) Continue to provide services required by or authorized under §§ 694.21, 694.22, and 694.23 to all students who received GEAR UP services under the initial grant and remain enrolled in secondary schools until they complete the twelfth grade; and

(b) Provide the services specified in paragraph (a) of this section by using Federal GEAR UP funds awarded for the new grant or funds from the non-Federal matching contribution required under the new grant.

(Authority: 20 U.S.C. 1070a–21(b)(3)(B) and 1070a–22(d)(1)(C))

[FR Doc. 2010–24324 Filed 10–25–10; 8:45 am]

BILLING CODE 4000–01–P