

very small increments.<sup>76</sup> Proposals like IEX's POP/coil that intentionally delay access to an exchange's quotation, albeit by a sub-millisecond amount, raise questions about the prior interpretation with respect to the definition of an automated quotation under Regulation NMS. Accordingly, the Commission is proposing and soliciting comment on an updated interpretation from that provided in the Regulation NMS Adopting Release.<sup>77</sup>

Specifically, the Commission preliminarily believes that, in the current market, delays of less than a millisecond in quotation response times may be at a *de minimis* level that would not impair a market participant's ability to access a quote, consistent with the goals of Rule 611 and because such delays are within the geographic and technological latencies experienced by market participants today. For example, IEX's proposed POP/coil would introduce a 350 microsecond delay for a non-routable IOC order before it could access the IEX matching engine. The additional delay introduced by the coil itself, which is approximately 38 miles long, is effectively equivalent to the communications latency between venues that are 38 miles apart.<sup>78</sup> The Commission understands that today the distances between exchange data centers, or between the order entry systems of market participants and exchange data centers, may exceed, sometimes by many multiples, a distance of 38 miles. The Commission does not believe that these naturally-occurring response time latencies resulting from geography are inconsistent with the purposes of Rule 611.<sup>79</sup> At the same time, permitting the

quotations of trading centers with very small response time delays, such as those proposed by IEX, to be treated as automated quotations, and thereby benefit from trade-through protection under Rule 611, could encourage innovative ways to address market structure issues.

Accordingly, the Commission today is proposing to interpret "immediate" when determining whether a trading center maintains an "automated quotation" for purposes of Rule 611 of Regulation NMS to include response time delays at trading centers that are *de minimis*, whether intentional or not.<sup>80</sup>

### III. Solicitation of Comment

The Commission requests comment all aspects of this proposed interpretation, including:

1. Would delays of less than a millisecond in quotation response times impair a market participant's ability to access a quote or impair efficient compliance with Rule 611?
2. In the current market, should the Commission interpret "immediate" as including a *de minimis* delay of less than one millisecond? Should the Commission consider other lengths? If so, what should they be?
3. Should the Commission be concerned about market manipulation? If so, specifically, what should the Commission focus on?
4. Should the Commission consider an alternative interpretation? If so, what should it be?

By the Commission.

Dated: March 18, 2016.

**Brent J. Fields,**

Secretary.

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**BILLING CODE 8011-01-P**

precisely the same market making strategies on IEX as [it does] on automated trading systems run by other broker-dealers . . . as well as on registered stock exchanges" and that "IEX's 'speed bump' has had no impact on [its] market making and liquidity provisioning on the platform." Virtu Letter at 1-2.

<sup>80</sup> An exchange that proposed to provide any member or user (including the exchange's inbound or outbound routing functionality, or the exchange's affiliates) with *exclusive* privileged faster access to its facilities over any other member or user would raise concerns under the Act, including under Section 6(b)(5) and 6(b)(8) of the Act, and would need to address those concerns in a Form 1 exchange registration application or a proposed rule change submitted pursuant to Section 19 of the Act, as applicable.

## DEPARTMENT OF EDUCATION

### 34 CFR Parts 270, 271, and 272

RIN 1810-AB26

[Docket ID ED-2016-OESE-0006]

#### Equity Assistance Centers (Formerly Desegregation Assistance Centers)

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to revise the regulations that govern the Equity Assistance Centers (EAC) program, authorized under Title IV of the Civil Rights Act of 1964, and to remove the regulations that govern the State Educational Agency Desegregation (SEA) program, authorized under Title IV of the Civil Rights Act of 1964. Once final and effective, these amended EAC regulations would govern the application process for new EAC grant awards. The proposed regulations would update the definitions applicable to this program; remove the existing selection criteria; and provide the Secretary with flexibility to determine the number and composition of geographic regions for the program. Additionally, the proposed regulations would remove the regulations for the SEA program, which is no longer funded.

**DATES:** We must receive your comments on or before April 25, 2016.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do 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 "Are you new to the site?"

• *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to: Britt Jung, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E231, Washington, DC 20202-6135. Telephone: (202) 205-4513.

*Privacy Note:* The Department's policy is to make all comments received

<sup>76</sup> See, e.g., Securities Exchange Act Release No. 67639 (August 10, 2012), 77 FR 49034 (August 15, 2012) (SR-NASDAQ-2012-071) (order approving proposed rule change to provide for simultaneous routing).

<sup>77</sup> In particular, the POP/coil, because it delays inbound and outbound messages to and from IEX Users, raises a question as to whether IEX will, among other things, "immediately" execute IOC orders under Rule 600(b)(3)(ii), "immediately" transmit a response to an IOC order sender under Rule 600(b)(3)(iv), and "immediately" display information that updates IEX's displayed quotation under Rule 600(b)(3)(v). See 17 CFR 242.600(b)(3); see also Regulation NMS Adopting Release, *supra* note 14, at 37504.

<sup>78</sup> See *supra* note 69 (citing to the Healthy Markets Letter, which observed that the length of IEX's coiled cable "is far less than the distance between NY and Chicago, and is remarkably similar to the distance between Carteret and Mahwah (36 miles)"). See also IEX Second Response at 11 (noting that the distance between Nasdaq's Carteret facility and NYSE's Mahwah facility is 42.8 miles).

<sup>79</sup> See *supra* note 69 (citing to commenters who believe that IEX's POP/coil latency is comparable to or shorter than natural and geographic latencies in today's market). One market maker and liquidity provider on the IEX ATS notes that it "engages in

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:** Britt Jung, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E231, Washington, DC 20202-6135. Telephone: (202) 205-4513 or by email: [britt.jung@ed.gov](mailto:britt.jung@ed.gov).

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

#### **SUPPLEMENTARY INFORMATION:**

*Invitation to Comment:* We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. 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 Department's programs and activities.

#### **Specific Issues Open for Comment**

In addition to your general comments, we are interested in your feedback on the proposed flexibility in selecting the number and boundaries of the geographic regions. The Department currently plans to reduce the number of regional centers in the first competition after these final regulations become effective. We are particularly interested in your feedback on the following questions:

- Do applicants or program beneficiaries support the proposed flexibility allowing the Secretary to choose the number of regional centers?
- What factors should the Secretary consider when determining the composition of States in each geographic region?
- Are there potential costs or benefits associated with the proposed approach that we have not addressed?

During and after the comment period, you may inspect all public comments

about these proposed regulations by accessing [Regulations.gov](http://Regulations.gov). You may also inspect the comments in person in room 3E231, 400 Maryland Avenue SW., Washington, DC, between 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. 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 these proposed regulations. 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**.

#### **Background**

The Secretary proposes to revise the general regulations in 34 CFR part 270 that apply to both the EAC and the SEA programs and to revise the regulations in 34 CFR part 272 that apply only to the EAC program. We propose five key changes to these regulations. First, we propose to amend the section that governs the existing geographic regions to allow the Secretary flexibility in choosing the number and composition of geographic regions to be funded with each competition. Second, we propose to add religion to the areas of desegregation assistance, add a definition for "special educational problems occasioned by desegregation," and amend the definition of "sex desegregation" to clarify the protected individuals identified by this term. Third, we propose to remove the existing selection criteria (to instead rely on the General Selection Criteria listed under the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.210). Fourth, we propose to remove the limitations and exceptions established in current 34 CFR 270.6 on providing desegregation assistance, to align these regulations with those of other technical assistance centers. Fifth, we propose to remove 34 CFR part 271, as the SEA program has not been funded in twenty years. We also propose to merge part 272 into part 270, so that a single part covers the EAC program.

We propose regulations that would permit the Secretary to establish the geographic regions for the EAC program with each competition, so the Department could respond to the magnitude of the need for desegregation

assistance across the nation, taking into account funding levels and the circumstances that exist at the time of each competition. The Department currently plans to fund four regional centers in the first competition after these final regulations become effective.

The proposed regulations would allow the Department to reduce the current number of regional centers while still providing technical assistance to beneficiaries across the nation. Presuming funding levels for the program remain constant, this would increase the funding available for each center and enable the centers to operate in the most effective and efficient manner. Reducing the current number of regions would limit the duplication of effort for overhead costs (such as start-up costs, administrative support, rent, etc.), and redirect those funds to technical assistance and support using the latest technology available. Furthermore, reducing the number of regions would allow the Department to provide more thorough support and monitoring of those consolidated centers, while ensuring technical assistance is still available to reach beneficiaries across the country. However, the proposed regulations would provide the flexibility to change the number and the composition of the regions in the future, in the event that funding levels or technical assistance delivery platforms were to change significantly. These decisions would necessarily take into consideration the need for centers to continue to provide support for communities across the country.

The proposed regulations would add religion to the areas of desegregation assistance, as religion is specifically cited in Title IV of the Civil Rights Act of 1964 as an area of desegregation assistance, and add a definition for the term "religion desegregation" that is consistent with the terms describing race, sex, and national origin desegregation. The Department would amend the definition of a "Desegregation Assistance Center" to refer to it as an Equity Assistance Center. The proposed regulations would also amend the definition of "sex desegregation" to explain that the Department interprets sex discrimination under Title IX to include discrimination based on transgender status, gender identity, sex stereotypes, and pregnancy and related conditions. Finally, the proposed regulations would add a definition for "special educational problems occasioned by desegregation" to clarify that this term does not refer to the provision of special education and related services as defined by the

Individuals with Disabilities Education Act (IDEA). Children with disabilities or staff providing services to them could be potential beneficiaries of technical assistance if they are affected by desegregation efforts.

The proposed regulations would also eliminate the selection criteria and the prescribed point values under § 272.30. At present, the prescribed point values are unduly restrictive on the Secretary's ability to structure each grant competition. Furthermore, there is significant overlap between the existing selection criteria and 34 CFR 75.210. As such, this change would provide the Secretary with greater flexibility to address program needs at the time of each competition, by allowing the use of any of the General Selection Criteria listed in 34 CFR 75.210, while ensuring that the selected projects for any competition meet the highest standards of professional excellence.

The proposed regulations would remove current § 270.6(b) in its entirety and amend current § 270.6(a) to broaden this section to address all technical assistance activities under this program, rather than only those for race and national origin desegregation assistance. We propose to amend current § 270.6 for

clarity, and to align these regulations with the limitations on developing curriculum that apply to other technical assistance centers, such as the Comprehensive Centers. Consistent with the General Education Provisions Act, 20 U.S.C. 1232(a), we cannot and do not authorize centers to exercise direction or control over the curriculum. As currently drafted, § 270.6(b) could be misconstrued to permit the development or implementation of activities for direct instruction; removing this provision will ensure clarity. Moreover, this approach is similar to that taken in the most recent notice of final requirements, priorities, and selection criteria for the Comprehensive Centers Program published in the **Federal Register** on June 6, 2012 (77 FR 33573). In that notice, we included a reminder that an applicant could not meet the program requirements by proposing a technical assistance plan that included designing or developing curricula or instructional materials for use in classrooms.

Finally, the proposed regulations would remove 34 CFR part 271, and merge current parts 270 and 272 into a single part under proposed 34 CFR part

270. The current regulations for the Desegregation of Public Education Programs under 34 CFR part 270 govern both the SEA Program and the EAC Program. The current regulations for part 272 govern the EAC program. The current regulations for part 271 govern the SEA program. We propose to remove 34 CFR part 271 (and any references to part 271 in current parts 270 and 272), because the SEA Program has not received funding in two decades and is no longer administered by the Department. As the only program currently administered under the Desegregation of Public Education Programs is the EAC Program, we propose to move sections in current part 272 into part 270 so that there is a single part governing the EAC program. As a result of merging parts 270 and 272, we would reorder the sections within proposed part 270. Additionally, we propose to remove current sections §§ 270.1 (desegregation of public education programs), 270.4 (types of projects funded by the desegregation of public education programs), 272.3 (applicable regulations), and 272.4 (definitions), as these sections would become redundant with the merger.

TABLE DEMONSTRATING HOW THE CURRENT REGULATIONS WOULD BE RENUMBERED UNDER THE PROPOSED REGULATIONS

Current section	Proposed section	Substantive changes
270.1 .....	(removed) .....	N/A.
270.2 .....	270.6 .....	None.
270.3 .....	270.7 .....	The proposed regulations would update certain definitions applicable to this program including adding a new definition of religion desegregation.
270.4 .....	(removed) .....	N/A.
270.5 .....	270.31 .....	None.
270.6 .....	270.32 .....	The proposed regulations would revise the prohibition against providing materials for the direct instruction of students and remove the exception under current 270.6(b).
Part 271 .....	(removed) .....	The proposed regulations would remove the regulations for the SEA program, which is no longer funded.
272.1 .....	270.1 .....	The proposed regulations would update program name to Equity Assistance Centers.
272.2 .....	270.2 .....	None.
272.3 .....	(removed) .....	N/A.
272.4 .....	(removed) .....	N/A.
272.10 .....	270.4 .....	The proposed regulations would add "community organizations" to the list of parties that may receive desegregation assistance under this program.
272.11 .....	270.3 .....	None.
272.12 .....	270.5 .....	The proposed regulations would revise the number of geographic regions served by the EACs.
272.30 .....	(removed) .....	The proposed regulations would remove the existing selection criteria.
272.31 .....	270.20 .....	None.
272.32 .....	270.21 .....	The proposed regulations would replace "expected need" with "evidence supporting the magnitude of the demonstrated need" as it relates to the Secretary's determination of the amount of a grant.
272.40 .....	270.30 .....	The proposed regulations would broaden EAC coordination of technical assistance to include "Comprehensive Centers, Regional Educational Laboratories, and other Federal technical assistance centers."

### Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory changes that are technical or otherwise minor in effect.

#### PART 270—DESEGREGATION OF PUBLIC EDUCATION

##### Section 270.1 What is the Equity Assistance Center Program?

*Statute:* Under Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c–2000c–2 and 2000c–5, the Secretary is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, to render technical assistance to such applicant in the preparation, adoption, and implementation of plans for the desegregation of public schools.

*Current Regulations:* Current § 270.1 refers to the “Desegregation of Public Education programs,” which includes both the SEA Program and the DAC Program.

*Proposed Regulations:* We propose to replace this section with the language of current § 272.1; in addition, we propose to change the name of the centers from Desegregation Assistance Centers (DACs) to Equity Assistance Centers. Our proposed regulations would also remove the reference to the SEA Program.

*Reasons:* When first implemented, the Desegregation of Public Education Programs under 34 CFR part 270 covered both the SEA Program (current part 271) and the DAC Program (current part 272). The SEA Program under current part 271 has not received funding since 1995 and is not currently administered by the Department. Therefore, we propose to remove all regulations for this program.

We propose to change the name from Desegregation Assistance Centers to Equity Assistance Centers because the term “equity” better reflects the breadth of the types of desegregation issues faced in schools now, as students from different backgrounds and experiences are brought together. Ultimately, the purpose of the regional centers is to ensure access to educational opportunities for all students without regard to their race, sex, national origin, or religion. In the 21st century, issues related to desegregation include harassment, school climate, resource equity gaps, discrimination, and instructional practices designed to reach all students. The Department has for some time referred to the regional

assistance centers as “Equity Assistance Centers” in the notices inviting applications, in cooperative agreements, and on OESE’s Web page for the grant program. The majority of the current regional centers refer to themselves as “Equity Centers” or “Equity Assistance Centers.” Therefore, we believe it is appropriate to formally refer to the regional centers as “Equity Assistance Centers.”

##### Section 270.2 Who is eligible to receive a grant under this program?

*Statute:* Section 403 of Title IV of the Civil Rights Act of 1964 states that the Secretary may render technical assistance upon the application of any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools.

*Current Regulations:* Under current § 272.2, any public agency (other than an SEA or school board) or private, nonprofit organization is eligible to receive an EAC grant.

*Proposed Regulations:* We propose to move current § 272.2 (without any changes) to part 270 as § 270.2.

*Reasons:* We propose to move this section so that there is a single part covering the EAC program.

##### Section 270.3 Who may receive assistance under this program?

*Statute:* Under section 403 of title IV of the Civil Rights Act of 1964, any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools may, upon request, receive technical assistance. The Secretary has the authority to prescribe how the technical assistance is provided, *i.e.*, through regional centers, and who the beneficiaries are of the technical assistance under this program in accordance with 20 U.S.C. 1221e–3 and 3474.

*Current Regulations:* The current regulation § 272.11 states that a recipient of a grant under these parts, *i.e.*, the regional centers, may provide assistance only if requested by a governmental unit legally responsible for operating a public school or schools located in its geographical service area. The regional centers are permitted to provide assistance to public school personnel and students enrolled in public schools, parents of those students, and other community members.

*Proposed Regulations:* We propose to move current § 272.11 to part 270 as § 270.3. We also propose to expand the list of beneficiaries who may receive technical assistance from the regional

centers to include “community organizations” in addition to “community members.”

*Reasons:* We propose to include community organizations within the list of beneficiaries who may receive assistance from the regional centers to clarify that all stakeholders with significant ties to public schools and students may assist in preparing, adopting, and implementing plans for the desegregation of public schools.

##### Section 270.4 What types of projects are authorized under this program?

*Statute:* Section 403 of Title IV of the Civil Rights Act of 1964 authorizes the Secretary to provide for technical assistance to any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, upon request, by making available information regarding effective methods of coping with special educational problems occasioned by desegregation, and by making available the Department’s personnel or other persons specially equipped to advise and assist in coping with such problems. The statute specifies that this technical assistance may include these actions “among other activities.” The Secretary has the authority to regulate other technical assistance activities that apply to the Equity Assistance Centers program under 20 U.S.C. 1221e–3 and 3474.

*Current Regulations:* Current § 272.10 states that the Secretary may award funds to DACs for projects offering technical assistance to governmental units legally responsible for operating a public school or schools, at their request, for assistance in the preparation, adoption, and implementation of desegregation plans. These projects must provide technical assistance in each of the following three areas of desegregation assistance: (1) Race, (2) sex, and (3) national origin. The section includes a non-exhaustive list of categories of desegregation assistance activities that are permissible under the statute, including training designed to improve the ability to effectively address special educational problems occasioned by desegregation, and identifies certain beneficiaries of such training.

*Proposed Regulations:* We propose to move current § 272.10 to part 270 as § 270.4 and to make the following changes in proposed § 270.4. We propose to amend the reference to DACs in current § 272.10(a) to “EACs.” We also propose to add “community organizations” to the list of beneficiaries of desegregation technical assistance

activities in current § 272.10(c)(3). Finally, we propose to update the number of desegregation assistance areas from “all three” in current § 272.10(b) to “all four.”

*Reasons:* We propose to update all references to DACs to now refer to EACs, to be consistent with our change to describe the centers as “Equity Assistance Centers” set forth in proposed § 270.7. We propose to add “community organizations” to the list of beneficiaries of desegregation technical assistance activities because the Department believes that community organizations with substantive ties to a public school can be effective stakeholders in working with schools and other responsible governmental agencies on issues this program seeks to address. We propose to revise § 272.10(b) to refer to four desegregation assistance areas, instead of three, to reflect the addition of religion desegregation to the existing desegregation assistance areas, as discussed in the explanation of proposed § 270.6.

*Section 270.5 What geographic regions do the EACs serve?*

*Statute:* Under section 403 of Title IV of the Civil Rights Act of 1964, the Secretary may render technical assistance upon application to any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools. The statute does not prescribe the specific number of centers or geographic regions under the program. The Secretary has the authority to regulate the provision of technical assistance under 20 U.S.C. 1221e-3 and 3474.

*Current Regulations:* Current § 272.12 provides that the Secretary awards grants for desegregation assistance in ten geographic regions. The current regulations specify the States located within each of the ten geographic regions.

*Proposed Regulations:* We propose to eliminate the current requirement that EACs serve ten geographic regions and reduce the number of regional centers. The proposed regulations state that the Secretary would announce in the **Federal Register** the number of centers and regions to be covered for each competition and identify the criteria the Secretary considers when determining the number and boundaries of the geographic regions. Thus, the proposed regulations would allow the Secretary to choose the number of centers and the geographic composition of each center in any given grant cycle. The criteria the Secretary considers when determining

the number and boundaries of the regions would include (1) size and diversity of the student population; (2) the number of LEAs; (3) the composition of urban, city, and rural LEAs; (4) the history of Equity Assistance Center and other Department technical assistance activities carried out in each geographic region; and (5) the amount of funding available for the competition. We also propose to move current § 272.12 to proposed § 270.5.

*Reasons:* The proposed regulations would allow the Secretary to choose the number of centers and the geographic composition of each center in any given grant cycle, which would allow the Secretary to reduce the number of regional centers moving forward. The proposed regulations identify criteria the Secretary considers when determining the number and boundaries of geographic regions for a given grant year, which are designed to provide a variety of criteria the Secretary would use to determine the demand and underlying needs of each geographic region.

This proposed change would allow the Secretary the flexibility to consider the amount of available funding for the EAC program and distribute it among an appropriate number of geographic regions. Since the Department was created, the amount of funding for the EAC program has dropped significantly, from \$45 million in FY 1980 (for all Desegregation of Public Education programs) to \$6.6 million in FY 2016 for EAC grants. In developing the proposed regulations for this section, the Department reasoned that limiting the number of centers may be appropriate at times to reduce overhead costs and to ensure that a greater percentage of funds are used to directly serve beneficiaries. We also believe this change would improve each individual center's capacity to carry out robust technical assistance. Consolidating the number of regional centers would also help the Department to award grants to the highest-quality applications in future grant cycles.

The proposed regulations would enable the centers to operate in the most effective and efficient manner by limiting the duplication of effort for overhead costs and redirecting those funds to technical assistance. In addition, providing each center with more resources would help each individual center attract and retain the highest-quality experts in the field. Similarly, flexibility to determine the boundaries of geographic regions may enable more effective responses to new or emerging issues in the field by allowing the Secretary to create

geographic regions based on areas facing similar issues. Furthermore, the capabilities of technology have changed dramatically since this program's enactment; the Internet now allows EACs to provide effective and coordinated technical assistance across much greater geographic distances than would have been possible when the current regulations were promulgated in 1987. Finally, allowing the Secretary to establish the number of regional centers for each competition will allow the Department to try different numbers to reach the optimal number of regional centers, without undergoing rulemaking each time it is necessary to alter the regions served under this program.

*Section 270.6 What definitions apply to this program?*

*Statute:* Under section 401 of title IV of the Civil Rights Act of 1964, the terms “Secretary,” “Desegregation,” “Public school,” and “School board” are defined. The Secretary has the authority to define through regulation other terms that apply to the Equity Assistance Centers program under 20 U.S.C. 1221e-3 and 3474.

*Current Regulations:* Current § 270.3 defines key terms used by the Department in administering the program. Under the current regulations:

- “Desegregation assistance” means the provision of technical assistance (including training) in the areas of race, sex, and national origin desegregation of public elementary and secondary schools.
- “Desegregation assistance areas” means the areas of race, sex, and national origin desegregation.
- “Desegregation Assistance Center” means a regional desegregation technical assistance and training center funded under 34 CFR part 272.
- “Limited English proficiency” has the same meaning under this part as the same term defined in 34 CFR 500.4 of the General Provisions regulations for the Bilingual Education Program.
- “National origin desegregation” means the assignment of students to public schools and within those schools without regard to their national origin, including providing students of limited English proficiency with a full opportunity for participation in all educational programs.
- “Race desegregation” means the assignment of students to public schools and within those schools without regard to their race including providing students with a full opportunity for participation in all educational programs regardless of their race. “Race desegregation” does not mean the assignment of students to public schools

to correct conditions of racial separation that are not the result of State or local law or official action.

- “Sex desegregation” means the assignment of students to public schools and within those schools without regard to their sex including providing students with a full opportunity for participation in all educational programs regardless of their sex.

*Proposed Regulations:* First, we propose to change the name from “Desegregation Assistance Center” to “Equity Assistance Center.” “Equity Assistance Center” would be defined as a regional desegregation technical assistance and training center funded under this part. Second, we propose to clarify and update the definition of “sex desegregation” to explain that sex desegregation includes desegregation based on transgender status, gender identity, sex stereotypes, and pregnancy and related conditions. Third, we propose to add religion desegregation to the definition of “desegregation assistance” and the “desegregation assistance areas,” and to define “religion desegregation” in this section. Fourth, we propose to replace the current definition of “limited English proficiency (LEP)” with the definition of “English learner” under section 8101(20) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act, Public Law 114–95 (2015) (ESSA), and make conforming changes to the definition of “national origin discrimination” including replacing the reference to students of “limited English proficiency” to “English learner” students. Fifth, we propose to add a definition of “special educational problems occasioned by desegregation” to clarify this term. We would also move current § 270.3 to proposed § 270.7.

*Reasons:* In the definitions we propose to change the name of the centers from “Desegregation Assistance Centers” to “Equity Assistance Centers” for the reasons discussed under proposed § 270.1.

We propose to update the definition of “sex desegregation” to clarify the protected individuals identified by this term. We propose to clarify that “sex desegregation” includes the treatment of students on the basis of pregnancy and related conditions, which include childbirth, false pregnancy, termination of pregnancy and recovery therefrom, consistent with Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 (Title IX) and its implementing regulations at 34 CFR 106.40. We also propose to clarify that “sex desegregation” includes the treatment of

students without regard to sex stereotypes, or their transgender status or gender identity, to highlight some emerging issues for which EACs may provide technical assistance in this area. This change reflects the Supreme Court’s reasoning that discrimination based on “sex” includes differential treatment based on any “sex-based conditions,” *Price Waterhouse v. Hopkins*, 490 U.S. 228, 242 (1989) (case decided under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*), and subsequent court decisions recognizing that the prohibitions on sex discrimination protect transgender individuals from discrimination. *See e.g., Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004); *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2000). The change also aligns with our Office for Civil Rights’ interpretation of the prohibition of sex discrimination in Title IX and its regulations as reflected in its “Questions and Answers on Title IX and Sexual Violence” (Apr. 29, 2014), [www.ed.gov/ocr/docs/qa-201404-title-ix.pdf](http://www.ed.gov/ocr/docs/qa-201404-title-ix.pdf); “Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities” (Dec. 1, 2014), [www.ed.gov/ocr/docs/faqs-title-ix-single-sex-201412.pdf](http://www.ed.gov/ocr/docs/faqs-title-ix-single-sex-201412.pdf); and “Title IX Resource Guide” (Apr. 24, 2015), [www.ed.gov/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf](http://www.ed.gov/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf). The Department interprets “sex discrimination” under Title IX and its regulations in a similar manner. *See* amicus brief filed in *G.G. v. Gloucester County Sch. Bd.*, No. 15–2056 (4th Cir.), available at [www.justice.gov/crt/case-document/gg-v-gloucester-county-school-board-brief-amicus](http://www.justice.gov/crt/case-document/gg-v-gloucester-county-school-board-brief-amicus). These interpretations of Title IX and its regulations are particularly relevant to the meaning of “sex” under Title IV because Congress’s 1972 amendment to Title IV to add sex as an appropriate desegregation assistance area was included in Title IX of the Education Amendments. This change is also consistent with other Federal agencies’ recent regulatory proposals to codify similar interpretations of sex discrimination, including treatment of students without regard to transgender status, gender identity, or sex stereotypes (such as treating a person differently because he or she does not conform to sex-role expectations by being in a relationship with a person of the same sex). 80 FR 5246, 5277, 5279 (Jan. 30, 2015) (Office of Federal Contract Compliance Programs, Department of Labor; proposed 41 CFR 60–20.2(a) and 60–20.7); 80 FR 54172, 54216–217 (Sept. 8, 2015) (Office for

Civil Rights, Department of Health and Human Services; proposed 41 CFR 92.4); 81 FR 4494, 4550 (Jan. 26, 2016) (Office of the Secretary, Department of Labor; proposed 29 CFR 38.7). Thus, the proposed definition would more accurately reflect the Office for Civil Rights’ and the Department’s interpretation of Title IX and its regulations, our existing practices regarding sex desegregation and equity, and would be consistent with the interpretations and rulemakings of other Federal agencies.

We propose to add a definition of “religion desegregation,” and to incorporate religion into the definitions of “desegregation assistance” and “desegregation assistance areas.” Sections 401 and 403 of Title IV of the Civil Rights Act of 1964 authorize the Secretary to render technical assistance to support the desegregation of public schools and the assignment of students to schools without regard to religion. While the current regulations do not address religion desegregation, the Secretary’s authority to render technical assistance for the desegregation of public schools is clear under sections 401 and 403 of Title IV of the Civil Rights Act of 1964, and desegregation is therein defined to include the assignment of students to public schools and within such schools without regard to their religion. Given the increasing religious diversity in the United States, and the increased tension that has developed in many of our schools related to a student’s actual or perceived religion, the Department believes it would be beneficial to provide resources for schools to assist in developing effective strategies to ensure all students have a full opportunity to participate in educational programs, regardless of religion. Further, adding religion desegregation to the desegregation assistance areas will allow the Department to build upon and support the work of the United States Department of Justice under Title IV to ensure compliance with Federal laws prohibiting discrimination on the basis of religion.

We propose to amend the current definition of “limited English proficiency (LEP)” so that this term is identical to, and has the same meaning as, “English Learner” under ESEA section 8101(20), as the statutory definition reflects the Department’s current understanding of this target population. We also propose to amend the definition of “national origin desegregation” to clarify that this term includes providing students who are English learners with a full opportunity for participation in all educational

programs “regardless of their national origin.”

Lastly, we propose to add a definition of “special educational problems occasioned by desegregation.” This phrase is included within the statute and regulations, but could be confused with requirements to provide special education and related services under IDEA. The new definition clarifies the distinction between the term “special educational problems occasioned by desegregation” under Title IV and “special education and related services” under the IDEA. Under this proposed definition, children with disabilities or staff providing services to them would not be precluded from being potential beneficiaries of technical assistance if they are affected by desegregation efforts.

*Section 270.20 How does the Secretary evaluate an application for a grant?*

*Statute:* Title IV of the Civil Rights Act of 1964 does not address how the Secretary evaluates an application for a grant under these programs, and the Secretary has the authority to regulate these requirements under 20 U.S.C. 1221e-3 and 3474.

*Current Regulations:* Current § 272.31 provides that the Secretary evaluates the application on the basis of all of the selection criteria in § 272.30. The Secretary cannot pick and choose from the selection criteria. These selection criteria include mission and strategy, organizational capacity, plan of operation, quality of key personnel, budget and cost effectiveness, evaluation plan, and adequacy of resources. The Secretary then selects the highest ranking application for each geographical service area to receive a grant.

*Proposed Regulations:* We propose to remove the program specific selection criteria and the associated point values in current § 272.30. We propose to amend current § 272.31(a) to state that the Secretary evaluates applications on the basis of criteria in 34 CFR 75.210, and may select from among the list of factors under each criterion in 34 CFR 75.210. We also propose to move current § 272.31 to proposed part 270, as § 270.20.

*Reasons:* We propose to remove the selection criteria and the associated point values in current § 272.30, and revise current § 272.31, to provide the Secretary with greater flexibility in identifying the most relevant factors for each grant competition.

Under current § 272.30, the Secretary is required to use all of the established selection criteria and the associated point values for each competition. As a

result, the Secretary has no flexibility to adjust the selection criteria in accordance with the needs of the program at the time of each competition. The current selection criteria also limit the opportunities to improve the selection process, based upon experience gained in running the program.

Using the general selection criteria listed in 34 CFR 75.210 would ensure that the program selection process can be refined over time, based upon the needs and concerns identified at the time of each competition. The general selection criteria have been vetted and tested across many Departmental programs, and provide a wide range of factors for evaluating applications in any competition.

Substantively, there is significant overlap between current § 272.30 and the general selection criteria of 34 CFR 75.210, which would allow the Secretary to continue to use some similar elements of the selection criteria, if those elements are deemed the most appropriate choices for ensuring high-quality applicants.

Similarly, allowing the Secretary to identify the point values for each selection criterion at the time of the competition would allow the Secretary to hone the selection process over time. The Secretary will have the flexibility to weight more heavily those selection criteria determined to be most important in identifying effective centers.

Finally, this change will bring the EAC regulations into alignment with many other Departmental regulations for discretionary grant programs.

*Section 270.21 How does the Secretary determine the amount of a grant?*

*Statute:* Title IV of the Civil Rights Act of 1964 is silent about how the Secretary may determine the amount of each grant. The Secretary has the authority to regulate this issue under 20 U.S.C. 1221e-3 and 3474.

*Current Regulations:* Under current § 272.32, the Secretary determines the amount of an EAC grant award on the basis of the amount of funds available under this part. The Secretary also conducts a cost analysis of the project. The Secretary considers the magnitude of the expected needs of responsible governmental agencies for desegregation assistance in the geographic region, as well as the costs required to meet the expected needs. Further, under current § 272.32(d), the Secretary considers the size and racial or ethnic diversity of the student population of the geographic region. Finally, the Secretary considers any other information concerning desegregation problems and proposed

activities that the Secretary finds relevant in the applicant’s geographic region.

*Proposed Regulations:* We propose to amend current § 272.32(c) to consider the “evidence supporting the magnitude of the demonstrated need of the responsible governmental agencies for desegregation assistance,” instead of “expected need.” We propose to update current § 272.32(d) to replace the reference to “the DAC” with “the EAC.” We also propose to move current § 272.32 to part 270, as proposed § 270.21.

*Reasons:* We propose that the Secretary determines the amount of a grant on the basis of “evidence supporting the magnitude of the demonstrated need” rather than “expected need” to encourage applicants to support their stated needs with data demonstrating the technical assistance needs of the geographic region.

An approach to technical assistance informed by data and evidence would promote comprehensive and preventative policies to combat segregation. Encouraging applicants to analyze needs of their geographic regions during the application process will jumpstart these efforts. Finally, a data-driven approach to geographic need will help potential applicants anticipate the future needs of their regions and make better use of existing resources.

*Section 270.30 What conditions must be met by a recipient of a grant?*

*Statute:* Title IV of the Civil Rights Act of 1964 is silent about the conditions that must be met by a recipient. The Secretary has the authority to regulate on this issue under 20 U.S.C. 1221e-3 and 3474.

*Current Regulations:* Pursuant to current § 272.40, a recipient of EAC grant funds must operate an EAC in the geographic region to be served and have a full-time project director. The EAC must also coordinate assistance in its geographic region with appropriate SEAs funded under 34 CFR part 271.

*Proposed Regulations:* We propose to replace all references to “DAC” or “DACs” with “EAC” or “EACs.” We also propose to amend current § 272.40(c) to state that a recipient of a grant under this part must coordinate assistance in its geographic region with appropriate SEAs, Comprehensive Centers, Regional Educational Laboratories, and other Federal technical assistance centers. As part of this coordination, the recipient would seek to prevent duplication of assistance where an SEA, Comprehensive Center,

or Regional Educational Laboratory may have already provided assistance to the responsible governmental agency. Finally, we propose to move current § 272.40 to part 270, as proposed § 270.30.

*Reasons:* The Department is proposing to replace all reference to DACs with the equivalent reference to EACs to reflect the proposal to change the term to Equity Assistance Centers.

Proposed § 270.30(c) would specify that a recipient of a grant under this part must coordinate assistance in its geographic region with appropriate SEAs, Comprehensive Centers, Regional Educational Laboratories and other Federal technical assistance centers. This change is meant to reflect two important updates: First, the EACs would not be required to coordinate with SEAs funded under the SEA program, because the SEA Program no longer exists and no SEAs are funded under this program. Second, the proposed regulations would highlight the centers' responsibilities to work with a variety of stakeholders by noting that they "must coordinate" with appropriate SEAs, Comprehensive Centers, Regional Educational Laboratories, and other Federal technical assistance centers. We propose to promote this coordination to prevent technical assistance centers from duplicating work and to encourage technical assistance centers to share expertise regarding equity and desegregation issues.

*Section 270.32 What limitation is imposed on providing Equity Assistance under this program?*

*Statute:* Under section 403 of Title IV of the Civil Rights Act of 1964, the Secretary may render technical assistance upon application to any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools. The Secretary has the authority to regulate the provision of technical assistance under 20 U.S.C. 1221e-3 and 3474.

*Current Regulations:* Current § 270.6(a) states that a recipient of a grant for race or national origin desegregation assistance may not use funds to assist in the development or implementation of activities or the development of curriculum materials for the direct instruction of students to improve their academic and vocational achievement levels. However, current § 270.6(b) provides that a recipient of a grant for national origin desegregation assistance may use funds to assist in the development and implementation of activities or the development of

curriculum materials for the direct instruction of students of limited English proficiency, to afford these students a full opportunity to participate in all educational programs.

*Proposed Regulations:* We propose to remove current § 270.6(b) in its entirety. We also propose to amend current § 270.6(a) to simply state that a recipient of a grant under this program may not use funds to assist in the development or implementation of activities or the development of curriculum materials for the direct instruction of students to improve their academic and vocational achievement levels.

*Reasons:* We propose to clarify that the prohibition on the development of curriculum materials for direct instruction applies to technical assistance activities under this program. Consistent with the General Education Provisions Act (GEPA), 20 U.S.C. 1232(a), we cannot and do not authorize centers to exercise direction or control over the curriculum. As currently drafted, these provisions could be misconstrued to permit the development or implementation of activities for direct instruction; removing the provisions will ensure clarity. Moreover, this approach is similar to that taken in the most recent notice of final priorities, requirements, and selection criteria for the Comprehensive Centers Program published in the **Federal Register** on June 6, 2012 (77 FR 33573). In that notice, we stated that an applicant could not meet the program requirements by proposing a technical assistance plan that included designing or developing curricula or instructional materials for use in classrooms. Finally, we have removed the limitation under current § 270.6(a) that these regulations only apply to grants "for race or national origin desegregation assistance" because the limitations on curriculum development under GEPA 1232(a) apply to all technical assistance activities under this program. Thus, the proposed changes align these regulations with the statutory limitations on developing curriculum that apply to other technical assistance centers.

#### **Executive Orders 12866 and 13563**

##### *Regulatory Impact Analysis*

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

regulatory action" as an action likely to result in a rule that may—

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

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

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

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

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

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

(1) Propose or adopt regulations only 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." The Office of

Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these proposed regulations 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 these proposed regulations are consistent with the principles in Executive Order 13563.

We have also 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 both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department’s programs and activities.

*Discussion of Costs and Benefits:* We have determined that the potential costs associated with this regulatory action would be minimal while the potential benefits are significant.

For Equity Assistance Center grants, applicants may anticipate costs in developing their applications. Application, submission, and participation in a competitive discretionary grant program are voluntary. The proposed regulations would create flexibility for us to use general selection criteria listed in EDGAR 75.210. We believe that any criterion from EDGAR 75.210 that would be used in a future grant competition would not impose a financial burden that applicants would not otherwise incur in the development and submission of a grant application. Other losses may stem from the reduction of the number of regional centers for those applicants that do not receive a grant in future funding years, including the costs of eliminating those centers and associated job losses.

Notably, we do not believe that reducing the number of regions would prevent EACs from providing technical assistance to beneficiaries across the country. Technological advancements allow EACs to provide effective and coordinated technical assistance across much greater geographic distances than

when the current regulations were promulgated in 1987.

The benefits include enhancing project design and quality of services to better meet the statutory objectives of the programs. These proposed changes would also allow more funds to be used directly for providing technical assistance to responsible governmental agencies for their work in equity and desegregation by reducing the amount of funds directed to overhead costs. The proposed flexibility of the geographic regions would increase the Department’s ability to be strategic with limited resources. In addition, these changes would result in each center receiving a greater percentage of the overall funds for the program, and this greater percentage and amount of funds for each selected applicant would help to incentivize a greater diversity of applicants.

In addition, the Secretary believes that students covered under sex desegregation and religion desegregation would strongly benefit from the proposed regulations. The revised definition of “sex desegregation” would eliminate lost opportunities for assistance by providing clarification regarding the scope of issues covered under sex desegregation, thus removing any confusion for EACs and the beneficiaries they serve as to which parties are entitled to assistance under this term. For religion desegregation, grantees would need to provide technical assistance to responsible governmental agencies seeking assistance on this subject, but the costs associated with these new technical assistance activities would be covered by program funds.

Elsewhere in this section under *Paperwork Reduction Act of 1995*, we identify and explain burdens specifically associated with information collection requirements.

#### 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 these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A “section” is preceded by the symbol “§” and a numbered heading; for example, § 270.1 *What is the Equity Assistance Center Program?*)

- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define institutions as “small entities” if they are for-profit or nonprofit institutions with total annual revenue below \$15,000,000, and defines “non-profit institutions” as small organizations if they are independently owned and operated and not dominant in their field of operation, or as small entities if they are institutions controlled by governmental entities with populations below 50,000. The Secretary invites comments from small entities as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief. The Secretary believes that the small entities which will be primarily affected by these regulations are public agencies and private, nonprofit organizations that would be eligible to receive a grant under this program. However, the Secretary believes that the proposed regulations would not have a significant economic impact on these small entities because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision, and will not affect the current status quo for the burden imposed on these small entities under existing regulations. However, the Secretary specifically invites comments on the effects of the proposed regulations on small entities, and on whether there may be further opportunities to reduce any potential adverse impact or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of

the Equity Assistance Center grant program.

### Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

### 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 these programs.

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

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(Catalog of Federal Domestic Assistance Number: 84.004D)

### List of Subjects in 34 CFR Parts 270, 271, and 272

Elementary and secondary education, Equal educational opportunity, Grant programs—education, Reporting and recordkeeping requirements.

Dated: March 17, 2016.

#### Ann Whalen,

*Senior Advisor to the Secretary, Delegated the Duties of Assistant Secretary for Elementary and Secondary Education.*

For the reasons discussed in the preamble, and under the authority of 20 U.S.C. 3474, the Secretary of Education

proposes to amend parts 270, 271, and 272 of title 34 of the Code of Federal Regulations as follows:

- 1. Part 270 is revised to read as follows:

### PART 270—EQUITY ASSISTANCE CENTER PROGRAM

#### Subpart A—General

Sec.

- 270.1 What is the Equity Assistance Center Program?
- 270.2 Who is eligible to receive a grant under this program?
- 270.3 Who may receive assistance under this program?
- 270.4 What types of projects are authorized under this program?
- 270.5 What geographic regions do the EACs serve?
- 270.6 What regulations apply to this program?
- 270.7 What definitions apply to this program?

#### Subpart B—[RESERVED]

#### Subpart C—How Does the Secretary Award a Grant?

Sec.

- 270.20 How does the Secretary evaluate an application for a grant?
- 270.21 How does the Secretary determine the amount of a grant?

#### Subpart D—What Conditions Must I Meet After I Receive a Grant?

Sec.

- 270.30 What conditions must be met by a recipient of a grant?
- 270.31 What stipends and related reimbursements are authorized under this program?
- 270.32 What limitation is imposed on providing Equity Assistance under this program?

**Authority:** 42 U.S.C. 2000c–2000c–2, 2000c–5, unless otherwise noted.

### PART 270—EQUITY ASSISTANCE CENTER PROGRAM

#### Subpart A—General

##### § 270.1 What is the Equity Assistance Center Program?

This program provides financial assistance to operate regional Equity Assistance Centers (EACs), to enable them to provide technical assistance (including training) at the request of school boards and other responsible governmental agencies in the preparation, adoption, and implementation of plans for the desegregation of public schools, and in the development of effective methods of coping with special educational problems occasioned by desegregation.

##### § 270.2 Who is eligible to receive a grant under this program?

A public agency (other than a State educational agency or a school board) or private, nonprofit organization is eligible to receive a grant under this program.

##### § 270.3 Who may receive assistance under this program?

(a) The recipient of a grant under this part may provide assistance only if requested by school boards or other responsible governmental agencies located in its geographic region.

(b) The recipient may provide assistance only to the following persons:

- (1) Public school personnel.
- (2) Students enrolled in public schools, parents of those students, community organizations and other community members.

##### § 270.4 What types of projects are authorized under this program?

(a) The Secretary may award funds to EACs for projects offering technical assistance (including training) to school boards and other responsible governmental agencies, at their request, for assistance in the preparation, adoption, and implementation of plans for the desegregation of public schools.

(b) A project must provide technical assistance in all four of the desegregation assistance areas, as defined in § 270.7.

(c) Desegregation assistance may include, among other activities:

- (1) Dissemination of information regarding effective methods of coping with special educational problems occasioned by desegregation;
- (2) Assistance and advice in coping with these problems; and
- (3) Training designed to improve the ability of teachers, supervisors, counselors, parents, community members, community organizations, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation.

##### § 270.5 What geographic regions do the EACs serve?

(a) The Secretary awards a grant to provide race, sex, national origin, and religion desegregation assistance under this program to regional Equity Assistance Centers serving designated geographic regions.

(b) The Secretary announces in the **Federal Register** the number of centers and geographic regions for each competition.

(c) The Secretary determines the number and boundaries of each geographic region for each competition.

on the basis of one or more of the following:

- (1) Size and diversity of the student population;
- (2) The number of LEAs;
- (3) The composition of urban, city, and rural LEAs;
- (4) The history of the Equity Assistance Center technical assistance activities, and other Department technical assistance activities, carried out in each geographic region; and
- (5) The amount of funding available for the competition.

**§ 270.6 What regulations apply to this program?**

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 75 (Direct Grant Programs), part 77 (Definitions That Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), and part 81 (General Education Provisions Act—Enforcement), except that 34 CFR 75.232 (relating to the cost analysis) does not apply to grants under this program.

(b) The regulations in this part.

(c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in 2 CFR part 3474 and the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted in 2 CFR part 3485.

**§ 270.7 What definitions apply to this program?**

In addition to the definitions in 34 CFR 77.1, the following definitions apply to the regulations in this part:

*Desegregation assistance* means the provision of technical assistance (including training) in the areas of race, sex, national origin and religion desegregation of public elementary and secondary schools.

*Desegregation assistance areas* means the areas of race, sex, national origin and religion desegregation.

*Equity Assistance Center* means a regional desegregation technical assistance and training center funded under this part.

*English learner* has the same meaning under this part as the same term defined in section 8101(20) of the Elementary and Secondary Education Act, as amended.

(Authority: Section 8101(20) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, Pub. L. 114–95 (2015) (ESSA))

*National origin desegregation* means the assignment of students to public schools and within those schools without regard to their national origin, including providing students such as those who are English learners with a full opportunity for participation in all educational programs regardless of their national origin.

*Public school* means any elementary or secondary educational institution operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from governmental sources.

*Public school personnel* means school board members and persons who are employed by or who work in the schools of a responsible governmental agency, as that term is defined in this section.

*Race desegregation* means the assignment of students to public schools and within those schools without regard to their race, including providing students with a full opportunity for participation in all educational programs regardless of their race. “Race desegregation” does not mean the assignment of students to public schools to correct conditions of racial separation that are not the result of State or local law or official action.

*Religion desegregation* means the assignment of students to public schools and within those schools without regard to their religion, including providing students with a full opportunity for participation in all educational programs regardless of their religion.

*Responsible governmental agency* means any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools.

*School board* means any agency or agencies that administer a system of one or more public schools and any other agency that is responsible for the assignment of students to or within that system.

*Sex desegregation* means the assignment of students to public schools and within those schools without regard to their sex (including transgender status, gender identity, sex stereotypes, and pregnancy and related conditions), including providing students with a full opportunity for participation in all educational programs regardless of their sex.

*Special educational problems occasioned by desegregation* means those issues that arise in classrooms, schools, and communities as a result of desegregation efforts based on race,

national origin, sex, or religion. The phrase does not refer to the provision of special education and related services for students with disabilities as defined under the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*)

**Subpart B—[Reserved]**

**Subpart C—How Does the Secretary Award a Grant?**

**§ 270.20 How does the Secretary evaluate an application for a grant?**

(a) The Secretary evaluates the application on the basis of the criteria in 34 CFR 75.210.

(b) The Secretary selects the highest ranking application for each geographic region to receive a grant.

**§ 270.21 How does the Secretary determine the amount of a grant?**

The Secretary determines the amount of a grant on the basis of:

- (a) The amount of funds available for all grants under this part;
- (b) A cost analysis of the project (that shows whether the applicant will achieve the objectives of the project with reasonable efficiency and economy under the budget in the application), by which the Secretary:

(1) Verifies the cost data in the detailed budget for the project;

(2) Evaluates specific elements of costs; and

(3) Examines costs to determine if they are necessary, reasonable, and allowable under applicable statutes and regulations;

(c) Evidence supporting the magnitude of the need of the responsible governmental agencies for desegregation assistance in the geographic region and the cost of providing that assistance to meet those needs, as compared with the evidence supporting the magnitude of the needs for desegregation assistance, and the cost of providing it, in all geographic regions for which applications are approved for funding;

(d) The size and the racial, ethnic, or religious diversity of the student population of the geographic region for which the EAC will provide services; and

(e) Any other information concerning desegregation problems and proposed activities that the Secretary finds relevant in the applicant’s geographic region.

**Subpart D—What Conditions Must I Meet After I Receive a Grant?**

**§ 270.30 What conditions must be met by a recipient of a grant?**

(a) A recipient of a grant under this part must:

(1) Operate an EAC in the geographic region to be served; and

(2) Have a full-time project director.

(b) A recipient of a grant under this part must coordinate assistance in its geographic region with appropriate SEAs, Comprehensive Centers, Regional Educational Laboratories, and other Federal technical assistance centers. As part of this coordination, the recipient shall seek to prevent duplication of assistance where an SEA, Comprehensive Center, Regional Educational Laboratory, or other Federal technical assistance center may have already provided assistance to the responsible governmental agency.

**§ 270.31 What stipends and related reimbursements are authorized under this program?**

(a) The recipient of an award under this program may pay:

(1) Stipends to public school personnel who participate in technical assistance or training activities funded under this part for the period of their attendance, if the person to whom the stipend is paid receives no other compensation for that period; or

(2) Reimbursement to a responsible governmental agency that pays substitutes for public school personnel who:

(i) Participate in technical assistance or training activities funded under this part; and

(ii) Are being compensated by that responsible governmental agency for the period of their attendance.

(b) A recipient may pay the stipends and reimbursements described in this section only if it demonstrates that the payment of these costs is necessary to the success of the technical assistance or training activity, and will not exceed 20 percent of the total award.

(c) If a recipient is authorized by the Secretary to pay stipends or reimbursements (or any combination of these payments), the recipient shall determine the conditions and rates for these payments in accordance with appropriate State policies, or in the absence of State policies, in accordance with local policies.

(d) A recipient of a grant under this part may pay a travel allowance only to a person who participates in a technical assistance or training activity under this part.

(e) If the participant does not complete the entire scheduled activity, the recipient may pay the participant's transportation to his or her residence or place of employment only if the participant left the training activity because of circumstances not reasonably within his or her control.

**§ 270.32 What limitation is imposed on providing Equity Assistance under this program?**

A recipient of a grant under this program may not use funds to assist in the development or implementation of activities or the development of curriculum materials for the direct instruction of students to improve their academic and vocational achievement levels.

**PART 271 [REMOVED AND RESERVED]**

■ 2. Part 271 is removed and reserved.

**PART 272 [REMOVED AND RESERVED]**

■ 3. Part 272 is removed and reserved.

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