

■ 61. On page 89244, the third column, the entry for 1.45V–6(c)(5) is corrected to read, “Example 5: Retrofit of an existing facility (80/20 Rule) and coordination with section 45Q credit previously allowed.”.

#### § 1.45V–1 [Corrected]

■ 62. On page 89245, the second column, the third line of paragraph (a)(7)(iii) is corrected to read, “addition to the production of qualified clean”.

■ 63. On page 89245, the third column, in the eleventh and twelfth lines of paragraph (a)(7)(iv) remove the language “the regulations in this part under section 45V” and add in its place the language “the section 45V regulations”.

■ 64. On page 89246, the first column, the second and third lines of paragraph (9)(i)(A) are corrected to read, “section 638(1) of the Code) or a U.S. territory, which, for purposes of”.

■ 65. On page 89246, first column, in the fourth and fifth lines of paragraph (a)(9)(i)(A) remove the language “the regulations in this part under section 45V” and add in its place the language “the section 45V regulations”.

#### § 1.45V–2 [Corrected]

■ 66. On page 89246, the third column, the sixth line from the bottom of paragraph (a) is corrected to read, “Rule is satisfied will not be treated as”.

■ 67. On page 89246, the third column, the second sentence of paragraph (b)(1) is corrected to read, “A purpose of section 45V and the regulations under section 45V (and so much of sections 6417 and 6418 and the regulations thereunder related to the section 45V credit) is to provide taxpayers an incentive to produce qualified clean hydrogen for a productive use.”.

■ 68. On page 89246, the third column, in the second and third lines from the bottom of paragraph (b)(1) remove the language “regulations in this part under section 45V of the Code” and add in its place the language “section 45V regulations”.

■ 69. On page 89247, the first column, the fourth line from the bottom of paragraph (b)(2)(i) is corrected to read, “of the section 45V credit by claiming”.

■ 70. On page 89247, the first column, the second line from the bottom of paragraph (b)(2)(i) is corrected to read, “credit through an election under”.

#### § 1.45V–4 [Corrected]

■ 71. On page 89248, the first column, the fifth line from the top of paragraph (c)(3) is corrected to read, “the DOE’s analytical assessment of the”.

■ 72. On page 89248, the first column, the second line from the bottom of paragraph (c)(3) is corrected to read,

“Clean Hydrogen Production Credit, or any successor form(s), to”.

■ 73. On page 89248, the first column, the sixth and seventh lines of paragraph (c)(4) are corrected to read, “be deemed accepted. A taxpayer may rely upon an emissions value”.

■ 74. On page 89248, the first column, in the second and third lines from the bottom of paragraph (c)(5), remove the language “regulations in this part under section 45V” and add in its place the language “section 45V regulations”.

■ 75. On page 89248, the second column, the heading of paragraph (d) is corrected to read, “Use of energy attribute certificates (EACs)–”.

■ 76. On page 89248, the second column, the seventh and eighth lines of paragraph (d)(1) are corrected to read, “Secretary determines a PER for hydrogen produced at”.

■ 77. On page 89248, the third column, the twelfth line of paragraph (d)(1) is corrected to read, “electricity used to produce hydrogen”.

■ 78. On page 89249, the second column, fifth line from the bottom of paragraph (d)(3)(i)(C) is corrected to read, “megawatt hours (MWh) (2 MW)”.

■ 79. On page 89249, the second column, the second line from the bottom of paragraph (d)(3)(i)(C) is corrected to read, “hour of Power Plant’s production”.

#### § 1.45V–5 [Corrected]

■ 80. On page 89250, the second column, the first line of paragraph (e)(1)(ii) is corrected to read, “The qualified verifier has not been a”.

#### § 1.45V–6 [Corrected]

■ 81. On page 89251, the second column, the heading of paragraph (b) is corrected to read, “Retrofit of an existing facility (80/20 Rule)”.

■ 82. On page 89252, the first column, the eighteenth and nineteenth lines of paragraph (c)(3)(i) are corrected to read, “respect to the new CCE located at Facility Y.”.

■ 83. On page 89252, the first column, the heading of paragraph (c)(4) is corrected to read “Example 4: Retrofit of an existing facilit (80/20 Rule)–”.

■ 84. On page 89252, the first column, the heading of paragraph (c)(5) is corrected to read, “Example 5: Retrofit of an existing facility (80/20 Rule) and coordination with section 45Q credit previously allowed–”.

#### § 1.48–15 [Corrected]

■ 85. On page 89252, the third column, the fourth line from the bottom of paragraph (d)(2) is corrected to read, “successor form(s), with its partnership”.

■ 86. On page 89254, the first and second columns, in paragraph (f)(5)(i) the language “0.44kg/CO<sub>2</sub>e” is corrected to read, “0.44kg of CO<sub>2</sub>e”, wherever it appears.

■ 87. On page 89254, the first and second columns, in paragraph (f)(5)(i) the language “1.4kg/CO<sub>2</sub>e” is corrected to read, “1.4kg of CO<sub>2</sub>e”, wherever it appears.

■ On page 89254, the second column, the fifth line of paragraph (f)(5)(ii) is corrected to read, “0.44kg of CO<sub>2</sub>e per kilogram of hydrogen, which is the rate specified”.

■ 88. On page 89254, the third column, the sixth line from the bottom of paragraph (g) is corrected to read, “definition of a specified clean”.

**Oluwafunmilayo A. Taylor,**

*Section Chief, Publications and Regulations Section, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2024–04304 Filed 3–1–24; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF EDUCATION

### 34 CFR Chapter III

[Docket ID ED–2024–OSERS–0011]

#### Proposed Priority and Requirements—Technical Assistance on State Data Collection—National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Part B Data

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

**ACTION:** Proposed priority and requirements.

**SUMMARY:** The Department of Education (Department) proposes a priority and requirements for a National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data (Center) under the Technical Assistance on State Data Collection program, Assistance Listing Number (ALN) 84.373Y. The Department may use this priority and these requirements for competitions in fiscal year (FY) 2024 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to improve the capacity of States to meet the data collection requirements under Part B of the Individuals with Disabilities Education Act (IDEA). This Center would support States in collecting, reporting, and determining how to best analyze and use their data and would customize its TA to meet each State’s specific needs.

**DATES:** We must receive your comments on or before May 20, 2024.

**ADDRESSES:** Comments must be submitted via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). However, if you require an accommodation or cannot otherwise submit your comments via [www.regulations.gov](http://www.regulations.gov), please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email, or comments submitted after the comment period closes. To ensure the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

**Federal eRulemaking Portal:** Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using [Regulations.gov](http://Regulations.gov), including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “FAQ.”

**Note:** The Department’s policy is generally to make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Richelle Davis, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A10, Washington, DC 20202. Telephone: (202) 245–6391. Email: [Richelle.Davis@ed.gov](mailto:Richelle.Davis@ed.gov).

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

**SUPPLEMENTARY INFORMATION:**

**Invitation to Comment:** We invite you to submit comments regarding the proposed priority and requirements. To ensure that your comments have maximum effect in developing the final priority and requirements, we urge you to identify clearly the specific provision of the proposed priority or requirement that each comment addresses.

**Directed Question:** Given that Congress has not yet enacted an appropriation for FY 2024, the Department is still awaiting the finalization of its FY 2024 appropriations for IDEA, the Department is considering whether it may use a phased-in funding approach to this investment, with smaller awards in the initial years of the project and higher awards in later years. The Department requests specific public comment on the extent to which such

an approach would require substantive changes to the proposed priority and whether there are particular areas of focus (e.g., data sharing templates, data analyses tools) that may benefit from a phased-in approach.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall requirement of reducing regulatory burden that might result from the proposed priority and requirements. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect public comments about the proposed priority and requirements by accessing [Regulations.gov](http://Regulations.gov). To inspect comments in person, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

**Purpose of Program:** The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary authority to reserve not more than one-half of one percent of the amounts appropriated under Part B for each fiscal year to provide TA activities, where needed, to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is \$25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements, which include

the data collection and reporting requirements in sections 616 and 618 of IDEA. In addition, the Consolidated Appropriations Act, 2023, Public Law 117–328, gives the Secretary authority to use funds reserved under section 611(c) of IDEA to “administer and carry out other services and activities to improve data collection, coordination, quality, and use under Parts B and C of the IDEA.” Consolidated Appropriations Act, 2023, Public Law 117–328, Division H, Title III, 136 Stat. 4459, 4891 (2022).

**Program Authority:** 20 U.S.C. 1411(c), 1416(i), 1418(c), 1418(d), 1442; Consolidated Appropriations Act, 2023, Public Law 117–328, Division H, Title III, 136 Stat. 4459, 4891 (2022).

**Applicable Program Regulations:** 34 CFR 300.702.

**Proposed Priority**

This document contains one proposed priority.

*National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data.*

**Background:**

We are proposing the same priority that we established through a notice of final priority published in the **Federal Register** on August 12, 2019 (84 FR 39736), with three changes. First, the proposed priority and requirements do not contain the requirement in paragraph (d)(5) that the applicant demonstrate how it will ensure that it will recover the lesser of: (a) Its actual indirect costs as determined by the grantee’s negotiated indirect cost rate agreement with its cognizant Federal agency; and (b) 40 percent of its modified total direct cost base as defined in 2 CFR 200.1, effectively instituting an indirect cost cap. The Department proposes to remove and has not included this indirect cost cap in the proposed priority because we found that it led to a decrease in the number of applicants, which limited competition. Further, the purpose of the indirect cost cap was to maximize the amount of grant funds used to provide TA to States to improve their capacity to meet the IDEA data collection and reporting requirements. However, we found that was not the case, because the indirect cost cap did not result in a decrease in the amount of indirect costs charged, and was thus not needed. Second, expected outcome (e) in the proposed priority and requirements has been edited to include “parents and families” in the parenthetical providing examples of local consumers. The Department proposes to include this language in recognition that families

may also be local consumers of data. Third, paragraph (b)(5)(iv)(F) of the *application and administrative requirements* in the proposed priority and requirements has been edited to include a parenthetical providing examples of the Department-funded TA projects with whom this Center will be expected to coordinate and collaborate. The Department proposes to include this parenthetical in order to highlight the Department-funded TA centers which also provide TA on the IDEA data.

The Department reviewed the data collection and analysis capacity of States to ensure that IDEA data are being collected and accurately reported to the Department and the public. Specifically, the Office of Special Education Programs (OSEP) reviewed and analyzed information from multiple sources, including data quality reviews conducted by OSEP to evaluate the accuracy of section 618 data, Department-developed edit check reports, written and oral communication with States through the data quality process, and State-initiated requests for TA. The Department's assessment is that States have varying needs for TA to improve their IDEA data collection capacity and their ability to ensure IDEA data are accurate and can be reported to the Department and the public. States also need ongoing TA to help them improve their capacity to analyze and use IDEA data so they can provide more accurate information about their efforts to improve implementation of IDEA and more accurately target future improvement activities in their State Systemic Improvement Plans (SSIPs) submitted as part of their State Performance Plans/Annual Performance Reports (SPPs/APRs).

The ongoing need for TA to improve State data collection and analysis capacity is compounded by the increased turnover in State IDEA Part B Data Managers (data managers). Since 2019, half of the States and entities required to submit IDEA section 618 data have experienced the turnover of at least one data manager, with one State experiencing six new data managers during this time. In all, 50 new data managers have begun since 2019. This consistent turnover in data managers heightens the need for continued TA to support both new and experienced data managers as they work to collect, report, analyze, and use accurate IDEA data.

To meet the array of complex challenges regarding the collection, reporting, analysis, and use of IDEA data by States, OSEP proposes a priority to establish and operate the National

Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data.

*Proposed Priority:*

The purpose of this proposed priority is to fund a cooperative agreement to establish and operate the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data (Data Center).

The Data Center will provide TA to help States better meet current and future IDEA Part B data collection and reporting requirements, improve data quality, and analyze and use section 616, section 618, and other IDEA data (e.g., State Supplemental Survey-IDEA) to identify and address programmatic strengths and areas for improvement. This Data Center will focus on providing TA on collecting, reporting, analyzing, and using Part B data on children with disabilities ages 3 through 21 required under sections 616 and 618 of IDEA. However, the Data Center will not provide TA on Part B data required under section 616 of IDEA for Indicators B7 (Preschool Outcomes) and B12 (Early Childhood Transition); TA on collecting, reporting, analyzing, and using Part B data associated with children with disabilities ages 3 through 5 for these indicators will be provided by the National IDEA Technical Assistance Center on Early Childhood Data Systems, ALN 84.373Z.

The Center must achieve, at a minimum, the following expected outcomes:

(a) Improved State data infrastructure by coordinating and promoting communication and effective data governance strategies among relevant State offices, including State educational agencies (SEAs), local educational agencies (LEAs), and schools to improve the quality of IDEA data required under sections 616 and 618 of IDEA;

(b) Increased capacity of States to submit accurate and timely data, to enhance current State validation procedures, and to prevent future errors in State-reported IDEA Part B data;

(c) Improved capacity of States to meet the data collection and reporting requirements under sections 616 and 618 of IDEA by addressing personnel training needs, developing effective tools (e.g., training modules) and resources (e.g., documentation of State data processes), and providing in-person and virtual opportunities for cross-State collaboration about data collection and reporting requirements that States can use to train personnel in schools, programs, agencies, and districts;

(d) Improved capacity of SEAs, and LEAs in collaboration with SEAs, to collect, report, analyze, and use both SEA and LEA IDEA data to identify programmatic strengths and areas for improvement, address root causes of poor performance towards outcomes, and evaluate progress towards outcomes;

(e) Improved IDEA data validation by using results from data reviews conducted by the Department to work with States to generate tools that can be used by States to lead to improvements in the validity and reliability of data required by IDEA and enable States to communicate accurate data to local consumers (e.g., parents and families, school boards, the general public); and

(f) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B data.

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

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

(1) Address the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and to increase their capacity to analyze and use section 616 and section 618 data as both a means of improving data quality and identifying programmatic strengths and areas for improvement. To meet this requirement the applicant must—

(i) Demonstrate knowledge of current educational issues and policy initiatives about IDEA Part B data collection and reporting requirements and knowledge of State and local data collection systems, as appropriate;

(ii) Present applicable national, State, and local data to demonstrate the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and use section 616 and section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement; and

(iii) Describe how SEAs and LEAs are currently meeting IDEA Part B data collection and reporting requirements and use section 616 and section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement.

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

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

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

(ii) Ensure that products and services meet the needs of the intended recipients of the grant;

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

(i) Measurable intended project outcomes; and

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

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

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

(4) Be based on current research and make use of evidence-based practices (EBPs).<sup>1</sup> To meet this requirement, the applicant must describe—

(i) The current research on the capacity of SEAs and LEAs to report and use data, specifically section 616 and section 618 data, as both a means of improving data quality and identifying strengths and areas for improvement; and

(ii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this

requirement, the applicant must describe—

(i) How it proposes to identify and develop the knowledge base on the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and SEA and LEA analysis and use of sections 616 and 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement;

(ii) Its proposed approach to universal, general TA,<sup>2</sup> which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,<sup>3</sup> which must identify—

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

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

(iv) Its proposed approach to intensive, sustained TA,<sup>4</sup> which must identify—

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

(B) Its proposed approach to measure the readiness of SEA personnel to work

with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA and LEA levels;

(C) Its proposed approach to prioritizing TA recipients with a primary focus on meeting the needs of States with known ongoing data quality issues, as measured by OSEP's review of the quality of the IDEA sections 616 and 618 data;

(D) Its proposed plan for assisting SEAs (and LEAs, in conjunction with SEAs) to build or enhance training systems related to the IDEA Part B data collection and reporting requirements that include professional development based on adult learning principles and coaching;

(E) Its proposed plan for working with appropriate levels of the education system (e.g., SEAs, regional TA providers, LEAs, schools, and families) to ensure that there is communication between each level and that there are systems in place to support the capacity needs of SEAs and LEAs to meet Part B data collection and reporting requirements under sections 616 and 618 of the IDEA; and

(F) Its proposed plan for collaborating and coordinating with Department-funded TA investments (e.g., the Center funded under 84.373Z, the Center for IDEA Fiscal Reporting, the Center for the Integration of IDEA Data, the Data Center to Address Significant Disproportionality, and the Weiss Center) and Institute of Education Sciences/National Center for Education Statistics research and development investments, where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of this priority; and

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

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

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

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

(c) In the narrative section of the application under "Quality of the project evaluation," include an evaluation plan for the project developed in consultation with and

<sup>2</sup> "Universal, general TA" means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

<sup>3</sup> "Targeted, specialized TA" means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

<sup>4</sup> "Intensive, sustained TA" means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. "TA services" are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

<sup>1</sup> For purposes of these requirements, "evidence-based practices" (EBPs) means, at a minimum, demonstrating a rationale (as defined in 34 CFR 77.1) based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

implemented by a third-party evaluator.<sup>5</sup> The evaluation plan must—

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

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

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

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

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

(d) Demonstrate, in the narrative section of the application under "Adequacy of resources and quality of project personnel," how—

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

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

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

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

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

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

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

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

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

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

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

(f) Address the following application requirements:

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

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

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

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

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

(iii) Three annual two-day trips to attend Department briefings,

Department-sponsored conferences, and other meetings, as requested by OSEP;

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

(4) Provide an assurance that it will maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

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

(6) Budget at least 50 percent of the grant award for providing targeted and intensive TA to States.

#### *Types of Priorities:*

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

**Absolute priority:** Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

#### *Competitive preference priority:*

Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

**Invitational priority:** Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

#### *Final Priority and Requirements*

We will announce the final priority and requirements in a document in the **Federal Register**. We will determine the final priority and requirements after considering responses to this document and other information available to the

<sup>5</sup> A "third-party" evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

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

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

*Executive Orders 12866, 13563, and 14094*

#### *Regulatory Impact Analysis*

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, 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 \$200 million or more (adjusted every three years by the Administrator of Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(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 for which centralized review would meaningfully further the President’s priorities, or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866, as amended by Executive Order 14094. To the extent permitted by law, Executive Order 13563 requires that an agency—

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

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

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

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

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

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

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

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions. In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department’s programs and activities.

#### *Clarity of the Regulations*

Executive Order 12866 and the Presidential memorandum “Plain

Language in Government Writing” require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priority and requirements easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed priority and requirements clearly stated?
- Do the proposed priority and requirements contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed priority and requirements (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed priority and requirements be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed priority and requirements in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed priority and requirements easier to understand? If so, how?

- What else could we do to make the proposed priority and requirements easier to understand?

To send any comments about how the Department could make the proposed priority and requirements easier to understand, see the instructions in the **ADDRESSES** section.

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

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

#### *Regulatory Flexibility Act*

*Certification:* The Secretary certifies that the proposed priority and requirements would not have a significant economic impact on a substantial number of small entities.

The small entities that this proposed regulatory action would affect are LEAs, including charter schools that operate as LEAs under State law; institutions of higher education; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant

by the proposed priority and requirements would be limited to paperwork burden related to preparing an application and that the benefits of the proposed priority and requirements would outweigh any costs incurred by the applicants.

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

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

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from eligible small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

#### *Paperwork Reduction Act of 1995*

The proposed priority and requirements contain information collection requirements that are approved by OMB under OMB control number 1820-0028. The proposed priority and requirements do not affect the currently approved data collection.

**Accessible Format:** On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or

text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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

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

**Glenna Wright-Gallo,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 42

[Docket No. PTO-P-2020-0060]

**RIN 0651-AD50**

#### **Motion To Amend Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board**

**AGENCY:** Patent Trial and Appeal Board, United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States Patent and Trademark Office (Office or USPTO) proposes to update its rules governing amendment practice in trial proceedings under the Leahy-Smith America Invents Act (AIA) to make permanent certain provisions of the Office's motion to amend pilot program (MTA pilot program) and to revise the rules that allocate burdens of persuasion in connection with motions to amend (MTAs). The Office proposes to revise its rules of practice to provide for issuance of preliminary guidance in response to an MTA and to provide a patent owner with the option for filing

one additional revised MTA. Further, the Office proposes to revise the rules to clarify that a preponderance of evidence standard applies to any new ground of unpatentability raised by the Board and to clarify that when exercising the discretion to grant or deny an MTA or to raise a new ground of unpatentability, the Board may consider all evidence of record in the proceeding, including evidence identified through a prior art search conducted by the Office at the Board's request and added to the record. These rules better ensure the Office's role of issuing robust and reliable patents, and the predictability and certainty of post-grant trial proceedings before the Board. These changes would apply to the existing consolidated set of rules relating to the Office trial practice for *inter partes* review (IPR), post-grant review (PGR), and derivation proceedings that implemented provisions of the AIA providing for trials before the Office.

**DATES:** To ensure consideration, commenters must submit written comments on or before May 3, 2024.

**ADDRESSES:** For reasons of government efficiency, comments must be submitted through the Federal eRulemaking Portal at <https://www.regulations.gov>. To submit comments via the portal, enter docket number PTO-P-2020-0060 on the home page and select "search." The site will provide a search results page listing all documents associated with this docket. Find a reference to this proposed rulemaking and select the "Comment" icon, complete the required fields, and enter or attach your comments. Attachments to electronic comments will be accepted in ADOBE® portable document format or MICROSOFT WORD® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal (<https://www.regulations.gov>) for additional instructions on providing comments via the portal. If the electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the USPTO using the contact information below for special instructions regarding how to submit comments by mail or by hand delivery, based upon the public's ability to obtain access to USPTO facilities at the time.