



# Federal Register

---

**Monday,  
December 13, 2004**

---

**Part VI**

**Department of  
Education**

---

**Semiannual Regulatory Agenda**

**DEPARTMENT OF EDUCATION (ED)**

**DEPARTMENT OF EDUCATION**

**Office of the Secretary**

**34 CFR Subtitles A and B**

**Unified Agenda of Federal Regulatory and Deregulatory Actions**

**AGENCY:** Office of the Secretary, Education.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Secretary of Education publishes a semiannual agenda of Federal regulations. The agenda is issued under the authority of section 4(b) of Executive Order 12866 "Regulatory Planning and Review." The purpose of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about pending regulatory activities.

**FOR FURTHER INFORMATION CONTACT:** Questions or comments related to specific regulations listed in this agenda should be directed to the agency contact listed for the regulations. Questions or comments related to preparation of this agenda should be directed to Stanley M. Cohen, Division of Regulatory Services, Office of the General Counsel, Department of Education, Room 6E117, FB-6, 400 Maryland Avenue, SW., Washington, DC 20202-2241; telephone: (202) 401-8300. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** Section 4(b) of Executive Order 12866, dated September 30, 1993, requires the Department of Education (ED) to publish, at a time and in a manner specified by the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, an agenda of all regulations under development or review. The Regulatory Flexibility Act, 5 U.S.C. 602(a), requires ED to publish, in

October and April of each year, a regulatory flexibility agenda.

The regulatory flexibility agenda may be combined with any other agenda that satisfies the statutory requirements (5 U.S.C. 605(a)). In compliance with the Executive order and the Regulatory Flexibility Act, the Secretary publishes this agenda.

For each set of regulations listed, the agenda provides the title of the document, the type of document, a citation to any rulemaking or other action taken since publication of the most recent agenda, and planned dates of future rulemaking. In addition, the agenda provides the following information:

- An abstract that includes a description of the problem to be addressed, any principal alternatives being considered, and potential costs and benefits of the action.
- An indication of whether the planned action is likely to have significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601(6)).
- A reference to where a reader can find the current regulations in the Code of Federal Regulations.
- A citation of legal authority.
- The name, address, and telephone number of the contact person at ED from whom a reader can obtain additional information regarding the planned action.

In accordance with ED's Principles for Regulating listed in its regulatory plan, ED is committed to regulation that improves the quality and equality of services to its customers, learners of all ages. ED will regulate only when absolutely necessary and then in the most flexible, most equitable, least burdensome way possible.

Interested members of the public are invited to comment on any of the items listed in this agenda that they believe are not consistent with the Principles for Regulating. Members of the public

are also invited to comment on the regulation listed in this agenda that is designated for periodic review under the Regulatory Flexibility Act (5 U.S.C. 610).

This publication in the **Federal Register** does not impose any binding obligation on ED with regard to any specific item in the agenda. ED may elect not to pursue any of the regulatory actions listed here, and regulatory action in addition to the items listed is not precluded. Dates of future regulatory actions are subject to revision in subsequent agendas.

For this edition of ED's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entry is listed in the table of contents below and is denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

**Electronic Access to This Document**

You may view this document, as well as all other ED documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: <http://www.ed.gov/news/fedregister>

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1-888-293-6498, or in the Washington, DC, area at (202) 512-1530.

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:** October 14, 2004.

**Brian W. Jones,**  
*General Counsel.*

Office of the Chief Financial Officer—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
849	Federal Policy for the Protection of Human Subjects, Technical Amendment .....	1890-AA12

## ED

## Office of the Chief Financial Officer—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
850	Protection of Human Subjects (Classified Research) .....	1890-AA08

## Office of the Chief Financial Officer—Completed Actions

Sequence Number	Title	Regulation Identifier Number
851	Direct Grant Programs—E-Application Regulations .....	1890-AA09

## Office for Civil Rights—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
852	Equal Access to Public School Facilities for the Boy Scouts of America and Other Designated Youth Groups .....	1870-AA12

## Office for Civil Rights—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
853	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance	1870-AA11

## Office of Elementary and Secondary Education—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
854	Title I, Improving the Academic Achievement of the Disadvantaged .....	1810-AA97

## Office of Special Education and Rehabilitative Services—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
855	Reauthorization of the Individuals With Disabilities Education Act ( <b>Section 610 Review</b> ) ( <b>Reg Plan Seq No. 35</b> ) ..	1820-AB54

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

## Office of Special Education and Rehabilitative Services—Completed Actions

Sequence Number	Title	Regulation Identifier Number
856	Title I, Improving the Academic Achievement of the Disadvantaged .....	1820-AB55

## Office of Innovation and Improvement—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
857	Credit Enhancement for Charter School Facilities Program .....	1855-AA02
858	Student Rights in Research, Experimental Programs, and Testing .....	1855-AA03

ED

Office of Innovation and Improvement—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
859	Innovation for Teacher Quality .....	1855-AA04

Department of Education (ED)

Final Rule Stage

Office of the Chief Financial Officer (OCFO)

**849. FEDERAL POLICY FOR THE PROTECTION OF HUMAN SUBJECTS, TECHNICAL AMENDMENT**

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

**Legal Authority:** 5 USC 301; 20 USC 1221e-3; 20 USC 3474; 42 USC 300v-1(b)

**CFR Citation:** 34 CFR 97

**Legal Deadline:** None

**Abstract:** These final regulations would amend the Department of Education regulations for the protection of human subjects by (1) changing all references to the Office for Protection from

Research Risks (OPRR) to the Office for Human Research Protections (OHRP) and (2) revising the footnote at the end of 34 CFR 97.101(i) by removing the references to research involving fetuses, pregnant women, or human in vitro fertilization and subpart B of 45 CFR part 46. This technical amendment is being made in conjunction with the other Federal departments and agencies that have promulgated the Federal Policy for the Protection of Human Subjects.

**Timetable:**

Action	Date	FR Cite
Final Action	12/00/04	

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**Agency Contact:** Helene Deramond, Department of Education, Office of the Chief Financial Officer, Room 7103, PCP, 400 Maryland Avenue SW, Washington, DC 20202-4248  
Phone: 202 245-6154

**RIN:** 1890-AA12

Department of Education (ED)

Long-Term Actions

Office of the Chief Financial Officer (OCFO)

**850. PROTECTION OF HUMAN SUBJECTS (CLASSIFIED RESEARCH)**

**Priority:** Substantive, Nonsignificant

**CFR Citation:** 34 CFR 97

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**Agency Contact:** Helene Deramond  
Phone: 202 245-6154

**RIN:** 1890-AA08

Department of Education (ED)

Completed Actions

Office of the Chief Financial Officer (OCFO)

**851. DIRECT GRANT PROGRAMS—E-APPLICATION REGULATIONS**

**Priority:** Substantive, Nonsignificant

**CFR Citation:** 34 CFR 75

**Completed:**

Reason	Date	FR Cite
Final Action	07/08/04	69 FR 41200

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**Agency Contact:** Blanca Rodriguez  
Phone: 202 245-6120

**RIN:** 1890-AA09

**Department of Education (ED)**  
**Office for Civil Rights (OCR)**

Proposed Rule Stage

**852. EQUAL ACCESS TO PUBLIC SCHOOL FACILITIES FOR THE BOY SCOUTS OF AMERICA AND OTHER DESIGNATED YOUTH GROUPS**
**Priority:** Other Significant**Legal Authority:** 20 USC 7905**CFR Citation:** 34 CFR 108**Legal Deadline:** None

**Abstract:** These regulations would implement the Boy Scouts of America Equal Access Act (Boy Scouts Act), which is part of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. Under the Boy Scouts Act, no public elementary school, public secondary school, or State or local

educational agency that receives funds made available through the Department and that has a limited public forum or designated open forum shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America or other specified patriotic youth groups.

**Timetable:**

Action	Date	FR Cite
ANPRM	11/15/02	67 FR 69456
ANPRM Comment Period End	12/16/02	
NPRM	10/19/04	69 FR 61556
NPRM Comment Period End	12/03/04	

**Regulatory Flexibility Analysis****Required:** No**Small Entities Affected:** No**Government Levels Affected:** None**URL For Public Comments:**

www.regulations.gov

**Agency Contact:** Sandra G. Battle, Department of Education, Office for Civil Rights, Room 6126, PCP, 400 Maryland Avenue SW, Washington, DC 20202-1100  
Phone: 202 245-6767

**RIN:** 1870-AA12
**Department of Education (ED)**  
**Office for Civil Rights (OCR)**

Final Rule Stage

**853. NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**
**Priority:** Other Significant**Legal Authority:** 20 USC 1681 to 1682**CFR Citation:** 34 CFR 106**Legal Deadline:** None

**Abstract:** The Department proposed changes to the regulations implementing title IX of the Education Amendments of 1972. These changes would amend existing regulations to provide more flexibility for educators to establish single-sex classes and schools at the elementary and

secondary levels. The amendments would support efforts of school districts to improve educational outcomes for children and to provide public school parents with a diverse array of educational options that respond to the educational needs of their children, while at the same time ensuring appropriate safeguards against discrimination. Amendments would be designed to permit appropriate latitude for innovative efforts to help children learn and to expand the choices parents have for their children's education consistent with the purposes of title IX.

**Timetable:**

Action	Date	FR Cite
NPRM	03/09/04	69 FR 11276

Action	Date	FR Cite
NPRM Comment Period End	04/23/04	
Final Action	12/00/04	

**Regulatory Flexibility Analysis****Required:** No**Small Entities Affected:** No**Government Levels Affected:** None

**Agency Contact:** Sandra G. Battle, Department of Education, Office for Civil Rights, Room 6126, PCP, 400 Maryland Avenue SW, Washington, DC 20202-1100  
Phone: 202 245-6767

**RIN:** 1870-AA11
**Department of Education (ED)**  
**Office of Elementary and Secondary Education (OESE)**

Final Rule Stage

**854. TITLE I, IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED**
**Priority:** Other Significant**Legal Authority:** PL 107-110**CFR Citation:** 34 CFR 200**Legal Deadline:** None

**Abstract:** These regulations would clarify statutory provisions regarding State, LEA, and school accountability for the academic achievement of limited English proficient (LEP) students and are needed to implement changes to title I of the Elementary and

Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. The regulations would permit States to exclude from reading/language arts assessments LEP students who have been in schools in the United States for fewer than 10 months. The regulations would also permit States to count in the LEP subgroup for 1 or 2 years students who were LEP but who, it is determined, are no longer LEP.

**Timetable:**

Action	Date	FR Cite
NPRM	06/24/04	69 FR 35462
NPRM Comment Period End	08/09/04	
Final Action	11/00/04	

**Regulatory Flexibility Analysis****Required:** No**Small Entities Affected:** No**Government Levels Affected:** None

**Agency Contact:** Jacquelyn Jackson, Director, Student Achievement and School Accountability Programs,

## ED—OESE

## Final Rule Stage

Department of Education, Office of  
Elementary and Secondary Education,  
400 Maryland Avenue SW, Room  
3W230, Washington, DC 20202-6132

Phone: 202 260-0826

**Related RIN:** Previously reported as  
1820-AB55

**RIN:** 1810-AA97

## Department of Education (ED)

## Prerule Stage

## Office of Special Education and Rehabilitative Services (OSERS)

**855. REAUTHORIZATION OF THE  
INDIVIDUALS WITH DISABILITIES  
EDUCATION ACT (SECTION 610  
REVIEW)**

**Regulatory Plan:** This entry is Seq. No.  
35 in part II of this issue of the **Federal  
Register**.

**RIN:** 1820-AB54

## Department of Education (ED)

## Completed Actions

## Office of Special Education and Rehabilitative Services (OSERS)

**856. TITLE I, IMPROVING THE  
ACADEMIC ACHIEVEMENT OF THE  
DISADVANTAGED**
**Timetable:**

Action	Date	FR Cite
Transferred to RIN 1810-AA97	09/29/04	

**RIN:** 1820-AB55

## Department of Education (ED)

## Proposed Rule Stage

## Office of Innovation and Improvement (OII)

**857. CREDIT ENHANCEMENT FOR  
CHARTER SCHOOL FACILITIES  
PROGRAM**

**Priority:** Other Significant

**Legal Authority:** 20 USC 7223 to 7223j

**CFR Citation:** 34 CFR 225

**Legal Deadline:** None

**Abstract:** The Department would use these regulations to administer the Credit Enhancement for Charter Schools Facilities program (authorized under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001) and its predecessor, the Charter School Facilities Demonstration Grant program. Under the program, the Department provides grants to non-profit and public entities to demonstrate innovative credit enhancement strategies that help charter schools meet their facility needs.

**Timetable:**

Action	Date	FR Cite
NPRM	10/22/04	69 FR 62008
NPRM Comment Period End	11/22/04	

**Regulatory Flexibility Analysis  
Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**URL For More Information:**  
charter.facilities@ed.gov

**URL For Public Comments:**  
www.regulations.gov

**Agency Contact:** Jim Houser, or Valarie Perkins, Department of Education, Office of Innovation and Improvement, Room 3E114, 400 Maryland Avenue SW, Washington, DC 20202-5961  
Phone: 202 260-1924

**RIN:** 1855-AA02

**858. STUDENT RIGHTS IN RESEARCH,  
EXPERIMENTAL PROGRAMS, AND  
TESTING**

**Priority:** Other Significant

**Legal Authority:** 20 USC 1232h

**CFR Citation:** 34 CFR 98

**Legal Deadline:** None

**Abstract:** These regulations are needed to implement amendments to the Protection of Pupil Rights Amendment (PPRA) resulting from (1) section 1017 of the Goals 2000 Educate America Act (Pub. L. 103-227; 20 U.S.C. 1232h) and (2) legislation passed as part of the No Child Left Behind Act of 2001 (NCLB) (Pub. L. 107-110). Section 1017 of Goals 2000 amended PPRA to require schools, in certain instances, to make specific educational materials available to parents for inspection. The provision also amended PPRA to prohibit schools from requiring students to submit to

ED—OII

Proposed Rule Stage

certain surveys, analyses, or evaluations without parental consent. NCLB specified certain subjects on which schools, in conjunction with parents, must develop and adopt policies. NCLB also required local educational agencies to directly notify parents of these policies and permit parents to opt out of certain activities. As our next action we will issue a new NPRM incorporating the amendments resulting from NCLB, as well as the earlier amendments resulting from the Goals 2000 Educate America Act.

**Timetable:**

Action	Date	FR Cite
NPRM	08/28/95	60 FR 44696
NPRM Comment Period End	10/27/95	
Second NPRM	01/00/05	

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:** Ellen Campbell, Department of Education, Family Policy Compliance Office, Room 2W117, FB-6, 400 Maryland Avenue SW, Washington, DC 20202-4605  
Phone: 202 260-3887

**Related RIN:** Previously reported as 1880-AA66

**RIN:** 1855-AA03

**859. • INNOVATION FOR TEACHER QUALITY**

**Priority:** Other Significant

**Legal Authority:** 20 USC 1221e-3; 20 USC 3474; 20 USC 6671 to 6684

**CFR Citation:** 34 CFR 230, subpart B

**Legal Deadline:** None

**Abstract:** These regulations would prescribe criteria to be used in selecting eligible members of the Armed Forces

to participate in the Troops-to-Teachers program and receive financial assistance through that program.

**Timetable:**

Action	Date	FR Cite
NPRM	11/00/04	

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:** Patricia Gore, Department of Education, Office of Innovation and Improvement, 400 Maryland Avenue SW, Room 5E121, Washington, DC 20202-6140  
Phone: 202 205-5812

**RIN:** 1855-AA04

[FR Doc. 04-23634 Filed 12-10-04; 8:45 am]

**BILLING CODE 4000-01-S**