

Teacher and School Leader Incentive Program

Frequently Asked Questions For the Fiscal Year 2017 Competition and Grant Awards



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Purpose of this Guidance

The purpose of this guidance is to provide information about the Teacher and School Leader Incentive (TSL) Program. This guidance addresses applicant or grantee implementation of various provisions in sections 2211 – 2213 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), and other requirements governing the fiscal year (FY) 2017 TSL program competition announced in the [Notice Inviting Applications \(NIA\) published in the *Federal Register*](#) on December 20, 2016 (81 FR 92793).

This guidance does not impose any requirements beyond those included in the language of sections 2211 – 2213 of the TSL Program in the ESEA, as amended by the ESSA, and in applicable provisions established in rules for this competition. Unless otherwise indicated, references in this guidance to the ESEA refer to the ESEA, as amended by the ESSA.

The Department will provide additional or updated program guidance, as necessary, on its TSL web site, <http://innovation.ed.gov/what-we-do/teacher-quality/teacher-and-school-leader-incentive-program/>. If you have further questions that are not answered here or are interested in commenting on this guidance, please email TSL@ed.gov.

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A. Eligibility

A-1. What is the basis for the provisions that govern eligibility to apply for funding under the FY 2017 TSL competition?

The eligibility rules governing who may apply for and receive a TSL award come from TSL's authorizing statute, sections 2211(b)(1) of the ESEA, as amended by the ESSA.

We stress that even if an applicant is eligible to apply for an FY 2017 TSL grant (see A-2), it will not be considered for funding if the Department finds that its application fails to meet the absolute priorities or one of the requirements, including definitions of terms, that are included in the FY 2017 NIA. In addition, the application must contain the required application information specified in section 2212(c) of the ESEA and repeated in the NIA under "Section III. Eligibility Information: Part 3. Other: Application Requirements." For these reasons, we strongly encourage each applicant to carefully review the absolute priorities, requirements (including definitions of terms), and required application content.

A-2. What entities are eligible to apply for a TSL grant?

Under section 2211(b)(1) of the ESSA, only the following types of applicants are eligible for a TSL award:

- (a) A local educational agency (LEA), including a charter school that is an LEA, or a consortium of LEAs;
- (b) A State educational agency (SEA) or other State agency designated by the chief executive of a State to participate;
- (c) The Department of the Interior's Bureau of Indian Education; or
- (d) A partnership consisting of—
 - (i) One or more agencies described in (a), (b), or (c); and
 - (ii) At least one nonprofit organization as defined in 2 CFR § 200.70 or at least one for-profit entity.

Note: An application that includes more than one eligible entity is a "group application," and is subject to provisions governing group applications in 34 CFR §§ 75.127 through 75.129 (describing who acts as the applicant, the group agreement, and each group member's legal responsibilities).

A-3. Are intermediary units, such as regional educational agencies that are considered LEAs under State law, eligible to apply?

Yes. However, if the intermediary unit does not itself develop and implement a Human Capital Management System (HCMS), Performance-Based Compensation System (PBCS), and an evaluation and support system consistent with the requirements of the NIA, it would need to apply with an SEA or other State agency, or at least one LEA that does develop and implement such systems. In this case, the focus of the project would be on supporting the LEA(s) that will be implementing these systems.

A-4. Must an LEA have high-need schools in order to be eligible to participate in a TSL project?

Yes. Under Requirement 3 of the NIA, each applicant must demonstrate that at least the majority of schools whose educators will participate in the implementation of the TSL-funded PBCS are high-need schools. Requirement 3 also requires each application to list all schools in which the proposed TSL-supported PBCS will be implemented, and identify which schools are high-need schools.

Thus, the Department will not fund an application from an LEA that does not identify any high-need schools. Similarly, the Department will not fund an application that describes a project where fewer than half of the project schools are high-need schools. In each case, the application would not meet Requirement 3.

A-5. Is a current Teacher Incentive Fund (TIF) grantee eligible to apply for a TSL grant award in the FY 2017 competition?

Yes. TSL is a new discretionary program, and the NIA does not prohibit any eligible entity from applying. Thus, any current TIF grantee that is also an eligible entity described in A-2 is eligible to apply for a TSL grant in the FY 2017 competition. However, applicants should note that the Department does not provide funding of the same activities from multiple grants simultaneously. As a result applications submitted by current TIF grantees must show that the requested funds will support activities that are distinct from those funded by the existing grant.

A-6. Are private schools eligible to apply for a TSL grant? What about entities that operate private schools?

Neither individual private schools nor private school consortia are eligible to apply for or be part of a TSL project since they are not “eligible entities.” See A-2. Likewise, educators who work in private schools may not be part of a TSL project. However, like any other nonprofit or for-profit entity, nonprofit or for-profit entities that operate private schools are eligible entities that may apply provided that they do so in partnership with other eligible partners in accordance with the definition of an eligible entity.

A-7. May an LEA within a State whose SEA is applying for a TSL grant apply independently of its SEA? If so, will the SEA’s application be given priority over the LEA’s application?

An LEA is eligible to apply for a TSL grant separately from its SEA. For example, in a State with LEA 1 and LEA 2, the SEA may choose to submit an application in which the project will work in both LEA 1 and LEA 2, or either LEA 1 or LEA 2. In either case, both LEA 1 and LEA 2 would be eligible to apply independently, either separately or as a consortium of two LEAs, or as a part of another application with another eligible entity or group of entities. However, an LEA may not be included in two TSL-funded projects awarded funding from the same competition because those two projects could not be implemented at the same time. Thus, in the previous example using LEA 1 and LEA 2, LEA 2 would not be eligible for inclusion in both an approved application submitted by its SEA and an approved application submitted independently or as part of another application with another eligible entity or group of entities if both are funded.

An SEA’s application will not be given priority over an LEA’s application, or vice versa. The Secretary intends to make grant awards to eligible entities based on the recommendations of independent peer reviewers, who will use the selection criteria described in the NIA to score the applications; applications from all eligible entities will be reviewed and scored together. Thus, one type of eligible entity (e.g., an SEA) will not be given priority over another (e.g., an LEA) during the application

review process. See Section F. However, if after all applications are reviewed and scored and LEA1 or LEA2 would be participating in more than one project within the funding range, the Department will take action to ensure that it does not fund projects in which any LEA would be implementing duplicative or overlapping activities.

A-8. Is a private Institution of Higher Education (IHE) eligible to apply for a TSL grant if it is a non-profit organization?

No. The NIA provides that the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards described in 2 CFR Part 200 apply to this competition. 2 CFR §200.70 defines a nonprofit organization as “any corporation, trust, association, cooperative, or other organization, not including [IHEs], that: (a) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (b) is not organized primarily for profit; and (c) uses net proceeds to maintain, improve, or expand operations of the organization (emphasis added).” Therefore, unlike in TIF competitions, private IHEs are not eligible applicants.

A-9. Is a State-funded IHE eligible to apply for a TSL grant?

Perhaps. Consistent with the definition of eligible entity in section 2211(b)(1) of the ESEA, a State-funded IHE may apply if it is a “State educational agency or other State agency designated by the chief executive of a State to participate.” See A-2. To show that it satisfies this requirement, the State-funded IHE must—

1. Satisfactorily demonstrate that it is a “State agency”; and
2. Confirm that the State’s Governor (the Chief Executive) designated the IHE as eligible to participate in the TSL program.

First, as part of its application, the State-funded IHE would need to provide documentation that it is legally considered to be a State agency. This documentation could be as simple as a statutory citation that it is a State agency, or evidence that demonstrates that the State government considers the IHE to be a State agency.

Second, it would need to include in its application a letter, affirmation, assurance, or other confirmation that the Governor of that State (i.e., the chief executive) has approved its participation in the TSL competition.

A-10. Are there any limitations on the number of times an applicant may receive a TSL grant award?

Yes. An LEA may only receive two TSL grants per section 2212(b)(3) of the ESEA (whether individually or as part of a consortium or partnership). This limitation, however, does not apply to the other categories of eligible entities described in A-2 as eligible to apply.

A-11. Would staff of a school’s early childhood program or center be eligible to participate in a TSL-funded project that would support and provide performance-based compensation to early childhood staff in that school?

Given the TSL statute and NIA, the overall answer depends on answers to the following two questions:

1. Who administers the early childhood program or center in the school?
2. Does the LEA's HCMS apply to the staff of the early childhood program or center?

First, the entity that administers the early childhood program or center in the school must itself be an eligible entity. See A-2. This is because under section 2212(a) of the ESEA, TSL grants are provided for "schools served by the eligible entity." As noted above, an eligible entity may not include a private school or a private IHE. See A-2, A-6, and A-8.

Second, an LEA's HCMS must apply to all educators in the district—including staff of the early childhood program or center. See the definition of HCMS in section 2211(b)(3) of the ESEA. Thus, for staff of a school's early childhood program to be eligible to participate in the TSL's PBCS, the LEA must use its HCMS to make decisions that affect those staff as well as staff of K-12 schools the LEA administers. Similarly, if the school's early childhood program or center is administered by another eligible entity in the proposed project, the LEA's HCMS must still apply to those staff.

B. The Priorities

What is the difference between absolute priorities and competitive preference priorities, and how do absolute priorities relate to funding eligibility?

Absolute priorities are requirements of the grant competition. An applicant *must* meet the absolute priority of the competition to which it applies in order to be eligible for funding under that competition. Points are not awarded for meeting an absolute priority; rather, applications that do not meet an absolute priority will not be considered for funding.

Competitive preference priorities are *optional* components of the grant competition. As specified in the NIA, when applications are reviewed, those that address one or more competitive preference priorities may be awarded additional points depending on the quality of their responses. See 34 CFR § 75.105(c)(2) and (3).

B1. Absolute Priority 1—Human Capital Management System (HCMS)

B1-1. May an applicant receive a TSL grant if it is unable to describe an existing LEA-wide HCMS (of each participating LEA) at the time of application?

No. Absolute Priority 1 requires that each application describe the existing HCMS, PBCS, and evaluation and support system that meet the definition of these terms in the NIA. These systems are LEA systems; so the absolute priority requires that applicants describe each system used by each participating LEA.

The definition of HCMS in the NIA and section 2211(b)(3) of the ESEA provides that an HCMS means a system: (1) by which an LEA makes and implements its human capital decisions, and (2) includes a PBCS. The first part is not problematic since every LEA has some form of HCMS system in place for making hiring and related personnel decisions.

However, the second component of the HCMS definition may disqualify applicants from receiving TSL awards. Absolute Priority 1 requires that the HCMS must have a PBCS that meets the

definition of the term in the NIA (which repeats the definition in section 2211(b)(4) of the ESEA). Thus, an applicant must describe each participating LEA's system of compensation for teachers, principals, or other school leaders that differentiates levels of compensation based, in part, on measurable increases in student academic achievement. If the application does not contain this description, it may not be funded under this TSL competition. The same is true for an applicant that does not describe its evaluation and support system that meets the definition of that term included in the NIA.

B1-2. Must the application describe the HCMS for each LEA that is part of an application?

Yes. If there is more than one LEA participating in an application, the application must describe the key features of the HCMS for each participating LEA in order to meet Absolute Priority 1.

In this regard, we note that the statement of Absolute Priority 1 provides that in the case of an application from a consortium (of LEAs) or an SEA, the applicant must describe "the shared HCMS that currently exists across the proposed LEAs that will participate in the project." The statement means only that such an applicant must describe any aspects of the HCMS that are common to participating LEAs. If certain features of the participating LEAs' HCMS are the same, we encourage applicants to describe the similarities without providing repetitive descriptions of those common features for each LEA.

B1-3. How must an applicant respond to the component in paragraph (1) of Absolute Priority 1 that it describe how each participating LEA's HCMS currently includes an evaluation and support system for teachers, school leaders, or both, that reflects clear and fair measures of performance, based in part on demonstrated improvement in student academic achievement?

The Department has not prescribed how an applicant must respond to this component of Absolute Priority 1. Applicants are free to address the absolute priority however they think is best.

As defined in the NIA, an evaluation and support system is a system that is "fair, rigorous, valid, reliable, and objective and reflects clear and fair measures of teacher, principal and other school leader performance, based in part on demonstrated improvement in student academic achievement," and that provides "teachers, principals, or other school leaders with ongoing, differentiated, targeted, and personalized support and feedback for improvement, including professional development opportunities designed to increase effectiveness." Given the definition, applicants may want to consider whether the process used to develop each participating LEA's system of evaluating educator performance focuses on the elements of this definition, and how the resulting system addresses items such as—

- The measures by which teachers, school leaders, or both are assessed, including a description of how each evaluation measure is weighted and contributes to an overall evaluation rating that is clear and fair;
- The steps that the LEA(s) took, in developing its teacher and/or leader evaluation and support system, to ensure that the measures are clear and fair and that the data and conclusions the system produces are valid and reliable; and
- The efforts to involve teachers, school leaders, and the broader educational community in the design and implementation of each participating LEA's teacher and/or leader evaluation and support system to ensure that its results are clear and fair.

B1-4. How must an applicant respond to the component in paragraph (2) of Absolute Priority 1 that it describe any proposed modifications of each participating LEA's HCMS under the proposed project, including modifications that expand or improve the evaluation and support system as defined in the NIA?

The Department has not prescribed how an applicant must respond to this component of Absolute Priority 1. Applicants are free to address the absolute priority however they think is best.

Among other things, applicants might want to consider providing a description of the current HCMS and proposed changes to it. They may also consider describing their reasons for wanting to make the proposed modifications, what expansion or improvements in the HCMS they expect the changes will produce, and any research or evidence to support their approach.

B1-5. How must an applicant respond to the component in paragraph (3) of Absolute Priority 1 that it describe how each participating LEA's evaluation and support system will provide ongoing, differentiated, targeted, and personalized support and feedback for improvement, including professional development opportunities designed to increase effectiveness during the entire project period?

The Department has not prescribed how an applicant must respond to this component of Absolute Priority 1. Applicants are free to address the absolute priority however they think is best.

The purpose of an evaluation and support system is to fairly and reliably assess an educator's performance and then, based on results and data generated by the evaluation process, provide assistance and support to these educators that will help them to become more effective. Therefore, applicants may want to consider what each LEA participating in its project will do with the information generated by its educator evaluation process to ensure that the LEA provides each educator with the professional development, incentives, and other possible support that are tailored to what that educator needs to become more effective. For example—

- If some teachers in high-need schools are unable to meet the needs of their students, the applicant might want to describe how the system will ensure that those who need extra resources and support receive them;
- If certain teachers do not have enough time for planning and interaction with colleagues as part of a professional learning community, the applicant might want to describe how the system will make available to them special instructional schedules that address this need; and
- If teachers, particularly those in high-need schools, need more assistance from instructional leaders, the applicant might want to describe how it will provide additional administrative staff to its schools so that principals and mentor or master teachers are able to provide more instructional leadership.

Like other components of Absolute Priority 1, paragraph (3) does not focus on how the applicant would use TSL funds to provide such support, but on how the evaluation and support system will respond to the needs of educators identified through the evaluation process. Please see Requirement 1 of the NIA for ways in which TSL funds may be used to support the evaluation and support system.

B1-6. How must an applicant respond to the component in paragraph (5) of Absolute Priority 1 that it describe how the HCMS uses information from the evaluation and support system to inform key school- and district-level human capital decisions, particularly as they affect educators working in high-need schools in the LEA or LEAs the project will serve?

The Department has not prescribed how an applicant must respond to this component of Absolute Priority 1. Applicants are free to address the absolute priority however they think is best.

In designing its proposed project, an applicant must determine whether the project will focus on use of an LEA’s evaluation and support system that is used for human capital decisions for teachers, for school leaders, or for both groups of educators. (*Compare* Absolute Priorities 2 through 4.) The applicant’s response to this component of Absolute Priority 1 should appropriately address the group of educators selected in Absolute Priorities 2 through 4. (See B2-1.)

Additionally, as they consider their responses, applicants should also note that paragraph (5) of Absolute Priority 1 asks for descriptions that respond to three separate questions: (1) for which key school and LEA decisions does the LEA use performance information generated by its educator evaluation and support system to inform human capital decisions; (2) how does the LEA use this information in making these human capital decisions; and (3) how do the responses to (1) and (2) particularly affect educators who work in high-need schools in which the project would focus? To meet this component of Absolute Priority 1, applicants will want to address all three.

B1-7. What if an LEA either does not currently use results from evaluation and support systems to inform key human capital decisions or uses them now only in minor ways, but plans to expand the use of these results in making human capital decisions in the future?

Under Absolute Priority 1, each application must describe how the applicant’s HCMS, PBCS, and the applicable educator evaluation and support system currently meet the definition of these terms in the NIA. Under paragraph (5) of the Absolute Priority, it also must describe how the HCMS “uses performance information from the educator evaluation and support system to inform key HCMS decisions.” Thus, the application must describe how each participating LEA is already using the results of these evaluation and support systems to inform key decisions.

B2. Absolute Priority 2— Evaluation and Support System for Teachers, Absolute Priority 3— Evaluation and Support System for School Leaders, and Absolute Priority 4— Evaluation and Support System for Teachers and School Leaders

B2-1. Is an applicant required to address all four absolute priorities in order to be eligible for a TSL grant?

No. Absolute Priorities 2 through 4 comprise a group of alternatives. TSL applicants must address Absolute Priority 1 **and one** of the following:

- Absolute Priority 2— Evaluation and Support System for Teachers;
- Absolute Priority 3— Evaluation and Support System for School Leaders; or
- Absolute Priority 4— Evaluation and Support System for Teachers and School Leaders.

B2-2. How must an applicant address Absolute Priorities 2, 3, or 4, which require an applicant to describe how its project would enhance its evaluation and support system for teachers (Absolute Priority 2), principals and other school leaders (Absolute Priority 3), or educators in both groups (Absolute Priority 4), in high-need schools to be served by the project?

The Department has not prescribed how an applicant must respond to these absolute priorities, which highlight the importance of LEAs continuing to improve the way they design and implement their evaluation and support systems. An applicant may choose to respond to the absolute priority that fits its proposed project however it chooses. But, since Absolute Priority 1 requires a description of its current evaluation and support system, in addressing Absolute Priority 2, 3, or 4, an applicant only must describe how it would improve that system for teachers, school leaders, or both groups of educators who work in the project’s high-need schools.

B3. Competitive Preference Priority 1— Using the HCMS to Improve Equitable Access to Effective Educators

B3-1. How many points may an applicant receive under Competitive Preference Priority 1?

Applicants that address Competitive Preference Priority 1 may earn up to 10 additional points, depending on the quality of their response.

B3-2. How may an applicant address Competitive Preference Priority 1?

As stated in the NIA, this priority is for projects that are designed to address the most significant gaps or insufficiencies in student access to effective teachers, school leaders, or both teachers and school leaders, in high-need schools, including gaps or inequities in how effective teachers, school leaders, or both, are distributed across the LEA or LEAs the project will serve. The Department has not prescribed how an applicant must respond to this competitive preference priority.

However, this competitive preference priority does require that, at minimum, applicants:

1. Identify the most significant gaps or insufficiencies in student access to effective teachers, school leaders, or both, in high-need schools, including gaps or inequities in how effective teachers, school leaders, or both, are distributed across the LEA(s) the project will serve;
2. Identify relevant factors used in determining such gaps (or insufficiencies), such as data on availability of school resources, staffing patterns, school climate, and educator support; and
3. Describe how the strategies proposed for closing the identified gaps are aligned to and are consistent with the strategies identified in the State’s Plan to Ensure Equitable Access to Excellent Educators, approved by the Department in 2015 (each State’s Plan to Ensure Equitable Access to Excellent Educators can be found at the following link: <https://www2.ed.gov/programs/titleiparta/resources.html>).

Applicants are free to address these three components of the competitive preference priority however they think is best.

For example, one applicant may choose to design a project whose strategies focus on recruiting, developing, and retaining excellent principals with the capacity to provide collaborative leadership and effective instructional support and to create high-quality teaching and learning conditions. A different applicant might design a project with strategies that focus on providing classroom coaching for teachers in high-poverty or high-minority schools to promote the use of effective instructional strategies. Both would describe how these strategies are aligned to and are consistent with the strategies identified in the State's Plan to Ensure Equitable Access to Excellent Educators, and might incorporate any supporting research or evidence to support their approach.

B4. Competitive Preference Priority 2— Attracting, Supporting, and Retaining a Diverse and Effective Workforce.

B4-1. How many points may an applicant receive under Competitive Preference Priority 2?

Applicants that address Competitive Preference Priority 2 may earn up to five additional points, depending on the quality of their response.

B4-2. How may an applicant address Competitive Preference Priority 2?

As stated in the NIA, this competitive preference priority (1) is for projects that are designed to attract, support, and retain a diverse and effective workforce, including effective teachers, school leaders, or both, from historically underrepresented populations, and (2) requires that applicants provide a description detailing their commitment to creating and maintaining a diverse workforce, and their plan for attracting, supporting, and retaining diverse educators.

The Department has not prescribed how an applicant must respond to this competitive preference priority, and applicants are free to address it however they think is best. In responding to the first component, applicants may consider describing how the populations of effective teachers, school leaders, or both, in the proposed project include those who are historically underrepresented.

Among the many approaches applicants might consider in responding to the second component, one applicant, for example, might consider the demographic makeup of the current educator workforce of its participating LEA(s), and the goals or objectives and strategies it has established to enhance workforce diversity through this TSL project. Another applicant might consider other strategies, and describe its experience with prior strategies to attract, support, and retain a diverse and effective workforce, as well as how its description of strategies to be implemented in this project incorporates any past experiences or research or evidence to support this approach. Yet another applicant might consider melding these proposals.

C. The Performance-Based Compensation System (PBCS)

C-1. Are there certain required components of an applicant's PBCS?

Yes. The definition of a PBCS contained in the NIA requires that it differentiate levels of compensation based in part on measurable increases in student academic achievement. Applicants

have discretion in how they choose to measure these increases in student academic achievement. They may, for example, use student learning objectives, growth models based on State assessments, or any other vehicle that can reasonably measure increases in student academic achievement.

C-2. Must an applicant propose to implement the PBCS in all of the participating LEAs' high-need schools?

No. An applicant must implement its PBCS in the high-need schools it identifies in its application. These identified high-need schools must comprise at least a majority of the schools whose educators will participate in implementation of the TSL-funded PBCS. See Requirement 3 of the NIA and its paragraph (a).

C-3. May an applicant propose to have its PBCS apply to educators in a school that is not a high-need school?

Yes. See section 2212(e)(2)(D) of the ESEA and Requirement 1, paragraph D, of the NIA for educators who may benefit from the PBCS. However, Requirement 3 of the NIA provides that applicants must demonstrate that at least a majority of the schools participating in the TSL-funded PBCS are high-need schools, and its paragraph (c) requires them to describe their rationale for extending the TSL-funded PBCS to any educators not working in high-need schools.

C-4. How much additional compensation must the TSL-funded PBCS make available to teachers, principals, other school leaders, and other school personnel?

Applicants are free to establish any reasonable amount or form of compensation. As with all uses of Federal funds, the amount of additional compensation must be reasonable and necessary to carry out the program objectives and be consistent with Federal cost principles in 2 CFR Part 200. Therefore, in setting the amount of compensation available through the PBCS, applicants should consider what amounts are needed to reward effective educators, particularly those in high-need schools, who raise student academic achievement and close the achievement gap between high- and low-performing students – the purpose of the TSL program (see section 2211(a) of the ESEA). Applicants should also consider consulting existing research that offers guidance to school leaders on the levels of additional performance-based compensation that are appropriate given an educator's performance, and taking into account the local context.

Please note that consistent with application requirements in section 2212(c) of the ESEA, the NIA requires all applications to include a description of how the eligible entity will continue the activities assisted under the grant after the grant period ends. Further, one of the selection criteria on which applications will be evaluated and scored is selection criterion (e), Adequacy of Resources, the potential for continued support of the project after Federal funding ends. Since provision of performance-based compensation is a key component of projects to be awarded FY 2017 TSL funds, "continued support" here brings in continuation of performance-based compensation. Given these provisions, applicants should consider how the amount of performance-based compensation they would provide during the project period from TSL and non-TSL funds will be sustainable beyond the grant's project period.

C-5. May an applicant design a PBCS in which compensation to effective educators is in the form of non-financial incentives or rewards?

Yes. While the Department has defined the term “performance-based compensation system (PBCS)” as used in provisions governing this competition, it has not defined the term “compensation.” We recognize that compensation is not always financial; thus, a PBCS could use forms of non-financial compensation rather than financial compensation. The definition of a PBCS does require that the performance-based compensation system be one that “differentiates levels of compensation based in part on measurable increases in student academic achievement (emphasis added).” As with all other aspects of their review, those who read and score TSL project applications will use their best professional judgment about how well applicants describe the compensation—and the PBCS itself—that each LEA would provide.

D. Requirements

D1. Requirement 1—Use of Funds

D1-1. Must an applicant propose to use TSL funds for each of the activities listed in Requirement 1 of the NIA?

No. Requirement 1 of the NIA, which comes from section 2212(e)(2) of the ESEA, permits a grantee to use TSL funds “to develop, implement, improve, or expand” any of the activities identified in paragraphs (A) through (E). Thus, “in collaboration with [e]ducators and members of the public” (see Requirement 1, lead paragraph, of the NIA), an applicant may propose to use TSL funds for one or more of the listed activities in the NIA and the statute that fit its project design.

We note that one of the application requirements (section 2212(c)(6) of the ESEA) requires that each application include a description of the effectiveness of teachers, principals, or other school leaders in the LEA(s) and schools to be served under the grant, and the extent to which the system will increase the effectiveness of teachers, principals, or other school leaders in such schools. Thus, each applicant should be sure to link its proposed uses of TSL funds to support for those schools, and educators in those schools that the project would serve.

D1-2. May a TSL-funded project be designed to use TSL funds for activities that are not listed in Requirement 1 of the NIA?

No. However, given the breadth of these authorized activities, we do not envision any applicant feeling constrained in how it designs its desired TSL project.

D2. Requirement 2 – Matching

D2-1. Must TSL grantees secure matching funds to support their project activities?

Yes. If awarded a grant, the grantee must obtain matching funds or in-kind contributions from non-Federal sources equal to at least 50 percent of its grant award to carry out TSL project activities. See section 2212(f) of the ESEA. Each grantee must meet the statutory match requirement, as well as provide any larger amount of non-Federal contributions it identifies in the proposed budget included with its approved application. See 34 CFR § 75.700. Grantees should pay close attention to TSL requirements about both the non-Federal match and other TSL and general administrative requirements, since providing the required non-Federal match for activities that would be allowable if

paid with TSL funds is a condition of a grantee's receipt and proper expenditure of its Federal award. See D2-5.

D2-2. When must a grantee secure the required match?

Requirement 2(a) of the NIA provides that, as part of its application, each applicant must provide a signed assurance attesting to its intent and ability to meet the TSL matching requirement. Each applicant must also provide a proposed budget and budget narrative in which it identifies both its proposed annual uses of TSL funds and its proposed annual matching contributions.

If awarded a grant, the eligible entity would need to secure the promised match in time to use these non-Federal resources during the project year in which it had proposed their use in its approved TSL application.

D2-3. Is the required match 50 percent of the total amount of the TSL annual grant award?

Yes. Therefore, for example, if an applicant receives a TSL grant from the Department of \$10,000,000 for the first year of the project, it would need to obtain a commitment for a non-Federal match of \$5,000,000 during that year, which is 50 percent of the amount of the Federal grant award. The applicant would, similarly, need to obtain match for each subsequent year of the project.

D2-4. May an applicant (or grantee) request that the Secretary reduce the required level of match?

Yes. An LEA- or SEA-applicant (or -grantee, after award) may seek a waiver of this requirement in whole or in part under provisions in section 8401 of the ESEA. An applicant that anticipates being unable to meet the matching requirement should include in or with the application a request that the Secretary reduce the matching requirement, along with a statement of the basis for the request. If this request is not included in or with the application, the Department will assume that the applicant expects the Department to review the application and its budget in keeping with the statutory match requirement.

D2-5. What funds or in-kind contributions may count towards meeting the match requirement?

Only contributions, cash or in-kind, from non-Federal sources count towards the matching requirement. Applicants may want to refer to the Uniform Requirements on cost-sharing and matching in 2 CFR § 200.306 for provisions pertaining to in-kind (and cash) contributions.

Among other requirements, applicants should note the following:

- 2 CFR § 200.306(b)(2) prohibits non-Federal funds or contributions being used as a match for one Federal program to be used as a match for another; and
- 2 CFR § 200.306(b)(4) requires all charges claimed as part of a non-Federal match or cost-share be allowable if paid with Federal grant funds, and so meet considerations addressed in 2 CFR § 200.403 and any other cost principle in 2 CFR Subpart E.

In addition, section 2212(g) of the ESEA requires that grantees use TSL funds to supplement, and not supplant, State (and other Federal) funds used in carrying out project activities. Therefore, any State

(and other Federal) funds or contributions treated as match must supplement other State and non-Federal funds that, in the absence of the funds used for match, would be provided for TSL-funded activities.

D2-6. May more than one partner or other entity, such as an IHE, contribute toward the non-Federal match?

Yes. Matching funds (cash or in-kind) may come from one or more entity or partner.

D2-7. Must all partners contribute towards the non-Federal match?

No. See D2-6.

D2-8. May a grantee use unrecovered indirect costs (i.e., indirect costs that a grantee could have claimed under its approved indirect cost rate agreement but did not or could not claim under its TSL grant) to meet the matching requirement?

No. The Department will not approve the use of unrecovered indirect costs to meet the TSL program's matching requirement. See 2 CFR § 200.306(c).

D2-9. May the value of volunteered services count towards the required non-Federal match?

Yes. 2 CFR § 200.306(e) permits volunteered services to be treated as an in-kind contribution, and specifies how these contributions are to be valued:

Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for third-party volunteer services must be consistent with those paid for similar work by the non-Federal entity. In those instances in which the required skills are not found in the non-Federal entity, rates must be consistent with those paid for similar work in the labor market in which the non-Federal entity competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, necessary, allocable, and otherwise allowable may be included in the valuation.

D2-10. May discounts on services or materials count towards the matching requirement?

Discounts on services or materials may count towards the matching requirement as in-kind contributions if the source of these contributions is non-Federal and if the contributions and their valuation is consistent with the regulations on cost-sharing and matching in 2 CFR § 200.306.

D2-11. May an applicant count toward the matching requirement non-Federal funds or in-kind contributions an eligible entity devoted to the project in anticipation of its receipt of the TIF grant?

Yes. 2 CFR § 200.458 defines pre-award costs as "those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work." Section 200.458 generally requires prior written approval by the Department to charge these costs to TSL funds.

However, the Department is exercising its authority under 2 CFR § 200.308(d)(1) to waive the requirement for prior written approval provided the grantee incurs these costs no more than 90 days prior to the TSL award. As part of this waiver, the Department does not require that such costs be the subject of negotiation. See also F-8.

The definition of pre-award costs in 2 CFR § 200.458 is not limited to costs under the Federal award; so they apply to costs of the project charged to both TSL funds and to non-Federal matching funds and other non-Federal contributions.

D2-12. What are some other examples of acceptable in-kind contributions?

Some other examples of costs, services, or in-kind contributions that may be claimed as match if paid with non-Federal funds include:

1. Personnel costs associated with the management or administration of the TSL project.
2. Personnel costs associated with the time that educators participate in TSL project activities, including, but not limited to:
 - a. Professional Development (see the definition of “professional development” in section 8101(42) of the ESEA).
 - b. Mentoring, coaching, or teacher leadership.
 - c. Classroom instruction time implementing new strategies or activities stemming from the results of the educator evaluations and support system.
 - d. TSL planning activities, including participation in professional learning communities.
 - e. Formative or summative evaluation activities and costs of reviewing research-based practices relating to the TSL project.
3. Non-personnel costs relating to the implementation, management, or administration of the TSL project, including, but not limited to:
 - a. Training-related supplies.
 - b. Costs of services for educators that are provided in conjunction with the educator evaluation and support system, and so are designed to improve the effectiveness of educators who participate in TSL project activities, such as procurements (e.g., professional development provided by contract), and costs of National Board certification or other ways to demonstrate an educator’s mastery of a subject or content area.
 - c. Project-related communications.
 - d. Technology integral to the TSL project.
 - e. Purchases, upgrades, or licensing fees needed for the HCMS.
 - f. Costs of tuition, fees, or other services provided by IHEs related to implementing the TSL project or improving the overall effectiveness of educators who participate in the project.

Note: The project application describes the scope of the project, including which educators in which schools will be eligible to benefit from TSL funds the grantee may devote to (a) performance-based compensation, and (b) helping educators benefit from other aspects of the HCMS, including the evaluation and support system. See also C-4, C-5, and D1-1. Services a grantee provides that are paid with non-Federal funds could well benefit a larger population of

educators than those served by or who may benefit from the TSL project. But if this is the case, since the non-Federal match must support activities that would be allowable if paid for with Federal grant funds, the grantee will need to determine the amount of non-Federal funds that are allocable to the project – and that therefore may be treated as matching.

Please also refer to the general considerations addressed in D2-5, that affect what non-Federal funds or in-kind contributions may count towards meeting the matching requirement.

D3. Requirement 3—Documentation of High-Need Schools

D3-1. Under Requirement 3 of the NIA, at least a majority of schools in which a grantee would implement a TSL-supported PBCS must be high-need schools. How must an applicant demonstrate in its application that it will meet this requirement?

Requirement 3 of the NIA requires applicants to list in their applications all schools in which the TSL-supported PBCS would be implemented, and to identify those schools that are “high-need schools” as defined in the NIA. Requirement 3 also requires applicants to provide the most current school-level data demonstrating that each listed high-need school meets the definition of this term as provided in the NIA. See also D3-2 through D3-4.

D3-2. What is a “high-need school?”

As addressed in the NIA, for the 2017 TSL competition a high-need school is 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 the participating LEA uses consistent with section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5)). Eligibility as a high-need school under this definition is determined on the basis of the most currently available data.

D3-3. May feeder patterns be used to establish that a middle or high school is a “high-need school?”

Yes. Applicants may calculate the percentage of students from low-income families at a middle or high school using poverty data on the percentage of students from low-income families in all schools that feed into the middle or high school. Below is an example of how an applicant would use feeder patterns to calculate the poverty rate of a high school:

Feeder Elementary Schools	Total Enrollment	Number of Low-Income Students
School A	568	401
School B	329	207
School C	588	362
School D	836	427
Total	2,321	1,397

In this example, to calculate the average poverty rate of the middle school into which the four elementary schools feed, divide the total number of low-income children attending these four elementary schools by the total enrollment of these schools (i.e., $1,397 \div 2,321$). The average

percentage of poverty in this example is 60.19 percent, and this poverty rate may be attributed to the middle school.

D3-4. What evidence must an applicant provide to demonstrate that a particular school is a “high-need school?”

Requirement 3 of the NIA provides that, for each high-need school an applicant identifies in its application, the applicant provide the most current data on the percentage of students who are eligible for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or are considered students from low-income families based on another poverty measure that the LEA uses under section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5)). Thus, if a middle school’s or high school’s eligibility as a high-need school is based on the poverty level of feeder schools, the applicant must identify the poverty levels of those feeder schools based on the most current data for the poverty measure the LEA uses under section 1113(a)(5) of the ESEA, and how the applicant determined that the middle or high school in question is a high-need school based on the poverty levels of all of its feeder schools. See D3-3.

Applicants should include this information as part of a narrative attached to the “Other Attachment Form” in Grants.gov. It should be labeled clearly as “Documentation of High-Need Schools.”

E. The Selection Criteria

E-1. How will applications be reviewed?

At various points in the review process, the Department intends to screen applications to determine the eligibility of the applicants. This review includes whether the applications adequately address the TSL Absolute Priorities and Requirements contained in the NIA, including the statutory application requirements in section 2212(c) of the ESEA and “Section III. Eligibility Information: Part 3. Other: Application Requirements” of the NIA.

In addition, the Department intends to use independent peer reviewers with relevant expertise to determine how well the applications address the program’s selection criteria included in the NIA. These reviewers will use their professional judgment to evaluate and score each application based on these selection criteria.

E-2. Will an applicant receive its scores and reviewer comments after the competition is completed?

Yes. Both funded and unfunded applicants will receive a copy of the technical review forms completed by the peer reviewers when reviewing the applications. The Department will delete the names of the peer reviewers from the technical review forms in order to preserve their confidentiality.

E-3. Will the reviewers be asked to read every part of each application they review?

Yes, though as noted in E-1, their review and scoring will focus on the quality of an application’s response to the TSL’s selection criteria; reviewers will not determine for the Department whether an application has adequately addressed each Absolute Priority or Requirement, including the statutory application requirements. To facilitate the review process, the Department encourages applicants to

carefully follow the directions in the application package. Applicants should pay particular attention to the flow of the narrative, and correctly label all attachments.

F. Budgets

F-1. For how long may an applicant seek an award of TSL funding?

Applicants may apply for a TSL grant of up to five years. However, consistent with section 2212(b) of the ESEA, the Department will only initially award a grant for up to three years. The Secretary may later renew an award for a period of up to two years if the grantee demonstrates that it is effectively using its funds. Further information on the renewal process will be provided later. Except in unusual circumstances, awards are expected to be made for a single budget period of 12 months.

Following the initial award, and excluding criteria the Department may establish for renewals, any subsequent award of funds is contingent on the level of congressional appropriations for TSL and a grantee's satisfactory performance under the grant as determined by annual performance reports and other relevant information received by the Department. These subsequent awards are known as "continuation awards."

F-2. On the SF-424 Form (the Application for Federal Assistance form) that each applicant must include with its application, under "Estimated Funding" should an applicant enter the budget request for the first 12 months of the project or for the entire project period?

An applicant should enter the amount of its budget request for the first 12 months of its project.

F-3. May an applicant request an annual award amount that increases over time? For example, may an applicant request \$1 million in Year 1, \$5 million in Year 2, and \$8 million in Year 3 as the project expands its reach and incorporates modifications or enhancements to the HCMS and PBCS?

Yes. An applicant may include in its proposed budget a request for increasing award amounts for succeeding project years. If it does, the applicant would explain the basis for its proposed budgetary increases in its budget narrative. However, applicants should understand that the Department's ability to make awards to deserving grantees in the years following the initial budget period (i.e., continuation awards) will depend, in part, on the size of future annual congressional appropriations. Applicants that request increasing award amounts in succeeding budget years should understand that if congressional appropriations for TSL are insufficient to fully cover continuation awards, future costs of TSL grantees may not be fully funded and grants with increasing award amounts in future budget years could be particularly affected..

F-4. Since an applicant must submit a TSL application whose proposed budget identifies non-TSL funds (or in-kind contributions) to be used to implement the proposed project, does the Department's award of a grant establish a requirement that the grantee provide those funds (or in-kind contributions) identified in the approved budget for the project?

Yes. Under 34 CFR § 75.700, each grantee must comply with the content of its approved application, which would include its approved budget, budget narrative, and any descriptions of use of these funds elsewhere in the application. Therefore, if an application is approved, the grantee is responsible for providing the level of non-Federal funds or in-kind resources set forth in Section B of the Department's Form 524, and described in either the budget narrative or elsewhere in the application. (The same would be true if the applicant offered to provide Federal funds from non-TSL programs, but these would be separately described in Section A of the Department's Form 524.) In addition, grantees are required to report on the extent to which they have met these responsibilities in their annual performance reports.

If, after award, an anticipated source of matching funds or in-kind contributions does not materialize, the Department may consider a proposed substitution of other sources of non-Federal funds or contributions that would provide services consistent with the scope and objectives of the approved TSL project. Whenever a grantee finds that an anticipated source of matching funds or in-kind contributions is not available, it should notify the Department's project officer so that the Department can advise about available options.

F-5. What should be included in the budget narrative?

As explained in the application package, an application should include a budget narrative that provides a detailed description of how the applicant plans to use, for each project year, both its requested TSL grant funds and the non-Federal funds or in-kind resources it proposes to provide – either to meet its requirement to provide the non-Federal match or as other contributions to project services.

The budget narrative should be of sufficient scope to detail what the applicant would provide with both Federal and non-Federal funds and non-Federal in-kind contributions, and thus enable (1) the Department to determine if the costs are necessary, reasonable, and otherwise allowable, and (2) the readers to understand how the applicant proposes to use Federal and non-Federal funds and non-Federal in-kind contributions to support the proposed project. For further guidance on Federal cost principles, please consult the Uniform Administrative Requirements in 2 CFR Part 200 and, in particular, the Basic Considerations in 2 CFR §§ 200.402 – 200.411 and the General Provisions for Selected Items of Cost in 2 CFR §§ 200.420 – 200.475.

Additionally, the "Budget Narrative" section of the application package provides extensive detail, including examples, on how an applicant might present the assumptions on which it bases the amount of funds budgeted for performance-based compensation.

F-6. How should the proposed budget identify the value of any materials and services that would be provided as part of the project's contribution of non-Federal resources?

The value of these services or materials should be indicated in Section B of the Department's Form 524. The value of these services or materials should be calculated in a manner that is consistent with 2 CFR § 200.306.

F-7. If a State or LEA currently funds all or part of an HCMS using State or local funds, may the SEA or LEA use TSL funds to replace some of those State or local funds?

Like many Federal grant programs, the TSL program has a "supplement, not supplant" requirement. The TSL requirement, in section 2212(g) of the ESEA, prohibits grantees from using TSL

funds in ways that supplant State or other Federal funds, including State or other Federal funds that support the HCMS (which includes its PBCS). A grantee's use of local funds is not affected by the TSL "supplement, not supplant" requirement.

Like a grantee under other Department programs, TSL grantees need to ensure that all expenditures of TSL funds are for costs that are reasonable and necessary, and that meet other cost principles in 2 CFR Part 200. In addition, applicants should consider whether their use of TSL funds to replace local funds that currently support the HCMS could undermine its ability to continue the TSL-supported activities after the grant period ends, a matter each applicant must address in its application. See section 2212(c)(8) of the ESEA.

F-8. Must a grantee wait until the start of the initial budget period to begin incurring costs that its TSL award will reimburse?

No. A grantee may use its TSL funds to reimburse itself for pre-award costs that are reasonable, necessary, and otherwise allowable when these costs were incurred not more than 90 days before the Department's award. See D2-11 and 2 CFR § 200.308(d)(1).

Thus, in anticipation of receiving a TSL grant, an applicant may begin carrying out tasks for its proposed project before receiving an award. If the Department issues an award to the applicant, for example, on September 30, 2017, the grantee may reimburse itself for costs that are allowable charges to the TSL grant and that were incurred on or after July 2, 2017.

However, until notified of its receipt of a grant award, an applicant bears the risk of committing its own funds to these pre-award costs. If the applicant is not awarded a TSL grant, the Department will not reimburse the applicant for any costs it incurred in anticipation of a possible grant award.

F-9. For Sections A and B of the Department's Form 524, on which applicants identify the proposed Federal and non-Federal costs of the project, where should an applicant include its estimate of the costs to make payments of performance-based compensation under the proposed PBCS?

As explained in the "Budget Narrative" section of the application package, an applicant has two options for presenting performance-based compensation costs in its budget narrative and on the Department's Form 524. The option the applicant chooses depends on whether the applicant plans to pay fringe benefits on the compensation. If an applicant plans to apply a fringe benefit rate to the compensation, it should include this additional compensation in the "Personnel" line and reflect the costs related to the fringe benefit rate in the "Fringe Benefits" line. If an applicant does not plan to apply a fringe benefit rate to the compensation, it should include the performance-based compensation costs in the "Other" line.

Clarification of these proposed costs should be included in the budget narrative. The application package provides an example of how these costs should be presented.

F-10. May TSL funds support training stipends for educators?

Yes. TSL funds may support these stipends if they are reasonable and necessary to help educators receive professional development to improve their performance. Applicants should include

these stipends separately in the “Other” line of Form 524 and provide an explanation in the budget narrative.

F-11. Where in Sections A and B of the Department’s Form 524 should an applicant include costs of educator professional development?

Unless the services are to be provided through contracts (in which case they should be reported on the “Contractual” line of Form 524), costs of professional development that educators need to help improve their performance or obtain the benefits of the LEA’s PBCS, should be reported in the “Other” line of Form 524. These costs may include those for such varying forms of professional development as ongoing subject area learning opportunities, coaching and modeling, and activities that encourage educator leadership such as learning communities that foster peer collaboration, . See section 8101(42) of the ESEA for the definition of “professional development.”

F-12. If an applicant intends to charge indirect costs to the grant, what information should it submit with its application?

Because TSL has a supplement, not supplant requirement, each grantee must use a restricted indirect cost rate, rather than an unrestricted indirect cost rate, to charge indirect costs to TSL funds. See 34 CFR §§ 75.563 and 76.564 – 76.569. The applicant should include an estimated amount of indirect costs in the “Indirect Costs” line of its Form 524, provide the other information this form requests, and include an explanation of these costs in the budget narrative.

In addition, if an applicant has a current approved restricted indirect cost rate, it should submit with its application a copy of its current indirect cost rate agreement that identifies its current restricted rate. Please see the TSL application package for additional information on how to submit this information as an attachment to the application. If the applicant’s indirect cost rate has expired it should discuss options with its cognizant agency on how to update the expired indirect cost rate.

If an applicant does not have an approved indirect cost rate agreement that identifies a currently available restricted indirect cost rate, see F-13 and F-14.

F-13. If, at the time it receives its TSL grant award, a grantee does not have an approved indirect cost agreement that identifies a current restricted indirect cost rate, may it still charge indirect costs to the TSL grant?

Yes. A grantee that does not have an approved indirect cost agreement at the time of application may proceed to charge indirect costs to the TSL grant as long as it does the following:

State agencies and LEAs: The grantee must (1) have indicated its intent to charge indirect costs to its TSL grant by including indirect costs in the budget and budget narrative of its TSL application, and (2) submit a proposal for a restricted indirect cost rate to its cognizant agency within 90 days of receiving a TSL grant award. From the date of award, the entity may then charge indirect costs to its TSL grant using procedures described in F-14.

Note: If an LEA does not have an approved indirect cost rate and has not previously received a Federally-funded grant, the LEA must obtain a negotiated indirect cost rate applicable to the TSL program from the SEA in the State in which it is located. See 34 CFR § 75.561(b).

Nonprofit and for-profit entities: The grantee must have indicated its intent to charge indirect costs to its TSL grant by including indirect costs in the budget and budget narrative of its TSL application. In addition, the entity must either--

- a. Submit a proposal for a restricted indirect cost rate to its cognizant agency within 90 days of receiving a TSL grant award. From the date of award, the entity may then charge indirect costs to its TSL grant using procedures described in F-14.

Or, if it does not want to negotiate a restricted indirect cost rate--

- b. Charge indirect costs to its TSL grant at 8 percent in accordance with 34 CFR § 76.564(c)(2), unless ED determines that the actual restricted indirect cost rate is lower than 8 percent. If ED determines that the entity's actual restricted indirect cost rate is lower than 8 percent, the grantee must use the lower rate.

Note: If you have questions about either of these indirect cost rate options or applying your indirect cost rate, more information is available on the Department's website at: <http://www2.ed.gov/policy/fund/guid/uniform-guidance/index.html>. In addition, contact information for the Department's Indirect Cost Group is available at: <http://www2.ed.gov/about/offices/list/ocfo/fipao/icgreps.html>.

F-14. Assuming that an applicant submits a request to its cognizant agency a request for a negotiated indirect cost rate within 90 days of receipt of a TSL grant award, how should the applicant budget for indirect costs in its application, and charge indirect costs after receipt of its award?

Pending receipt of its approved restricted indirect cost rate, an applicant may budget indirect costs, and if awarded a grant a grantee may charge indirect costs, based on a temporary rate of 10 percent of budgeted direct salaries and wages. If within the 90-day period following receipt of a TSL grant, the grantee has not submitted a proposal for an indirect cost rate to its cognizant agency, the grantee may not charge its grant for indirect costs from the end of this 90-day period until it has received an indirect cost rate agreement applicable to the TSL program that includes a current restricted indirect cost rate. However, under exceptional circumstances, the Department may allow a grantee to continue using the temporary indirect cost rate after the end of the 90-day period. See 34 CFR § 75.560(c) and (d).

Note: Consistent with 2 CFR § 200.414(f), the Department generally permits a grantee other than a State or local government (e.g., an SEA, other State agency, or LEA) that has never had an approved indirect cost rate agreement to charge indirect costs indefinitely using a de minimis indirect cost rate of 10 percent of a project's modified total direct costs (MTDC). However, this provision does not apply to grants that require use of a restricted indirect cost rate, and so this 10 percent de minimis rate is not available to TSL grantees.

F-15. If, in the budget it included in its application, a grantee did not propose charging indirect costs to its TSL grant, may it still do so after receiving its award?

If the grantee did not propose charging indirect costs in its application, the grantee would need the Department's approval in order to charge indirect costs to the grant. If a proposed budget does not include indirect costs, the budget and amount of TSL award the Department approves will not include

them. Therefore, a shift of unused TSL funds previously budgeted for the project's direct costs to indirect costs may imply that the grantee over-estimated the amount of TSL funds that it needs to implement specific project activities, and so does not need all of its grant award to implement its project in any budget period.

A grantee that did not claim indirect costs in its approved budget may submit a requested budget revision to the Department program office with a request to use the excess funds budgeted for direct costs for those previously unclaimed indirect costs. If it does so, the grantee should: (1) explain what budgeted direct costs it is not charging to the grant, and how it will be able to carry out the scope and objectives of the grant without charging them, and (2) submit its approved indirect cost agreement with the applicable restricted indirect cost rate (see F-12 through F-14, F-16 and F-17). The Department will then determine the reasonableness of this request, and whether the facts warrant a decrease in continuation awards because of a proposed change in project scope and objectives rather than approval of the use of unused grant funds to pay for indirect costs.

F-16. In the case of a group application (i.e., an application that is not from a single eligible entity), how is the amount of indirect costs that each member of the group may charge to the grant calculated?

An application submitted on behalf of more than one eligible entity is a group application. This application must meet requirements in 34 CFR §§ 75.127 – 75.129 (describing who acts as the applicant, the group agreement, and each group member's legal responsibilities). Under 34 CFR § 75.564(e), the amount of indirect costs that may be charged to the grant is limited to the amount derived by applying the (lead) applicant's indirect cost rate, as applied to the direct cost base for the grant. Under 34 CFR § 75.128(b), the members of the eligible partnership need to enter into an agreement that details the responsibilities of each partner, and this agreement should among other things, identify how indirect costs will be apportioned among all of the eligible entities on whose behalf the application is submitted.

F-17. When direct costs of a TSL grant include equipment and large contracts, how do these costs affect an applicant's calculation of indirect costs?

The terms of the approved indirect cost agreement govern this issue. In general, the amount of indirect costs that may be charged to a TSL grant is calculated by applying the grantee's restricted indirect cost rate (or other rate addressed in F-13) to the project's total of direct costs. 34 CFR § 76.569 contains certain mandatory exclusions from direct costs, and therefore many indirect cost rate agreements exclude from the direct costs used for this calculation costs of equipment and the amount of each contract that exceeds the first \$25,000 (for the latter, see also 2 § CFR 200.68). Each applicant should review its own indirect cost rate agreement, as the agreement will describe the indirect cost allocation base and those expenses that must be excluded from the base, expenses that should not be used when calculating indirect costs under the TSL grant.

F-18. May a grantee use TSL funds for systems and tools to improve the quality and success of the LEA's HCMS, including the PBCS?

Yes. Each grantee may use TSL funds under Requirement 1 of the NIA (which repeats those that are allowable under section 2212(e) of the ESEA) to "develop, implement, improve, or expand, in collaboration with [e]ducators and members of the public, one or more of the" activities identified in paragraphs (A) through (F). Therefore, TSL funds may be used for systems and tools to improve the quality and success of the LEA's HCMS provided that this use of funds is reasonable and necessary to

implement one or more of the activities identified in paragraphs (A) through (E) of Requirement 1 of the NIA.

F-19. May TSL funds be used to support the salary costs of an LEA’s central office staff who are responsible for areas of the HCMS described in the project application?

It depends. These activities all broadly relate to the HCMS. Therefore, consistent with the need to collaborate with educators and members of the public on the use of TSL funds, those funds may be used to support that portion of the salary costs of central office staff (or others) devoted to work in these areas. TSL funds may not be used for salary (and other) costs associated with administering or implementing other components of the HCMS.

F-19. Is there a minimum or maximum amount of performance-based compensation that a grantee must provide to effective educators as part of its PBCS?

No. The TSL program gives applicants wide discretion to establish, in collaboration with educators and members of the public, the amount of performance-based compensation that effective educators will receive. However, as the cost principles in 2 CFR § 200.403 require, among other things, that all costs charged to Federal grant funds be reasonable and necessary, the amount of performance compensation may not be so high or so low as to be “unreasonable” or “unnecessary.” See also C-4.

G. Identifying Vendors and Others to Receive TSL-Funded Procurements in Project Applications

G-1. What flexibility does 34 CFR § 75.135(b) provide for applicants for Department discretionary grant awards?

In August 2013, the Department revised 34 CFR § 75.135(b) to permit applicants for the Department’s competitive grant programs to identify in their applications those entities with which they would contract for data collection, data analysis, evaluation services, or essential services, where these activities are required by the program.

This new provision includes procurements, for example, for project evaluations issued in response to a competition’s selection criteria. Unless prohibited from using this flexibility by State or local law, the regulation now permits governmental (including States) and non-governmental applicants to use the simple small purchase procedures now authorized in 2 CFR § 200.320(b) (including the definition of “simplified acquisition threshold” in 2 CFR § 200.88) to select the contractors in the specified areas that they identify in their applications regardless of whether the contract price exceeds the small purchase threshold. To use this exception to the general rule that the procurement be conducted through a free and open competition, the grantee must certify in its application that: (1) any employee, officer, or agent participating in the selection, award, or administration of a contract is free of any real or apparent conflict of interest, and (2) it used small purchase procedures to obtain the product or service.

G-2. Why is 2 CFR § 200.320(b) important to applicants?

By allowing the use of the small purchase procedures set out in 2 CFR § 200.320(b) (including the definition of “simplified acquisition threshold” in 2 CFR § 200.88) under certain circumstances, 34

CFR § 75.135(b) provides applicants with a means for selecting and identifying vendors that can be completed prior to the submission of their grant applications to the Department. Before the Department adopted this change, most applicants could not, within the time frame most grant applications have to be prepared and submitted to the Department, complete the required procurement process. This often led to audit findings that applicants for competitive grants had identified partners, evaluators, and project sites in their applications without first fulfilling responsibilities for selecting those vendors through competitive procurement as required by 34 CFR §§ 74.43-74.44 and § 80.36 (as is now required by 2 CFR §§ 200.319-320). The flexibility provided by 34 CFR § 75.135(b), expanding the circumstances under which the small purchase procedures in 2 CFR § 200.320(b) can be used, allows competitive grantees to avoid these audit findings, secure appropriate project vendors for key services without delay, and do so in a way that ensures cost are reasonable and competition promoted.

G-3. What does 2 CFR § 200.320(b) provide?

2 CFR § 200.320(b) provides:

Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

G-4. How can an applicant, in exercising the flexibility under 34 CFR § 75.135(b), meet the small purchase requirements of 2 CFR § 200.320(b)?

While 34 CFR § 75.135(b) permits prospective applicants to use small purchase procedures to identify prospective vendors for key services in their competitive grant applications, it is clear that those applicants must interpret 2 CFR § 200.320(b) to allow for the kind of simplified process that this provision makes available.

The purpose of the small purchase procedures in 2 CFR § 200.320(b) is to ensure that, even for small procurements, prospective applicants and grantees do not just choose their favorite vendors but rather have objective information about a reasonable number of potential vendors, so the applicant can make an unbiased and informed selection. This regulation does not require an elaborate or formal process of obtaining the needed price quotes. Indeed, this procedure is intended to permit selection of an appropriate vendor in a short period of time.

While there may be other permissible approaches to implement 34 CFR § 75.135(b), the Department believes that an LEA or any other prospective grantee should use its best judgment in obtaining a single vendor that it identifies to carry out the activities proposed in the application, even if, at the time the vendor is selected, the applicant has not completed the process of preparing its application and the specifications that the vendor will be expected to meet. For example, as it develops its proposal, an applicant might submit to an appropriate number of potential vendors a request that each potential vendor respond with basic information on key topics such as--

- Experience and expertise with the kind of work the applicant needs;

- Knowledge of, and experience working with, the program and the kinds of educators and entities to be served;
- Experience producing high-quality deliverables and reports the applicant would have to deliver if the application is funded;
- Basic information about the vendor’s cost structure that fits the kind of project design the applicant envisions; and
- Based on the best information about the kinds of deliverables, timeline for work, etc., that the applicant can provide at the time of the solicitation, how the potential vendor would address the specific deliverable that would be required under the grant.

The applicant would then use price and other information provided by these possible vendors to select the vendor it would use, ensuring in doing so that products or services to be procured are of adequate quality, and identify the selected vendor in its application.

We also note that coupled with the new flexibility in 34 CFR § 75.135(b) is a new requirement in 34 CFR § 75.135(c) that the applicant certify that “any employee, officer, or agent participating in the selection, award, or administration of a contract is free of any real or apparent conflict of interest.” Moreover, even when relying on the flexibility provided by 34 CFR § 75.135(b), applicants also should take steps to avoid organizational and other conflicts of interest. See 2 CFR § 200.318.

If, after award of a grant, the grantee decides not to use the selected vendor, the grantee would need, with prior Department approval, to go through the usual competitive procurement process required by 2 CFR § 200.319(c) and (d).