Federal Register

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Part II

Department of Education

Smaller Learning Communities Program; Notice

DEPARTMENT OF EDUCATION

Smaller Learning Communities Program

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215L.

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

ACTION: Notice of final priorities, requirements, definition and selection criteria.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education announces final priorities, requirements, definition, and selection criteria under the Smaller Learning Communities (SLC) program. The Assistant Secretary may use these priorities, requirements, definition, and selection criteria, in addition to other previously established priorities, definitions and requirements, for a competition using fiscal year (FY) 2009 funds and may use them in later years. We take this action to focus Federal financial assistance on an identified national need. We intend these final priorities, requirements, definition, and selection criteria to enhance the effectiveness of SLC projects in improving academic achievement and helping to prepare students for postsecondary education and careers.

DATES: *Effective Date:* These final priorities, requirements, definition, and selection criteria are effective July 23, 2010.

FOR FURTHER INFORMATION CONTACT: Angela Hernandez-Marshall, U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Room 3E308, Washington, DC 20202–6200. Telephone: (202) 205–1909 or by e-mail: *smallerlearningcommunities@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Purpose of Program: The SLC program awards discretionary grants to local educational agencies (LEAs) to support the restructuring of large public high schools (*i.e.,* schools with enrollments of 1,000 or more students) into smaller units for the purpose of improving academic achievement in large public high schools. These smaller units include freshman academies, multi-grade academies organized around career interests or other themes, "houses" in which small groups of students remain together throughout high school, and autonomous schools-within-a-school. These structural changes are typically complemented by other personalization strategies, such as student advisories, family advocate systems, and mentoring programs.

Program Authority: 20 U.S.C. 7249.

Applicable Program Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The notice of final priority, requirements, definitions, and selection criteria published in the **Federal Register** on April 28, 2005 (70 FR 22233) (2005 SLC NFP). (c) The notice of final priority, requirements, and selection criteria published in the **Federal Register** on May 18, 2007 (72 FR 28426) (2007 SLC NFP).

We published a notice of proposed priorities, requirements, definition, and selection criteria (NPP) for this program in the **Federal Register** on March 31, 2010 (75 FR 16082). That notice contained background information and our reasons for proposing the particular priorities, requirements, definition, and selection criteria.

This notice of final priorities, requirements, definition, and selection criteria contains several changes from the NPP. We fully explain these changes in the *Analysis of Comments and Changes* section that follows.

Public Comment: In response to our invitation in the NPP, 12 parties submitted comments on the proposed definition and proposed priorities, requirements, and selection criteria. We group major issues according to subject. Generally, we do not address technical and other minor changes and suggested changes we are not authorized to make under the applicable statutory authority.

Analysis of Comments and Changes: An analysis of the comments and changes in the priorities, requirements, and selection criteria follows.

Priorities

Priority 1—Common Planning Time for Teachers

Comment: Two commenters recommended that we restrict the priority to common planning time that occurs during the regular school day. These commenters contended that common planning time offered immediately after the school day is less likely to result in improvements in instruction and greater academic and personal support for students than common planning time that occurs during the school day. One of these commenters also argued that teachers do not participate regularly in common planning time when it is offered after school because they have other responsibilities, such as leading extracurricular activities for students and caring for their families. One of these commenters also stated that providing common planning time during the school day is less costly than providing it after the school day.

Discussion: We believe that providing teachers with regular and ongoing opportunities for structured collaboration and planning can be a valuable strategy for improving instruction and supports for students, regardless of whether it is offered during or immediately following the school day. We do agree with the commenters that, as a practical matter, obtaining regular teacher participation in common planning time that is held after school may be more challenging than when it is held during the school day due to the real world constraints on teachers' out-of-school time. However, we believe that some LEAs may be able to overcome these challenges and implement strategies that ensure that teachers are able to, and will, participate regularly in common planning time that is held after school. For this reason, we have revised the priority to require an applicant that proposes to meet the priority by regularly scheduling common planning time immediately following the school day to provide a description of how it will ensure that the teachers who will be included are able to and will participate regularly in the common planning time activities.

With respect to the one commenter's concern about the higher cost of holding common planning periods after school, we believe that applicants are in the best position to determine whether it would be more cost-effective to provide for common planning time during—rather than after the school day—and therefore decline to require that planning time only be offered during the school day.

Changes: We have revised the priority to require an applicant that proposes to meet it by regularly scheduling common planning time immediately following the school day to provide a description of how it will ensure that the teachers who will be included are able to and will participate regularly in the common planning time activities scheduled immediately following the school day.

Comment: Two commenters objected to including common planning time for teachers of the same academic subjects as part of this priority. Both commenters expressed concern that, by doing so, the Department would be allowing SLC grant funds to be used to support existing, regularly scheduled departmental meetings that would otherwise occur. They argued that the priority should focus exclusively on

common planning time for teachers who share the same students in common. One of the commenters expressed the view that, unlike meetings among teachers who teach the same subjects, meetings among teachers who share the same students are unlikely to occur without SLC grant funds and are, therefore, more in need of financial support.

Discussion: This priority provides that the required common planning time be used for specific activities (*e.g.,* structured examination of student work and outcome data; collaborative professional development and coaching, including classroom observation; identifying instructional and other interventions for struggling students; and curriculum and assessment development) not just generalized meetings. These activities, whether engaged in by groups of teachers who teach the same subject or groups of teachers who share the same group of students, are designed to enable grantees to develop strategies to improve student outcomes. For example, among teachers who share a common group of students, these strategies could support promising practices that include, but are not limited to: The development and implementation of personalized learning models, early identification and coordinated responses to meet the needs of struggling students, and opportunities for teachers to improve delivery of rigorous core course instruction. Likewise, teachers who teach the same subject could, for example, collaborate for the purposes of developing a stronger articulation of middle-to-high-school and high-school-to-postsecondary-student curricula and assessments. These are just a few of many examples of how common planning time can be used effectively to improve student outcomes by groups of teachers who teach the same subject or groups of teachers who share the same group of students.

We have designed this priority to apply to both teachers who share the same students and teachers who teach the same academic subject because we want to provide grantees with flexibility to develop the best common planning activities for their schools.

Finally, we disagree that, without SLC funds, schools may be unlikely to initiate the practice of regularly scheduled common planning time among teachers who share the same students. Some current grantees do not use grant funds for common planning time but have managed to implement the practice to support purposeful collaboration. That said, we do acknowledge that current financial constraints at high schools across the country have made practitioners more cautious about embarking on new initiatives. Therefore, high schools that are not already engaged in these common planning activities may be reluctant to begin doing so now without some additional funding. This is, in part, why we are establishing substantially higher budget award amounts in the *Requirements* section of the notice. The maximum, 60-month award amount per school is $750,000 more than the maximum award amount established in the 2007 SLC NFP.

Changes: None.

Comment: One commenter recommended that we clarify whether a project could meet this priority if it increased the amount of time for common planning time, but decreased the amount of time for individual planning and preparation available to teachers during the regular school day. The commenter expressed concern that, without this clarification, a project that shifted individual planning time for teachers from the school day to after school could still meet the priority if it also increased the amount of time for common planning and collaboration.

Discussion: We agree with the commenter that the priority should be clarified on this point. Teachers need individual planning time during the school day to develop and prepare lessons, review and grade student work and tests, and examine assessment and other student outcome data. Providing teachers with time during the school day for individual planning and preparation is just as important as providing collaborative teacher time. We believe that both are essential to ensuring that core curricula are rigorous and use high-quality instruction and that learning environments are personalized based on student need.

Some purposeful common planning time activities we described in the NPP are complementary but quite distinct from the work that a teacher undertakes during individual planning time. On the one hand, we believe that purposeful common planning time activities increase the likelihood that teachers will gain access to more curriculum resources, add to and benefit from collective efforts to more efficiently identify and track struggling students, create a coherent sequence of courses, and ensure all students are receiving the supports they need to graduate ready for postsecondary education and careers. On the other hand, individual planning allows teachers the time to determine how the collective knowledge and skills learned during collaborative planning can be applied in their individual classrooms. We further believe that relegating individual planning to after school would be detrimental because, as noted elsewhere in this notice, during that period of the day, educators face a number of time constraints that they do not face during the school day. For this reason, we believe it is appropriate to revise this priority to clarify that, to meet this priority, a project must increase the amount of time regularly provided to teachers for common planning and collaboration during the school day without decreasing the amount of time provided to teachers for individual planning and preparation during the school day.

Changes: We have added the words "during the school day" to the end of the sentence describing the required common planning period and the need for the increase in required common planning time so as not to result in individual teacher planning time.

Priority 2—Persistently Low-Achieving Schools—Secondary Schools (Revised and Redesignated as Priority 2—Projects in Which Fifty Percent or More of the Included Schools Are Low-Achieving and Priority 3—Projects in Which at Least One, but Less than Fifty Percent, of the Included Schools Are Low-Achieving)

Comment: Five commenters objected to the proposed priority for persistently lowest-achieving schools, arguing that, while these schools have extreme needs, many other high-poverty schools that may not be designated as persistently lowest-achieving also need assistance to improve student achievement and should be able to receive funding under the SLC program. Two of these commenters also argued that persistently lowest-achieving schools should not be given priority under the SLC program because these schools will be given priority for assistance under the School Improvement Grant (SIG) and Race to the Top programs.

Discussion: In the NPP, we had proposed to give a priority to projects that include one or more schools that have been identified by a State as being "persistently lowest-achieving," in accordance with the definition of persistently lowest-achieving schools established for the SIG program. We proposed this priority because we sought to target SLC funds on the Nation's neediest schools and align the SLC program with the Administration's efforts to finally break the long cycle of educational failure—including the failure of previous reforms—in these schools. This approach is consistent with the Department's long-established

practice of targeting resources where there is the greatest need. That said, we recognize the concerns raised by commenters that limiting this priority to only persistently lowest-achieving schools may be too restrictive because, as applied to this program, it may prevent many schools that have critical needs from being included in an SLC project. For this reason, we have revised the priority to include persistently lowest-achieving schools as well as schools that fall within one of the following categories:

(a) Title I schools that are in corrective action or restructuring under section 1116 of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

(b) Schools that are eligible for, but do not receive Title I funds provided that, if the schools received Title I funds, they would be in corrective action or restructuring under section 1116 of the ESEA.

(c) Title I schools or schools that are eligible for, but do not receive Title I funds that had a graduation rate, as defined in the State's approved accountability plan for Part A of Title I of the ESEA, that is less than 60 percent.

We believe that these changes to the criteria for schools to be served by the SLC grant respond to commenters' concerns about the proposed priority being too narrow, while at the same time retaining the focus on serving the neediest schools, which include high-need schools that may not qualify as persistently lowest-achieving schools. We note that the substantive changes made to the proposed priority align it more closely with the priority for persistently low-performing schools that we used in the Investing in Innovation FY 2010 competition (*see Absolute Priority 4—Innovations that Turn Around Persistently Low-Performing Schools* in the notice inviting applications (75 FR 12072, 12073)).

In addition, for clarity and ease of administration, we have determined that it would be helpful to convert this single priority into two separate priorities that include the substantive categories (a), (b), (c), and (d), but that apply to different types of applications. Establishing two separate priorities will be clearer to applicants than a single, two-part priority, reducing the likelihood that they will make inadvertent errors in addressing the priorities in their applications. For this reason, we have further revised the priority proposed in the NPP by redesignating it as two priorities—Priority 2 and Priority 3. As revised, new priority 2 applies to applications in which 50 percent or more of the schools to be served by the SLC grant are schools in categories (a), (b), (c), or (d) of the priority. Priority 3, which has the same categories as new priority 2, applies to applications in which at least one, but less 50 percent, of the schools to be served by the SLC grant are in categories (a), (b), (c), or (d) of the priority.

Finally, we have made additional changes, reflected in new Priorities 2 and 3, to require that an applicant provide evidence that any school or schools included in its application are in categories (a), (b), (c), or (d). Specifically, we require an applicant to include with its application a signed and dated certification from the superintendent of the LEA in which the school is located. This certification also must identify the specific category of the priorities (*i.e.,* the categories of schools described in paragraphs (a), (b), (c), and (d) of the priorities) that applies to each school included in the application. We are establishing this certification requirement to expedite our review of an application to determine whether it meets one of the two priorities. This is particularly important for those applications that include a school that is in categories (b), (c), or (d) because unlike the lists of schools identified by States as being "persistently lowest-achieving" that were submitted by States with their SIG applications, the Department does not have ready access to the complete and current list of schools that are in the remaining categories.

Changes: We have revised priority 2 to include (a) persistently lowest-achieving schools as well as schools that fall within one of the following categories: (b) Title I schools that are in corrective action or restructuring under section 1116 of the ESEA; (c) schools that are eligible for, but do not receive Title I funds provided that, if the schools received Title I funds, they would be in corrective action or restructuring under section 1116 of the ESEA; and (d) Title I schools and schools that are eligible for, but do not receive Title I funds that have a graduation rate, as defined in the State's approved accountability plan for Part A of Title I of the ESEA, that is less than 60 percent. In addition, we have created a new priority, Priority 3, which is substantively the same as new Priority 2, but which applies to a different set of applications. New Priority 2 is for applications in which 50 percent or more of the schools to be served by the SLC grant are schools are in categories (a), (b), (c), or (d). New Priority 3 is for applications in which at least one, but less 50 percent, of the schools to be served by the SLC grant are schools in categories (a), (b), (c), or (d). We clarified that the data used by an applicant to identify schools that fall within one of the four categories be from the current, or most recently completed, school year.

We also have added a provision to this priority to require applicants to include evidence to support the assertion that the proposed project's schools fit within one of these categories. This evidence must consist of a signed and dated certification from the superintendent of the LEA in which the school is located. This certification must identify the specific category of the priority (*i.e.,* the categories of schools described in paragraphs (a), (b), (c), and (d) of this priority) that applies to each school included in the application.

Comment: Two commenters recommended that the priority for persistently lowest-achieving schools be designated as an invitational priority when we invite applications for SLC funding.

Discussion: In the NPP, we indicated that we would designate the proposed priorities as invitational, competitive preference, or absolute in the notice inviting applications for any competition for which we planned to use the priorities. For the competition using FY 2009 funds, we will designate Priority 2 and 3 as competitive preference priorities. We do, however, retain the flexibility to designate these priorities as competitive preference or absolute priorities in future competitions.

Changes: None.

Comment: Two commenters recommended that we restrict the priority to persistently lowest-achieving schools that do not receive SIG funding. One of these commenters noted that LEAs will be preparing applications for SIG and SLC grants during the same general time period. This commenter expressed concern that the SIG and SLC applications developed by some LEAs may not be consistent and complementary, making it extremely difficult for an LEA to implement both projects if its two applications are selected for funding. The commenter went on to argue that, even if an LEA's two applications are consistent and complementary, there also may be significant implementation problems if only one of these applications is selected for funding.

Discussion: We acknowledge that there is a risk that LEAs may not submit complementary applications for SIG and SLC funding and that implementation problems also may ensue if both

applications are selected for funding. This issue is not limited to the SIG and SLC programs; it occurs any time multiple Department programs hold competitions for funding during the same time period. However, we do not believe that there is any practical way that the Department can address or prevent problems that may result when the application periods for two or more Department grant programs occur simultaneously.

Changes: None.

Requirements

Requirement 1—Budget and Performance Periods

Comment: Two commenters expressed opposition to our proposed requirement that would reduce the budget period for the initial grant award from 36 to 24 months. The commenter argued that it was unreasonable to expect a project to demonstrate substantial progress in 24 months. The commenter also expressed concern that it would be difficult to hire a full-time project director because individuals would be reluctant to assume this position if their employment was guaranteed for only 24 months of receiving the award.

Discussion: As we explained in the NPP, we proposed reducing the duration of the initial budget period because we believe it is reasonable to expect an SLC grantee to demonstrate substantial progress within 24 months. Grantees that require more than an initial 24 months to show progress are likely experiencing significant management problems and may not merit continued funding. We note as well that most of the Department's discretionary grant programs have an initial budget period of 12 months. Generally, grantees that receive funding under these programs do not have difficulty demonstrating progress during the first 12 months of the project period. They also do not experience significant problems recruiting qualified individuals to serve as project directors.

Changes: None.

Requirement 3—Performance Indicators

Comment: One commenter recommended that we require grantees to use a cohort model for calculating the proposed graduation rate performance indicator.

Discussion: Paragraph (b) of the proposed performance indicators requires grantees to use a cohort model to calculate graduation rate. In the NPP, we proposed to require that grantees use the same definition of graduation rate that is used in the State's approved accountability plan for part A of title I of the ESEA. On October 29, 2008, the Department published in the **Federal Register** final regulations amending the Department's regulations implementing title I, part A of the ESEA (*see* 34 CFR 200.19). Section 200.19 requires States and LEAs to use a four-year adjusted cohort graduation rate to calculate the graduation rate they report on the annual report cards required by section 1111(h) of ESEA. Under this regulatory provision, States and LEAs are required to use this new definition of graduation rate beginning with the 2010–11 school year. For this reason, we do not believe any change to this performance indicator is necessary.

Changes: None.

Comment: In the NPP, we proposed to require applicants to establish, for each school included in an application, annual performance objectives for three performance indicators:

(1) The percentage of students who score at or above the proficient level on the reading/language arts and mathematics assessments used by the State to determine whether a school has made adequate yearly progress under part A of Title I of the ESEA;

(2) The school's graduation rate, as defined in the State's approved accountability plan for Part A of Title I of the ESEA; and

(3) The percentage of graduates who enroll in postsecondary education, advanced training, or a registered apprenticeship program in the semester following high school graduation.

We further proposed to require grantees to report annually data for these indicators in the aggregate, as well as disaggregated by the following subgroups:

(1) Major racial and ethnic groups;

(2) Students with disabilities;

(3) Students with limited English proficiency; and

(4) Economically disadvantaged students.

One commenter requested that we clarify whether applicants may set different annual performance objectives for students in the aggregate and for each of the student subgroups.

Discussion: The *Performance Indicators* requirement directs applicants to establish a single, annual performance objective for each school for each of the three performance indicators. It does not require or permit grantees to set different performance objectives for different groups of students for these three required performance indicators. Instead, it requires grantees to report data on the extent to which a school met its performance objectives in the aggregate, as well as disaggregated by the four student subgroups.

Changes: None.

Comment: One commenter requested that we clarify whether we were proposing to require grantees to meet the annual performance objectives they establish in the aggregate and for each subgroup for student performance on reading/language arts and mathematics assessments, high school graduation rates, and student enrollment in postsecondary education in order to continue to receive funding.

Discussion: Nothing in the *Performance Indicators* requirement requires grantees to meet or exceed any of their annual performance objectives in order to continue to receive an SLC grant. However, a grantee's success in meeting these performance objectives would be considered as one of a number of factors we would review in determining whether the grantee has made substantial progress toward accomplishing the goals and objectives of the project and merits continued funding. Other factors we would consider include, among others, a grantee's success in meeting the project-specific goals and objectives it establishes in its application, the extent to which it is implementing its project according to the timeline it identified in its application, and its fiscal management of the grant.

Changes: None.

Proposed Requirement 5—Evidence of Eligibility

Comment: None.

Discussion: In the NPP, we proposed to require applicants to provide evidence in their applications that, during the current or the most recently completed school year, each school included in their applications is a large public high school (*i.e.,* an entity that includes grades 11 and 12 and has an enrollment of 1,000 or more students in grades 9 and above (*see* Definitions in 2005 SLC NFP) and, thus, is eligible to receive assistance under this program. We proposed that this evidence would need to include a copy of either:

(a) The form or report that the LEA submits to the SEA to report the school's student enrollment (or student membership, as it is sometimes described) on or around October 1 of each year.

(b) A document provided by the SEA that identifies the school's enrollment on or around October 1 of each year.

Upon further review, we believe it is necessary to simplify the evidence of eligibility requirement to ensure that all prospective applicants with eligible schools can provide evidence of their

eligibility. Because there is so much diversity in how SEAs define student enrollment and when and the extent to which they collect and report school-level enrollment data from LEAs, we are concerned that some LEAs may have difficulty identifying a single document that meets the requirements of either of the two options for providing evidence of eligibility. We also are concerned that documents that may meet the requirements we proposed in the NPP still may not include all of the information we need to establish that a school is eligible to receive assistance under this program. For example, a document issued by an SEA may identify a school's enrollment on or around October 1, but it may not also include information on whether or not the school includes grades 11 and 12, another element of the school eligibility requirement. For these reasons, we believe it is necessary and appropriate to limit the evidence of school eligibility that must be provided by each applicant to a signed and dated certification from the superintendent of the LEA in which the school is located that the school is a large public high school as that term is defined in the 2005 SLC NFP.

Changes: We have revised the *Evidence of Eligibility* requirement by deleting the proposed types of evidence and replacing them with a single requirement—for the applicant to include in its application a certification from the superintendent of the LEA in which the school is located that the school is a large public high school as that term is defined in the 2005 SLC NFP.

Requirement 6—Evaluation

Comment: Three commenters expressed opposition to our proposed elimination of the requirement established by the 2005 SLC NFP that each applicant provide assurances that it will support an evaluation of the project that will produce an annual report for each year of the performance period. These commenters contended that high-quality, formative evaluations can provide grantees with important data they need for program improvement and to demonstrate substantial progress.

Discussion: We agree with the commenters that a well-designed, independent, and formative evaluation of an SLC project can provide the project director and other LEA and school personnel with data that can be useful in gauging the project's progress and identifying areas for improvement. However, as we noted in the NPP, we carefully reviewed the annual evaluation reports that have been submitted by grantees since FY 2006 and concluded that, generally, the evaluation requirement established in the 2005 SLC NFP has not achieved its intended purpose. For the most part, grantees have not chosen to commission evaluations that provide them with useful implementation information or have not used the information provided by these evaluations to improve their management of their projects. Instead, it appears that many grantees have commissioned evaluations chiefly to comply with our requirement. Given the often considerable cost of these evaluations and their apparent limited usefulness to grantees, we believe it would be prudent to cease to require grantees to commission them. A grantee may still choose to use grant funds to support a project evaluation under some circumstances. The evaluation costs must be related clearly to the goals of the project and be necessary for the proper and efficient performance and administration of the grant. In addition, the costs must be reasonable, allocable, and meet other requirements set out in Office of Management and Budget Circular A–87.

Changes: None.

Comment: One commenter recommended that we continue to require grantees to support independent evaluations, but that we address the concerns we described in the NPP about the quality and usefulness of these evaluations by designing and overseeing the evaluations that grantees support with grant funds.

Discussion: We agree generally with the commenter that independent evaluations commissioned and managed by the Department are more likely to provide useful information about project implementation, particularly if the evaluations are rigorous and use, for example, an experimental design. For this reason, in FY 2006, the Department supported a two-year randomized controlled trial of two supplemental literacy interventions that were implemented by SLC grantees in freshman academies. We are currently exploring other opportunities to support similar evaluations of practices, programs, or strategies implemented by high schools included in SLC grants in future competitions, but are unable to do so for this competition.

Changes: None.

Requirement 7—Grant Award Administration

Comment: One commenter recommended that we clarify that the responsibilities of the project director of an SLC grant are not limited to administrative functions, but that they also include responsibility for managing and providing leadership for the implementation of the practices, programs, and strategies the grantee identified in its application. The commenter recommended that these responsibilities include, for example, coordinating grant activities with other structural and instructional reform efforts that a school or LEA is implementing.

Discussion: We agree with the commenter that, in addition to performing other important management and administrative functions related to the implementation of the grant, the project director of an SLC grant also should have significant programmatic responsibilities, as well as the authority to carry out these responsibilities.

Changes: We have revised this requirement to clarify that the project director's responsibilities include managing and providing leadership for the implementation of the practices, programs, and strategies the grantee identified in its application.

Requirement 8—Use of Funds for Equipment

Comment: Two commenters asked us to clarify whether the maximum amount of funds used for equipment—defined as 1 percent of the total award—is the maximum amount that can be expended in a single year or the maximum amount that can be expended across all five years of the grant's project period.

Discussion: We agree that as originally drafted, the proposed requirement did not clearly describe how a grantee may use funds to pay the costs of equipment across its 60-month project period. We appreciate that this may have become even less clear given the changes we proposed to the lengths of SLC budget periods (*Proposed Requirement 1—Budget and Performance Periods*). For this reason, we have clarified that, in any budget period, an applicant may use up to 1 percent of the total amount awarded for that budget period on the costs of equipment.

Changes: We have revised this requirement to state that a grantee may not use more than one percent of the grant award in any single budget period during the project period for the acquisition of equipment (as that term is defined in this notice). We have also added language to clarify that the first budget period of the SLC project period is 24 months in length and each of the three subsequent budget periods are 12 months in length, for a total of four budget periods.

Comment: One commenter objected to limiting equipment costs, arguing that

placing restrictions on these costs could negatively affect a project's ability to attract administrative and staff support for the project. The commenter stated that acquiring technology equipment, which necessarily results in increases in costs, often serves as an incentive for administrative and staff support for the SLC project.

Discussion: While equipment may be perceived as one solution to providing staffs tangible benefits for their support and efforts, we strongly believe that prioritizing funds for effective teacher planning, professional development, student instructional services, and the like, is more strongly correlated with improvements in student academic performance than equipment. We intend these limits on the use of funds to prompt SLC project leaders to approach these costs more thoughtfully, and in a way that will ensure that such costs are clearly aligned and consistent with the goals and objectives of their projects. Ultimately, each project must be able to provide the rationale for why its costs are appropriate, reasonable, and allowable under OMB's cost principles.

Changes: None

Selection Criteria

Comment: One commenter expressed concern about the selection subcriterion under *Quality of Project Services* that evaluates the extent to which the project fosters a personalized learning environment. The commenter objected to the proposed use of the term "multiple teachers and adults" rather than the term "core group of teachers and other adults" that is used in the definition of "smaller learning community" established in the 2005 SLC NFP. The commenter contended that the revised language weakens the significance of smaller learning environments, such as freshman and career-based academies, as well as advisories to provide personalized social and academic support to all students.

Discussion: We agree that use of the phrase "multiple teachers" in paragraph (b)(1) of the *Quality of Project Services* selection criterion is inconsistent with the definition of "smaller learning community" in the 2005 SLC NFP. Upon further review, we believe that the selection subcriterion should be revised to conform with this definition by deleting the phrase "multiple teachers" in paragraph (b)(1) of the *Quality of Project Services* selection criterion and using instead the phrase "core group of teachers."

Changes: We have replaced the phrase "multiple teachers" with the phrase "a core group of teachers" in paragraph (b)(1) of the *Quality of Project Services* selection criterion.

Comment: Two commenters expressed concern about paragraph (b)(4) of the *Quality of Project Services* selection criterion, under which the Secretary evaluates the extent to which a project incorporates teacher common planning time. The commenter objected to referring to common planning and collaboration immediately following the school day; the commenter cited multiple challenges to getting teachers to participate in collaborative activities after school hours. Another commenter strongly recommended that the Department require each applicant to provide an assurance that, in implementing the new common planning time requirement, it will not move teacher individual planning time from during the school day to after school.

Discussion: For the same reasons we articulate earlier in this preamble in connection with comments received on priority 1, we agree that it is appropriate to remove the reference to "after school" from this selection criterion, which also addresses required common planning time. In addition, for the same reasons explained in the response to comments on priority 1, we believe it is appropriate to clarify that—in increasing the amount of time regularly provided to teachers for common planning and collaboration during the school day—applicants must not decrease the amount of time provided to teachers for individual planning and preparation during the school day.

Changes: We have removed the words "immediately following" from paragraph (b)(4) of the *Quality of Project Services* selection criterion. In addition, we have added the words "during the school day" at the end of the sentence on decreasing the amount of time provided to teachers for individual planning and preparation.

Comment: One commenter expressed concern about paragraph (b)(6) of the *Quality of Project Services* selection criterion, under which the Secretary evaluates the extent to which a proposed project will increase student participation in Advanced Placement, International Baccalaureate, or dual credit courses, such as dual enrollment or early college programs. The commenter objected to the use of the phrase "dual enrollment" in the list of examples referenced in this criterion. The commenter indicated that the distinction between the terms "dual credit" and "dual enrollment" was not clear.

Discussion: We agree that the distinction between the terms "dual credit" and "dual enrollment" is unclear. Because the "Preparing All Students to Succeed in Postsecondary Education and Careers" priority we established in the 2007 SLC NFP uses only the term "dual credit," we have deleted the term "dual enrollment" from paragraph (b)(6) of the *Quality of Project Services*."

Changes: In paragraph (b)(6) of the *Quality of Project Services* selection criterion, we have deleted the term "dual enrollment courses" and the parenthetical that followed and replaced the phrase with the term "dual credit courses."

Comment: None.

Discussion: Upon further review, we determined that paragraph (b)(7) of the *Quality of Project Services* selection criterion, under which the Secretary evaluates the extent to which a proposed project will increase the percentage of students who enter postsecondary education in the semester following graduation, did not explicitly mention career awareness, guidance, and planning. Because these activities should be an integral part of a high school's comprehensive program to increase student enrollment in postsecondary education, we have included explicit references to career awareness, guidance, and planning in paragraph (b)(7).

Changes: We have revised paragraph (b)(7) to incorporate references to career awareness, guidance, and planning activities.

Final Priorities

The Assistant Secretary for Elementary and Secondary Education establishes the following priorities for the Smaller Learning Communities program. These priorities are in addition to the priority established in the 2007 SLC NFP published in the **Federal Register** (*see* 72 FR 28429). We may apply these priorities in any year in which this program is in effect.

Priority 1—Common Planning Time for Teachers

This priority supports projects that increase the amount of time regularly provided to teachers who share the same students or teach the same academic subject for common planning and collaboration during or immediately following the school day without decreasing the amount of time provided to teachers for individual planning and preparation during the school day. To meet this priority, the common planning time must be used for one or more of the following activities:

(1) Structured examination of student work and outcome data.

(2) Collaborative professional development and coaching, including classroom observation.

(3) Identifying instructional and other interventions for struggling students.

(4) Curriculum and assessment development.

An applicant that proposes to meet this priority by regularly scheduling common planning time immediately following the school day must provide a description of how it will ensure that the teachers who will be included are able to and will participate regularly in the common planning time activities.

Priority 2—Projects in Which Fifty Percent or More of the Included Schools Are Low-Achieving

This priority supports projects in which 50 percent or more of the schools to be served by the SLC grant are in any of the following categories:

(a) Persistently lowest-achieving schools (as defined in the final requirements for the School Improvement Grants program (*see* 74 FR 65618, 65652)).

(b) Title I schools that are in corrective action or restructuring under section 1116 of the ESEA.

(c) Schools that are eligible for, but do not receive Title I funds provided that, if the schools received Title I funds, they would be in corrective action or restructuring under section 1116 of the ESEA.

(d) Title I schools and schools that are eligible for, but do not receive Title I funds that have a graduation rate, as defined in the State's approved accountability plan for Part A of Title I of the ESEA, that is less than 60 percent.

To meet this priority, the applicant must provide evidence that its proposed project includes a fifty percent or more of schools that are from one of the categories (a), (b), (c) or (d) of this priority. This evidence must be based upon data from the current school year or the most recently completed school year and must consist of a signed and dated certification from the superintendent of the LEA in which the schools are located. This certification must identify the specific category of the priority (*i.e.,* the categories of schools described in paragraphs (a), (b), (c), and (d) of this priority) that applies to each school included in the application.

Priority 3—Projects in Which at Least One, but Less Than Fifty Percent, of the Included Schools Are Low-Achieving

This priority supports projects in which at least one, but less than 50 percent, of the schools to be served by the SLC grant are in any of the following categories:

(a) Persistently lowest-achieving schools (as defined in the final requirements for the School Improvement Grants program (*see* 74 FR 65618, 65652)).

(b) Title I schools that are in corrective action or restructuring under section 1116 of the ESEA.

(c) Schools that are eligible for, but do not receive Title I funds provided that, if the schools received Title I funds, they would be in corrective action or restructuring under section 1116 of the ESEA.

(d) Title I schools and schools that are eligible for, but do not receive Title I funds that have a graduation rate, as defined in the State's approved accountability plan for Part A of Title I of the ESEA, that is less than 60 percent.

To meet this priority, the applicant must provide evidence that its proposed project includes at least one, but less than 50 percent of schools that are included in its application that are included in its application are in one of the categories (a), (b), (c), or (d) of this priority. This evidence must be based upon data from the current school year or the most recently completed school year and must consist of a signed and dated certification from the superintendent of the LEA in which the school or schools are located. This certification must identify the specific category of the priority (*i.e.,* the categories of schools described in paragraphs (a), (b), (c) and (d) of this priority) that applies to each school included in the application.

Types of Priorities

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

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

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

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

Final Requirements

The Assistant Secretary for Elementary and Secondary Education establishes the following requirements for the Smaller Learning Communities program. We may apply these requirements in any year in which this program is in effect.

Note: These requirements will be in addition to the application requirements required under title V, part D, subpart 4, section 5441(b) of the ESEA, and the following requirements established in the 2005 SLC NFP and the 2007 SLC NFP:

Requirement	Table
Consortium Applications and Educational Service Agencies.	2005 SLC NFP.
Student Placement	2005 SLC NFP.
Including All Students	2005 SLC NFP.
Indirect Costs	2007 SLC NFP.
Required Meetings Sponsored by the Department.	2007 SLC NFP.
Previous Grantees	2007 SLC NFP.

Requirement 1—Budget and Performance Periods: Grantees will be awarded grants for a period up to 60 months, with the initial award to provide funding for the first 24 months of the performance period. Funding for the remainder of the performance period will be made annually, contingent on the availability of funds and each grantee's substantial progress toward accomplishing the goals and objectives of the project as described in its approved application.

In its application, the applicant must provide detailed, yearly budget information for the total grant period requested.

Requirement 2—Maximum Award Amounts and Number of Schools: An eligible LEA may receive, on behalf of a single school, up to $2,500,000 of SLC grant funds, depending upon student enrollment in the school, for the entire 60-month project period.

The following chart provides the ranges of awards per high school size:

SLC AWARD RANGES

Student enrollment	Award ranges per school
1,000–2,000 Students.	$1,750,000–$2,000,000
2,001–3,000 Students.	1,750,000–2,250,000
3,001 and Up	1,750,000–2,500,000

An LEA may include up to five schools in a single application for a SLC grant. Therefore, an LEA applying on behalf of a group of eligible schools would be able to receive up to $12,500,000 for its SLC grant for the entire 60 month project period.

Applications requesting more funds than the maximum amounts specified for any school or for the total grant will not be read as part of the regular application process. However, if, after the Secretary selects applications to be funded, it appears that additional funds remain available, the Secretary has the option of reviewing applications that requested funds exceeding the maximum amounts specified. Under this requirement, if the Secretary chooses to fund any of the additional applications, selected applicants will be required to work with the Department to revise their proposed budgets to fit within the appropriate funding range.

Requirement 3—Performance Indicators: Each applicant must identify in its application the following specific performance indicators as well as the annual performance objectives to be used for each of these indicators. Specifically, each applicant must use the following performance indicators to measure the progress of each school included in its application:

(a) The percentage of students who score at or above the proficient level on the reading/language arts and mathematics assessments used by the State to determine whether a school has made adequate yearly progress under part A of title I of the ESEA, as well as these percentages disaggregated by subject matter and the following subgroups:

(1) Major racial and ethnic groups.

(2) Students with disabilities.

(3) Students with limited English proficiency.

(4) Economically disadvantaged students.

(b) The school's graduation rate, as defined in the State's approved accountability plan for part A of title I of the ESEA, as well as the graduation rates for the following subgroups:

(1) Major racial and ethnic groups.

(2) Students with disabilities.

(3) Students with limited English proficiency.

(4) Economically disadvantaged students.

(c) The percentage of all graduates who enroll in postsecondary education in the semester following high school graduation, as well as the percentage disaggregated by the following subgroups:

(1) Major racial and ethnic groups.

(2) Students with disabilities.

(3) Students with limited English proficiency.

(4) Economically disadvantaged students.

Each applicant must identify in its application its performance objectives for each of these indicators for each year of the project period and provide baseline data for the third indicator (postsecondary enrollment). The Department will obtain baseline data for the first and second performance indicators (student performance on reading/language arts and mathematics assessments and the graduation rate) and data on the extent to which each school included in a grant achieves its annual performance objectives for each year of the project period from the data that are now reported to the Department by SEAs using the EDEN Submission System (ESS). Grantees are not required to provide these data. However, each grantee must report to the Department annually on the extent to which each school in its grant achieves its performance objectives for the third indicator (postsecondary enrollment).

Finally, grantees must use administrative records maintained by State, national, or regional entities that already collect data on student enrollment in postsecondary education as the principal source of data for this performance indicator. These administrative records include, for example, data available through State longitudinal databases or other sources. Grantees may supplement these records with data collected through surveys administered to students or parents after graduation.

Requirement 4—No School Report Cards: No applicant is required to include in its application any report card for the schools included in its application.

Requirement 5—Evidence of Eligibility: LEAs, including schools funded by the Bureau of Indian Education and educational service agencies, applying on behalf of large public high schools, are eligible to apply for a grant. We will not accept applications from LEAs applying on behalf of schools that are being constructed and do not have an active student enrollment at the time of application. LEAs may apply on behalf of no more than five schools. Along with its application, each applicant must provide for each school included in its application:

(a) The school's name, postal mailing address, and the 12-digit identification number assigned to the school by the National Center for Education Statistics.

(b) A signed and dated certification from the superintendent of the LEA in which the school is located that, based upon data from the current school year or the most recently completed school year, the school is a large public high school as that term is defined in the 2005 SLC NFP.

Requirement 6—No Evaluation: No applicant is required to provide assurances that it will support an evaluation of the project that will produce an annual report for each year of the performance period.

Requirement 7—Grant Award Administration: Grantees must designate a single project director who will be principally responsible for managing and providing leadership for the implementation of the practices, programs, and strategies the grantee identified in its application and for communicating with the Department.

Each grantee must ensure that its designated project director—for a grant that includes one school—be not less than 50 percent of a full-time equivalent (FTE) position and that the time commitment of a project director for a grant that includes more than one school be not less than one FTE.

Requirement 8—Use of Funds for Equipment: A grantee may not use more than one percent of the grant award in any single budget period during the project period for the acquisition of equipment (as that term is defined in this notice). The first budget period of the SLC project period is 24 months in length and each of the three subsequent budget periods are 12 months in length, for a total of four budget periods.

Final Definition

In addition to the definitions in the authorizing statute, 34 CFR 77.1, and the 2005 SLC NFP, the following definition applies to this program:

Equipment means an article of nonexpendable, tangible personal property that has a useful life of more than one year and that has an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or $500. It includes, but is not limited to, office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles.

Final Selection Criteria

The Assistant Secretary for Elementary and Secondary Education establishes the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria in any year in

which this program is in effect. These selection criteria replace the selection criteria established for the SLC program in the 2005 SLC NFP (*see* 70 FR 22237–22239) and the 2007 SLC NFP (*see* 72 FR 28430, 28431).

In the notice inviting applications or the application package or both we will announce the maximum possible points assigned to each criterion.

(a) *Quality of the Project Design.* In determining the quality of the design of the proposed project, we will consider the extent to which—

(1) Teachers, school administrators, parents, and community stakeholders support the proposed project and have been and will continue to be involved in its development and implementation;

(2) The applicant has carried out sufficient planning and preparatory activities to enable it to implement the proposed project during the school year in which the grant award will be made;

(3) School administrators, teachers, and other school employees will receive effective, ongoing technical assistance and professional development in implementing structural and instructional reforms and providing effective instruction; and

(4) The applicant demonstrates that the proposed project is aligned with and advances a coordinated, district-wide strategy to improve student academic achievement and preparation for postsecondary education and careers without need for remediation.

(b) *Quality of Project Services.* In determining the quality of the services to be provided by the proposed project, we will consider the extent to which the proposed project is likely to be effective in—

(1) Creating an environment in which a core group of teachers and other adults within the school know the needs, interests, and aspirations of each student well, closely monitor each student's progress, and provide the academic and other support each student needs to succeed;

(2) Equipping all students with the reading/English language arts, mathematics, and science knowledge and skills they need to succeed in postsecondary education and careers without need for remediation;

(3) Helping students who enter high school with reading/English language arts or mathematics skills that are significantly below grade-level to "catch up" and attain, maintain and exceed proficiency by providing supplemental instruction and supports to these students during the ninth grade and, to the extent necessary, in later grades;

(4) Increasing the amount of time regularly provided to teachers for common planning and collaboration during the school day, without decreasing the amount of time provided to teachers for individual planning and preparation during the school day;

(5) Ensuring, through technical assistance, professional development, and other means, that teachers use opportunities for common planning and collaboration effectively to improve instruction and student academic achievement;

(6) Increasing the participation of students, particularly low-income students, in Advanced Placement, International Baccalaureate, or dual credit courses that offer students the opportunity to earn simultaneously both high school and college credit; and

(7) Increasing the percentage of students who enter postsecondary education in the semester following high school graduation by delivering comprehensive career guidance and academic advising to students and their parents that includes assistance in selecting courses and planning a program of study that will provide the academic preparation needed to succeed in postsecondary education and careers, early and ongoing career and college awareness and planning activities, and help in identifying and applying for financial aid for postsecondary education.

(c) *Support for Implementation.* In determining the adequacy of the support the applicant will provide for implementation of the proposed project, we will consider the extent to which—

(1) The management plan is likely to achieve the objectives of the proposed project on time and within budget and includes clearly defined responsibilities and detailed timelines and milestones for accomplishing project tasks; and

(2) The project director and other key personnel are qualified and have sufficient authority to carry out their responsibilities, and their time commitments are appropriate and adequate to implement the SLC project effectively.

(d) *Need for the Project.* In determining the need for the proposed project, we will consider the extent to which the applicant has identified specific gaps and weaknesses in the preparation of all students for postsecondary education and careers without need for remediation, the nature and magnitude of those gaps and weaknesses, and the extent to which the proposed project will address those gaps and weaknesses effectively.

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

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, definition, requirements, or selection criteria, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this final regulatory action.

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

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priorities, requirements, definition, and selection criteria justify the costs.

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

Discussion of Costs and Benefits: Elsewhere in this notice we discuss the potential costs and benefits, both quantitative and qualitative, of the final priorities, requirements, definition, and selection criteria.

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

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

Accessible Format: Individuals with disabilities can 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**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 17, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

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