

UNITED STATES DEPARTMENT OF EDUCATION

Plan for Retrospective Analysis of Existing Regulations

August 22, 2011

I. Executive Summary

The Department of Education (ED or the Department) issues this “Plan for Retrospective Analysis of Existing Regulations” in accordance with Executive Order 13563, “Improving Regulation and Regulatory Review” (Executive Order). The Executive Order recognizes the importance of maintaining a consistent culture of retrospective review and analysis of regulations throughout the executive branch, consistent with law and each agency’s resources and regulatory priorities. ED’s plan is designed to create a defined policy, method, and schedule for identifying significant regulations, as determined under Executive Order 12866, that may be outmoded, ineffective, insufficient, or excessively burdensome, as well as regulations that can be modified, streamlined, expanded, or repealed to be more effective and efficient, achieve better outcomes for students, and be easy to understand.

This plan includes numerous initiatives, recently completed or in progress, that will promote the goals of Executive Order 13563. In January 2011, for example, ED successfully completed its 2010 Burden Reduction Initiative to reduce burdens associated with completing the Free Application for Federal Student Aid (FAFSA). In fact, ED decreased the FAFSA burden by 5,405,813 hours, or more than 14 percent. Many of the reforms listed here will save time, money, or both.

ED views the issuance of this plan as only one step in an ongoing process for improving the quality of its regulations and regulatory process in accordance with the overarching goals of the Executive Order. We will evaluate closely the implementation of this plan and the results of the regulatory analyses and reviews that we conduct to determine where we can make improvements. We look forward to working with all stakeholders in this effort.

II. Scope of Plan

a. Background

ED supports States, local communities and schools, institutions of higher education, and others in improving education nationwide and in helping to ensure that all Americans receive a quality education. We provide leadership and financial assistance pertaining to education at all levels to a wide range of stakeholders and individuals, including State educational agencies, local school districts, providers of early learning programs, elementary and secondary schools, institutions of higher education, career and technical schools, nonprofit organizations, members of the public, postsecondary students, families, and many others. These efforts are helping to ensure that all students will be ready for college and careers, and that all children and students from preschool through grade 12 (P-12) have an open path towards postsecondary education that

leads to their success at the postsecondary level and in a career. In addition, we support grant programs that provide vocational rehabilitation and independent living services, increase access to assistive technology, and improve the quality of life for individuals with disabilities. We also vigorously monitor and enforce the implementation of Federal civil rights laws related to our programs and activities that receive Federal financial assistance, and support innovative programs, research and evaluation activities, technical assistance, and the dissemination of research and evaluation findings to improve the quality of education, employment, and community and family participation. Overall, the laws, regulations, and programs we administer affect nearly every American during his or her life.

In developing and implementing regulations, guidance, technical assistance, and monitoring related to our programs, we are guided by the following three principles. First, we are committed to working closely with persons and groups who benefit from or are affected by our programs. Specifically, we work with a broad range of interested parties and the general public, including families, students, and educators; State, local, and tribal governments; and neighborhood groups, community-based early learning programs, elementary and secondary schools, colleges, rehabilitation service providers, adult education providers, professional associations, advocacy organizations, businesses, and labor organizations.

Second, we are committed to ensuring that our regulations are concise and minimize burden to the greatest extent possible while helping to ensure that program outcomes are achieved.

Third and finally, we continue to seek greater and more useful public participation in our rulemaking activities through the use of transparent and interactive rulemaking procedures and new technologies. If we determine that it is necessary to develop regulations, we seek public participation at key stages in the rulemaking process.

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

b. The following subagencies within the Department are included in this plan:

- Office of the Secretary
- Office of the Deputy Secretary
- Office of the Under Secretary
- Office of the Chief Financial Officer
- Office of the Chief Information Officer
- Office of Management
- Office of Elementary and Secondary Education
- Office of Postsecondary Education
- Office of Federal Student Aid
- Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students
- Office of Special Education and Rehabilitative Services, including the Office of Special Education Programs, the National Institute on Disability and Rehabilitation Research, and the Rehabilitation Services Administration

Office of Inspector General
Office of Innovation and Improvement
Office of Safe and Drug-Free Schools
Office of Vocational and Adult Education
Office of the General Counsel
Office for Civil Rights
Office of Planning, Evaluation and Policy Development

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

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

III. Public Access and Participation

a. Summary of Outreach Efforts.

This final plan incorporates our responses to feedback we have received on the “Preliminary Plan for Retrospective Analysis of Existing Rules” that we developed earlier this year. On May 18, 2011, ED submitted its Preliminary Plan to the Office of Management and Budget (OMB) and, in accordance with OMB’s direction, posted the Preliminary Plan on ED’s Open Government website for public comment on June 1, 2011. Following that posting, ED published a notice in the *Federal Register* requesting comment on the Preliminary Plan as well as feedback from the public on ED’s implementation of the President’s February 28, 2011, memorandum on Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments. The information and a link to this notice were also posted on ED’s Open Government website and summarized in ED’s Twitter feed.

In addition to these publications, ED held a public stakeholders’ briefing on July 14, 2011, entitled “Informing ED’s Response to the Presidential Memorandum on ‘Administrative Flexibility, Lower Costs, and Better Results for State, Local and Tribal Governments,’” which included a discussion of ED’s plans for the retrospective review of its regulations.

b. Summary of and Response to Comments.

ED received a total of 30 comments in response to the *Federal Register* notice. These comments can be found on www.regulations.gov under Docket No. ED-2011-OGC-0004. A transcript of the Stakeholders’ Briefing is also posted to the docket.

The Department appreciates the many comments it received on the Preliminary Plan as well as the comments it received regarding implementation of the President's February 28, 2011, memorandum. A summary of and responses to the comments we received on the Preliminary Plan follow.

Public Input. Several commenters asserted that ED should have sought public input before publishing its Preliminary Plan.

Response: As we stated in the Preliminary Plan, we decided to develop our Preliminary Plan without first seeking public input because we wanted to provide the public with specific proposals on which to comment. We believed this approach would result in more meaningful feedback from the public about our retrospective review plan. We also believed that, given the overlap in the goals of Executive Order 13563 and the President's February 28th memorandum (namely, maximizing program and regulatory effectiveness and outcomes while reducing burden), combining our request for comments on both initiatives in one, streamlined publication would be an easy and efficient way for the public to provide their comments without having to respond to multiple and somewhat overlapping requests for feedback.

Public Comments on Regulatory Changes. Several commenters expressed concern that by publishing the Preliminary Plan, ED would not be seeking public comment on any proposed revisions to its regulations.

Response: The Preliminary Plan simply set forth a proposed framework for the processes and analyses ED proposed to use in reviewing its regulations and determining whether to explore making further changes to those regulations. When ED decides to amend any of its regulations, those amendments will be published for public comment through a notice of proposed rulemaking.

Emphasis on Reducing Burden. Several commenters expressed concern that ED's Preliminary Plan focused too much on regulatory review for the purposes of reducing burden rather than producing benefits and improving program effectiveness.

Response: This was not our intention. We fully recognize that reducing regulatory burden must not be achieved at the cost of failing to implement fully the statute that a particular regulation implements, for example, by sacrificing education outcomes, the rights of and safeguards afforded to students and parents, or accountability. We also appreciate that the statutes these regulations implement may entail actions that are perceived to be a burden by some, but these actions are necessary to accomplish those statutory objectives, for example, to improve education quality, safeguard parents' and students' rights, responsibly administer adult vocational rehabilitation and independent living programs, and ensure that all Americans receive a quality education and participate fully in the community. We strive to achieve this balance in the regulations we promulgate and have made some modifications to this plan to more accurately reflect this critical balance in our plan for retrospective review.

Comments on Specific Regulations. We received a number of comments on several of the regulations that we identified in the Preliminary Plan as candidates for retrospective review.

For example, several commenters supported ED's proposal to review its career and technical education regulations. Several commenters suggested that regulations under the Individuals with Disabilities Education Act (IDEA) should not be a priority for review given the anticipated reauthorization of this law and the need to align critical elements of IDEA with the reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA). With respect to the ESEA, commenters suggested that ED review its regulations implementing ESEA now if it does not appear that Congress will reauthorize this law in the near future. We also received a number of comments recommending specific revisions to particular regulations under Title I of the ESEA. For example, several commenters stated that ED should specifically review the Title I regulations regarding alternate assessments based on modified academic achievement standards for students with disabilities. In the context of higher education, other commenters asked ED to review several of its Program Integrity regulations that were issued in the fall of 2010. We also received a number of comments recommending specific revisions to ED's accreditation regulations under the Higher Education Act of 1965, as amended (HEA). Several commenters recommended that regulations implementing section 504 of the Rehabilitation Act of 1973 not be a priority for retrospective review.

Response: We appreciate this feedback and will be considering these comments as we conduct our reviews of these regulations.

Recommendations Regarding Prioritization Factors and Review Criteria. Several commenters recommended that ED revise the prioritization factors and review criteria that were listed in the Preliminary Plan.

Response: We appreciate these suggestions and are incorporating several of them into this final plan.

IV. Current Agency Efforts Already Under Way Independent of Executive Order 13563

a. Pre-existing ED Efforts (independent of Executive Order 13563) to Retrospectively Review its Regulations.

General

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

In deciding when to regulate, we consider:

- Whether regulations are essential to promote quality and equality of opportunity in education;
- Whether a demonstrated problem can be resolved without regulation;

- Whether regulations are necessary in order to provide a legally binding interpretation that resolves ambiguity;
- Whether entities or situations subject to regulation are similar enough that a uniform approach through regulation would be meaningful and do more good than harm; and
- Whether regulations are needed to protect the Federal interest, that is, are needed to ensure that Federal funds are used for their intended purpose or are needed to eliminate fraud, waste, and abuse.

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

- Regulate no more than necessary;
- Minimize burden to the extent possible, and promote multiple approaches to meeting statutory requirements when possible;
- Encourage coordination of Federally funded activities with State and local reform activities;
- Ensure that the benefits justify the costs of regulating;
- To the extent possible, establish performance objectives rather than specify compliance behavior; and
- Encourage flexibility, to the extent possible and as needed to enable institutional forces to achieve desired results.

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

Recently Completed Key Regulatory Review Efforts

Over the past two years, and operating under the principles outlined, we have engaged in retrospective review of several key regulations that required updating to reflect changes in the authorizing statute, Administration priorities, or ED policies. These are as follows:

Freedom of Information Act (FOIA) Regulations. In 2010, ED amended its FOIA regulations to implement changes made to FOIA policies and practices in recent years. ED's FOIA regulations had not been amended in many years and required amendments to bring the regulations up to date and to take into account public guidance issued by the White House and the Department of Justice. The revised regulations articulate more clearly to the public how ED processes FOIA requests for publicly available records, thereby promoting equality of opportunity to obtain information and decreasing ambiguity.

Education Department Acquisition Regulations. The Education Department Acquisition Regulations (EDAR) codify the Department's policies and procedures that implement and supplement the Federal Acquisition Regulation (FAR). ED engaged in a comprehensive review of these regulations and proposed, for notice and comment, a complete revision of the EDAR to bring the regulations into alignment with over 20 years of changes to the FAR. ED issued the final complete revision of the EDAR on March 8, 2011. These modifications will provide clarity

for regulated parties on the Department's contract and procurement processes and increase the efficiency with which ED manages its contracts and procurements.

Federal TRIO Programs. The Federal TRIO Programs (TRIO) include eight programs targeted to serve and assist low-income individuals, first-generation college students, and individuals with disabilities in progressing through the academic pipeline from middle school to post-baccalaureate programs. Following reauthorization of TRIO in the Higher Education Opportunity Act in 2008, ED reviewed its existing TRIO regulations and conducted extensive negotiated rulemaking in 2009 and 2010 to comprehensively update and amend the regulations governing these programs. These amended regulations were issued in October 2010 and will help to ensure that Federal funds are used for their intended purpose, namely, to improve education opportunities for students from disadvantaged backgrounds.

Program Integrity Regulations. Over the past two years, ED reviewed and revised a number of program integrity regulatory provisions associated with the Federal student aid programs authorized under title IV of the HEA. ED conducted this review in recognition of the fact that the student financial aid programs have grown dramatically in recent years, placing significantly more taxpayer funding at risk. In response to this dramatic growth in student aid, we tightened our regulatory requirements in some areas (e.g., misrepresentation, State authorization, credit hours, and incentive compensation) while reducing them in others (e.g., verification). These efforts will allow for additional growth in the student aid programs while ensuring that there are appropriate safeguards in place to protect taxpayers' dollars.

FAFSA Burden Reduction. In January 2011, ED successfully completed its 2010 Burden Reduction Initiative to reduce burden associated with completing the Free Application for Federal Student Aid (FAFSA) by at least five percent. In fact, ED decreased the FAFSA burden by 5,405,813 hours, or more than 14 percent. As part of accomplishing this impressive burden reduction, ED also realized the other goals of the initiative: (a) consolidation of the FAFSA and Student Aid Report into one Information Collection Request to better reflect that the two are part of one business process--applying for Federal student financial aid; (b) simplifying the application process for student aid applicants by shortening completion times, primarily through the use of improved technology such as "skip and assumption logic;" and (c) making it possible to electronically retrieve information from tax returns previously filed with the Internal Revenue Service.

b. Current Regulatory Review -- Ensuring Regulatory Benefits and Effectiveness and Reducing Burden.

Prior to issuance of the Executive Order, and in establishing ED's regulatory priorities for 2011, we identified several specific key regulations for retrospective review and determined that, based on that review, further amendments to these regulations are necessary to ensure program effectiveness and to reduce burden on the public and regulated parties.

Key Regulatory Initiatives

Transitioning from the FFEL Program to the Direct Loan Program. In the SAFRA Act, Title II of the Health Care and Education Reconciliation Act of 2010, Congress ended new loans

under the Federal Family Education Loan (FFEL) program effective July 1, 2010. As a result, the William D. Ford Federal Direct Loan (Direct Loan) program is the primary source of new Federal student loans.

On May 5, 2011, ED announced through a notice in the *Federal Register* that it was beginning a negotiated rulemaking process to streamline the loan program regulations by removing unnecessary FFEL program regulations from 34 CFR part 682 and incorporating and modifying necessary requirements within the Direct Loan program regulations in 34 CFR part 685, as appropriate. ED held four public hearings in May 2011 to obtain public feedback on proposed amendments to the FFEL and Direct Loan program regulations, including those governing income-based and income-contingent loan repayment plans and loan discharges based on the total and permanent disability of the borrower. Based on the feedback received from these hearings, ED will soon form a negotiated rulemaking committee to consider proposed amendments and intends to conduct these negotiations beginning in the fall of 2011. Until ED has commenced these negotiations and sought input on specific changes to the regulations, we are unable to estimate specific costs or reductions in burden that will result from these amended regulations.

Discretionary Grant Process Improvements. ED makes discretionary grants to States, school districts, institutions of higher education, nonprofit organizations, and other entities for activities intended to improve early learning opportunities, increase student achievement, encourage institutional reforms, improve opportunities for students at all levels of the educational system, promote college access, improve teacher quality, increase employment opportunities and community participation for individuals with disabilities, and encourage innovation. Given the significant role that ED's discretionary grant programs play in advancing these goals, in 2010 the Department commenced several initiatives focused on identifying key improvements that could be made to ED's discretionary grants process. This initiative includes an evaluation of ED's peer review process, updating ED's discretionary grants guidance, and providing for greater transparency in the discretionary grants processes. It also includes a close retrospective review of the Education Department General Administrative Regulations (EDGAR), which govern ED's discretionary grants process and administration. We have already identified several provisions within these regulations that are obsolete or that require updating to take into account developments in technology and streamlined application submission processes. Additionally, in implementing several new grant programs under the American Recovery and Reinvestment Act of 2009 (ARRA), we have identified key EDGAR provisions that require substantive changes to improve transparency and the efficiency of our grant-making functions. These include our regulations on establishing and collecting data on measures of grantee performance, the selection criteria that peer reviewers use to evaluate applications, and the procedures grantees must use to select research sites and evaluators.

We are continuing our review of EDGAR and hope to complete it by the end of calendar year 2011 with the goal of issuing proposed regulations for public comment in the Spring of 2012. Although we anticipate there will be some savings from these amendments, we are unable to provide an estimate at this time.

Safeguarding Privacy and Using Data Effectively. On April 8, 2011, ED issued a notice of proposed rulemaking (NPRM) to amend its regulations in 34 CFR part 99 implementing the Family Educational Rights and Privacy Act (FERPA). These proposed amendments are necessary to ensure that ED's implementation of FERPA continues to protect the privacy of students' education records, as intended by Congress, while allowing for the effective use of data in statewide longitudinal data systems (SLDS) as envisioned in the America COMPETES Act and under the ARRA. Improved access to data contained within an SLDS will reduce burden on States and greatly facilitate States' efforts to evaluate education programs, to build upon what works and discard what does not, to increase accountability and transparency, and to contribute to a culture of innovation and continuous improvement in education. ED received approximately 274 comments in response to these proposals and intends to complete this rulemaking in the second half of 2011. As indicated in the NPRM that we issued in April, we do not anticipate any increased costs to regulated entities in complying with these regulations, once they are adopted.

IDEA Part B Program. Under Part B of the Individuals with Disabilities Education Act (IDEA), the Department provides grants to States, outlying areas, and freely associated States, as well as funds to the Department of the Interior, to assist them in providing special education and related services to children with disabilities ages 3 through 21. There are four key purposes of the Part B program and implementing regulations: (1) ensuring that all children with disabilities have available to them a free appropriate public education that includes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; (2) ensuring that the rights of children with disabilities and their parents are protected; (3) assisting States, localities, educational service agencies, and Federal agencies in providing for the education of children with disabilities; and (4) assessing and ensuring the effectiveness of efforts to educate children with disabilities.

Over the last six months, we have engaged in a review of one particular provision of the Part B regulations, relating to the use of public benefits or insurance to pay for services provided to children under Part B. IDEA and the Part B regulations allow public agencies to use public benefits or insurance (e.g., Medicaid) to provide or pay for services required under Part B with the consent of the parent of a child who is enrolled under the public benefits or insurance program. Public insurance is an important source of financial support for services required under Part B. With respect to the use of public insurance, §300.154(d)(2)(iv)(A) of our current regulations specifically provides that a public agency must obtain parental consent, consistent with §300.9, "each time that access to public benefits or insurance is sought."

We will soon be issuing a notice of proposed rulemaking to amend §300.154(d)(2)(iv) with the goals of maintaining critical parent protections and ensuring parents have the information they need regarding a public agency's use of their public benefits or insurance as part of providing FAPE while reducing unnecessary burden on a public agency's ability to access public benefits or insurance in appropriate circumstances.

Gainful Employment Regulations. Between November 2009 and January 2010, the Department held three negotiated rulemaking sessions aimed at improving integrity in the HEA Title IV programs. As a result of these discussions, the Department published two notices of proposed rulemaking, one on June 18, 2010, and one on July 26, 2010 (July 26th NPRM). The

July 26th NPRM focused specifically on establishing measures for determining whether an educational program is offering training that leads to gainful employment in a recognized occupation. After considering comments on the July 26th NPRM related to the establishment of new gainful employment programs, the Department published final regulations on October 29, 2010 (Gainful Employment--New Programs), which included requirements for institutions to notify the Department before offering a new educational program that provides training leading to gainful employment in a recognized occupation. Through this notification process, the Department may advise an institution that it must obtain approval to establish the eligibility of an additional gainful employment program for purposes of the title IV, HEA programs.

The Department established the notification requirement out of concern that some institutions might attempt to circumvent the proposed gainful employment standards in §668.7(a)(1) of the July 26th NPRM by adding new programs before those standards would take effect. The Department explained that the notification process requirements, referred to as “interim requirements,” were intended to remain in effect until the final regulations that established eligibility measures for gainful employment programs would take effect. Specifically, we stated that with regard to approving additional programs, “[w]e intend to establish performance-based requirements in subsequent regulations” and that “[u]ntil those subsequent regulations take effect, institutions must comply with the interim requirements in [the Gainful Employment--New Programs final] regulations”.

We published the final regulations establishing the gainful employment eligibility measures on June 13, 2011 (Gainful Employment—Debt Measures). In those regulations, the Department established measures for gainful employment programs that are intended to identify the worst-performing programs. The Gainful Employment—Debt Measures final regulations also place restrictions on when an institution may reestablish the eligibility of an ineligible program or a failing program that was voluntarily discontinued, or establish the eligibility of a new program that is substantially similar to an ineligible program.

We believe that when these new provisions go into effect on July 1, 2013, the notification process for all new gainful employment programs established in the Gainful Employment—New Programs final regulations will no longer be needed. Accordingly, the Department will soon be issuing a new NPRM, which will propose steps to reduce the burden on institutions and focus the reviews based on past performance. We anticipate completing this rulemaking later this year.

ESEA Flexibility. The Department recently announced that as it continues to work with Congress on reauthorizing the Elementary and Secondary Education Act of 1965, it is considering ways to offer flexibility to States and school districts in exchange for a commitment to implement meaningful reforms. We are looking at mechanisms that would ensure continued accountability and commitment to education quality for all students while at the same time providing States and school districts with increased flexibility in meeting the requirements of the current law. The Department intends to release this flexibility package in September 2011.

Minority-Serving Institutional Development Programs. ED is currently reviewing its regulations in 34 CFR parts 606, 607, 608, 609, and 637, which govern the Department’s discretionary grant programs for minority-serving institutions. The Higher Education

Opportunity Act, enacted in 2008, and the College Cost Reduction and Access Act, enacted in 2007, created several new programs for minority-serving institutions. Additional funding for these programs was provided through fiscal year 2019 through the SAFRA Act. These new programs, however, are not covered by the existing regulations. We need to review and amend the existing regulations in order to streamline them to the extent feasible and to ensure that they cover the newly authorized programs. Through these amendments, we plan to simplify the application process, thereby reducing burden on potential applicants.

V. Elements of the Plan and Compliance with Executive Order 13563

a. ED's Plans for Developing a Strong, Ongoing Culture of Retrospective Analysis.

This plan establishes ED's policy for conducting thorough and meaningful retrospective reviews and analyses of its regulations on an ongoing basis. We will publish this plan on our external and internal website. In addition, the plan will be disseminated to all offices within ED, and all offices will participate in implementing the plan.

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

Executive Order 13563 calls not for a single exercise, but for "periodic review of existing significant regulations," with close reference to empirical evidence. It explicitly states that "retrospective analyses, including supporting data, should be released online wherever possible." Consistent with the commitment to periodic review and to public participation, ED will continue to assess its existing significant regulations in accordance with the requirements of Executive Order 13563. The Department welcomes public suggestions about appropriate reforms. If, at any time, members of the public identify possible reforms to streamline requirements and to reduce existing burdens, the Department will give those suggestions careful consideration.

b. Factors and Processes ED will Use in Setting Priorities.

ED will consider the following factors in setting priorities for the retrospective review of its regulations:

- Are the regulations achieving their intended outcomes, e.g., enhancing accountability, improving outcomes for students, ensuring compliance with civil rights obligations, safeguarding privacy, and helping to ensure affordability of and access to college?
- Have changes in the economy or other external factors had an impact on the regulations' effectiveness, led to a change (increase or decrease) in benefits for the intended beneficiaries of the regulations, or led to a change (increase or decrease) in costs for regulated parties?

- Are the regulations outmoded, unnecessary, or out of date?
- Has Congress amended the authorizing statute such that prompt review of existing regulations is necessary?
- Does ED anticipate reauthorization of the authorizing statute in the near term such that prompt review of existing regulations would likely be disrupted or not lead to regulatory revisions that could be implemented before reauthorization?
- Have regulated parties expressed confusion about the regulations or requested changes to the regulations?
- Can the regulations be understood and implemented without extensive legal interpretation, non-regulatory guidance, or technical assistance?
- What do relevant data show about the effectiveness and benefits of the regulations in comparison to their costs?
- What resources in terms of time, staff, finances, and technology will be needed to review and possibly amend the regulations?
- If the regulations relate to a formula or discretionary grant program, are they sufficient to administer the program?
- Have issues with the regulations been identified in audits (Office of Inspector General (OIG) audits, Government Accountability Office (GAO) studies, or Single Audits)?

c. Initial List of Candidate Regulations for Review Over the Next Two Years.

In addition to those regulations currently under review, we have preliminarily identified a number of other regulatory provisions that we believe warrant retrospective review. As indicated below, program offices will conduct a retrospective review of these and other regulatory provisions in the next several months and submit the results of their reviews to ED's retrospective review team for analysis and recommendations. The regulations that we are considering reviewing include the following:

Reporting requirements under Part B of IDEA. We have heard from a number of States about the burden associated with the annual reporting requirements under Part B of IDEA. We intend to conduct a review of these regulations and requirements to assess their effectiveness and determine whether burden can be reduced without diminishing the rights of students with disabilities.

Regulations in 34 CFR part 350 relating to programs administered by the National Institute on Disability and Rehabilitation Research (NIDRR). In reviewing these regulations, ED seeks to identify regulatory changes that could improve the process for awarding grants and

reduce the burden for eligible entities that apply for discretionary funds under the programs administered by NIDRR.

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

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

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

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

Regulations governing discretionary grant programs for which the authorization has been repealed or for which Congress has not provided funding in some time. These include regulations for The Endowment Challenge Grant program in 34 CFR part 628, the Urban Community Service Program in 34 CFR part 636, the Christa McAuliffe Fellowship Program in 34 CFR part 237, and the Bilingual Education: Graduation Fellowship Program in 34 CFR part 535. We will repeal the regulations for programs that are no longer authorized and consider whether the regulations for authorized but no-longer-funded programs should also be repealed.

Regulations in 34 CFR part 668 governing gainful employment education programs. In the Gainful Employment—Debt Measures regulations that we published on June 13, 2011, we indicated that, consistent with Executive Order 13563, we would monitor the implementation of those regulations, consider new data as they become available, and reconsider relevant issues if the evidence warrants.

d. Structure and Staffing.

The agency official who will be responsible for the retrospective review is:

Name/Position Title: Tony Miller, Deputy Secretary

Email address: tony.miller@ed.gov

e. ED's Plan to Ensure that the Retrospective Review Team and Process Maintain Sufficient Independence from the Offices Responsible for Writing and Implementing Regulations.

ED is committed to ensuring that its retrospective review team and process will maintain sufficient independence from those offices that draft and implement regulations. The retrospective review team will include representatives of the following offices: Office of the Deputy Secretary; Office of the Under Secretary; Office of Planning, Evaluation and Policy Development; Budget Service; and the Office of the General Counsel. These offices do not have primary responsibility for drafting or implementing regulations. Additionally, the team will consult, as appropriate, with other offices that have agency-wide responsibilities, such as the Office of Inspector General, the Privacy, Information and Records Management Service, and Risk Management Services.

f. Actions ED Will Take to Strengthen Internal Review Expertise.

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

g. ED's Plan for Retrospective Analysis over the Next Two Years, and Beyond.

Based on the feedback we received on the Preliminary Plan and in accordance with this final plan, ED will be conducting its retrospective review using the prioritization factors listed above and the factors listed in VI.c. below. The team will coordinate the retrospective reviews and provide periodic reports to the Deputy Secretary and other senior officials on the progress and results of those reviews.

Once these reviews are completed, the retrospective review team will analyze the results and make recommendations to senior officials about which regulations should be amended (or whether actions other than regulating could be taken to improve benefits or to reduce burden). Taking into account the prioritization factors listed above and agency resources, and working with senior officials, ED will develop a schedule for amending those regulations identified for revision.

ED intends to conduct its retrospective reviews biennially.

h. ED's Use of the Retrospective Review Analysis.

The retrospective review team will use the results of the retrospective review analyses to develop recommendations for senior officials regarding whether regulations should be amended and whether alternatives to regulating, such as updating guidance or modifying reporting

requirements, should instead be used to reduce burden, improve regulatory outcomes, simplify program implementation, or improve understanding of the regulations.

i. ED's Plans for Revising its Regulations.

ED will revise regulations based on the results of the retrospective reviews, the recommendations of the retrospective review team, and the decisions of senior officials. As indicated above, ED intends to conduct its retrospective reviews biennially. Once a decision has been made to amend particular regulations, the Department will publish a notice of proposed rulemaking for public comment and upon receipt and consideration of the public comments, issue final regulations. In certain situations, such as rulemakings under title IV of the HEA, the Department also will engage in negotiated rulemaking with interested parties prior to issuing a notice of proposed rulemaking. Additionally, the Department may hold public meetings to solicit feedback from the public on regulatory proposals.

j. ED's Plan to Coordinate with other Federal Agencies that have Jurisdiction or Similar Interests.

ED will work through the Office of Information and Regulatory Affairs within OMB and with its existing contacts at other agencies as ED is conducting its retrospective reviews and any subsequent amendments to its regulations. These agencies include the U.S. Department of Justice (DOJ), the U.S. Department of Labor, the U.S. Department of Health and Human Services (HHS), the Social Security Administration, the U.S. Small Business Administration, the U.S. Department of the Treasury, and the U.S. Consumer Financial Protection Bureau.

ED has considerable experience working with these agencies on a number of initiatives. For instance, our Office for Civil Rights works closely with DOJ on civil rights and education equity guidance and regulatory matters. ED's Office of Special Education and Rehabilitative Services consults frequently with HHS on issues relating to Medicaid and services to children with disabilities. Most recently, ED is working closely with HHS on joint administration of the Race to the Top-Early Learning Challenge program, which is designed to support State systems for developing high-quality early learning programs and services for young children. We will continue to consult with these and other Federal agencies on activities of common interest to assess ways in which we can reduce overlap and redundancy and share best practices, including in such areas as pre-award risk assessments and audit reviews.

k. Peer Review of the Retrospective Review Plan.

The Preliminary Plan and this final plan have undergone several levels of Departmental review. We have actively engaged and sought input from ED's senior leaders in developing the plan. The plan was distributed to all offices in ED for review, and changes have been made incorporating comments resulting from that process. This final plan also reflects the valuable feedback we received from the public and other stakeholders.

VI. Components of Retrospective Cost-Benefit Analysis

a. Metrics ED Will Use to Evaluate Regulations after They Have Been Implemented.

As part of its retrospective review, ED will use several metrics to evaluate its regulations. These metrics are as follows:

- Has implementation of the regulations led to increased equality in access to educational opportunities?
- Has implementation of the regulations led to unfair or unequal access to funding?
- Have there been numerous questions from stakeholders asking for further clarification of, or further amendment to, the regulations on points it would be feasible or desirable to address or clarify in the regulations?
- What, if any, guidance has ED provided to clarify the regulations following issuance of the regulations, and has the guidance provided the clarification needed?
- What does information obtained from ED data collections, including data collected through evaluations, grantee performance reports, and other sources, tell us about net benefits, cost-effectiveness ratios, or other financial metrics?
- With respect specifically to ED's regulations implementing Parts B and C of IDEA, ED already publishes a quarterly list of correspondence that it sends in response to requests from stakeholders. This correspondence provides guidance and interpretations of IDEA and its implementing regulations. We will continue to monitor the substance of this correspondence and the number of inquiries received to assess whether regulatory changes may be necessary.

b. Steps ED Has Taken to Ensure that It Has the Data Available with which to Conduct a Robust Retrospective Analysis.

The retrospective review team is developing a tool for offices to use in collecting data on the metrics listed above. The Department plans to distribute this survey to ED offices in the coming months and to complete an analysis of at least 50 percent of the regulations surveyed by the end of calendar year 2011. ED also is exploring using a customer survey on an ongoing basis to obtain feedback and data from the public on the benefits and costs of ED's regulations.

c. Use of Experimental Designs in Retrospective Analyses.

To a limited extent, the Department has used, and will continue to use, experimental designs in determining alternative regulatory approaches. Under section 487A(b) of the HEA, the Secretary has the authority to grant waivers from specific title IV, HEA statutory or regulatory requirements to allow institutions to test alternative methods for administering the title IV, HEA programs. In 2009, the Department published a notice in the *Federal Register* seeking suggestions from institutions for new experiments under the experimental sites initiative (ESI) (74 FR 55542). The Department received suggestions for new experiments from institutions representing all sectors of the postsecondary education community. From these suggestions, and

from internal generated suggestions, the Department has developed experiments that it will invite institutions to request to participate in. In the near future, and through a notice in the *Federal Register*, the Secretary intends to invite postsecondary educational institutions that participate in the student assistance programs authorized under title IV of the HEA to apply to participate in one or more new experiments under the ESI as authorized by section 487A(b) of the HEA. Each experiment will be designed to test whether proposed changes to current requirements improve the administration of the title IV, HEA programs. Substantiated improvements as a result of an experiment would provide a rationale for the Department to consider changing the statutory or regulatory provision that was the focus of the experiment.

In addition, the Department's retrospective analysis of a given set of regulations will begin with independent reviews from the following: (1) program staff who are responsible for overseeing the implementation of the regulations; (2) the program attorneys who advise the program staff on the legal aspects of administering the program; and (3) budget staff who are knowledgeable about the allowable uses of program funds. Each individual will independently complete a survey that requests information in the following areas (which correspond to the prioritization factors described above):

- Are the regulations achieving their intended outcomes, e.g., enhancing accountability, improving outcomes for students, ensuring compliance with civil rights obligations, safeguarding privacy, and ensuring affordability of and access to college?
- Have changes in the economy or other external factors had an impact on the regulations' effectiveness, led to a change (increase or decrease) in benefits for the intended beneficiaries of the regulations, or led to a change (increase or decrease) in costs on regulated parties?
- Are the regulations outmoded, unnecessary, or out of date?
- Has Congress amended the authorizing statute such that prompt review of existing regulations is necessary?
- Does ED anticipate reauthorization of the authorizing statute in the near term such that prompt review of existing regulations would likely be disrupted or not lead to regulatory revisions that could be implemented before reauthorization?
- Have regulated parties expressed confusion about the regulations or requested changes to the regulations?
- Can the regulations be understood and implemented without extensive legal interpretation, non-regulatory guidance, or technical assistance?
- What do relevant data show about the effectiveness and benefits of the regulations in comparison to their costs?

- What resources in terms of time, staff, finances, and technology will be needed to review and possibly amend the regulations?
- If the regulations relate to a formula or discretionary grant program, are they sufficient to administer the program?
- Have issues with the regulations been identified in audits (OIG audits, GAO studies, or Single Audits)?

In addition, ED will also consider how regulations might be designed and written in ways that facilitate evaluation of their consequences and thus promote retrospective analyses and the measurement of actual results. For example, the Department may consider the use of experimental or quasi-experimental designs, including randomized controlled trials, when promoting the empirical testing of the effects of its regulations.

VII. Publishing the Agency's Plan Online

ED's plan is published on its Open Government website (www.ed.gov/open). The technical person who will post any subsequent updates to the plan is Kirk Winters, who can be reached at kirk.winters@ed.gov, 202-401-2000.