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DEPARTMENT OF EDUCATION

34 CFR Subtitle B, Chapter II

DOCKET ID ED-2010-OESE-0001

RIN 1810-AB08

Teacher Incentive Fund Program

Catalog of Federal Domestic Assistance (CFDA) Numbers:

84.385 and 84.374.

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

ACTION: Proposed priorities, requirements, definitions,  
and selection criteria.

SUMMARY: The Secretary of Education (Secretary) proposes  
priorities, requirements, definitions, and selection  
criteria under the Teacher Incentive Fund (TIF) program.  
These proposed priorities, requirements, definitions, and  
selection criteria are designed to be used in two separate  
and distinct TIF grant competitions: the Main TIF  
competition, which will provide TIF funding to eligible  
entities to support their implementation of performance-  
based compensation systems (PBCSs) in accordance with the  
priorities, the Main TIF requirements, the definitions, and  
the selection criteria proposed in this document, and the  
TIF Evaluation competition, which will provide, in

accordance with the priorities, the Main TIF requirements, the definitions, and the selection criteria as well as the Evaluation requirements proposed in this document, TIF funding to help pay for the costs of implementing these eligible entities' PBCS in exchange for an agreement to participate in the national evaluation. The Secretary may use these proposed TIF priorities, requirements, definitions, and selection criteria in fiscal year (FY) 2010 and subsequent years. We intend the proposed priorities, requirements, definitions, and selection criteria to improve student achievement in high-need schools by creating incentives for effective teachers and principals in these schools.

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 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 "Teacher Incentive Fund" 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." A direct link to the docket page is also available at [www.ed.gov/programs/teacherincentive](http://www.ed.gov/programs/teacherincentive).

- Postal Mail, Commercial Delivery, or Hand Delivery:

If you mail or deliver your comments about these proposed priorities, requirements, definitions, and selection criteria, address them to: Office of Elementary and Secondary Education (Attention: Teacher Incentive Fund Comments), U.S. Department of Education, 400 Maryland Avenue, SW., room 3E120, Washington, DC 20202.

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: April Lee. Telephone: (202) 205-5224, or by e-mail: TIF@ed.gov. Note that we will not accept comments by e-mail.

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

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, definitions, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, definition, or selection criterion that each comment addresses.

We invite you 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 the proposed priorities, requirements, definitions, and selection criteria. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice by accessing

Regulations.gov. You may also inspect the comments in person, in room 3E120, 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: The purpose of the TIF program is to support projects that develop and implement PBCSs for teachers and principals in order to increase educator effectiveness and student achievement in high-need schools.

Program Authority: The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008, Division G, Title III, Pub. L. No. 110-161; Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2010, Division D, Title III, Pub. L.

111-117; and the American Recovery and Reinvestment Act of 2009, Division A, Title VIII, Pub. L. No. 111-5 (the ARRA).

## BACKGROUND

### The Statutory Requirements

Statutory provisions that govern the use of TIF funds are contained in the Department's annual congressional appropriations and in the ARRA. In this regard, Pub. L. No. 111-117, which contains the Department's fiscal year (FY) 2010 appropriation, authorizes the Department to use TIF funds to make competitive grants to eligible entities to develop and implement PBCSs in high-need schools.

Eligible entities for these funds are:

(a) Local educational agencies (LEAs), including charter schools that are LEAs.

(b) States.

(c) Partnerships of--

(1) An LEA, a State, or both; and

(2) At least one non-profit organization.

Under Pub. L. No. 111-117, eligible entities must use TIF funds to develop and implement in high-need schools PBCSs that--

(a) Consider gains in student academic achievement as well as classroom evaluations conducted multiple times during each school year among other factors, and

(b) Provide educators with incentives to take on additional responsibilities and leadership roles.

Pub. L. 111-117 further provides that grant recipients (1) must demonstrate that their PBCSs are developed with the input of teachers and school leaders in the schools and LEAs the grants will serve, and (2) may use TIF funds to develop or improve systems and tools (which may be developed and used either for the entire LEA or only for schools served under the grant) that would enhance the quality and success of the PBCS, such as high-quality teacher evaluations and tools to measure growth in student achievement. In addition, Pub. L. 111-117 provides that applications for TIF grants must include a plan for the financial sustainability of the activities conducted and systems developed under the grant once the grant period has expired.

Funds for this program, including funds for a required national evaluation, were also appropriated as part of the ARRA. Recipients of awards made with ARRA funds must meet specific reporting requirements established by the ARRA. The following link provides guidance on these reporting requirements:

[http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-21.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf).

Note: Provisions of the ARRA that govern use of TIF funds require use of funds consistent with substantive requirements in the Department's FY 2008 appropriations act, Pub. L.110-161. The Department's FY 2009 and FY 2010 appropriations acts contain comparable provisions governing eligible grantees and the need to use TIF funds to develop and implement PBCSs in high-need schools. Although Pub. L. No. 110-161 and Pub. L. 111-115 provide that Federal TIF funds may support PBCSs only for teachers and principals, grantees may extend their PBCSs to all school personnel by using non-TIF funds to pay for additional compensation for non-instructional personnel.

Under the program, grantees may only use TIF funds for expenses related to the development and implementation of their PBCS in high-need schools identified in the applicant's proposal. However, in addition to the financial incentives given to teachers and principals based on their effectiveness and their assumption of additional responsibilities or leadership roles (as defined in this notice), TIF funds also may be used to support a variety of activities either for the entire LEA or only for high-need schools served under the grant, that are related to the PCBS. These activities include professional development activities, evaluation and research analysis, costs of

developing or improving systems and tools that would enhance the quality and success of the PBCS, such as high-quality teacher evaluations and tools to measure growth in student achievement, reasonable travel expenses related to the TIF program, data system enhancement or development, and other reasonable and necessary costs.

With regard to payments for financial incentives, while the Department is not proposing to establish a minimum percentage that grantees would need to expend, it would expect that as an LEA's PBCS becomes institutionalized, the percentage of its budget that is used for incentive payments would increase throughout the five-year grant period. In addition, while the salaries of certain staff outside of the PBCS (such as salaries of a school's master, mentor or lead teacher) could conceivably be legitimate costs of a TIF project, given the purpose of the program the Department expects to continue to limit its approval of the number of such staff whose salaries may be paid with TIF funds. Grantees, however, would be able to use TIF funds towards the costs of bonuses paid to any number of these staff if they assume additional responsibilities under the PBCS.

Background: Signed into law by President Obama on February 17, 2009, the ARRA constitutes an unprecedented effort to

revive the Nation's economy, create or save millions of jobs, and address long-neglected challenges so the Nation can thrive in the 21st century.

In addition to measures that modernize the Nation's infrastructure, enhance energy independence, preserve and improve affordable health care, provide tax relief, and protect those in greatest need, the ARRA provides an unprecedented sum - approximately \$100 billion dollars - to fundamentally transform our public education system. Section 14005(d) of the ARRA requires that this funding be used to promote effective school reform in four assurance areas: (1) Adopting internationally benchmarked standards and assessments that prepare students for success in college and the workplace; (2) Building data systems that measure student success and inform teachers and principals in how they can improve their practices; (3) Increasing teacher effectiveness and achieving equity in teacher distribution; and (4) Turning around our lowest achieving schools.

The ARRA's second and third assurances are based upon evidence that teachers are the single most critical factor in improving student achievement. However, too many students, particularly those attending high-need schools, are provided instruction by ineffective teachers.

Accordingly, the ARRA requires the Department to promote efforts that ensure equitable distribution of effective teachers between high and low poverty schools so that economically disadvantaged students have the same access to effective teachers as other students.

TIF is one such effort. By requiring its grantees to draw distinctions in how teachers are retained, promoted and rewarded, TIF, as implemented by the Department, advances the ARRA's third assurance of recruiting, developing and retaining effective teachers. To accomplish these goals, the ARRA provides TIF with an additional \$200 million dollars of funding.

The Department proposes, to the extent feasible and appropriate, to align TIF with the requirements contained in the other ARRA programs, including the State Fiscal Stabilization Fund, Race to the Top, and the Title I School Improvement Grants. The Department's intention in doing so is to encourage applicants to develop plans for evaluating educator effectiveness and for providing educators the professional development needed to improve classroom practice and student achievement that complement, and are consistent with, plans developed across these other ARRA programs.

Along with authorizing TIF funds to be used to support projects that implement PBCSSs, the ARRA also requires the Department to use the appropriated funds to conduct a "rigorous national evaluation . . . utilizing randomized controlled methodology to the extent feasible, that assess the impact of performance-based teacher and principal compensation systems supported by the funds provided in this Act on teacher and principal recruitment and retention in high-need schools and subjects". The ARRA thus requires the Department to award funds in a way that will ensure adequate participation of both a treatment group and control group in the national evaluation. Our proposal for the TIF Evaluation Competition, and the questions on which we specifically request public comment, are designed to permit the Department to meet this responsibility, and at the same time to seek answers to research questions about the effect of PBCSSs on student achievement in high-need schools that are of great importance to those who would implement such systems.

PROPOSED PRIORITIES:

This notice contains five proposed priorities. The Secretary intends to use all five proposed priorities for the Main TIF competition and the TIF Evaluation competition.

### Types of Priorities:

The Secretary proposes five priorities for the Main TIF competition and the TIF Evaluation competition.

Proposed Priority 1 through 3 are absolute priorities.

Proposed Priorities 4 and 5 are proposed as competitive preference priorities and are aligned with other key education reform goals of the Department.

We may choose, in the notice of final priorities, requirements, definitions, and selection criteria, to change the designation of any of these priorities to absolute, competitive preference, or invitational priorities, or to include the substance of these priorities in the requirements or the selection criteria. We may also decide to include the substance of the requirements or the selection criteria in the priorities.

With an invitational priority, we would signal our interest in receiving applications that meet the priority; however, consistent with 34 CFR 75.105(c)(1), we would not give an application that meets an invitational priority preference over other applications.

Under an absolute priority, as specified by 34 CFR 75.105(c)(3), we would consider only applications that meet the priority. Under a competitive preference priority, we would 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)).

Proposed Priority 1 (Absolute)--Differentiated Levels of Compensation for Effective Teachers and Principals.

Background:

The quality of classroom teachers is the most important factor under a school's control that affects student achievement.<sup>1</sup> Studies using value-added assessments indicate that individual teachers make a significant difference in student achievement and that teacher effectiveness varies considerably, even after adjusting for student characteristics such as prior performance, race or income.<sup>2</sup>

Yet one of the greatest obstacles to achieving the President's ambitious goal of providing a high-quality education for all children is that too few students, particularly low-income, minority, and low-achieving

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<sup>1</sup>Goldhaber, D. (2007). Thoughts on Teacher Pay Reform. Washington, DC: National Comprehensive Center on Teacher Quality.

<sup>2</sup>Sanders, W. (2006, November). Cumulative and Residual Effects of Teachers on Future Student Academic Achievement. Knoxville, TN: University of Tennessee; and Rivkin, S., Hanushek, E., and Kain, J. (2005, March). "Teachers, Schools, and Academic Achievement." *Econometrica*, 73, 417-458.

students, are provided instruction by effective teachers. And because LEAs typically do not pay teachers and principals based on their effectiveness, but instead on a single salary schedule that pays all teachers and principals the same based on experience and level of education, LEAs rarely provide highly effective teachers and principals in public school systems compensation that differs from what they provide to less effective teachers and principals.

Moreover, LEAs typically provide no additional incentive for the most effective teachers or principals to enter or remain in high-need schools. On the contrary, by providing the same amount of compensation based on credential and years of experience, and offering more experienced educators a priority in transfer options, LEA personnel systems often create at least implicit incentives for teachers and principals to move into schools and classrooms that present the fewest challenges. The failure to reward good performance by teachers and principals and to encourage effective teachers and principals to work in the most challenging schools makes it difficult to create a culture in high-need schools that focuses on continued excellence and results.

The Secretary believes that LEAs with high-need schools that implement a PBCS that (1) rewards teachers and principals who demonstrate their effectiveness by improving student achievement and (2) provides opportunities for highly effective teachers to take on additional roles and responsibilities, will increase overall teacher and principal quality and will attract outstanding educators to these schools. The Secretary also believes that these PBCSs will foster the creation of schools that use evidence of student achievement and of effective teacher practice to continuously improve teaching and learning.

Assuming that all funded projects are of sufficient quality, the Department intends to fund a variety of approaches to implement a PBCS including individual-based, school or group-based awards, and a combination of the two. Each applicant should propose a method or methods that best meet the needs of its principals, teachers and students in its high-need schools.

Proposed Absolute Priority:

To meet this proposed absolute priority, an applicant must demonstrate, in its application, that it will develop and implement a PBCS that rewards, at differentiated levels, teachers and principals who demonstrate their effectiveness by improving student achievement (as defined

in this notice) as part of the LEA's coherent and integrated approach to strengthening the educator workforce.

In determining teacher and principal effectiveness as part of the PBCS, the LEA--

(a) Must give significant weight to student growth (as defined in this notice) based on objective data on student performance;

(b) Must include observation-based assessments of teacher performance at multiple points in the year, carried out by evaluators trained in using objective evidence-based rubrics for observation, aligned with professional teaching standards; and, if applicable, as part of the LEA's coherent and integrated approach to strengthening the educator workforce; and

(c) May include other measures such as evidence of leadership roles that increase the effectiveness of other teachers in the school or LEA.

In determining principal effectiveness as part of a PBCS, the LEA must give significant weight to student growth and may include supplemental measures such as high school graduation and college enrollment rates.

In addition, the applicant must demonstrate that the differentiated effectiveness incentive payments will

provide incentive amounts that are substantial and provide justification for the level of incentive amounts chosen. While the Department does not propose a minimum incentive amount, the Department encourages applicants to be thorough in their explanation of why the selected incentive amounts are likely high enough to create change in the behavior of current and prospective teachers and principals.

Proposed Priority 2 (Absolute)–Fiscal Sustainability of the Performance-Based Compensation System (PBCS).

Background:

One of the most important steps that LEAs and States must take when developing and implementing a PBCS is to accurately project program costs and to plan for fiscal sustainability.<sup>3</sup>

Accurate cost projections at the development stage of a PBCS are critical, especially if an LEA or State plans to expand a PBCS from just a few schools to all schools in the LEA or to all LEAs in the State.<sup>4</sup> Ample evidence suggests that States and LEAs frequently underestimate both the overall costs of PBCSs for teachers and principals and the

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<sup>3</sup> Guthrie, J.W., and Prince, C.D. (2008). Paying for and Sustaining a Performance-based Compensation System. Washington, DC: Center for Educator Compensation Reform. U.S. Department of Education, Office of Elementary and Secondary Education.

<sup>4</sup> Hassel, B. (2002, May). Better pay for better teaching: Making teacher compensation pay off in the age of accountability. Washington, DC: Progressive Policy Institute.

number of teachers and principals that will qualify for awards under the chosen PBCS.<sup>5</sup>

Pub. L. 111-117 requires that applicants must “include a plan to sustain financially the activities conducted and systems developed under the grant once the grant period has expired.” This absolute priority is intended to ensure that applicants effectively estimate the future costs of the particular PBCS they plan to implement, and that they are prepared to pay financial awards to everyone who earns them under the system. In addition to the direct costs of performance-based payments made as part of the PBCS that applicants should expect, there can be extra costs associated with administering a PBCS. These costs include both (1) employee benefits, such as premiums toward employee retirement, State taxes, and Federal withholdings, and (2) the costs of measuring employee effectiveness, such as costs associated with developing measures of teacher effectiveness, effective teacher and principal evaluation systems, incentives for career development, and longitudinal data systems capable of linking individual educators with student outcomes.

The Secretary seeks to promote the fiscal

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<sup>5</sup>Odden, A., and Wallace, M. (2007, February). Rewarding Teacher Excellence: A Teacher Compensation Handbook for State and Local Policy Makers. Madison, WI: Wisconsin Center for Education Research, University of Wisconsin-Madison.

sustainability of effective PBCSs by focusing applicants on the need to find additional and alternative sources of funding in order to provide an increasing share of matching funds (non-TIF funds) in those project years when differentiated compensation is paid to teachers and principals. The various strategies that States and LEAs might consider for securing sustainable funding for their PBCSs include:

(a) Redeploying current State, LEA, or school resources, including resources that currently contribute to salary increments based on the accumulation of graduate credits and degrees.

(b) Redirecting expected future resources.

(c) Redirecting State and Federal categorical program assistance so State or Federal program funds, where authorized, are used to assist in paying for the expenses of the chosen PBCS.

(d) Seeking additional public funding.

(e) Seeking philanthropic or corporate support.

In this proposed priority, we are asking that applicants (1) demonstrate that they have projected costs associated with the development and implementation of the PBCS, and (2) provide evidence that they will be able to sustain a financial commitment to their PBCS through the commitment

of funds other than those provided under the TIF grant, during and beyond the life of the TIF project.

Proposed Absolute Priority:

To meet this proposed absolute priority, the applicant must provide, in its application, evidence that:

(a) The applicant has projected costs associated with the development and implementation of the PBCS, during the project period and beyond, and the LEA has accepted responsibilities to provide such performance-based compensation to teachers and principals who earn them under the system; and

(b) The applicant will provide from non-TIF funds over the course of the five-year project period an increasing share of performance-based compensation paid to teachers and principals in those project years in which the LEA provides such payments as part of its PBCS.

Proposed Priority 3 (Absolute)–Programmatic Sustainability of the Performance-Based Compensation System (PBCS).

Background:

The Secretary seeks to focus applicants on the need to plan for the programmatic sustainability of the chosen PBCS. Evidence suggests that programmatic sustainability can best be accomplished when the PBCS is aligned with the LEA's or State's strategies for increasing teachers' and

principals' effectiveness in high-need schools. Ideally, a PBCS supports and reinforces a coherent and integrated approach to strengthening the educator workforce, including teacher and principal recruitment, induction, professional development, evaluation, retention, and advancement into instructional leadership roles. When the PBCS's implementation becomes embedded into the core of a LEA's larger improvement strategy and operations, it will have a much greater likelihood of financial sustainability over the long term.<sup>6</sup>

Thus, through this proposed priority, we are asking that applicants demonstrate that the proposed PBCS is aligned with a coherent strategy for strengthening the educator workforce in the LEA(s) participating in the project.

Proposed Absolute Priority:

To meet this proposed absolute priority, the applicant must provide, in its application, evidence that the proposed PBCS is aligned with a coherent and integrated strategy, including the use of data and evaluations for professional development, retention and tenure decisions,

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<sup>6</sup> Guthrie, J.W., & Prince, C.D. (2008). Paying for and sustaining a performance-based compensation system. Washington, DC: Center for Educator Compensation Reform. U.S. Department of Education, Office of Elementary and Secondary Education.

for continuing to strengthen the educator workforce in the LEA(s) participating in the project after the end of the TIF project period.

Proposed Priority 4 (Competitive Preference)--Use of Value-Added Measures of Student Achievement.

Background:

The Secretary supports the use of "value-added" measures of teacher and principal effectiveness for purposes of determining differentiated levels of compensation in a PBCS. Value-added measures seek to statistically isolate the contribution of teachers and principals to growth in student achievement between two or more points in time from other factors contributing to student achievement growth, including prior student achievement and student and family characteristics. Research indicates that value-added measures are a promising means of assessing the contributions of a school, teacher, or principal, while filtering out the non-school factors that may also contribute to growth in student achievement.<sup>7</sup>

Through this priority, the Secretary seeks to promote the use of value-added measures in PBCSs for teachers and

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<sup>7</sup>Goe, L. (May 2008). Key issue: Using value-added models to identify and support highly effective teachers. National Comprehensive Center for Teacher Quality.

principals. Value-added measures of educational performance can provide a useful, objective measure of teacher and principal effectiveness. The use of a value-added measure under this priority would need to be implemented consistent with the requirements in Proposed Absolute Priority 1 (Differentiated Levels of Compensation for Effective Teachers and Principals), which would require observation-based assessments of teacher performance at least twice a year.

Given the complexity of models that use value-added measures, the Secretary seeks to ensure that applicants have a plan for (1) ensuring that they have the capacity to implement the value-added model effectively (e.g., that they have appropriate data systems and measures to ensure data quality), and (2) clearly explaining the chosen value-added model to teachers to enable them to use the data generated through the models to improve classroom practices.

Proposed Competitive Preference Priority:

To meet this proposed competitive preference priority, the applicant must demonstrate, in its application, that the proposed PBCS for teachers and principals will use a value-added measure of the impact on student growth as a

significant factor in calculating differentiated levels of compensation provided to teachers and principals.

Under this proposed priority, the applicant must also demonstrate that it has a plan to ensure that, as part of the PBCS, it has the capacity to (1) implement the proposed value-added model (e.g., through robust data systems that collect the necessary data and ensure data quality), and (2) educate teachers and principals on the chosen value-added model and how it would be implemented.

Proposed Priority 5 (Competitive Preference)--Increased Recruitment and Retention of Teachers in Hard-to-Staff Subjects and Specialty Areas in High-Need Schools.

Background:

This proposed competitive preference priority is intended to ensure that LEAs focus on recruiting and retaining effective teachers of hard-to-staff subjects and specialty areas in high-need schools. High-need schools are likely to have a higher proportion of vacancies, novice teachers, out-of-field teachers, and ineffective teachers than other schools in the LEA or State educational agency.<sup>8</sup> In many LEAs, recruiting and retaining effective secondary mathematics and science teachers and teachers with the

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<sup>8</sup> Imazeki, J. and Goe, L. (2009). The Distribution of Highly Qualified, Experienced Teachers: Challenges and Opportunities. Washington, DC: National Comprehensive Center on Teacher Quality.

knowledge and skills to effectively accelerate the learning of English language learners and students with disabilities is particularly challenging. Providing incentives to hire and retain teachers who are effective, or likely to be effective, in teaching hard-to-staff subjects and specialty areas in high-need schools can be a valuable tool for ensuring that students in those schools are taught by effective teachers.

The availability of such incentives should be communicated broadly to current teachers in the LEA, as well as to potential recruits, to increase the likelihood that effective teachers within the LEA, as well as new teachers with relevant backgrounds, will apply for hard-to-staff subjects and specialty areas in high-need schools.

Proposed Competitive Preference Priority:

To meet this proposed competitive preference priority, the applicant must demonstrate in its application that its proposed PBCS is designed to assist high-need schools to

- (1) serve high-need students (as defined in this notice),
- (2) retain effective teachers in teaching positions in hard-to-staff subjects and specialty areas, such as mathematics, science, special education, and English language acquisition, and
- (3) fill vacancies with teachers of those subjects or specialty areas who are effective or

likely to be effective. Applicants would be required to provide an explanation for how they will determine a teacher filling a vacancy is effective or likely to be effective. In addition, applicants would be required to demonstrate, in their applications, the extent to which the subject areas or specialty areas they propose to target are hard-to-staff. Lastly, applicants would need to demonstrate, in their applications, that they will implement a process for effectively communicating to teachers which of the LEA's schools are high-need and which subjects and specialty areas are considered hard-to-staff.

REQUIREMENTS:

The following sections provide requirements for both the Main TIF and Evaluation TIF competitions.

PROPOSED REQUIREMENTS FOR THE MAIN TIF COMPETITION:

Background:

In order to promote successful projects that meet the objectives Congress has established for the TIF program, the Secretary proposes to establish the following requirements for the Main TIF competition:

(a) A requirement that an applicant may submit an application for the Main TIF competition or the Evaluation competition. Applicants not funded under the Evaluation

competition are automatically eligible under the Main TIF competition, and thus need not apply to both.

(b) A requirement that each applicant describe in its application how its proposed PBCS will provide educators with incentives to take on additional responsibilities and leadership roles, as defined in this notice.

(c) A requirement that every applicant have five core elements (as described below) of its PBCS in place or it must implement a planning period.

(d) A requirement that the proposed PBCS provide participating teachers and principals high quality professional development which is targeted to needs identified through the evaluation process and shown to be effective.

(e) A requirement that the applicant document that all participating schools are high-need schools.

(f) A requirement that limits eligibility for both competitions to applicants that propose to serve schools not already served (or to be served) by current TIF grants.

The following describes the Department's rationale for proposing these requirements:

Selection of Competition. To ensure that there is a sufficient sample for the national evaluation, we propose to select applicants from the Evaluation competition before

selecting applicants from the Main TIF competition. In order to not disadvantage the Evaluation competition applicants, we further propose that any Evaluation competition applicants not funded in the Evaluation competition would be automatically eligible for the Main TIF competition.

Application Requirement. Pub. L. No. 111-8 requires that any PBCS funded under the TIF program provide educators with incentives to take on additional responsibilities and leadership roles.

The Secretary views this requirement as a critical component for successful PBCSs and wants to ensure that each applicant has a plan in place that details how its proposed PBCS will provide these incentives.

Core Elements of a PBCS and a Potential Planning Period. The Secretary has identified five core elements that he believes are essential to the success of any effective PBCS. We, therefore, propose to require each TIF grantee to have:

(a) A plan for effectively communicating to teachers, administrators, other school personnel, and the community at-large about the components of the PBCS.

(b) The involvement and support of teachers, principals, and other certified personnel (including input

from teachers and principals in the schools and LEAs to be served by the grant) and the involvement and support of unions in participating LEAs where they are the designated exclusive representatives for the purpose of collective bargaining that is needed to carry out the grant.

(c) Rigorous, transparent, and fair evaluation systems for teachers and principals that differentiate effectiveness using multiple rating categories that take into account student achievement growth as a significant factor, as well as classroom observations conducted at least twice during the school year. The classroom observation process must: (1) use an objective, evidence-based rubric aligned with professional teaching standards and the LEA'S coherent and integrated approach to strengthening the educator workforce; (2) provide for observations of each teacher or principal multiple times during the school year by individuals (who may include peer reviewers), who are provided specialized training; (3) incorporate the collection and evaluation of additional forms of evidence; and (4) ensure a high degree of inter-rater reliability (i.e., agreement among two or more raters who score approximately the same) across the evaluators.

(d) A data-management system, consistent with the LEA's proposed PBCS, that can link student achievement data

to teacher and principal payroll and human resources systems.

(e) A plan for ensuring that teachers and principals understand the specific measures of teacher and principal effectiveness included in the PBCS, and receive professional development that enables them to use data generated by these measures to improve their practice.

The Secretary recognizes that not every applicant will be able to demonstrate in its application that it has in place all five core elements necessary to ensure effective implementation of its PBCS. Based on the Department's experience with current TIF grantees, however, we believe that having these required core elements in place before beginning to build a PBCS leads to a much more efficient and successful implementation of that system. Therefore, the Secretary proposes to require any applicant that cannot demonstrate in its application that it has in place each of these five core elements to agree, as part of its application, to implement a planning period of up to one year, during which it would use its TIF funds to develop the core element or elements it lacks. Because of the importance of the core elements, a grantee would be prohibited from using TIF program funds to provide incentive payments to teachers or principals until the

Secretary is satisfied that it has implemented all five elements (as demonstrated in the grantee's reports to the Department during the project period).

Professional Development. The Secretary believes that high-quality professional development, tied to the evaluation systems described above, is a key component of any successful and enduring PBCS for teachers and principals. Among other things, professional development enables all teachers and principals in high-need schools to learn how to generate, examine, and use student growth data to improve their practices in the classroom and in their schools, and thereby raise student achievement. For this reason, the Secretary proposes to require each applicant to demonstrate, in its application, that it has a system in place, or a specific plan for developing one, to (1) provide high-quality professional development that is aligned with the PBCS for teachers and principals consistent with the definition of the term professional development in section 9101(34) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) and targeted to needs identified in the evaluation process; and (2) regularly assess the effectiveness of this professional development in improving teacher practice and student

achievement and make modifications necessary to improve its effectiveness.

High-Need Schools Documentation. Consistent with the requirement that all schools served through the TIF program be "high-need," the Secretary proposes to require that each applicant demonstrate, in its application, that it will implement the proposed PBCS in high-need schools (as defined in this notice). The Secretary proposes this requirement to enable the Department to ensure that all applicants are eligible to receive funding under this program. This requirement would specify that applicants must identify the schools in which the PBCS would be implemented, and provide school-level data that demonstrate that each school to be served is a high-need school. We would require school-level data as opposed to LEA or State-level data because the TIF authorizing statute requires poverty data be identified at the school level.

Additional Eligibility Requirement. Finally, the Secretary proposes to limit eligibility for the Main TIF competition and the Evaluation competition to applicants that are serving schools not already served (or to be served) by current TIF grants. We propose to establish this eligibility requirement (1) in order to expand the number of LEAs and schools that are able to take advantage

of PBCSS funded under the TIF program; and (2) because we believe that the projects currently funded under the TIF program should successfully complete the activities described in their approved application before seeking additional TIF funds to enhance their current projects in schools already served. Nothing in this proposed eligibility requirement would preclude current TIF grantees from applying for a new award to expand their TIF-supported PBCS into other high-need schools in the participating LEA.

Proposed Requirements for Main TIF Competition:

For the reasons outlined in the preceding Background section, the Secretary proposes the following requirements for the Main TIF competition.

Selection of Competition. An applicant may submit an application for either the Main TIF competition or the Evaluation competition. Each applicant must identify in its application the competition for which it is applying. The Evaluation competition will be funded prior to the Main TIF competition. Any Evaluation applicants not funded in the Evaluation competition will be automatically eligible for the Main TIF competition.

Application Requirement. Each applicant must describe in its application how its proposed PBCS will provide educators with incentives to take on additional

responsibilities and leadership roles, as defined in this notice.

Core Elements of a PBCS and a Potential Planning Period. Each applicant must either--

(a) Demonstrate in its application that it has in place each of the following five core elements; or

(b) If the applicant cannot demonstrate in its application that it has in place each of these five core elements--

(1) Agree, as part of its application, to implement a planning period of up to one year, during which it will use its TIF funds to develop the core element or elements it lacks; and

(2) Include a plan for how it will implement the core element or elements it lacks during the planning period.

Core Elements.

(a) A plan for effectively communicating to teachers, administrators, other school personnel, and the community at-large the components of the PBCS;

(b) The involvement and support of teachers, principals, and other certified personnel (including input from teachers and principals in the schools and LEAs to be served by the grant) and the involvement and support of unions in participating LEAs where they are the designated

exclusive representatives for the purpose of collective bargaining that is needed to carry out the grant;

(c) Rigorous, transparent, and fair evaluation systems for teachers and principals that differentiate effectiveness using multiple rating categories that take into account student achievement growth as a significant factor, as well as classroom observations conducted at least twice during the school year. The evaluation process must: (1) use an objective, evidence-based rubric aligned with professional teaching standards and the LEA'S coherent and integrated approach to strengthening the educator workforce; (2) provide for observations of each teacher or principal multiple times during the school year by individuals (who may include peer reviewers), who are provided specialized training ; (3) incorporate the collection and evaluation of additional forms of evidence; and (4) ensure a high degree of inter-rater reliability (i.e., agreement among two or more raters who score approximately the same);

(d) A data-management system that can link student achievement data to teacher and principal payroll and human resources systems; and

(e) A plan for ensuring that teachers and principals understand the specific measures of teacher and principal

effectiveness included in the PBCS, and receive professional development that enables them to use data generated by these measures to improve their practice.

Planning Period Requirements. Each grantee that implements a planning period to develop the core element or elements it lacks, would be--

(a) Required to demonstrate in its annual performance report or other interim performance report that it has implemented any of the five core elements it had lacked; and

(b) Prohibited from using TIF program funds to provide incentive payments to teachers or principals until it has implemented a PBCS that, to the Secretary's satisfaction, has all five core elements.

Professional Development. Each applicant must demonstrate, in its application, that its proposed PBCS will include a high-quality professional development component for teachers and principals consistent with the definition of the term professional development in section 9101(34) of the ESEA.

The applicant must demonstrate that its PBCS has a professional development component in place, or a specific plan for developing one that is directly linked to the specific measures of teacher and principal effectiveness

included in the PBCS. The professional development component of the PBCS must--

(1) Be based on needs assessed either at the high-need schools participating in the applicant's proposed PBCS or LEA-wide;

(2) Be targeted to individual teachers' and principals' needs as identified in the evaluation process;

(3) Provide--

(a) Those teachers and principals who do not receive differentiated compensation based on effectiveness under the PBCS with the tools and skills they need to improve their effectiveness in the classroom or school and be able to raise student achievement; and

(b) Those teachers and principals who are deemed to be effective and who, therefore, receive differentiated compensation under the PBCS, with the tools and skills they need to (1) continue effective practices in the classroom or school and raise student achievement, and (2) successfully assume additional responsibilities and leadership roles; and

(4) Include helping teachers and principals to better understand and use the measures of effectiveness in the PBCS to improve practice and student achievement.

(5) Include a process for regularly assessing the

effectiveness of this professional development in improving teacher practice and student achievement and making modifications necessary to improve its effectiveness.

High-Need Schools Documentation. Each applicant must demonstrate, in its application, that the schools to be served by the proposed PBCS are high-need schools, as defined in this notice. Each applicant must provide, in its application, a list of schools in which the proposed PBCS will be implemented as well as the most current data on the percentage of each identified school's students who are eligible for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that the LEA uses (see section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5))). Data provided to demonstrate eligibility as a high-need school must be school-level data; the Department will not accept LEA- or State-level data for purposes of documenting whether a school is a high-need school.

Additional Eligibility Requirement. An applicant must demonstrate, in its application, that it will implement the proposed PBCS only in schools that are not being served (or are not to be served) by current TIF grants.

PROPOSED REQUIREMENTS FOR THE TIF EVALUATION COMPETITION:

Background:

The ARRA requires the Department's Institute of Education Sciences (IES) to conduct a rigorous national evaluation, utilizing randomized controlled methodology to the extent feasible, to assess the impact that PBCSS for teachers and principals that are supported by program funds have on teacher and principal recruitment and retention in high-need schools and subjects. IES intends to implement this requirement, as well as to conduct related research on important issues that concern the effect of PBCSS on increased student achievement, by conducting a national random-assignment impact evaluation of TIF grantees (the Evaluation) that will provide researchers, policy-makers, school administrators, and teachers with important information about the teacher and principal differentiated effectiveness incentives component of the PBCS. Moreover, to meet its statutory responsibility to conduct this evaluation, the Department needs to be able to ensure it is able to assess the impact of differentiated effectiveness incentives component PBCSS using a sufficient number of high-need schools in comparison to high-need schools in which differentiated effectiveness incentives component PBCSS are not being implemented.

In order to select both appropriate grantees (consistent with the objectives of the evaluation) and a

sufficient number of participating LEAs and schools for the evaluation, the Department proposes to hold a separate competition under the TIF program--the TIF Evaluation competition--and to select applicants for an award under the Evaluation competition prior to selecting any applicants for an award under the Main competition. Under the TIF Evaluation competition, applicants must address all of the requirements and absolute priorities in the Main TIF competition, as well as additional requirements that are specific to the TIF Evaluation competition. The following describes the Evaluation that IES would conduct as well as the competition the Secretary would hold to select participants in the Evaluation.

Description of the Evaluation:

Through the Evaluation, IES would study a select group of PBCSS implemented in one or more LEAs, in which the PBCS--

(a) Determines the amount of teacher incentives for differentiated effectiveness using one of the following two models:

(1) An individual-based incentive pay model, defined as a PBCS that uses individual performance criteria for determining differentiated effectiveness incentive payments.

(2) A mixed-group incentive model, defined as a PBCS that determines differentiated effectiveness incentive payments using performance criteria to evaluate a group, such as a grade-level team of teachers or an entire school group, or using a mixture of individual and group performance criteria;

(b) Determines the amount of principal differentiated effectiveness incentive payments using any incentive model determined appropriate by the applicant and proposed in the applicant's application; and

(c) Requires an LEA to make substantial and differentiated effectiveness incentive payments at the following levels--

(1) For differentiated effectiveness incentive payments provided to principals, (i) the average principal payout (defined as the total amount of principal payments divided by the total number of principals in the schools participating in the differentiated effectiveness incentive payment component of the PBCS) is substantial (e.g., 5% of the average principal salary), (ii) the criteria for determining whether a principal is eligible for payment are challenging (e.g., payments are only made to those who perform significantly better than the current average performance among study schools within the district), and

(iii) there is an expectation of meaningful differences in resulting principal pay (e.g., at least some principals could reasonably expect to receive an incentive payment of three times the average principal payout) and the applicant's documentation of cost projections is consistent with this expectation); and

(2) For differentiated effectiveness incentive payments provided to teachers, (i) the average teacher payout (defined as the total amount of teacher payments divided by the total number of teachers in the schools participating in the differentiated effectiveness incentive payment component of the PBCS) is substantial (e.g., 5% of the average teacher salary), (ii) the criteria for determining whether a teacher is eligible for payment are challenging (e.g., payments are only made to those who perform significantly better than the current average performance among study schools within the district), and (iii) there is an expectation of meaningful differences in resulting teacher pay (e.g., at least some teachers could reasonably expect to receive an incentive payment of three times the average teacher payout) and the applicant's documentation of cost projections is consistent with this expectation).

The Department intends to assess the performance component of a PBCS described in paragraph (c) in relation to a comparison group. This notice describes two possible options for a comparison group. A decision about whether to use either of these comparison designs, or a different approach, will be made after review of public comment on this notice. Accordingly, we specifically request comment on these proposed designs as well as alternatives.

The two comparison designs are as follows:

(a) Comparison design 1: The differentiated effectiveness incentive component of the PBCS would be compared to a PBCS with no differentiated effectiveness incentive component. Thus, under this design, all non-performance pay components of the PBCS (e.g., the professional development component, incentives for leadership roles component, and incentives for taking on additional responsibilities) would be implemented in all schools participating in the evaluation and the performance pay component of the PBCS would be implemented only in those schools designated by the evaluation contractor;

(b) Comparison design 2: The differentiated effectiveness incentive component of the PBCS would be compared to a PBCS with an across-the-board salary increase of an amount equivalent to the expected average payout in

the differentiated effectiveness incentive payment (e.g., if the expected average teacher payout is 5% of the average teacher salary, then one-half of the schools participating in the evaluation, as designated by the evaluation contractor, would implement the applicant's proposed performance component of the PBCS while the other half of the schools participating in the evaluation would implement an across-the-board salary increase equivalent to the proposed applicant's expected average payout, 5% in this example).

In evaluating the selected PBCSs, the Evaluation would address the following research questions:

(a) Under comparison design 1: What is the effect on student achievement of an LEA's PBCS that includes a performance component of a PBCS that includes differentiated pay and in which the incentive has a substantive average payout (e.g., 5% of the average teacher salary for teachers)? What is the effect of such a PBCS component on the composition and effectiveness of teachers and principals eligible for the incentive payments? What is the effect on recruitment and retention of eligible teachers and principals?

(b) Under comparison design 2: What is the effect on student achievement of a performance based increase in

wages compared to an across-the-board increase in teacher and principal salary in which the expected payouts are equivalent? Are there differences in the composition and effectiveness of teachers and principals between these two methods of increasing wages? Are there any differential effects on recruitment and retention of teachers and principals?

(c) What is the relationship between the effect on student achievement of individual-based and mixed-group incentive pay models (i.e., is the differentiated effectiveness incentive of an individual-based incentive pay model more likely to be associated with an effect on student achievement)?

(d) What features of PBCSS (e.g., relative emphasis on student achievement or teacher/principal observations incentives based on absolute versus relative standards; and the extent of staff eligibility) are associated with improved teacher and principal effectiveness and student achievement?

(e) What are the implementation challenges associated with PBCSS, and what strategies do grantees use to overcome them?

TIF Evaluation Competition:

Grantees funded under the TIF Evaluation competition would be awarded at least an additional \$1 million over the 5-year grant period (above the amount of funding awarded to them to implement the PBCS proposed in its application) to help pay for any additional costs of implementing activities associated with their TIF project. These costs might include those associated with developing value-added measures of student achievement, and professional development and expenses related to release time for teachers to attend professional development that is designed to support or complement the PBCS, and available to staff working on the grant or district-wide. In addition, while under the Main TIF competition the Department would continue its practice of permitting TIF funding to be used to pay the salary of only one Master, Mentor, or Lead Teacher or academic coach per school, recipients of awards under the Evaluation competition would be permitted to use the additional \$1 million for salaries of other academic coaches such as math and reading coaches, and of other Master, Mentor, or Lead Teachers. Finally, TIF Evaluation grantees could also use the additional \$1 million award to pay for costs of securing data, including data linked to student achievement, needed by the evaluation contractor.

In order to be eligible to receive this additional funding, applicants seeking awards under the TIF Evaluation competition must agree to certain additional requirements. The following describes the Department's rationale for proposing these additional requirements for applicants under the TIF Evaluation competition:

Budget Information. The Secretary proposes to require each applicant under the TIF Evaluation competition to include the additional \$1 million funds available in its proposed budget accompanying the application for funding, and indicate the activities it plans to implement using these additional funds. This application requirement would assist the Department in conducting the necessary budget analysis before grant funding is awarded and ensure the Department has adequate budget information to fiscally manage the grant throughout the five-year project period.

Two Incentive Models for Determining Teacher Incentive Payments. Each TIF Evaluation competition grantee would be required to implement, in at least one LEA, a PBCS that determines teacher differentiated effectiveness incentive payments using either an individual-based incentive pay model or a mixed-group incentive pay model.

The two proposed models would allow the Evaluation to separately test two prominent models of incentive pay and

allow for analyses that will provide information about core aspects of differentiated effectiveness incentive pay to inform policy. An individual-based incentive pay model, which we would define as a PBCS that uses individual performance criteria for determining incentive payments, would provide the most direct incentive to teachers to improve their own effectiveness, and thus the student achievement of the students they teach. Under this model, the amount of a teacher's incentive payment would be directly linked to the teacher's individual performance, as measured against the criteria established for the PBCS. One possible downside of using an individual-based incentive model is that, given its focus on the individual, it may undermine collaboration among teachers.

A mixed-group incentive pay model, which we would define as a PBCS that determines differentiated effectiveness incentive payments using performance criteria to evaluate a group, such as a grade-level team of teachers or an entire school group, or using a mixture of individual and group performance criteria, acknowledges the importance of collaboration but may weaken the incentive for individual teachers to perform better, because the performance criteria are, at least in part, based on the performance of others. The use of individual teacher

performance criteria in addition to group performance criteria in a mixed-group incentive pay model allows the grantee to use individual performance criteria, which could lead to individual teacher differentiated effectiveness incentive payments that differ by individuals within the group. (If the PBCS only used group performance criteria, then teachers within a group meeting the group performance criteria all receive the same incentive payments. If, on the other hand, the PBCS uses a mix of group and individual performance criteria, then incentive payments for individual teachers within the group can differ from teacher to teacher.)

Including in the Evaluation some LEAs with PBCSs that use an individual-based incentive pay model and some LEAs with PBCSs that use a mixed-group incentive pay model to determine teacher differentiated effectiveness incentive payments would allow IES to analyze separately each model. It also would allow the Evaluation to focus on the relationship between various PBCS features (e.g., relative emphasis on student achievement or teacher/principal observations as a performance criterion; incentives based on absolute versus relative performance criteria standards; and the extent of staff eligibility) and their effect on teacher and student outcomes.

There is no analogous proposed choice of models for the principal differentiated effectiveness incentive pay because, by its nature, principal performance is a group performance measure related to the performance of each principal's school.

Incentive Amounts. Evaluation grantees would be required to implement a PBCS through which an LEA makes substantial incentive awards at the following levels:

(a) For differentiated effectiveness incentive payments provided to principals, (i) the average principal payout (defined as the total amount of principal payments divided by the total number of principals in the schools participating in the differentiated effectiveness incentive payment component of the PBCS) is substantial (e.g., 5% of the average principal salary), (ii) the criteria for determining whether a principal is eligible for payment are challenging (e.g., payments are only made to those who perform significantly better than the current average performance among study schools within the district), and (iii) there is an expectation of meaningful differences in resulting principal pay (e.g., at least some principals could reasonably expect to receive an incentive payment of three times the average principal payout) and the

applicant's documentation of cost projections is consistent with this expectation); and

(b) For differentiated effectiveness incentive payments provided to teachers, (i) the average teacher payout (defined as the total amount of teacher payments divided by the total number of teachers in the schools participating in the differentiated effectiveness incentive payment component of the PBCS) is substantial (e.g., 5% of the average teacher salary), (ii) the criteria for determining whether a teacher is eligible for payment are challenging (e.g., payments are only made to those who perform significantly better than the current average performance among study schools within the district), and (iii) there is an expectation of meaningful differences in resulting teacher pay (e.g., at least some teachers could reasonably expect to receive an incentive payment of three times the average teacher payout) and the applicant's documentation of cost projections is consistent with this expectation).

Each Evaluation grantee would be required to agree to implement in at least one LEA a PBCS with these characteristics to ensure that the Evaluation can focus on the effectiveness of the differentiated effectiveness incentive component of the PBCS. In designing the

Evaluation, IES determined that these differentiated effectiveness incentive amounts, based on current evidence in the research literature, are the minimal amounts needed to alter teacher and principal behavior and recruitment in high-need schools consistent with the effect the Evaluation is designed to detect.

Implementation of Evaluation. Each applicant under the TIF Evaluation competition would be required to agree, in its application, to implement its differentiated effectiveness incentive component of the PBCS in at least one LEA in accordance with the implementation plan developed by the IES evaluator, Mathematica Policy Research. The applicant also would be required to identify in its application the schools that would participate in the evaluation. For each LEA participating in the Evaluation, the IES evaluator would, by lottery, place eligible schools equally within one of two groups (i.e., "Group 1" or "Group 2").

For each participating LEA, the grantee would be required to implement its PBCS in the LEA's Group 1 schools in either school year 2010-2011 or school year 2011-2012, depending on whether the LEA has the 5 core elements of the PBCS in place at the time of award.

The following describes implementation for each of the two comparison designs the Department is considering:

(a) Comparison design 1: With the same timing as Group 1, Group 2 would be required to implement all non-differentiated effectiveness incentive components of the PBCS. (Participating LEAs that have the 5 core elements in place at the time of the grant award would be required to begin the first PBCS implementation in Group 1 schools and non-differentiated effectiveness incentive components of the PBCS in Group 2 schools at the beginning of the 2010-2011 school year. Participating LEAs that do not have in place the 5 core elements and that therefore would implement a planning period would be required to begin the first PBCS implementation in Group 1 schools and non-differentiated effectiveness incentive components of the PBCS in Group 2 schools at the beginning of the 2011-2012 school year.) All Group 2 schools would be prohibited from implementing a differentiated effectiveness incentive component for the duration of the TIF grant.

(b) Comparison design 2: With the same timing as Group 1, Group 2 would be required to implement all non-differentiated effectiveness incentive components of the PBCS and a salary increase for teachers and principals equivalent to the expected average payout in Group 1.

(Participating LEAs that have the 5 core elements in place at the time of the grant award would be required to begin the PBCS implementation in Group 1 schools and non-differentiated effectiveness incentive components of the PBCS and the across the board salary increase in Group 2 schools at the beginning of the 2010-2011 school year. Participating LEAs that do not have in place the 5 core elements and that therefore would implement a planning period would be required to begin the PBCS implementation in Group 1 schools and non-differentiated effectiveness incentive components of the PBCS and the across the board salary increase in Group 2 schools at the beginning of the 2011-2012 school year.) All Group 2 schools would be prohibited from implementing a differentiated effectiveness incentive component for the duration of the TIF grant.

The selection and placement of the LEA's participating schools into Groups 1 and 2 by lottery would enable the IES evaluator to examine what happens to student, teacher, and principal outcomes in comparable schools: i) with and without a differentiated effectiveness incentive component of the PBCS under comparison design 1; or ii) with a differentiated effectiveness incentive component of the PBCS and with an across-the-board salary increase under comparison design 2. Both of these evaluation designs

would enable IES to compare outcomes in these schools for up to 5 years after the PBCS is implemented. It is important for the Evaluation to include multiple years because principal and teacher behavior may take time to respond to the differentiated effectiveness incentive payments. For teachers and principals who transfer to the PBCS schools, it may also take time for them to be effective in their new setting.

Under comparison design 2, in addition to the non-differentiated effectiveness incentive components of its PBCS, the Group 2 schools would also implement an across-the-board salary increase for teachers and principals equivalent to the respective expected average payouts for teachers and principals in Group 1. This requirement, in combination with the random assignment study design, would ensure that when the Evaluation compares schools in the study that have implemented the differentiated effectiveness incentive component of the PBCS with schools that have implemented an across-the-board salary increase, differences in outcomes can be attributed to the differentiated effectiveness incentive component of the PBCS.

Matching Requirement under Comparison Group 2. (Funds provided to meet this match requirement may address the

element of Absolute Proposed Priority 2 in which applicants would be required to provide from non-TIF funds an increasing share of performance-based compensation paid to teachers and principals.)

Each applicant under the TIF Evaluation competition would be required to provide from non-TIF funds 50% of the proposed across-the-board salary increase to be implemented in half of the participating Evaluation schools. While an across-the-board salary increase for staff in high-need schools reflects what may be, for some, a seemingly attractive alternative to differentiated payments based on performance, funds used to pay these increases are not supporting a PBCS. TIF funds therefore could not support such an across-the-board salary increase except for the fact that ARRA and the Department's FY 2010 appropriation permit the use of TIF funds for evaluation.

We recognize that if comparison design 2 is adopted, IES will be able to secure important research results about the impact of PBCSs relative to an across-the-board salary increase. On the other hand, the teachers and principals in schools that benefit from such salary increases will obtain significant benefits from use of TIF funds. Balancing these competing factors, if comparative design 2 is adopted, we believe that it is reasonable to require

that grantees pay 50 percent of the costs of across-the-board salary increases for staff in the group of schools selected to be in Group 2. The Department will also consider alternative possibilities for design, including a hybrid of the two approaches above.

Advance Notice. To ensure that teachers and principals are aware of the implementation of the PBCS in their schools, applicants would be required to agree to work with the IES evaluator to notify all eligible school staff in schools participating in the Evaluation at least two months prior to the assigned Group 1 implementation schedule. Advance notification and dissemination about the PBCS differentiated effectiveness incentive component features and performance criteria two months prior to the beginning of the school year in which it is implemented is important so that teachers and principals within and outside of the LEA would have time to learn about the differentiated effectiveness incentive component of the PBCS, and be informed enough about it to change their behavior in response. (E.g., for those in a PBCS school with a differentiated effectiveness incentive component, this might entail altering their teaching strategy to be more effective; for those not in a PBCS school with a differentiated effectiveness incentive component, this

might entail transferring to a PBCS school with a differentiated effectiveness component.)

Implementation of all Non-differentiated Effectiveness Incentive Components. In order to isolate the effects of the differentiated effectiveness incentive component of the PBCS, the Department would require every applicant to agree to implement the non-differentiated effectiveness incentive components (e.g., the professional development component, the incentives for leadership roles component, and the incentives for taking on additional responsibilities) of its PBCS in all of an LEA's Group 1 and Group 2 schools at the same time the applicant implements the differentiated effectiveness incentive component of the PBCS in Group 1 schools. This requirement, in combination with the random assignment study design, would ensure that when the Evaluation compares schools in the study with and without the differentiated effectiveness incentive component of the PBCS, differences in outcomes can be attributed to the differentiated effectiveness incentive component of the PBCS. The LEA's schools in Group 2 would not be permitted to fully implement the differentiated effectiveness incentive component of the PBCS for the duration of the grant.

Scope of Schools. In order that funds reserved for the TIF Evaluation competition are used as efficiently as possible, each applicant would be required to demonstrate, in its application, that, for each LEA in which it implements the PBCS, it will implement the differentiated effectiveness incentive component of the PBCS--

(a) In eight or more high-need schools, within that LEA, that have students in tested subjects (i.e., students in grades three through eight); and

(b) In at least two schools among those eight or more high-need schools that are of the same grade configuration (e.g., in at least two elementary schools or at least two middle schools).

It would be important that each applicant provide the IES evaluator with at least two schools with the same grade configuration among the LEA's schools proposed to participate in the Evaluation so that the IES evaluator's group assignments made by lottery can result with at least one school of the same grade configuration in each of the two Groups (i.e., at least one elementary school in Group 1 and at least one in Group 2). It would also be important for the eight schools to be within the same LEA so that the random assignment can be conducted within the same local context (e.g., the schools have in common the same labor

market issues, the same union issues, the same LEA policies etc.).

Commitment to Evaluation. Because each participating LEA and school will need to work with the IES evaluator, it is critical that both the LEA and principals of the schools participating in the Evaluation are aware of, and agree to, the requirements of the Evaluation (i.e., adhering to the implementation plan and cooperating with data-collection efforts, such as providing math and reading State assessment student test scores). Therefore, we propose to require applicants to demonstrate, in their applications, that each participating LEA and school is willing and able to participate in the Evaluation. To demonstrate this willingness and ability to participate, each applicant would be required to include, in its application, a letter from the superintendent of each participating LEA, and a letter from the LEA's research office or board, and principals of the participating schools stating that these officials agree to comply with the Evaluation requirements.

Proposed Requirements for the TIF Evaluation Competition:

In addition to the requirements and priorities for the Main competition, which applicants for the TIF Evaluation competition would also be required to address, the

Secretary proposes the following requirements for the TIF Evaluation competition only:

Budget Information. An applicant for the TIF Evaluation competition must provide, in its application, a proposed budget that indicates how it plans to use the additional \$1 million in funding received for participating in the Evaluation. The following activities are the only permissible uses for these additional funds: costs associated with developing value-added measures of student achievement; professional development and expenses related to release time for teachers to attend professional development; and salaries of academic coaches such as math and reading coaches, and Master, Mentor, or Lead Teacher salaries.

Two Incentive Models for Determining Teacher Incentive Payments. An applicant for the TIF Evaluation competition must demonstrate, in its application, that it will implement a PBCS that provides incentive payments to both teachers and principals:

(a) Teacher Incentive Payments. To be eligible to receive a grant under the TIF Evaluation competition, an applicant's teacher differentiated effectiveness incentive component of the PBCS must use one of the following two models:

(1) An individual-based incentive pay model, which awards differentiated effectiveness incentive payments to teachers based on individual teachers' performance (e.g., student achievement results, teacher observations, etc.) based on criteria proposed by the applicant in its application.

(2) A mixed-group incentive pay model which awards differentiated effectiveness incentive payments to teachers using group performance criteria at the grade, team, or school level, or using a mixture of group and individual teacher performance criteria.

Note: Under the mixed-group incentive pay model, how much emphasis is placed on individual performance relative to group performance is up to the applicant to specify; however, in order to be a mixed-group model, the PBCS must use group performance criteria to determine the differentiated effectiveness incentive component of the incentive amounts and may, but is not required to, use individual performance criteria.

Each applicant must specify, in its application, which of these two incentive models it will use for the teacher compensation component of its PBCS.

(b) Principal Incentive Payments. To be eligible to receive a grant under the TIF Evaluation competition, the

applicant must describe, in its application, the incentive model it will use for the principal differentiated effectiveness incentive component of its PBCS. (There are no specific model requirements for an applicant's principal compensation component of the PBCS.)

Incentive Amounts. An applicant for the TIF Evaluation competition must demonstrate, in its application, that it will implement a PBCS that uses:(1) principal differentiated effectiveness incentive payments in which (i) the average principal payout (defined as the total amount of principal payments divided by the total number of principals in the schools participating in the differentiated effectiveness incentive payment component of the PBCS) is substantial (e.g., 5% of the average principal salary), (ii) the criteria for determining whether a principal is eligible for payment are challenging (e.g., payments are only made to those who perform significantly better than the current average performance among study schools within the district), and (iii) there is an expectation of meaningful differences in resulting principal pay (e.g., at least some principals could reasonably expect to receive an incentive payment of three times the average principal payout) and the applicant's

documentation of cost projections is consistent with this expectation); and

(2) teacher differentiated effectiveness incentive payments in which (i) the average teacher payout (defined as the total amount of teacher payments divided by the total number of teachers in the schools participating in the differentiated effectiveness incentive payment component of the PBCS) is substantial (e.g., 5% of the average teacher salary), (ii) the criteria for determining whether a teacher is eligible for payment are challenging (e.g., payments are only made to those who perform significantly better than the current average performance among study schools within the district), and (iii) there is an expectation of meaningful differences in resulting teacher pay (e.g., at least some teachers could reasonably expect to receive an incentive payment of three times the average teacher payout) and the applicant's documentation of cost projections is consistent with this expectation).

Implementation of Evaluation. Each applicant under the TIF Evaluation competition must agree, in its application, to implement its differentiated effectiveness incentive component of the PBCS in at least one LEA in accordance with the implementation plan developed by the IES evaluator. The applicant would be required to identify

in its application the schools that would participate in the evaluation.

In its application, an applicant also must acknowledge that the IES evaluator will select, by lottery, from among the schools participating in the evaluation, those schools that will implement the differentiated effectiveness incentive component of the PBCS and must agree to implement the Evaluation design and its implementation plan within at least one LEA.

In participating LEAs that have the five core elements in place at the time of grant award, the first group of schools in that LEA (Group 1 schools) must begin implementation of all components of the PBCS at the beginning of the 2010-2011 school year. In a participating LEA that does not yet have in place the 5 core elements necessary to implement a successful PBCS at the time of award, the first group of schools in that LEA (Group 1 schools) must begin implementation of all components of the PBCS no later than the 2011-2012 school year.

The following table illustrates the Evaluation random assignment plan, depending on the amount of planning time an applicant would need:

	<b>Random Assignment<sup>a</sup></b>	<b>Pay component of PBCS<sup>b</sup></b>
Design 1		

LEAs Ready for 2010-11 Implementation	Group 1	Differentiated pay implemented starting in 2010-11
	Group 2	No differentiated pay component until 2015-16
LEAs Ready for 2011-12 Implementation	Group 1	Differentiated pay implemented starting in 2011-12
	Group 2	No differentiated pay component until 2015-16
Design 2		
LEAs Ready for 2010-11 Implementation	Group 1	Differentiated pay implemented starting in 2010-11
	Group 2	Across the board pay increase implemented starting in 2010-11 through 2014-15
LEAs Ready for 2011-12 Implementation	Group 1	Differentiated pay implemented starting in 2011-12
	Group 2	Across the board pay increase implemented starting in 2011-12 through 2014-15

<sup>a</sup>For each LEA, the IES evaluator will randomly assign the schools participating in the Evaluation into 2 groups (Groups 1 and 2).

<sup>b</sup>The school year listed is the first year in which the differentiated effectiveness incentive component of the PBCS will be implemented in the LEA's schools participating in the designated group.

Matching Requirement. (Funds provided to meet this match requirement may address the element of Proposed Absolute Priority 2 in which applicants are required to provide from non-TIF funds an increasing share of performance-based compensation paid to teachers and principals.) If Comparison Design 2 is selected, an

applicant for the TIF Evaluation competition must provide from non-TIF funds 50% of the proposed across-the-board salary increase to be implemented in Group 2 schools.

Advance Notice. Each applicant must agree, in its application to work with the IES evaluator to notify all eligible schools participating in the Evaluation at least 2 months prior to the assigned Group 1 implementation schedule.

Implementation of all Non-differentiated Effectiveness Incentive Components. Each applicant must agree, in its application, to implement the non-differentiated effectiveness incentive components of its PBCS in all of the LEA's participating schools (those in Groups 1 and 2) starting at the same time as the differentiated effectiveness incentive component of its PBCS is implemented in the Group 1 schools. The schools in Group 2 must not implement the differentiated effectiveness incentive component of its PBCS for the duration of the TIF grant.

Scope of Schools. An applicant for the TIF Evaluation competition must demonstrate, in its application, that it will implement a PBCS in eight or more high-need schools, within an LEA, that have students in tested subjects (i.e., students in grades three through eight), from which there

are at least two schools proposed to participate in the Evaluation within the same LEA within each grade configuration (i.e., if elementary schools are proposed there are at least two elementary schools among the minimum of eight schools all within the same LEA; if middle schools are proposed there are at least two middle schools among the minimum of eight schools all within the same LEA). Applicants that include multiple LEAs must meet the scope of schools requirement in at least one LEA.

Commitment to Evaluation. An applicant for the TIF Evaluation competition must provide, in its application, documentation that demonstrates the willingness of each participating LEA and school to participate in the Evaluation. Such documentation must include for each participating LEA:

(a) A letter from the LEA superintendent and the principals of the participating schools stating that those officials agree to meet the TIF Evaluation competition requirements, including adhering to the implementation plan of the IES evaluator which involves selection through a lottery of those schools to implement the differentiated effectiveness component among the schools participating in the evaluation.

(b) A letter from the research office or research board of the participating LEA that expresses an agreement to comply with the Evaluation requirements (if such research office approval is needed).

PROPOSED DEFINITIONS:

Background:

The Department proposes definitions for five terms not defined in the authorizing legislation for TIF that the Department has determined are necessary for the proper implementation of the TIF program: high-need school, student achievement, student growth, high-need students, and additional responsibilities and leadership roles.

High-need School

Pub. L. No. 110-161 and Pub. L. No. 111- 117 require an eligible entity to use TIF funds to develop and implement a PBCS in a high-need school, but they does not define the term "high-need school". Because the meaning of this term is critical to implementing the purpose of the TIF program, we propose to define it. Specifically, we propose to define a high-need school as a school with 50 percent or more of its enrollment from low-income families, based on eligibility for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use (see

section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5))). Because it is widely known that students attending middle and high schools submit applications for free or reduced-price lunch subsidies much less frequently than do students enrolled in elementary schools, we propose to clarify in the definition that LEAs may establish eligibility of a middle school or a high school as a high-need school based on comparable data from its feeder schools. We are proposing to define the term high-need school in terms of 50 percent eligibility for free- and reduced-lunch subsidies because the Administration is focusing on turning around struggling schools in high-poverty areas. We are targeting our efforts to help the schools and students most in need.

#### Student Achievement and Student Growth

The Department believes that there is sufficient research demonstrating that teacher effectiveness is a critical contributor to student learning, where student learning is measured by student growth over time--that is, the change in student achievement between two or more points in time. We believe that student achievement should be measured, in significant part, by a student's standardized test scores.

On the other hand, we recognize that teacher effectiveness should not be determined solely on the basis of standardized test scores, which is why we are proposing, consistent with the Race to the Top program, that the use of student growth as a significant factor in teacher evaluations must include multiple measures.

The Department believes that student achievement and student growth data are meaningful predictive measures of teacher and principal effectiveness, and, therefore, should be considered as a part of a rigorous, transparent, and fair evaluation system.

#### High-need Students

Through the Proposed Priority 5, the Department is encouraging applicants to develop and implement a PBCS that serves the needs of high-need students. The Department would like to take this opportunity to define this term for the purpose of each applicant's understanding of the competitive priority. It was important to the Department for this definition to be consistent with the definition of high-need students in the Race to the Top final notice of priorities. Thus, the Department has used the same definition (identified below).

#### Additional Responsibilities and Leadership Roles

Pub. L. No. -161 and Pub. L. No. 111- 117 require an eligible entity to use TIF funds to develop and implement a PBCS in a high-need school that provides educators incentives to take on additional responsibilities and leadership roles, but it does not define the terms "additional responsibilities and leadership roles". Because the meaning of these terms is critical to implementing the purpose of the TIF program, we propose to define it. Specifically, we propose to define additional responsibilities and leadership roles as duties teachers may voluntarily accept such as roles as master or mentor teachers who are chosen through a performance-based selection process including assessment of their teaching effectiveness and the ability to work effectively with other adults and students, with responsibilities to assess and improve the teaching effectiveness of other teachers in the school; roles in induction and mentoring of novice teachers or high-need students; roles in tutoring students; or in establishing and developing learning communities designed to continually improve the capacity of all teachers in a school to advance student learning, using a shared set of practices, instructional principles or teaching strategies. This list is not exhaustive and the Department would encourage applicants to come up with other

additional responsibility and leadership role opportunities for its teachers and principals that best meets the needs of its high-need schools.

Proposed Definitions:

The Secretary proposes the following definitions of the terms high-need school, student achievement and student growth, high-need students, and additional responsibilities and leadership roles for use in the TIF program. We would apply these definitions for any Main TIF competition or TIF Evaluation competition in any year in which TIF is funded.

High-need school means a school with 50 percent or more of its enrollment from low-income families, based on eligibility for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use (see section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5))). For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-need school under this definition is determined on the basis of the most currently available data.

Student achievement means--

(a) For tested grades and subjects--

(1) A student's score on the State's assessments under the ESEA; and

(2) As appropriate, other measures of student learning, such as those described in paragraph (b) of this definition, provided that they are rigorous and comparable across schools.

(b) For non-tested grades and subjects, alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments, and other measures of student achievement that are rigorous and comparable across schools.

Student growth means the change in student achievement (as defined in this notice) for an individual student between two or more points in time. A State or LEA may also include other measures that are rigorous and comparable across schools.

High-need students means students at risk of educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools, who are far below grade level, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English language learners.

Additional responsibilities and leadership roles means duties teachers may voluntarily accept such as roles as master or mentor teachers who are chosen through a performance-based selection process including assessment of their teaching effectiveness and the ability to work effectively with other adults and students, with responsibilities to assess and improve the teaching effectiveness of other teachers in the school; roles in induction and mentoring of novice teachers or high-need students; roles in tutoring students; or in establishing and developing learning communities designed to continually improve the capacity of all teachers in a school to advance student learning, using a shared set of practices, instructional principles or teaching strategies.

PROPOSED SELECTION CRITERIA:

The following selection criteria apply to both the Main competition and the TIF Evaluation competition.

Background:

The Secretary proposes these selection criteria to be used to review an applicant's proposal for funding under either the Main TIF competition or the TIF Evaluation competition. The Department believes that these proposed selection criteria are needed to ensure that each applicant demonstrates, in its application, that it: (1) proposes to

implement a PBCS that will address a significant need of the LEA(s) to be served by the project, through the types of awards to be given to teachers and principals based on student achievement and other required factors; (2) has or will have a personnel and management structure capable of overseeing the development and implementation of the proposed PBCS; and (3) commits to sustaining the proposed PBCS after TIF funding has ended.

Proposed Selection Criteria:

The Secretary proposes 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 there is a Main TIF competition or TIF Evaluation competition for this program. In the notice inviting applications, or the application package, or both we will announce the maximum possible points assigned to each criterion.

(a) Need for the project. In determining the need for the proposed project, the Secretary will consider the extent to which the applicant establishes that--

(1) The high-need schools whose educators would be part of the PBCS have difficulty--

(i) Recruiting highly qualified or effective teachers, particularly in hard-to-staff subject areas or

specialty areas, such as mathematics, science, English Language Acquisition, and special education; and

(ii) Retaining highly qualified or effective teachers and principals; and

(2) Student achievement in each of the schools whose educators would be part of the PBCS is lower than in what the applicant determines are comparable schools of the LEA, or another LEA within its state, in terms of key factors such as size, grade levels, and poverty levels.

(3) A definition of what it considers a "comparable" school for the purposes of paragraph (2) of this selection criterion.

(b) Project design. The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the extent to which the proposed PBCS--

(1) Is part of a proposed LEA or Statewide strategy, as appropriate, for improving the process by which each participating LEA rewards teachers and principals in high-need schools based upon their effectiveness as determined in significant part by student growth. With regard to teacher and principal effectiveness, the Secretary considers whether--

(i) The methodology the LEA or SEA proposes to use in its PBCS to determine the effectiveness of a school's teachers and principals includes valid and reliable measures of student achievement, including norm- and criterion-referenced State-wide assessment scores, as appropriate; and

(ii) The participating LEA would use the proposed PBCS to provide performance awards to teachers and principals that are of sufficient size to affect teacher and administrator behaviors, and their decision whether to go to, or remain working in, the high-need school;

(2) Has the involvement and support of teachers, principals, and other certified personnel (including input from teachers and principals in the schools and LEAs to be served by the grant) and the involvement and support of unions in participating LEAs where they are the designated exclusive representatives for the purpose of collective bargaining that is needed to carry out the grant;

(3) Includes rigorous, transparent, and fair evaluation systems for teachers and principals that differentiate effectiveness using multiple rating categories that take into account data on student growth as a significant factor, as well as classroom observations conducted at least twice during the school year;

(4) Includes a data-management system, consistent with the LEA's proposed PBCS, that can link student achievement data to teacher and principal payroll and human resources systems; and

(5) Incorporates high-quality professional development activities that increase the capacity of teachers and principals to raise student achievement, and are directly linked to the specific measures of teacher and principal effectiveness included in the PBCS.

(c) Adequacy of Support for the Proposed Project. In determining the adequacy of the support for the proposed project, the Secretary considers 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;

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

(3) The applicant will support the proposed project with funds provided under other Federal or State programs and local financial or in-kind resources; and

(4) The requested grant amount and project costs are sufficient to attain project goals and reasonable in relation to the objectives and design of the project.

(d) Quality of Evaluation. In determining the quality of the project evaluation, the Secretary considers the extent to which the applicant's evaluation plan--

(1) Includes the use of strong and measurable performance objectives (that are clearly related to the goals of the project) for raising student achievement, increasing teacher and principal effectiveness, and retaining and recruiting effective teachers and principals;

(2) Will produce evaluation data that are quantitative and qualitative; and

(3) Includes adequate evaluation procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

Final Priorities, Requirements, Definition, and Selection Criteria:

We will announce the final priorities, requirements, definition, and selection criteria in a notice in the Federal Register. We will determine the final priorities, requirements, definition, and selection criteria after considering responses to this notice and other information available to the Department. 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 these proposed priorities, requirements, definition, and selection criteria, we invite applications through a notice in the Federal Register.

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 subject to review by Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments, or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan

programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the Executive Order, it has been determined that this regulatory action will have an annual effect on the economy of more than \$100 million because the amount of government transfers provided through the TIF program will exceed that amount. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(1) of the Executive Order.

The potential costs associated with this proposed 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 of this proposed regulatory action, we have determined that the benefits of the proposed priorities, requirements, definition, and selection criteria justify the costs.

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

Need for Federal Regulatory Action:

The proposed priorities, requirements, definition, and selection criteria are needed to implement the TIF program. The Secretary does not believe that the statute, by itself, provides a sufficient level of detail to ensure that the program achieves the greatest national impact in promoting the development and implementation of teacher and school leader PBCSSs. The authorizing and appropriations language is very brief and provides only broad parameters to govern the program. The priorities, requirements, definition, and selection criteria proposed in this notice would clarify the types of activities the Department seeks to fund, and permit the Department to evaluate proposed projects using selection criteria that are based on the purpose of the program and are closely aligned with the Secretary's priorities.

In the absence of specific selection criteria for the TIF program, the Department would use the general selection criteria in 34 CFR 75.210 of the Education Department General Administrative Regulations in selecting grant recipients. However, the Secretary does not believe the use of those general criteria would be appropriate for the Main TIF grant or TIF Evaluation competitions, because they do not focus on the development of PBCSSs or activities most likely to increase the quality of teaching and school

administration and improve educational outcomes for students.

### Regulatory Alternatives Considered

The Department considered a variety of possible priorities, requirements, definitions, and selection criteria before deciding to propose those included in this notice. For example, the Department considered—

(1) Allowing applicants to propose to serve schools already served (or to be served) by current TIF grants, but chose to limit eligibility in order to expand the program to new schools.

(2) A variety of definitions for the term “high-need school” before proposing to define this term based on 50 percent eligibility for free- and reduced-lunch subsidies as the best means of focusing the program on turning around struggling schools in high-poverty areas. We are targeting our efforts to help the schools and students most in need.

(3) Restricting the range of approaches to implementing a PBCS that this competition would support, to individual-based, school-based, or group-based awards. However, we recognize that a combination of these approaches may best meet the needs of an applicant’s high-need school or schools.

The proposed priorities, requirements, definitions, and selection criteria are those that the Secretary believes best capture the purpose of the TIF program while clarifying what he expects the program to accomplish and ensuring that program activities are aligned with other Presidential and Departmental priorities. The proposals also would provide eligible applicants with some flexibility in selecting activities to carry out the purposes of program. The Secretary believes that the proposals reflected in this notice appropriately balance the need to flesh out TIF programmatic requirements and provide the Department with the necessary tools to evaluate applications for TIF funding with the goal of providing applicants with sufficient flexibility to implement innovative approaches to PBCSS. We seek public comment on whether we have achieved an acceptable balance.

Summary of Costs and Benefits:

The Secretary believes that the proposed priorities, requirements, definitions, and selection criteria would not impose significant costs on eligible States, LEAs, or nonprofit organizations that would receive assistance through the TIF program. The Secretary also believes that the benefits of implementing the proposals contained in this notice outweigh any associated costs.

The Secretary believes that the proposed priorities, requirements, definitions, and selection criteria would result in selection of high-quality applications to implement activities that are most likely to improve the quality of teaching and educational administration. Through the regulatory action proposed in this notice, the Secretary seeks to provide clarity as to the scope of activities he expects to support with program funds and the expected burden of work involved in preparing an application and implementing a project under the program. A potential applicant would need to consider carefully the effort that would be required to prepare a strong application and its capacity to implement a project successfully.

The Secretary believes that the costs imposed on an applicant by the proposed priorities, requirements, definitions, and selection criteria would be largely limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by the applicant. This is because, during the project period, the costs of actually carrying out activities under a TIF grant would be paid for with program funds and any matching funds. Thus, the costs of implementing a TIF project or

evaluation using these proposed priorities, requirements, definition, and selection criteria would not be a burden for any eligible applicants, including small entities.

Accounting Statement:

As required by OMB Circular A-4 (available at <http://www.Whithouse.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 this proposed regulatory action. This table provides our best estimate of the Federal payments to be made to States, LEAs, and nonprofit organizations under this program as a result of this proposed regulatory action. This table is based on funds available for new awards under this program from the ARRA supplemental appropriation and the fiscal year 2010 appropriation. Expenditures are classified as transfers to those entities.

Accounting Statement Classification of Estimated

Expenditures:

<b>Category</b>	<b>Transfers (in millions)</b>
Annual Monetized Transfers	\$439.0
From Whom to Whom	Federal Government to States, LEAs, and nonprofits

Paperwork Reduction Act of 1995:

The requirements and selection criteria proposed in this notice would require the collection of information that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

We estimate that each applicant would spend approximately 248 hours of staff time to address the requirements and selection criteria, prepare the application, and obtain necessary clearances. Based on the number of applications the Department received in the first competition it held (in FY 2006), we expect to receive approximately 120 applications for these funds. The total number of hours for all expected applicants is an estimated 29,760 hours. We estimate the total cost per hour of the applicant-level staff who carry out this work to be \$30 per hour. The total estimated cost for all applicants would be \$892,800.

Regulatory Flexibility Act Certification:

The Secretary certifies that this proposed regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this proposed regulatory action may affect are (1) small LEAs, and (2) nonprofit organizations applying

for and receiving funds under this program in partnership with an LEA or SEA. The Secretary believes that the costs imposed on an applicant by the proposed priorities, requirements, definition, and selection criteria would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by the applicant.

Participation in the TIF program is voluntary. For this reason, the proposed priorities, requirements, definitions, and selection criteria would impose no burden on small entities unless they applied for funding under a TIF program using the priorities, requirements, definition and selection criteria proposed in this notice. We expect that in determining whether to apply for TIF funds, an eligible entity would evaluate the requirements of preparing an application and implementing a TIF project, and any associated costs, and weigh them against the benefits likely to be achieved by implementing the TIF project. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application and implementing a project. The likely benefits of applying for a TIF program grant include the potential receipt of a grant as well as other benefits

that may accrue to an entity through its development of an application, such as the use of its TIF application to spur development and implementation of PBCSS without Federal funding through the TIF program.

The U.S. Small Business Administration (SBA) Size Standards define "small entities" as for-profit or nonprofit institutions with total annual revenue below \$7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000. The Urban Institute's National Center for Charitable Statistics reported that of 203,635 nonprofit organizations that had an educational mission and reported revenue to the Internal Revenue Service (IRS) by July 2009, 200,342 (over 98 percent) had revenues of less than \$5 million. In addition, there are 12,484 LEAs in the country that meet the SBA's definition of small entity. While these entities are eligible to apply for funding under the TIF program, the Secretary believes that only a small number of them will be interested in applying, thus reducing the likelihood that the priorities, requirements, definitions and selection criteria proposed in this notice would have a significant economic impact on small entities. In the

first TIF competition that the Department held in FY 2006, approximately 21 nonprofit organizations applied for funding in partnership with an LEA or SEA, and few of these organizations appeared to be a small entity. The Secretary has no reason to believe that a future competition under this program would be different. To the contrary, we expect that the competitions run under Pub. L. No. 111-8 and ARRA will be similar to the FY 2006 competition because only a limited number of nonprofit organizations are working actively on the development of teacher and school leader PBCSs and many of these organizations are larger organizations.

In addition, the Secretary believes that the priorities, requirements, definitions, and selection criteria proposed in this notice do not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

Further, this proposed regulatory action may help a small entity determine whether it has the interest, need, or capacity to implement activities under the program and,

thus, prevent a small entity that does not have such an interest, need, or capacity from absorbing the burden of applying.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program and with any matching funds provided by private-sector partners.

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

Intergovernmental Review:

This program is subject to the requirements of 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: [www.ed.gov/news/fedregister](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: [www.gpoaccess.gov/nara/index.html](http://www.gpoaccess.gov/nara/index.html).

Dated: February 22, 2010.

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Thelma Meléndez de Santa Ana,  
Assistant Secretary for Elementary and  
Secondary Education.

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