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DEPARTMENT OF EDUCATION

DOCKET ID ED-2009-OESE-0010

RIN 1810-AB06

School Improvement Grants -- American Recovery and Reinvestment Act of 2009; Title I of the Elementary and Secondary Education Act of 1965

ACTION: Notice of proposed requirements.

SUMMARY: The U.S. Secretary of Education (Secretary) proposes requirements for School Improvement Grants authorized under section 1003(g) of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA), and funded through both the Department of Education Appropriations Act, 2009 and the American Recovery and Reinvestment Act of 2009 (ARRA). The proposed requirements would define the criteria that a State educational agency (SEA) must use to award school improvement funds to local educational agencies (LEAs) with the lowest-achieving Title I schools that demonstrate the greatest need for the funds and the strongest commitment to use those funds to provide adequate resources to their lowest-achieving Title I schools in order to raise substantially the achievement of the students attending those schools. The proposed requirements also would require an SEA to give priority, through a waiver under section 9401 of the ESEA, to LEAs that also wish to serve

the lowest-achieving secondary schools that are eligible for, but do not receive, Title I funds. Finally, the proposed requirements would require an SEA to award school improvement funds to eligible LEAs in amounts sufficient to enable the targeted schools to implement one of four specific proposed interventions.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID and the term "School Improvement Grants" at the top of your comments.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How To Use This Site."

- Postal Mail, Commercial Delivery, or Hand Delivery. If you mail or deliver your comments about these proposed requirements, address them to Dr. Zollie Stevenson, Jr., U.S. Department of

Education, 400 Maryland Avenue, SW., room 3W230, Washington, DC 20202-7241.

- Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at <http://www.regulations.gov>. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Dr. Zollie Stevenson, Jr.

Telephone: (202) 260-0826 or by e-mail:

Zollie.Stevenson@ed.gov.

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

Individuals with disabilities may obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. We are particularly interested in comments on the measures of accountability described in Section

II.A.7 of the proposed requirements and whether they are appropriate measures for Tier I and Tier II schools that implement one of the interventions proposed in Section I.A.2.a, 2.b, or 2.d of this notice. To ensure that your comments have maximum effect in developing the notice of final requirements, we urge you to identify clearly the specific proposed requirement that each comment addresses.

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

During and after the comment period, you may inspect all public comments about this notice by accessing Regulations.gov. You may also inspect the comments in person in room 3W100, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

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 this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: In conjunction with Title I funds for school improvement reserved under section 1003(a) of the ESEA, School Improvement Grants under section 1003(g) of the ESEA are used to improve student achievement in Title I schools identified for improvement, corrective action, or restructuring so as to enable those schools to make adequate yearly progress (AYP) and exit improvement status.

Appropriations for School Improvement Grants have grown from \$125 million in fiscal year (FY) 2007 to \$546 million in FY 2009. The ARRA provides an additional \$3 billion for School Improvement Grants in FY 2009. The proposed requirements in this notice would govern the total \$3.546 billion in FY 2009 school improvement funds, an unprecedented sum with the potential to support implementation of the fundamental changes needed to turn around some of the Nation's lowest-achieving schools.

Program Authority: 20 U.S.C. 6303(g).

BACKGROUND

Statutory Context:

Section 1003(g) of the ESEA (20 U.S.C. 6303(g)) requires the Secretary to award School Improvement Grants to each SEA based on the SEA's proportionate share of the funds it receives under Title I, Parts A, C, and D of the ESEA. In turn, each SEA must provide subgrants to LEAs that apply for those funds to assist their Title I schools identified for improvement, corrective action, or restructuring under section 1116 of the ESEA. This assistance is intended to help these schools implement reform strategies that result in substantially improved student achievement so that the schools can make AYP and exit improvement status.

To receive school improvement funds under section 1003(g), an SEA must submit an application to the Department at such time, and containing such information, as the Secretary shall reasonably require. An SEA must allocate at least 95 percent of its school improvement funds directly to LEAs, although the SEA may, with the approval of the LEAs that would receive the funds, directly provide assistance in implementing school reform strategies or arrange for their provision through such other entities as school support teams or educational service agencies. A subgrant to an LEA must be of sufficient size and scope to support the activities required under section 1116 of the ESEA. An LEA's total subgrant may not be less than \$50,000 or more than \$500,000 per year for each participating Title I

school in improvement, corrective action, or restructuring. An LEA's subgrant is renewable for two additional one-year periods if the LEA's schools are meeting, or are on track to meet, their student achievement goals.

In awarding School Improvement Grants, an SEA must give priority to LEAs with the lowest-achieving schools that, in their application to the SEA, demonstrate (1) the greatest need for the funds and (2) the strongest commitment to ensuring that the funds are used to provide adequate resources to enable the lowest-achieving schools to meet their goals for substantially raising the achievement of their students.

Overview of the Secretary's Proposal:

The Secretary views the large FY 2009 investment in school improvement funds made possible by the ARRA as a historic opportunity to face education's most intractable challenge: turning around or closing down our Nation's most persistently low-achieving schools. Although there are noted examples of successful school reforms, the vast majority of the lowest performers have not changed course, either because they have received insufficient support or because interventions have been ineffective. The Secretary is committed to turning around over five years the 5,000 lowest-achieving schools nationwide, and School Improvement Grants are a centerpiece of that strategy.

The Secretary's strategy includes identifying and serving the lowest-achieving Title I schools in each State; supporting only the most rigorous interventions that hold the promise of producing rapid improvements in student achievement and school culture; providing sufficient resources over several years to implement those interventions; and measuring progress in achieving results.

Identifying and serving the lowest-achieving Title I schools.

To drive school improvement funds to LEAs with the greatest need for those funds, the Secretary would require each SEA to identify three tiers of schools:

- Tier I: the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring in the State, or the five lowest-achieving Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater.¹
- Tier II: equally low-achieving secondary schools (both middle and high schools) in the State that are eligible for, but do not receive, Title I funds.

¹ These are the same schools as the Secretary has proposed to target in the Race to the Top competitive grant program and has proposed that States report on under phase two of the State Fiscal Stabilization Fund (SFSF) under the ARRA.

- Tier III: the remaining Title I schools in improvement, corrective action, or restructuring that are not Tier I schools in the State. The Secretary encourages an SEA to develop criteria to further differentiate among the schools in Tier III, either in the State as a whole or within an LEA.

An LEA that wishes to receive a School Improvement Grant would submit an application to its SEA identifying which Tier I, Tier II, and Tier III schools it commits to serve. The SEA would give priority to LEAs serving Tier I and Tier II schools.

Supporting only the most rigorous interventions.

In order to ensure that the large influx of school improvement funds is used most effectively to improve outcomes for students, the Secretary proposes to require an LEA to use those funds to implement four specific interventions in the lowest-achieving schools intended to improve the management and effectiveness of these schools. Thus, in its application to the SEA, an LEA would be required to demonstrate its strong commitment to raising student achievement by implementing, in each Tier I and Tier II school, one of four rigorous interventions:

- Turnaround model, which would include, among other actions, replacing the principal and at least 50 percent of the school's staff, adopting a new governance

structure, and implementing a new or revised instructional program.

- Restart model, in which an LEA would close the school and reopen it under the management of a charter school operator, a charter management organization (CMO), or an educational management organization (EMO) that has been selected through a rigorous review process.
- School closure, in which an LEA would close the school and enroll the students who attended the school in other, high-achieving schools in the LEA.
- Transformation model, which would address four specific areas critical to transforming the lowest-achieving schools.

An LEA with nine or more Tier I and Tier II schools would not be able to implement the same intervention in more than 50 percent of those schools.

Providing sufficient resources over several years.

The Secretary believes that it takes substantial funds in combination with rigorous interventions to break the cycle of failure and raise student achievement substantially in the Nation's lowest-achieving schools. Therefore, he would require the SEA to allocate sufficient school improvement funds to an LEA to match, as closely as possible, the LEA's budget for implementing one of the four proposed interventions in each Tier

I and Tier II school and the costs associated with closing such schools, as well as for serving participating Tier III schools. An LEA's total grant award would contain funds for each Title I school in improvement, corrective action, or restructuring that the LEA intends to serve, including \$500,000 per year for each Tier I school that will implement a turnaround, restart, or transformation model.² Once an LEA receives its School Improvement Grant, it has the flexibility to spend more than \$500,000 per year in its Tier I and Tier II schools so long as all schools identified in its application are served. Recognizing that it takes time to implement rigorous interventions and reap results in the most persistently low-achieving schools, the Secretary would waive the period of availability of school improvement funds beyond September 30, 2011 so as to make those funds available to LEAs for three years.

Measuring progress in achieving results.

Because measuring progress is essential to knowing whether an intervention results in improved student achievement, the Secretary would require an LEA to establish three-year student achievement goals in reading/language arts and mathematics. The

² An SEA may award school improvement funds to an LEA based only on the Title I participating schools that the LEA identifies in its application. Tier II schools would, thus, not generate any funds because they are not Title I schools in improvement, corrective action, or restructuring; however, the LEA could serve them, through a waiver requested by the SEA, with the school improvement funds it receives.

LEA would hold each Tier I and Tier II school it serves with school improvement funds annually accountable for meeting, or being on track to meet, those goals with respect to the achievement of all students in each school, as well as each subgroup of students identified in 34 CFR 200.13(b)(7),³ and for making progress on the leading indicators of school reform.

SEA Priorities for Awarding School Improvement Grants:

Section 1003(g)(6) of the ESEA requires an SEA, in allocating school improvement funds, to give priority to LEAs with the lowest-achieving Title I schools in improvement, corrective action, or restructuring that demonstrate the greatest need for the funds and the strongest commitment to carrying out the purposes of the program. Consistent with his focus on reforming or closing the 5,000 lowest-achieving schools in the Nation over the next five years, the Secretary proposes to require an SEA that receives a School Improvement Grant to define the terms "greatest need" and "strongest commitment" as follows to help accomplish this goal.

Greatest need. The Secretary would require an SEA to define three tiers of schools in identifying those LEAs with the greatest need for school improvement funds.

³The subgroups identified in 34 CFR 200.13(b)(7) include students from major racial and ethnic groups, economically disadvantaged students, student with limited English proficiency, and students with disabilities.

Tier I schools: The Secretary proposes to require each SEA to identify the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring in the State or the five lowest-achieving Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater. These are schools for which the data indicate that overall student achievement is extremely low and that little or no progress has occurred over a number of years. Under the proposed requirements, a school has not made progress if its gains on the State's assessments in reading/language arts and mathematics in the "all students" category are less than the average gains of schools in the State on those assessments. The Secretary is targeting these schools because of the urgency to provide their students with a high-quality education. Indeed, in school year 2007-08, based on data reported by each State, the average percentage of students performing at the proficient level in the lowest-achieving 25 Title I-eligible schools in each State, aggregated for the Nation, was approximately 32 percent in reading/language arts and 25 percent in mathematics. Moreover, in most cases, despite years of earlier efforts to turn around the performance of these schools, they have failed to make sufficient progress in improving student achievement and continue, year after year, to turn out students who are unprepared for further education or

the workforce. And in the case of secondary schools, these lowest-achieving schools contribute disproportionately to the more than 1 million students who drop out each year, too often permanently. This diminishes the educational and employment prospects of these young people who deserve the opportunity to acquire the knowledge and skills necessary to be successful in life and to be productive citizens. For these reasons, the Secretary is proposing to use school improvement funds to transform fundamentally the lowest-achieving schools in each State.

Tier II schools: The Secretary also proposes to require an SEA to identify secondary schools (both middle and high schools) that are equally as low-achieving as the State's Tier I schools and are eligible for, but do not receive, Title I funds. Low-achieving secondary schools often present unique resource, logistical, and pedagogical challenges that require rigorous interventions. There are close to 2,000 high schools in the country in which graduation is at best a 50/50 proposition.⁴ However, Department data indicate that fewer than half of these schools currently receive Title I, Part A funds. In order to reverse this high dropout rate and drive the attainment of better outcomes for these students, the Secretary also proposes

⁴ Balfanz, R. & Legters, N. (2004). Locating the dropout crisis: Which high schools produce the nation's dropouts? Where are they located? Who attends them? Baltimore: The Johns Hopkins University.

to target some of these extremely low-achieving secondary schools (both high schools and their middle school "feeder" schools) that are eligible for, but do not receive, Title I funds.

Because of the importance of identifying and intervening in Tier II schools, the Secretary encourages an SEA to apply for a waiver under section 9401 of the ESEA to enable its LEAs to serve such schools. Such a waiver is necessary because section 1003(g) of the ESEA authorizes an LEA to use school improvement funds only in Title I schools in improvement, corrective action, or restructuring. If the provisions proposed in this notice become final, an LEA would not be required to include Tier II schools in its application; however, including Tier II schools would enhance an LEA's likelihood of funding because, as proposed in this notice, the SEA would be required to give priority to an LEA that commits in its application to serve both Tier I and Tier II schools.

Tier III schools: The Secretary proposes that all Title I schools in improvement, corrective action, or restructuring that are not Tier I schools would be Tier III schools. To urge LEAs to differentiate among these schools in their use of school improvement funds, the Secretary encourages an SEA to establish criteria to give priority to applications from LEAs that, after addressing the needs of their Tier I and Tier II schools, focus

school improvement funds on a subset of their Tier III schools. For example, an SEA's criteria might target Tier III schools that are in the lowest-achieving sixth to tenth percentile in the State or might reward and provide public recognition for Tier III schools that would have been in the lowest-achieving five percent but have made progress over several years.

Similarly, an SEA's criteria might focus on clusters of Tier III elementary schools that are feeder schools to Tier I or Tier II secondary schools.

Strongest commitment. In awarding school improvement funds among the LEAs with schools in Tier I, Tier II, and Tier III (i.e., those with the greatest need), the Secretary would require each SEA to give priority to those LEAs with the strongest commitment to use school improvement funds to implement one of four specific interventions described in this notice. These interventions are based on research that suggests that the lowest-achieving schools--

(1) Require rigorous interventions, including changes in leadership, staffing, time for learning, governance, operating conditions, student supports, and school culture;

(2) Benefit from intensive, ongoing, coordinated technical assistance and support, such as technical assistance from external providers to build capacity so that LEAs and SEAs can provide them with more concentrated and sustained support; and

(3) Need substantial funding over three to five years to plan, implement, and solidify rigorous interventions that change school culture and result in substantial increases in student achievement.⁵

The Secretary believes that rigorous interventions are essential if LEAs are to reform the lowest-achieving schools and improve educational outcomes for their students. Incremental change in these schools that may result in marginal improvements is not enough to enable each student to achieve to high standards. Fortunately, the large increase in FY 2009 funding for school improvement available through the ARRA provides an unprecedented opportunity to implement intensive interventions. Accordingly, the Secretary proposes to define an LEA that demonstrates the strongest commitment as an LEA that would implement, in each Tier I and Tier II school that it commits to serve, one of the following four rigorous interventions:⁶

⁵ See, e.g., Calkins, A., Guenther, W., Belfiore, G., & Lash, D. (2007). The turnaround challenge: Why America's best opportunity to dramatically improve student achievement lies in our worst-performing schools. Boston: Mass Insight Education and Research Institute; American Institutes for Research. (in press). State and local implementation of the No Child Left Behind Act, Volume IX-accountability under NCLB: Final report. Washington, D.C.

⁶ We note that some of the activities that an LEA would be required to implement as part of a proposed intervention are not allowable uses of Title I funds in a Tier I school that operates a targeted assistance program under section 1115 of the ESEA; therefore, an LEA that wishes to implement one of the proposed interventions in such a school would need to do so through a schoolwide program under section 1114 of the ESEA. To enable the LEA to serve a Tier I targeted assistance school below 40 percent poverty, the SEA would need to apply to the Secretary for a waiver of the poverty threshold in order that the LEA can operate a schoolwide program in its Tier I schools. See the Department's Title I, Part A Waiver Guidance available at: <http://www.ed.gov/programs/titleiparta/title-i-waiver.doc>.

(1) Turnaround model. To implement a turnaround model, an LEA would be required to replace the principal and at least 50 percent of the staff; adopt a new governance structure, which may include, but is not limited to, reporting to a new "turnaround office" in the LEA or SEA, hiring a "turnaround leader" who reports directly to the Superintendent or Chief Academic Officer, or entering into a multi-year contract with the LEA or SEA to obtain added flexibility in exchange for greater accountability; and implement a new or revised instructional program. The LEA would also be required to incorporate strategies designed to recruit, place, and retain effective staff, and provide ongoing, high-quality job-embedded professional development designed to ensure that staff members are equipped to facilitate effective teaching and learning; promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction to meet the needs of individual students; establish schedules and strategies that increase instructional time for students and time for collaboration and professional development for staff; and provide appropriate social-emotional and community-oriented services and supports for students.

(2) Restart model. Under this model, an LEA would close the school and reopen it under the management of a charter school operator, a charter management organization (CMO), or an educational management organization (EMO) that has been selected through a rigorous review process. (A CMO is a non-profit organization that operates charter schools by centralizing or sharing certain functions and resources among schools. An EMO is a for-profit or non-profit organization that provides "whole-school operation" services to an LEA.) A restart school would be required to admit, within the grades it serves, any former student who wishes to attend.

(3) School closure. Under this model, an LEA would close the school and enroll the students who attended the school in other, high-achieving schools within the LEA.

(4) Transformation model. To implement a transformation model, an LEA would be required to address four specific areas, as defined in this notice, critical to transforming the lowest-achieving schools: (1) developing teacher and school leader effectiveness; (2) implementing comprehensive instructional reform strategies; (3) extending learning time and creating community-oriented schools; and (4) providing operating flexibility and sustained support.

In determining the strength of an LEA's commitment to using school improvement funds to implement these interventions in its

Tier I and Tier II schools, an SEA would be required to consider, for example, the extent to which the LEA's application shows the LEA's efforts to analyze the needs of its schools and match the interventions to those needs; design interventions consistent with this notice; recruit, screen, and select external providers to ensure quality; embed the interventions in a longer-term plan to sustain gains in achievement; align other resources with the interventions; modify its practices, if necessary, to enable it to implement the interventions fully and effectively; and sustain the reforms after the funding period ends. Moreover, the SEA would be required to consider the LEA's capacity to implement the changes it seeks to make. For example, the SEA could determine that an LEA with ten Tier I and Tier II schools has the capacity to serve only five of those schools at the level of intensity contemplated by the proposed interventions. Accordingly, the SEA may approve the LEA to serve only those schools for which the SEA determines that the LEA can fully and effectively implement one of the proposed interventions.

Providing flexibility:

To fully support an LEA's efforts to intervene in low-achieving schools, the Secretary believes there is need for flexibility in several respects. First, so as not to penalize an LEA that has proactively implemented rigorous reform

strategies prior to the publication of this notice, an SEA may award school improvement funds to an LEA that has implemented, in whole or in part, one of the interventions proposed in Section I.A.2.a, 2.b, or 2.d in a Tier I school within the last two years. For example, an LEA might have replaced the principal of a Tier I school and begun to implement improvement activities that meet many, but not all, of the proposed requirements in this notice for a transformation model. In this case, the SEA could award the LEA school improvement funds to fully implement the transformation model in this school without needing to replace the new principal or duplicate the reform activities already in place. Second, an SEA could seek a waiver from the Secretary to permit a school that implements a turnaround or restart model in an LEA that receives a School Improvement Grant to "start over" in the school improvement timeline while continuing to receive school improvement funds. In other words, such a school in restructuring could exit that status even though it has not made AYP for two consecutive years and, thus, would not need to continue providing public school choice or supplemental educational services. Finally, an SEA could seek a waiver from the Secretary to enable a Tier I school that operates a targeted assistance program to instead operate a schoolwide program in order to implement one of the proposed interventions.

Awarding School Improvement Grants to LEAs:

LEA applications.

Under this proposal, any Title I LEA that can demonstrate the greatest need and strongest commitment, as defined by the SEA consistent with this notice, to reform its lowest-achieving schools would be eligible to apply to the SEA for a School Improvement Grant. In addition to providing information that the SEA may require, the LEA would be required to demonstrate its commitment to use the school improvement funds to provide adequate resources to each Tier I and Tier II school it commits to serve in order to implement fully one of the four proposed interventions described in this notice. If an LEA has nine or more Tier I and Tier II schools, the LEA would not be able to implement the same intervention in more than 50 percent of those schools.

An LEA would be required to serve each of its Tier I schools, unless the LEA demonstrates that it lacks sufficient capacity or sufficient school improvement funds to undertake one of the four proposed interventions in each such school. For example, an LEA might demonstrate a lack of capacity to serve all of its Tier I schools if no EMOs or CMOs of sufficient quality are available to restart its schools. An LEA might also demonstrate a lack of capacity if it lacks a sufficient number of school leaders (e.g., principals, assistant principals,

teacher leaders) capable of implementing one of the rigorous interventions proposed in this notice. Additionally, an LEA might decide that it can best impact student achievement by focusing resources heavily in a subset of Tier I schools, attempting to turn around some schools before proceeding to others. In such cases, the LEA would identify in its application the Tier I schools that it can serve effectively with one of the proposed interventions; such an LEA would not be permitted to use school improvement funds to serve a Tier I school that is not implementing one of the four interventions. An LEA would not be required to include Tier II schools in its application, although the SEA would be required to give priority to LEA applications that include both Tier I and Tier II schools. Once an LEA has identified all of the Tier I schools it has capacity to serve, it may also identify Tier III schools it will serve. No LEA would be required to apply for a School Improvement Grant; however, an LEA that has one or more Tier I schools would not be permitted to apply for a grant to serve only Tier III schools.

An LEA would be required to include in its application for a School Improvement Grant a budget indicating the amount of funds needed for each Tier I, Tier II, and Tier III school the LEA commits to serve. In designing its budget, the LEA would be required to ensure, for each Tier I and Tier II school

identified in its application, that its request is of sufficient size and scope to ensure that the LEA can implement one of the four rigorous interventions proposed in this notice. The Secretary believes that, in most cases, implementing these interventions (with the exception of closing a school) would require annual amounts that considerably exceed \$500,000 per school, the maximum amount per year of school improvement funds that may be generated by a participating school under the statute. (Tier II schools would not generate any funds because they are not Title I schools in improvement, corrective action, or restructuring; however, the LEA could serve them, through a waiver, with the school improvement funds it receives.)

Accordingly, if the Secretary adopts the proposed requirements as final, the LEA should estimate the full cost of implementing its selected intervention in each Tier I and Tier II school it commits to serve and the costs associated with closing a school,⁷ as well as the costs of providing services in participating Tier III schools. In estimating costs, the LEA should consider such factors as the size of each school; whether the LEA plans to serve clusters of elementary schools that feed into Tier I or Tier II secondary schools; and whether the schools to be served are elementary, middle, or high schools. The Secretary strongly

⁷ Costs of closing a school may include, for example, parent and community meetings regarding the school closure, services to help parents and students transition to a new school, orientation activities at the new school, etc.

urges an LEA to develop its budget in a way that sufficiently concentrates school improvement funds to raise student achievement substantially by the end of the grant period in the schools served with those funds.

An LEA would also be required to establish, in its application, three-year student achievement goals in reading/language arts and mathematics. The LEA would be required to hold each Tier I and Tier II school it commits to serve annually accountable for meeting, or being on track to meet, those goals with respect to the achievement of all students in each school, as well as each subgroup of students identified in 34 CFR 200.13(b)(7),⁸ and for making progress on the leading indicators described in Section III of this notice. If an LEA implements a restart model, it would also be required to hold the charter school operator, CMO, or EMO accountable for meeting these annual goals for student achievement and for making progress on the leading indicators.

SEA responsibilities.

Under this proposal, to receive a School Improvement Grant, an SEA would submit an application to the Department at such time, and containing such information, as the Secretary shall reasonably require. That application would generally address

⁸ The subgroups identified in 34 CFR 200.13(b)(7) are students from major racial and ethnic groups, economically disadvantaged students, students with limited English proficiency, and students with disabilities.

the SEA's role with respect to school improvement funds, including, at a minimum: (1) identifying Tier I and Tier II schools in the State; (2) establishing criteria related to the overall quality of the LEA's application and to the LEA's capacity to implement fully and effectively the required interventions; (3) allocating school improvement funds to the LEA; (4) monitoring the LEA's implementation of interventions in and the progress of its participating schools; (5) providing technical assistance to the LEA and its participating schools; and (6) holding each Tier I and Tier II school it has committed to serve annually accountable for meeting, or being on track to meet, the LEA's student achievement goals with respect to the achievement of all students in the school, as well as each subgroup of students identified in 34 CFR 200.13(b)(7), and for making progress on the leading indicators described in Section III of this notice.

An SEA would review and approve the applications for a School Improvement Grant that it receives from its LEAs. Before approving an LEA's application, the SEA would ensure that the application meets the requirements the Secretary establishes in a notice of final requirements, particularly with respect to whether the LEA has demonstrated that it has the capacity to implement one of the four proposed rigorous interventions in the Tier I and Tier II schools it has committed to serve and whether

the LEA has budgeted sufficient funds to implement fully and effectively the selected interventions. If an LEA lacks the capacity to implement one of the four interventions in each of its Tier I schools, the SEA would adjust the size of the LEA's School Improvement Grant accordingly. Additionally, the SEA would consider the quality of the application, including the extent to which the LEA analyzed the needs of each school and matched an intervention to those needs, consistent with Section II.A.2; the design of the interventions consistent with this notice; whether the interventions are part of a long-term plan to sustain gains in student achievement; the coordination with other resources; whether the LEA will modify its practices, if necessary, to be able to implement the interventions fully and effectively; and how the LEA will sustain the reforms after the funding period ends. If an SEA does not have sufficient school improvement funds to award a grant to each LEA that submits an approvable application, the SEA would be required to give priority to LEAs that apply to serve both Tier I and Tier II schools and to LEAs that apply to serve Tier I schools before LEAs serving only Tier III schools.

Section 1003(g)(5) of the ESEA requires an SEA to award a School Improvement Grant to an LEA in an amount that is of sufficient size and scope to support the activities required under section 1116 of the ESEA, which include taking corrective

actions and restructuring the LEA's lowest-achieving Title I schools. An LEA's total grant may not be less than \$50,000 or more than \$500,000 per year for each participating Title I school (i.e., the Tier I and Tier III schools that the LEA commits to serve); however, the LEA has flexibility to spend higher or lower amounts in serving individual schools.

Experts in implementing effective school reform strategies, such as those proposed in this notice, estimate that the cost of turning around a persistently low-achieving school of 500 students can range from \$250,000 to \$1,000,000 per year for at least three years; implementation in a larger school would likely cost more.⁹ Thus, in order to ensure that an LEA has sufficient resources to turn around its Tier I and Tier II schools, the Secretary proposes to require that an SEA allocate to each such LEA \$500,000 per year in school improvement funds (the maximum per-school amount permitted under section 1003(g)(5) of the ESEA) for each Tier I school for which the LEA applies to implement one of the interventions in Section I.A.2.a, 2.b, or 2.d of this notice and for which the SEA approves the LEA to serve. (Due to issues of capacity, an SEA could decide not to approve all the schools included in an LEA's application.) Additionally, the SEA would be required to

⁹ Calkins, A., Guenther, W., Belfiore, G., & Lash, D. (2007). The turnaround challenge: Why America's best opportunity to dramatically improve student achievement lies in our worst-performing schools. Boston: Mass Insight Education and Research Institute.

allocate sufficient school improvement funds in total to the LEA, consistent with section 1003(g)(5), to match, as closely as possible, the LEA's budget for implementing the proposed interventions in each Tier I and Tier II school approved by the SEA and costs associated with closing those schools under Section I.A.2.c, while also serving participating Tier III schools, particularly those schools meeting additional criteria established by the SEA. Further, to provide the sustained support that available research suggests is necessary for successful interventions, the Secretary would require the SEA to apportion its FY 2009 school improvement funds so as to provide funding to LEAs over three years, which the Secretary would make possible by waiving the period of availability beyond September 30, 2011.

The following examples illustrate how an SEA might determine the amount of a School Improvement Grant for three hypothetical LEAs, all of which have the same number of Title I schools in improvement, corrective action, or restructuring:

LEA A: LEA A has ten Title I schools in improvement, corrective action, or restructuring; three are Tier I schools and the rest are Tier III schools. The LEA also has one Tier II school. The LEA and SEA agree that the LEA has capacity to serve all of those schools. Under section 1003(g)(5), the maximum School Improvement Grant that the LEA may receive per

year is \$5,000,000 (\$500,000 x 10 Title I schools to be served). Based on the LEA's proposed budget and capacity, the SEA awards the LEA a School Improvement Grant totaling \$4,150,000 per year (consistent with section 1003(g)(5)). In spending the school improvement funds, the LEA uses, consistent with its budget, \$1,500,000 in one Tier I school; \$1,000,000 in the Tier II school; \$750,000 in each of the remaining two Tier I schools; \$50,000 in each of two Tier III schools; and \$10,000 in each of the remaining five Tier III schools.

LEA B: LEA B has ten Title I schools in improvement, corrective action, or restructuring; three are Tier I schools. The LEA also has one Tier II school. The LEA decides, however, that it has capacity to serve only two of its Tier I schools, no Tier II schools, and five of its Tier III schools. Under section 1003(g)(5), the maximum School Improvement Grant that the LEA may receive per year is \$3,500,000 (\$500,000 x 7 Title I schools to be served). Based on the LEA's proposed budget and capacity, the SEA awards the LEA a School Improvement Grant totaling \$2,500,000 (consistent with section 1003(g)(5)). In spending the school improvement funds, the LEA uses, consistent with its budget, \$1,200,000 in one Tier I school; \$800,000 in the other Tier I school; and \$100,000 in each of the five Tier III schools.

LEA C: LEA C has ten Title I schools in improvement, corrective action, or restructuring; none is a Tier I school, although two are among the lowest-achieving Title I schools in the State but are making significant progress. The LEA has one Tier II school. The LEA applies to serve all its Tier III schools as well as its Tier II school. Under section 1003(g)(5), the maximum School Improvement Grant that the LEA may receive per year is \$5,000,000 (\$500,000 x 10 Title I schools to be served). Based on the LEA's proposed budget and capacity, the SEA awards the LEA a School Improvement Grant totaling \$2,500,000 (consistent with section 1003(g)(5)). In spending the school improvement funds, the LEA uses, consistent with its budget, \$1,000,000 in its one Tier II school; \$500,000 in each of the two Tier III schools making progress; and \$62,500 in each of the remaining eight Tier III schools.

Targeting resources in this manner may result in school improvement funds being concentrated in a small number of LEAs and schools, depending on where in a State the Tier I schools are located and the ability of an LEA to implement the proposed interventions. The Secretary believes such targeting is warranted by the significant needs of the students in the lowest-achieving schools and is fully consistent with the priorities stated in the statute.

With the approval of its LEAs, an SEA could also directly implement the proposed interventions in a Tier I or Tier II school and provide services in a Tier III school or arrange for their provision through other entities such as EMOs, school support teams, or educational service agencies. An SEA also plays a critical role in building capacity at the State and local levels to raise achievement in the State's lowest-achieving schools, including by supporting efforts to increase the supply of effective teachers and principals who have the ability to implement one of the proposed interventions and to recruit external providers to support implementation of such interventions. The SEA might also establish a specific unit at the State level to provide support to its lowest-achieving schools. Moreover, the SEA should seek to eliminate barriers to the implementation of the proposed interventions, such as State laws, regulations, or policies that limit the SEA's authority to intervene in low-achieving schools, limit the number of charter schools that may operate in the State, or impede efforts to recruit and retain effective teachers and principals in low-achieving schools.

Reporting Metrics:

Because data are critical to informing and evaluating the effectiveness of the rigorous interventions proposed in this notice, the Secretary proposes that SEAs and LEAs report

specific school-level data related to the use of school improvement funds and the impact of the specific interventions implemented. Local educators need the data on an ongoing basis to evaluate the extent to which effective reform strategies are being implemented, to monitor the impact of changes, to track progress against their own goals, and to identify areas where, during implementation, assistance or adjustments are needed. SEAs can use the data to identify trends across schools and LEAs and to inform technical assistance efforts targeted to schools and LEAs receiving school improvement funds, as well as to other LEAs with schools in improvement, corrective action, or restructuring. Analyses of these data at the national level would inform the Nation's collective knowledge of what works in turning around our lowest-achieving schools.

The Secretary proposes to collect data in three general categories: (1) Interventions (those an LEA is implementing); (2) Leading Indicators (instructional minutes per school year and teacher attendance); and (3) Student Achievement Outcomes (average scale scores on State assessments, in the aggregate and disaggregated by subgroup as identified in 34 CFR 200.13(b)(7), and number of students enrolled in advanced coursework). These data, which are not currently available at the national level, would augment, and not duplicate, other important school-level data collected through EDFacts and through State Fiscal

Stabilization Fund (SFSF) reporting that are identified in Section III of this notice. Turning around the lowest-achieving schools is particularly challenging; however, with the development and implementation of statewide longitudinal data systems, increased resources, and more concentrated focus on data, the Secretary believes that the availability of an increased body of knowledge in this area will help educators understand and meet this challenge.

Coordination with Section 1003(a) Funds:¹⁰

Implementing intensive interventions that would dramatically turn around the lowest-achieving schools in a State requires substantial planning at the LEA and school levels. Although the proposed requirements in this notice are being published for comment and thus are not final, they reflect the Secretary's expectation that school improvement funds will be used to support rigorous interventions in Tier I and Tier II schools. Because the identity of potential Tier I and Tier II schools will likely not change significantly from this year to next year, the Secretary strongly encourages each SEA to allocate its FY 2009 section 1003(a) funds to LEAs with these

¹⁰ In addition to school improvement funds available through a separate appropriation under section 1003(g) of the ESEA, an SEA must reserve under section 1003(a) of the ESEA four percent of the Title I, Part A funds the State receives for school improvement activities. Of this amount, the SEA must distribute at least 95 percent to LEAs for schools identified for improvement, corrective action, or restructuring under section 1116 of the ESEA.

schools in order to provide the resources needed to remove barriers to, and set the conditions for, implementing the proposed interventions.¹¹

The Secretary also encourages an LEA with Tier I and Tier II schools to conduct an analysis of these schools' and the LEA's ability to implement the proposed interventions; review student achievement outcomes; evaluate current policies and practices that may support or impede successful reform strategies; assess the strengths and weaknesses of school leaders, teachers, and other school staff; recruit and train principals with the needed skills to lead a school that would implement one of the proposed interventions; screen and identify necessary external partners (e.g., an EMO, institution of higher education, or educational service agency); and design a multi-pronged strategy for changing the school culture and reforming the lowest-achieving schools. At the same time, an SEA should consider what steps it can take now to set the conditions for reform, especially those, such as taking actions to support changes to State laws, regulations, and policies that cap the number of charter schools or place restrictions on school calendars, that are not dependent on which LEAs ultimately receive a School Improvement Grant.

¹¹ If an LEA wishes to use FY 2009 section 1003(a) funds in a Tier II school, it would need to apply for a waiver from the Secretary, because Tier II schools do not now receive Title I funds.

Although not every LEA and school participating in this planning process would likely receive section 1003(g) funds, all LEAs and schools can become better positioned to implement interventions that improve student achievement. Using section 1003(a) funds to set the conditions for reform would also allow participating LEAs and schools that actually receive section 1003(g) funds to move more quickly in implementing the interventions as soon as they receive funds. Moreover, an LEA would be able to use the information gathered from this planning process to inform its application to the SEA for section 1003(g) funds. This information might also help the SEA determine the amount of funding that it would allocate to the LEA on behalf of individual schools. In addition, this planning would inform the SEA as to the kinds of technical assistance or external partners that would be needed in LEAs and schools that do not have the capacity to implement the rigorous interventions necessary to turn around their lowest-achieving schools.

PROPOSED REQUIREMENTS:

The Secretary proposes the following requirements with respect to the allocation and use of School Improvement Grants.

I. SEA Priorities in Awarding School Improvement Grants:

A. Defining key terms: To award School Improvement Grants to its LEAs, consistent with section 1003(g)(6) of the ESEA, an SEA must define three tiers of schools, in accordance with the

requirements in paragraph 1, to enable the SEA to select those LEAs with the greatest need for such funds. From among the LEAs in greatest need, the SEA must select, in accordance with paragraph 2, those LEAs that demonstrate the strongest commitment to ensuring that the funds are used to provide adequate resources to enable the lowest-achieving schools to meet, or be on track to meet, the LEA's three-year student achievement goals in reading/language arts and mathematics. Accordingly, the Secretary proposes to require an SEA to use the following definitions to define key terms:

1. Greatest need. An LEA with the greatest need for a School Improvement Grant must have one or more schools in at least one of the following tiers:

a. Tier I schools: A Tier I school is a school in the lowest-achieving five percent of all Title I schools in improvement, corrective action, or restructuring in the State, or one of the five lowest-achieving Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater.

(i) In determining the lowest-achieving Title I schools in the State, an SEA must consider both the absolute performance of a school on the State's assessments in reading/language arts and mathematics and the school's lack of progress on those

assessments over a number of years as defined in paragraph (a) (ii).¹²

(ii) A school has not made progress if its gains on the State's assessments in reading/language arts and mathematics, in the "all students" category (as used in section 1111(b) (2) (C) (v) (I) of the ESEA), are less than the average gains of schools in the State on those assessments.

b. Tier II schools: A Tier II school is a secondary school (middle school or high school) that is equally as low-achieving as a Tier I school and that is eligible for, but does not receive, Title I, Part A funds.

c. Tier III schools: A Tier III school is a Title I school in improvement, corrective action, or restructuring that is not a Tier I school. An SEA may establish additional criteria to encourage LEAs to differentiate among these schools in their use of school improvement funds and to use in setting priorities among LEA applications for funding.

2. Strongest Commitment. An LEA with the strongest commitment is an LEA that agrees to implement, and demonstrates the capacity to implement fully and effectively, one of the

¹²As noted in footnote 1, these are the same schools as the Secretary has proposed to target in the Race to the Top competitive grant program and has proposed to require States to report on under phase two of SFSF under the ARRA.

following rigorous interventions in each Tier I and Tier II school that the LEA commits to serve:

a. Turnaround model. A turnaround model must include--

(i) Replacing the principal and at least 50 percent of the staff;

(ii) Adopting a new governance structure, which may include, but is not limited to, reporting to a new "turnaround office" in the LEA or SEA, hiring a "turnaround leader" who reports directly to the Superintendent or Chief Academic Officer, or entering into a multi-year contract with the LEA or SEA to obtain added flexibility in exchange for greater accountability;

(iii) Implementing a new or revised instructional program;

(iv) Implementing strategies designed to recruit, place, and retain effective staff;

(v) Providing ongoing, high-quality, job-embedded professional development to staff to ensure that they are equipped to facilitate effective teaching and learning;

(vi) Promoting the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction to meet the needs of individual students;

(vii) Establishing schedules and strategies that increase instructional time for students and time for collaboration and professional development for staff; and

(viii) Providing appropriate social-emotional and community-oriented services and supports for students.

b. Restart model. A restart model is one in which an LEA closes a school and reopens it under a charter school operator, a charter management organization (CMO), or an education management organization (EMO) that has been selected through a rigorous review process. A restart model must admit, within the grades it serves, all former students who wish to attend the school.

c. School closure. An LEA closes a school and enrolls the students who attended that school in other, high-achieving schools in the LEA, which may include charter schools.

d. Transformation model. A transformation model must include each of the following strategies:

(i) Developing teacher and school leader effectiveness.

(A) Required activities. The LEA must--

(1) Use evaluations that are based in significant measure on student growth to improve teachers' and school leaders' performance;

(2) Identify and reward school leaders, teachers, and other staff who improve student achievement outcomes and identify and remove those who do not;

(3) Replace the principal who led the school prior to commencement of the transformation model;

(4) Provide staff ongoing, high-quality, job-embedded professional development (e.g., regarding subject-specific pedagogy, instruction that reflects a deeper understanding of the community served by the school, or differentiated instruction) that is aligned with the school's comprehensive instructional program and designed to ensure staff are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies; and

(5) Implement strategies designed to recruit, place, and retain effective staff.

(B) Permissible activities. An LEA may also implement other strategies to develop teachers' and school leaders' effectiveness, such as--

(1) Providing additional compensation to attract and retain high-quality educators to the school;

(2) Instituting a system for measuring changes in instructional practices resulting from professional development;

or

(3) Ensuring that the school is not required to accept a teacher without the mutual consent of the teacher and principal, regardless of the teacher's seniority.

(ii) Comprehensive instructional reform strategies.

(A) Required activities. The LEA must--

(1) Use data to identify and implement comprehensive, research-based, instructional programs that are vertically aligned from one grade to the next as well as aligned with State academic standards; and

(2) Promote the continuous use of individualized student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction to meet the needs of individual students.

(B) Permissible activities. An LEA may also implement other strategies for implementing comprehensive instructional reform strategies, such as--

(1) Conducting periodic reviews to ensure that the curriculum is being implemented with fidelity, is having the intended impact on student achievement, and is modified if ineffective;

(2) Implementing a schoolwide "response-to-intervention" model; or

(3) In secondary schools--

(a) Increasing rigor by offering opportunities for students to enroll in advanced coursework (such as Advanced Placement or International Baccalaureate), early-college high schools, dual enrollment programs, or thematic learning academies that prepare students for college and careers, including by providing appropriate supports designed to ensure that low-achieving students can take advantage of these programs and coursework;

(b) Improving student transition from middle to high school through summer transition programs or freshman academies; or

(c) Increasing graduation rates through, for example, credit-recovery programs, smaller learning communities, and acceleration of basic reading and mathematics skills.

(iii) Extending learning time and creating community-oriented schools.

(A) Required activities. The LEA must--

(1) Provide more time for students to learn core academic content by expanding the school day, the school week, or the school year, or increasing instructional time for core academic subjects¹³ during the school day;

¹³Under section 9101(11) of the ESEA, "core academic subjects" are English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(2) Provide more time for teachers to collaborate, including time for horizontal and vertical planning to improve instruction;

(3) Provide more time or opportunities for enrichment activities for students (e.g., instruction in financial literacy, internships or apprenticeships, service-learning opportunities) by partnering, as appropriate, with other organizations, such as universities, businesses, and museums; and

(4) Provide ongoing mechanisms for family and community engagement.

(B) Permissible activities. An LEA may also implement other strategies that extend learning time and create community-oriented schools, such as--

(1) Partnering with parents, faith- and community-based organizations, health clinics, the police department, and others to create safe school environments that meet students' social, emotional and health needs;

(2) Extending or restructuring the school day to add time for such strategies as advisory periods to build relationships between students, faculty, and other school staff; or

(3) Implementing approaches to improve school climate and discipline, such as implementing a system of positive behavioral

supports or taking steps to eliminate bullying and student harassment.

(iv) Providing operating flexibility and sustained support.

(A) Required activities. The LEA must--

(1) Give the school sufficient operating flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach to substantially improve student achievement outcomes; and

(2) Ensure that the school receives ongoing, intensive technical assistance and related support from the LEA, the SEA, or a designated external lead partner organization (such as a school turnaround organization or an EMO).

(B) Permissible activities. The LEA may also implement other strategies for providing operational flexibility and intensive support, such as--

(1) Allowing the school to be run under a new governance arrangement, such as a turnaround division within the LEA or SEA; or

(2) Implementing a weighted per-pupil school-based budget formula.

In determining the strength of an LEA's commitment to using school improvement funds to implement these interventions, an SEA must consider, at a minimum, the extent to which the LEA's

application shows the LEA's efforts to: (1) analyze the needs of its schools and match the interventions to those needs; (2) design interventions consistent with this notice; (3) recruit, screen, and select external providers to ensure quality; (4) embed the interventions in a longer-term plan to sustain gains in achievement; (5) align other resources with the interventions; (6) modify its practices, if necessary, to enable it to implement the interventions fully and effectively; and (7) sustain the reforms after the funding period ends. Moreover, the SEA must consider the LEA's capacity to implement the proposed interventions and may approve the LEA to serve only those schools for which the SEA determines that the LEA can implement fully and effectively one of the proposed interventions.

B. Providing flexibility:

1. An SEA may award school improvement funds to an LEA for a Tier I school that has implemented, in whole or in part, an intervention that meets the requirements under Section I.A.2.a, 2.b, or 2.d of these proposed requirements within the last two years so that the LEA and school can continue or complete the intervention being implemented in that school.

2. An SEA may seek a waiver from the Secretary of the requirements in section 1116(b) of the ESEA in order to permit a Tier I school implementing an intervention that meets the

requirements under Section I.A.2.a or 2.b of these proposed requirements in an LEA that receives a School Improvement Grant to “start over” in the school improvement timeline. Even though the school is no longer in improvement, corrective action, or restructuring, it may receive school improvement funds.

3. An SEA may seek a waiver from the Secretary to enable a Tier I school that is ineligible to operate a Title I schoolwide program and is operating a Title I targeted assistance program to operate a schoolwide program in order to implement an intervention that meets the requirements under Section I.A.2.a, 2.b, or 2.d of these proposed requirements.

II. Awarding School Improvement Grants to LEAs:

A. LEA applications:

1. An LEA may apply for a School Improvement Grant if it has one or more schools that qualify under the State’s definition of a Tier I, Tier II, or Tier III school.

2. In its application, in addition to other information that the SEA may require, the LEA must identify the Tier I, Tier II, and Tier III schools it commits to serve and demonstrate that it has the capacity to use the school improvement funds to provide adequate resources and related support to each of the Tier I and Tier II schools in order to implement fully and effectively one of the interventions identified in Section I.A.2 of this notice. If an LEA has nine or more Tier I and Tier II

schools, the LEA may not implement the same intervention in more than 50 percent of those schools.

3. The LEA must include in its application a budget indicating how it will allocate school improvement funds among the Tier I, Tier II, and Tier III schools it commits to serve. The LEA must serve each Tier I school using one of the four interventions identified in Section I.A.2 of this notice, unless the LEA demonstrates that it lacks sufficient capacity to undertake intensive interventions in each such school, in which case the LEA must indicate the Tier I schools that it can effectively serve. An LEA may not serve with these school improvement funds a Tier I school in which it does not implement one of the proposed interventions.

4. The LEA's budget for each Tier I and Tier II school it commits to serve must be of sufficient size and scope to ensure that the LEA can implement one of the rigorous interventions identified in Section I.A.2 of this notice. A budget should cover three years. The LEA's budget may, and likely would, exceed \$500,000 per year for each Tier I and Tier II school that implements an intervention in Section I.A.2.a, 2.b, or 2.d in order to reform the school consistent with the LEA's application and the requirements in this notice. The LEA's budget may include less than \$500,000 per year for a Tier I or Tier II school for which it proposes to implement the school closure

intervention in Section I.A.2.c. In addition, a school closure typically would be completed in less than three years.

5. The LEA's budget for each Tier III school it commits to serve must include the services it will provide the school, particularly if the school meets additional criteria established by the SEA, although those services do not need to be commensurate with the funds the SEA provides the LEA based on the school's inclusion in the LEA's School Improvement Grant application.

6. An LEA in which a Tier I school is located and that does not apply to serve that school for reasons other than lack of capacity may not apply for a grant to serve only Tier III schools.

7. An LEA must establish, in its application, three-year student achievement goals in reading/language arts and mathematics. The LEA must hold each Tier I and Tier II school it commits to serve annually accountable for meeting, or being on track to meet, those goals with respect to the achievement of all students in each school, as well as each subgroup of students identified in 34 CFR 200.13(b)(7),¹⁴ and for making progress on the leading indicators described in Section III of this notice. If an LEA proposes to implement a restart model,

¹⁴The subgroups identified in 34 CFR 200.13(b)(7) include students from major racial and ethnic groups, economically disadvantaged students, student with limited English proficiency, and students with disabilities.

it must also describe how it will hold the charter school operator, CMO, or EMO accountable for meeting, or being on track to meet, the LEA's student achievement goals and making progress on the leading indicators.

8. An LEA must demonstrate how it will sustain the interventions implemented with its School Improvement Grant after the funding period for the grant has ended.

B. SEA responsibilities:

1. To receive a School Improvement Grant, an SEA must submit an application to the Department at such time, and containing such information, as the Secretary shall reasonably require.

2. An SEA must review and approve, consistent with the requirements in this notice, an application for a School Improvement Grant that it receives from an LEA. Before approving the application, the SEA must ensure that it meets the requirements of this notice, particularly with respect to: (1) whether the LEA has agreed to implement one of the four rigorous interventions identified in Section I.A.2 of this notice in each Tier I and Tier II school included in its application; (2) the extent to which the LEA's application shows the LEA's efforts to analyze the needs of each school and match an intervention to those needs, consistent with Section II.A.2; design and implement interventions consistent with this notice; recruit,

screen, and select external providers to ensure quality; embed the interventions in a longer-term plan to sustain gains in student achievement; coordinate with other resources; modify its practices, if necessary, to enable it to fully and effectively implement the interventions; and sustain the reforms after the funding period ends; (3) whether the LEA has the capacity to implement the selected intervention fully and effectively in each Tier I and Tier II school; and (4) whether the LEA has submitted a budget that includes sufficient funds to implement the selected intervention fully and effectively in each Tier I and Tier II school.

3. An SEA must review and approve the LEA's three-year student achievement goals to ensure that they are sufficiently rigorous to hold each Tier I and Tier II school accountable for meeting, or being on track to meet, those goals with respect to all students in the school, as well as each subgroup of students identified in 34 CFR 200.13(b)(7), and for making progress on the leading indicators described in Section III of this notice.

4. If an SEA does not have sufficient school improvement funds to award, for up to three years, a grant to each LEA that submits an approvable application, the SEA must give priority to LEAs that apply to serve both Tier I and Tier II schools.

5. An SEA must award a School Improvement Grant to an LEA in an amount that is of sufficient size and scope to support the

activities required under section 1116 of the ESEA and this notice. The LEA's total grant may not be less than \$50,000 or more than \$500,000 per year for each Tier I and Tier III school that the LEA commits to serve.

6. In awarding the school improvement funds, an SEA must allocate \$500,000 per year for each Tier I school that will implement a rigorous intervention under Section I.A.2.a, 2.b, or 2.d for which the LEA has requested funds in its budget and for which the SEA determines the LEA has the capacity to serve. The SEA must also allocate sufficient school improvement funds in total to the LEA, consistent with section 1003(g)(5), to match, as closely as possible, the LEA's budget for implementing one of the four interventions in each Tier I and Tier II school it commits to serve, including costs associated with closing such schools under Section I.A.2.c, as well as for serving participating Tier III schools, particularly those meeting additional criteria established by the SEA.

7. If an SEA does not have sufficient school improvement funds to allocate to each LEA with a Tier I or Tier II school an amount sufficient to enable the school to implement fully the specified intervention for three years, the SEA may take into account the distribution of Tier I and Tier II schools among such LEAs in the State to ensure that Tier I and Tier II schools throughout the State can be served.

8. If an SEA has provided a School Improvement Grant to each LEA that has requested funds to serve a Tier I or Tier II school in accordance with this notice, the SEA may award remaining school improvement funds to an LEA with only Tier III schools that applies to receive those funds.

9. In awarding School Improvement Grants, an SEA must apportion its FY 2009 school improvement funds, including those available through the ARRA, in order to make grants that are renewable for two additional years, which the Secretary will make possible by waiving the limitation on the period of availability beyond September 30, 2011.

C. Renewal for two additional one-year periods:

An SEA must renew an LEA's School Improvement Grant for two additional one-year periods if the LEA demonstrates that its Tier I and Tier II schools are meeting, or are on track to meet, the LEA's student achievement goals with respect to all students in the school, as well as each subgroup of students identified in 34 CFR 200.13(b)(7), and are making progress on the leading indicators described in Section III of this notice and that its Tier III schools are meeting the goals in their plans developed under section 1116 of the ESEA. If an SEA does not renew an LEA's School Improvement Grant because the LEA's participating schools are not meeting or on track to meet their student

achievement goals, the SEA may reallocate those funds to other eligible LEAs, consistent with the requirements of this notice.

D. State reservation for administration, evaluation, and technical assistance:

An SEA may reserve from the total FY 2009 school improvement funds it receives under section 1003(g) of the ESEA no more than five percent for administration, evaluation, and technical assistance expenses.

E. States Whose School Improvement Grant Exceeds the Amount the State May Award to Eligible LEAs: In some States in which a limited number of Title I schools are identified for improvement, corrective action, or restructuring, the SEA may be able to make School Improvement Grants, renewable for two additional years, to each LEA with a Tier I, Tier II, or Tier III school without using the State's full allocation under section 1003(g) of the ESEA. An SEA in this situation may reserve up to five percent of its FY 2009 allocation of school improvement funds for administration, evaluation, and technical assistance expenses under section 1003(g)(8) of the ESEA. The SEA may retain sufficient school improvement funds to serve, for two succeeding years, each Tier I, II, and III school that generates funds for an eligible LEA in the 2010-2011 school year. The Secretary proposes to reallocate to other States,

before September 30, 2010, any remaining school improvement funds from the States with surplus funds.

III. Reporting and Evaluation:

A. Reporting metrics:

To inform and evaluate the effectiveness of the interventions in this notice, the Secretary proposes to collect data on the metrics in the following chart. The Department already collects most of these data through EDFacts and will collect data on two metrics through SFSF reporting. Accordingly, an SEA must only report the following new data with respect to school improvement funds:

1. A list of the LEAs that received a School Improvement Grant under section 1003(g) and the amount of the grant.

2. For each LEA that received a School Improvement Grant, a list of the schools that were served and the amount of funds or value of services each school received.

3. For any Tier I or Tier II school, school-level data on the metrics designated on the following chart as "SIG" (School Improvement Grant):

Metric	Source	Achievement Indicators	Leading Indicators
SCHOOL DATA			
Which intervention the school used (i.e., turnaround, restart, closed, or transformation)	NEW SIG		
AYP status	<u>EDFacts</u>	✓	
Which AYP targets the school met and missed	<u>EDFacts</u>	✓	
School improvement status	<u>EDFacts</u>	✓	
STUDENT OUTCOME/ACADEMIC PROGRESS DATA			
Percentage of students at or above each proficiency level on state assessments in reading/language arts and mathematics (e.g., Basic, Proficient, Advanced), by grade and by student subgroup	<u>EDFacts</u>	✓	
Student participation rate on state assessments, by student subgroup	<u>EDFacts</u>		✓
Average scores on state assessments across subgroups – scale scores by quartile	NEW SIG	✓	
Title III LEP students English language proficiency	<u>EDFacts</u>	✓	
AMAO status for LEP students	<u>EDFacts</u>	✓	
Graduation rate	<u>EDFacts</u>	✓	
Dropout rate	<u>EDFacts</u>		✓
Student attendance	<u>EDFacts</u>		✓
Students enrolled in advanced coursework	NEW SIG		✓

Metric	Source	Achievement Indicators	Leading Indicators
(e.g., AP/IB), early-college high schools, or dual enrollment classes	HS only		
College enrollment rates	NEW SFSF phase two HS only	✓	
STUDENT CONNECTION AND SCHOOL CLIMATE			
Discipline incidents	<u>EDFacts</u>		✓
Truants	<u>EDFacts</u>		✓
# of instructional minutes	NEW SIG		✓
TALENT			
Distribution of teachers by performance level on LEA's teacher evaluation system	NEW SFSF phase two		✓
Teacher attendance	NEW SIG		✓

B. Evaluation.

An LEA that receives a School Improvement Grant must participate in any evaluation of that grant conducted by the Secretary.

Executive Order 12866:

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 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 (1) has an annual effect on the economy of \$100 million or more, or adversely affects a section 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) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impact of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. The Secretary has determined that

this regulatory action is economically significant under section 3(f)(1) of the Executive order.

Potential Costs and Benefits

The proposed costs have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Department has assessed the costs and benefits of this regulatory action.

In assessing the potential costs and benefits--both quantitative and qualitative--of these proposed requirements, the Department has determined that the benefits of the proposed requirements exceed the costs. The Department also has determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed requirements without impeding the effective and efficient administration of the program.

Summary of Costs and Benefits

The Department believes that the proposed requirements will not impose significant costs on States, LEAs, or other entities that receive school improvement funds. As noted elsewhere,

these proposed requirements would drive school improvement funds to LEAs that have the lowest-achieving schools in amounts sufficient to turn those schools around and significantly increase student achievement. They would also require participating LEAs to adopt the most effective approaches to turning around low-achieving schools. In short, the Department believes that the proposed requirements would ensure that limited school improvement funds are put to their optimum use—that is, that they would be targeted to where they are most needed and used in the most effective manner possible. The benefits, then, would be more effective schools serving children from low-income families and a better education for those children.

The Department believes that the State and local costs of implementing the proposed requirements (including State costs of applying for grants, distributing the grants to LEAs, ensuring compliance with the proposed requirements, and reporting to the Department, and LEA costs of applying for subgrants and implementing the interventions) will be financed through the grant funds. The Department does not believe that the proposed requirements will impose a financial burden that States and LEAs will have to meet from non-Federal sources.

Need for Federal Regulatory Action

The proposed requirements are needed to implement the School Improvement Grants program in FY 2009 in a manner that the Department believes will best enable the program to achieve its objective of supporting comprehensive and effective efforts by LEAs to overcome the challenges faced by low-achieving schools that educate concentrations of children living in poverty. The proposed requirements for SEAs to target school improvement funds on schools that are among the very lowest-achieving in their State will ensure that limited Federal funds will go to the schools in which they are most needed, including high schools with high dropout rates. The requirement for LEAs receiving school improvement funds to implement one of four specific interventions would ensure that those funds are not used for activities that are unlikely to produce the improvement in outcomes that the lowest-achieving schools need to achieve.

The reporting requirements proposed in this notice would ensure that the Department receives limited but essential data on the results of this major Federal investment in school improvement. The Department does not believe that the State and local costs of providing those data will be significant and, as noted earlier, those costs can be met with grant funds.

The definitions proposed would give clearer meaning to some of the terms used elsewhere in the notice.

Regulatory Alternatives Considered

A likely alternative to promulgation of the requirements proposed in this notice would be for the Secretary to allocate the FY 2009 school improvement funds without setting any regulatory requirements governing their use. Under such an alternative, States and LEAs would be required to meet the statutory requirements, but funds likely would not be targeted to the very lowest-achieving schools and LEAs would likely not use all the funds for activities most likely to result in a real turn-around of those schools and significant improvement in the educational outcomes for the students they educate.

Accounting Statement

As required by OMB Circular A-4 (available at <http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf>), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed requirements. This table provides our best estimate of the Federal payments to be made to States under this program as a result of these proposed requirements. Expenditures are classified as transfers to States.

Table - Accounting Statement Classification of Estimated Expenditures

Category	Transfers
Annual Monetized Transfers	\$3,545,633,000

As previously noted, the ARRA provides \$3 billion for School Improvement Grants in FY 2009 in addition to the previously appropriated \$546 million. The proposed requirements in this notice would govern the total \$3.546 billion in FY 2009 school improvement funds.

The proposed requirements will have a distributional impact on the allocation of school improvement funds nationally. The implementation of these requirements would likely result in a larger proportion of program funds flowing to LEAs that have larger concentrations of the lowest-achieving schools (Tier I and Tier II schools) and a smaller portion flowing to other LEAs. However, because the FY 2009 appropriation for the program is much larger than the appropriation for FY 2008, the negative impact on the latter category of LEAs may be minimal. The Department is unable to project the amount of the shift but will collect data on the allocations through the procedures described under Reporting and Evaluation.

Regulatory Flexibility Act Certification:

The Secretary certifies that these proposed requirements will not have a significant economic impact on a substantial number of small entities. Under the U.S. Small Business Administration's Size Standards, small entities include small governmental jurisdictions such as cities, towns, or school

districts (LEAs) with a population of less than 50,000. Approximately 11,900 LEAs that receive Title I funds qualify as small entities under this definition. However, the small entities that the proposed requirements will affect are small LEAs receiving school improvement funds under section 1003(g) of the ESEA--i.e., a small LEA that has one or more schools in improvement, corrective action, or restructuring and that meets the SEA's priorities for greatest need for those funds and demonstrates the strongest commitment to use the funds to provide adequate resources to their lowest-achieving Title I schools to raise substantially the achievement of their students.

SEAs would develop their own definitions for their lowest-achieving schools, consistent with the requirements of this notice, but preliminary data analyses by the Department suggest that 15-25 percent of the lowest-performing schools in the Nation are located in rural areas, which are likely to contain most of the targeted schools that are operated by small LEAs. Assuming a maximum of 1,000 turnaround schools nationwide, and that few if any rural LEAs will contain more than one of their State's lowest-performing schools, there would be a range of 150 to 250 small LEAs affected by the requirements in this notice, including a limited number of small suburban and urban LEAs.

The requirements proposed in this notice would not have a significant economic impact on these small LEAs because (1) the costs of implementing the required interventions would be covered by the grants received by successful applicants, and (2) in most cases the costs of developing turnaround plans and submitting applications would not be significantly higher than the costs that would be incurred in applying for School Improvement Grants under the statutory requirements.

Successful LEAs would receive up to three years of funding under section 1003(g) of the ESEA to implement their proposed interventions, consistent with the Secretary's intention that SEAs ensure that awards are of sufficient size and duration to turn around the Nation's lowest-achieving schools.

Small LEAs may incur costs to develop and submit plans for turning around their lowest-achieving schools but, in general, such costs would be similar to those incurred to apply for School Improvement Grant funding under existing statutory requirements. Moreover, since nearly all of the schools included in the applications submitted by small LEAs would be schools that already are in improvement status, these LEAs would be able to incorporate existing data analysis and planning into their applications, at little additional cost. Also, small LEAs may receive technical assistance and other support from their

SEAs in developing turnaround plans and applications for these funds.

In addition, the Department believes the benefits provided under this proposed regulatory action will outweigh the burdens on these small LEAs of complying with the proposed requirements. In particular, the proposed requirements potentially make available to eligible small LEAs significant resources to make the fundamental changes needed to turn around their lowest-achieving schools, resources that otherwise may not be available to small and often geographically isolated LEAs.

The Secretary invites comments from small LEAs as to whether they believe the requirements proposed in this notice would have a significant economic impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995:

The proposed requirements in this notice contain information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 USC 3501-3520). It is our plan to offer a comment period for the information collection provisions at the time of the notice of final requirements. This is because we cannot finalize the requirements and develop the application package until we have received and responded to comments on the underlying proposed requirements in this notice. At that time, the Department will

submit the information collection to OMB for its review and provide the burden hours associated with each requirement for comment.

Because it is likely that the information collection requirements will be reviewed under emergency OMB processing, however, the Department encourages the public to comment on the burden hours associated with the contents of the SEA application proposed in this notice. As noted earlier, that application would generally address the SEA's role with respect to school improvement funds, including establishing criteria to approve an LEA's application, allocating school improvement funds to the LEA, monitoring the implementation of interventions by the LEA and the progress participating schools in the LEA are making with respect to both student achievement outcomes and the leading indicators described in Section III of this notice, providing technical assistance to the LEA and its participating schools, and holding the LEA and its schools accountable for acceptable progress. We estimate that an SEA would spend approximately 90 hours of staff time to plan and prepare its application at a cost of \$2,700 per State (\$30.00 (average cost per hour of SEA staff) times 90 hours). Thus, we estimate the total burden to be up to 4,680 hours (52 SEAs (50 States, the District of Columbia, and Puerto Rico) times 90 hours) or \$140,400 (\$30.00 times 4,680) for all States.

Intergovernmental Review:

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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(Catalog of Federal Domestic Assistance Number: 84.377)

Dated: August 21, 2009

Arne Duncan,
Secretary of Education.

[FR Doc. 2009-20612 Filed 08/25/2009 at
8:45 am; Publication Date: 08/26/2009]