



# Federal Register

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**Thursday**

**January 25, 2007**

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**Part III**

## **Department of Education**

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**34 CFR Part 76**

**State-Administered Programs; Final Rule**

**DEPARTMENT OF EDUCATION****34 CFR Part 76**

RIN 1890-AA13

**State-Administered Programs****AGENCY:** Department of Education.**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations in 34 CFR part 76 governing State reporting requirements. These final regulations require States to submit their performance reports, financial reports, and any other required reports, in the manner prescribed by the Secretary, including through electronic submission, if the Secretary has obtained approval from the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA). Failure to submit such reports in the manner prescribed by the Secretary constitutes a failure, under section 454 of the General Education Provisions Act, 20 U.S.C. 1234c, to comply substantially with a requirement of law applicable to the funds made available under the program for which the reports are submitted. If the Secretary chooses to require submission of information electronically, the Secretary may establish a transition period during which a State would not be required to submit such information electronically in the format prescribed by the Secretary, if the State meets certain requirements.

**DATES:** These regulations are effective February 26, 2007.

**FOR FURTHER INFORMATION CONTACT:** Patrick Sherrill, U.S. Department of Education, 400 Maryland Avenue, SW., room 6C103, Washington, DC 20202. Telephone: (202) 708-8196 or via Internet: pat.sherrill@ed.gov.

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**SUPPLEMENTARY INFORMATION:** On April 27, 2006, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (71 FR 24824).

In the preamble to the NPRM, the Secretary discussed on pages 24826 to 24828 the major changes proposed to the current regulations. These changes are summarized as follows:

- Under proposed § 76.720(c)(1), States would have to comply with the Secretary's requirements concerning the manner in which reports are submitted to the Department.

- Under proposed § 76.720(c)(2), failure by a State to submit reports in the manner prescribed by the Secretary would constitute a failure, under section 454 of the General Education Provisions Act (20 U.S.C. 1234c), to comply substantially with a requirement of law applicable to the Department's programs.

- Under proposed § 76.720(c)(3), which applies to reports that the Secretary requires to be submitted electronically, the Secretary would have the discretion to establish a transition period of up to two years during which a State would not be required to submit information electronically in the format prescribed by the Secretary if the State submits to the Secretary (a) evidence satisfactory to the Secretary that the State is unable to comply, (b) the information requested in the report, through an alternative means deemed acceptable by the Secretary, and (c) a plan showing how the State would come into compliance with the data submission requirements specified in the data collection instrument.

There are no differences between the NPRM and these final regulations.

These regulations highlight that the Department may require, through the PRA clearance process, that States report certain information electronically and establish that the Department may take administrative action against a State for failure to submit reports in the manner prescribed by the Secretary. These regulations will facilitate the use of the Department's electronic *EDFacts* data management system (*EDFacts*).

As explained in the NPRM, States have been submitting data through the Education Data Exchange Network (EDEN) voluntarily for the past two years. EDEN has acted as the Department's central repository and electronic data collection system for over 140 common data elements on student achievement, school characteristics, demographics, and program financial information. The Department is now in the process of increasing the EDEN capabilities to include, in addition to the Web-based interface that allows States to submit data electronically into EDEN, a capability for States, Department staff, and, eventually, the public, to query the database and independently analyze the data subject to all applicable privacy protections for disclosing statistical data. To signal the increased capabilities of the system, the Department is

renaming EDEN and the expanded Web-based interface "*EDFacts*." Accordingly, except as otherwise noted, we will describe the expanded system using the name "*EDFacts*" in this final rulemaking document.

The Department has now obtained approval from OMB to require the electronic submission of data through *EDFacts*. The Department published both PRA notices for this data collection under the title "Annual Mandatory Collection of Elementary and Secondary Education Data for the Education Data Exchange Network." Because we have changed the name of the Education Data Exchange Network to *EDFacts*, the title of the justification for OMB Control No. 1875-0240 has been changed to "Annual Mandatory Collection of Elementary and Secondary Education Data through *EDFacts*." We also note that some of the language in the Supporting Statement for this collection has been changed from that which was originally posted in the Education Department Information Collection System (EDICS). The Department's goal in requiring electronic submission of information, including data submitted through *EDFacts*, is to reduce State-reporting burden significantly and to streamline dozens of data collections currently required by the Department.

**Analysis of Comments**

In response to the Secretary's invitation in the NPRM, approximately 21 parties submitted comments on the proposed regulations and the Department's plan to require States to submit data electronically through *EDFacts* beginning with data from the 2006-07 school year. To the extent these comments related to specific elements of the *EDFacts* data collection request (1875-0240) we have addressed those comments as part of the PRA clearance process for *EDFacts*, and have not included responses to those comments in this document. For an analysis of those comments, you may download Attachment E "Paperwork Reduction Act Submission Supporting Statement—Annual Mandatory Collection of Elementary and Secondary Education Data through *EDFacts*: *EDFacts* Response to Public Comments" at the following Web site: [http://edicsweb.ed.gov/browse/downldatt.cfm?pkg\\_serial\\_num=3017](http://edicsweb.ed.gov/browse/downldatt.cfm?pkg_serial_num=3017).

An analysis of the comments relating to the proposed regulations follows.

We group major issues according to subject. Generally, we do not address technical or minor changes, and suggested changes that we are not authorized to make under the law.

*Section 76.720 State Reporting Requirements Nature and Schedule of Reports Covered by § 76.720*

*Comment:* A few commenters asked about the reports covered by these regulations. Specifically, they asked what was meant by the phrase “other reports by the Secretary” in paragraph (a) of proposed § 76.720. One of the commenters asked the Department to provide a list of these proposed reports for review. A couple of commenters were concerned about which reports might be required “more frequently than annually”. One commenter asked the Department to provide a “reporting schedule” for review.

*Discussion:* We included the phrase “other reports by the Secretary” in § 76.720(a) to establish that the requirements described in § 76.720 apply to all State reports that are now, and may in the future be, required by the Secretary and have been approved by OMB under the PRA, not just those reports that are specifically enumerated in the current regulations. The ability of the Secretary to require reporting more frequently than annually is not a proposed change; it can be found in current § 76.720(c). *See also* 34 CFR 80.41(b)(3) (frequency of financial reporting). The schedule for submitting data to ED*Facts* is included in the clearance package for that data collection (1875–0240), includes proposed annual data submission dates for each of the data groups, and has been provided to the State data coordinators.

*Changes:* None.

*Comment:* A number of commenters requested clarification on what constitutes the “quality level” expected in the submission of data under proposed § 76.720(c)(1).

*Discussion:* Section 76.720(c)(1) provides that States must submit reports at the quality level specified in the data collection instrument. Accordingly, the Department will specify in each data collection instrument the data quality standards that are applicable to the reports subject to the data collection instrument. Under the Department’s Information Quality Guidelines, the Department seeks to ensure that data it disseminates to the public are accurate, reliable, and useful. Thus, it is important for data submitted to the Department to be complete, timely, accurate, valid, and useful.

For example, for data that would be submitted through ED*Facts*, the Department expects to establish data quality standards in collaboration with its State partners, so that the data will be helpful to the Department, its State

partners, and the public. The Department will continue to work with States to provide them with detailed feedback that they can use to analyze the quality of the data they submit to the Department, and to establish mutually agreeable criteria that the Department can use to certify the data submitted through ED*Facts*.

*Changes:* None.

*Potential Penalties Under § 76.720(c)(2)*

*Comment:* One commenter recommended that the Secretary not impose penalties under § 76.720(c)(2) for failure to comply with the reporting requirements of the proposed regulations; others supported the ability of the Secretary to impose penalties after a reasonable transition period. Another commenter recommended that enforcement under § 76.720(c)(2) depend on whether a State is making reasonable, good-faith efforts to comply with the requirements. Several other commenters asked for clarity on how the penalties would be determined, specifically asking about when a State would be considered out of compliance, how penalties would be calculated, and whether funds would be withheld from administrative or program allocations, or both. Finally, a commenter asked if States would be penalized under § 76.720(c)(2) for failure of local educational agencies (LEAs) to report directly to the Office for Civil Rights (OCR) in the Department.

*Discussion:* As explained in the preamble to the NPRM, failure of a recipient to comply with the Department’s reporting requirements, including submitting reports electronically, harms the Federal interest in establishing what the Department deems is an efficient and effective means of obtaining accurate, reliable, and valid information on the performance of the Department’s programs and the success of States in meeting their goals under such laws as the No Child Left Behind Act of 2001 (Pub. L. 107–110). Thus, we determined that it was necessary to highlight, through these regulations, the importance of the Department’s reporting requirements. Moreover, we determined that, for the Department’s reporting requirements to be meaningful, it was essential for the Secretary to have the appropriate tools to enforce them. That being said, the Department will consider many factors in determining whether to impose appropriate sanctions, including whether a State is making reasonable, good-faith efforts to comply with the reporting requirements and, in the case of mandatory electronic reporting,

whether a State has submitted a transition plan and whether that plan is sufficiently detailed to explain how the State would provide the requested data within the transition period.

To be clear, the Department is not interested in penalizing States for minor, technical infractions but is instead focused on collaborating with States to strengthen the States’ own data systems and the use of data collected through those systems to improve education within their States. Part of the ability to use data effectively depends on the completeness of those data. Accordingly, the Department will work with States to establish reasonable criteria for what a complete submission entails.

In addition, the Department plans to continue to work closely with States as partners in the identification, collection, and reporting of complete, accurate, timely, and valid education information, to minimize the need for the Department to take administrative action to compel compliance with these regulations.

For example, with respect to ED*Facts* data, the Department currently requests each State to submit an individual State data submission plan to address the unique data submission challenges of each State data provider. Working together with States, the Department has provided tools to help States assess their specific challenges and to develop individualized State data submission plans and reporting schedules for ED*Facts* data. The Department also will adopt the suggestion of one commenter that the Department conduct site visits with individual States to determine their capacity to collect and report data, and to develop phase-in plans and agreements for each. In all cases, the Department is committed to providing the support that is needed to help individual States that are making reasonable, concerted, good-faith efforts to comply with the ED*Facts* data submission requirements.

Furthermore, the Department anticipates that States will vary in their capacity to report data electronically in accordance with § 76.720. For that reason, under § 76.720(c)(3), States may report data through an alternative means for up to two years following the date the States otherwise would be required to submit the data electronically if they meet the requirements in paragraphs (c)(3)(i) through (c)(3)(iii) of § 76.720. These requirements include developing a plan for coming into compliance with the reporting requirements within two years. The Department will work directly with individual States to develop and implement those plans,

and we anticipate they will be customized to address individual State capacities. The Department is also open to the possibility that some of these required data might be submitted by a State to a multi-State data repository, or "public utility," maintained by, and for, the States, provided that the data repository enters into agreements with the participating States and the Department to ensure that data from the repository are provided to *EDFacts*.

Should the Department determine that administrative action is necessary, the Department would determine on a case-by-case basis whether and how sanctions would be imposed by considering factors such as the existence of an approved State data submission plan, the history of the State's efforts to provide required data to the Department, and evidence of a State's progress in improving its education data systems. For example, the Department may decide to commence action to withhold administrative funds from a State if the Department determines that the State was not making reasonable and good-faith efforts to implement a transition plan under § 76.720(c)(3)(iii) to submit reports electronically.

Finally, under 34 CFR 76.500, States and their subgrantees are responsible for compliance with the civil rights statutes and regulations enforced by OCR, including the obligation to provide civil rights data when requested by OCR. As part of its data collection activities, OCR has been collecting data both from States, and directly from LEAs. The Department cannot specially alter or suspend the civil rights responsibilities of States or LEAs during the migration of the Civil Rights Data Collection (CRDC) into *EDFacts*. During the migration process, when data are requested from an LEA, the primary focus of OCR's efforts will continue to be on the LEA's obligation to submit the required data. Virtually all of the LEAs participating in the 2006 CRDC have notified the Department that they are planning to provide their data submissions electronically. However, LEAs submitting CRDC data to the Department will continue to have the option of electing other formats, including paper forms.

*Changes:* None.

#### *Transition Period for Mandatory Electronic Submission Requirements Under § 76.720(c)(3)*

*Comment:* Six commenters expressed support for the two-year transition period described in § 76.720(c)(3). One commenter noted that a longer transition period would only serve to delay the presence of a fully populated

data repository and would, therefore, result in the continued practice of duplicative data collections. Many other commenters questioned whether the two-year transition period was a sufficient amount of time for States to establish the data systems needed to supply the reliable and quality data that are being requested for the *EDFacts* data collection. Commenters suggested alternatives, ranging from two to five years, because of issues such as the need to obtain legislative approval within their States.

*Discussion:* The Department appreciates that many States will find it challenging to make the needed changes to their data systems to be able to report their data to the Department electronically for any collection of data. The Department recognizes that any automated information system will require some significant work to modify it for the collection, storage, protection, and reporting of any data that were previously uncollected. For this reason, the Department has determined that it is appropriate for the Secretary to have the discretion to establish a transition period of up to two years during which a State would not be required to submit information electronically in the format prescribed by the Secretary, if the State meets certain requirements. Because the need for good data is so important, the Department believes that the two-year transition period is reasonable.

The two-year transition period applies to the *EDFacts* data collection. Thus, if a State is not able to submit all of the required data electronically to *EDFacts* by the specified reporting deadline, the State must submit to the Secretary, in accordance with § 76.720(c)(3), evidence that the State cannot comply with the electronic submission reporting requirement, the information requested in the report through an alternative means acceptable to the Secretary, and a plan for submitting the reports in the required electronic manner no later than two years after the reporting deadline.

We recognize that States may need guidance in developing their plans under § 76.520(c)(3)(iii) with respect to the *EDFACTS* data collection. To address that need, we included in our *EDFACTS* data collection submission to OMB proposed guidance to States on when the Department would expect States to be able to submit certain data elements electronically to *EDFACTS*. The guidance, for example, identifies those *EDFACTS* data groups that the Department believes all States should have the capability to submit electronically to *EDFACTS* for the 2006–2007 school year. If a State cannot submit all of those data groups

electronically for the 2006–2007 award year, the State would provide the Secretary with evidence about which data groups it could not submit electronically for the 2006–2007 award year and propose a transition plan. Under the transition plan, the State would submit those data groups that could be provided electronically to *EDFACTS* for the 2006–2007 school year and would provide all other required data elements to the Department through an alternative means in accordance with § 76.720(c)(3)(ii). The State would include in its transition plan information on when, within the two year transition period, it would submit the other data elements electronically through *EDFACTS*. We are providing as guidance information about when the Department would expect States to be able to provide data electronically through *EDFACTS*; States may need to structure their transition plans differently depending on their capacities. In all cases, however, we will work cooperatively with States to provide them support in their efforts to comply with the *EDFACTS* data collection requests.

*Changes:* None.

*Comment:* Most commenters cited scarce State resources as the reason the two-year transition period in § 76.720 was inadequate. Several commenters stated that to comply with the proposed regulations they would need to restructure their current data systems and, thus, would require more financial and human resources. One commenter estimated that it would need 4 years and \$840,000 to comply with the reporting requirements in the *EDFACTS* data collection. Many commenters stated that States would need more staff to prepare and report data to *EDFACTS*. Several commenters suggested that the Federal Government provide the funding for additional staff to lead the data collection and reporting effort, explaining that the work needed at least one full-time-equivalent position similar to the position funded by the National Center for Education Statistics to manage data for the National Assessment of Educational Progress. One commenter suggested that the responsibilities of such a position include submitting and maintaining the data submission plan, managing and submitting files, reviewing and commenting on future changes, and using *EDFACTS* for reporting to management.

*Discussion:* Over the last two fiscal years, the Congress has appropriated nearly \$50 million to assist States in developing State Longitudinal Data Systems. The Department is continuing

to explore ways to increase funding, and expand State access to these funds.

*Changes:* None.

*Comment:* One State recommended that the two-year transition period be understood as a minimum period of time during which States can obtain the first data set on any new variable. Another State noted that forcing States to report data before they have a complete data set could result in inaccurate data being reported.

*Discussion:* These regulations address only the submission of data in the form and format required by the Secretary and not the process by which States obtain or collect data to be reported to the Department. Whether specific data are available and the cost of acquiring or collecting those data are matters that are best addressed in the PRA public comment and clearance process for each information collection package. That being noted, the Department's goal continues to be to obtain accurate, reliable, and useful data from States, in order to monitor and evaluate the States' performance and use of Department funds.

*Changes:* None.

#### *General Comments*

*Comment:* Several commenters expressed concern that they do not currently collect some of the data requested through EDFACTS and that, therefore, it would be unfair to penalize them for not having the data or to require them to establish new data collection efforts.

*Discussion:* As part of the public comment period required under the PRA, States have been given the opportunity to identify any problems they expect to have in supplying the data required under the EDFACTS data collection (1875–0240). The Department has invited comment multiple times on exactly which data elements are not available from the States. The Department has also invited States to provide this information as part of one of the two public comment periods under the PRA for the most recent request for collection of EDFACTS data, or as part of the ongoing work with the States to implement EDFACTS. As noted elsewhere in this section, every effort will be made in the EDFACTS collection to require only those data that are needed by the Department in order to monitor and evaluate a State's performance in using funds awarded by the Department.

*Changes:* None.

*Comment:* A number of commenters expressed concern that the consolidated, mandatory collection of data through EDFACTS would not

eliminate the numerous, redundant program collections currently required of States. One commenter suggested that the Department ought to provide a timeframe in which each data collection is to be eliminated. Several others suggested that, once data are available to the Department through EDFACTS, the Department take swift action to require program offices to cease collecting similar data through other means and set a clear schedule with specific dates for when each data collection is to be eliminated. If not, one commenter warned, participation in EDFACTS might not be worth the effort for States. Several commenters noted that there is no language in the regulations to make the use of EDFACTS mandatory for program offices within the Department, and that they are concerned that if this is not explicit within the regulations, program offices may continue to require their own reports.

*Discussion:* The Department's goal is to eliminate duplicative reporting and, accordingly, the Department is working to ensure that as many of its program offices as possible use EDFACTS. In the future, if a program office sends forward a proposal to request data through a program-specific data collection, and those data are already being collected through EDFACTS, the Secretary will, through the internal and PRA clearance processes, deny approval for such duplicate collections. However, if any duplicative data elements should slip through the clearance processes, States can alert the Secretary through the public comment period under the PRA, ensuring that redundant data collections are eliminated.

*Changes:* None.

*Comment:* There were several requests by commenters for the Department to explain the rationale for certain data elements and for a clear indication of what data elements are going to be eliminated now and in the future. Some States said that they do not collect or use some of the proposed data elements and that reporting those data will create extra burden. Some commenters said that States want a comprehensive data map or crosswalk for each and every data element that corresponds to the Federal law that authorizes its collection, the current Department collection forms that collect it, and the actual Federal use of the data, so that they can see that coordination exists between the efforts to collect data through EDFACTS and the efforts of the Department's program staff to collect data outside the EDFACTS context. One commenter noted that program staff and EDFACTS staff frequently send mixed

messages about which data are required to be submitted.

*Discussion:* The Department will continue to use the clearance process under the PRA to analyze the national costs and benefits of each data element it requires. Proposed data collections will face a rigorous internal clearance process at the Department before being added to an EDFACTS collection—and then phased in, if necessary. The Department asks States to inform it of any and every Department program office message that may seem to be “at odds” with what has been written here, so that it can improve its communication with the public about data collection. To help prevent these mixed messages, the Department has convened a cross-program committee composed of many senior Department program managers to discuss shared data definitions and data usage and to ensure internal agency collaboration.

*Changes:* None.

*Comment:* One commenter asked if it could submit school and district data, and have the Department aggregate those data to the State level, rather than submitting all three levels of data.

*Discussion:* EDFACTS has the technical capacity to aggregate school data to the district level and district data to the State level. The Department has not done this yet because it is concerned that some data might be missed in the aggregation process. The Department will work with any State that agrees to certify that the school-level data that it submits through EDFACTS is complete in all cells and that the aggregations of those cells produce complete data at the district and State levels. The Department is willing to make available the State data aggregation option and allow States to submit only school-level data.

*Changes:* None.

#### *Section 76.722 Subgrantee Reporting Requirements*

*Comment:* None.

*Discussion:* Current § 76.722 provides that “[a] State may require a subgrantee to furnish reports that the State needs to carry out its responsibilities under the program.” In the NPRM, we proposed to amend § 76.722 slightly in order to make that provision consistent with the language in proposed § 76.720, which requires States to submit reports “in a manner prescribed by the Secretary.” Thus, proposed § 76.722 provides that “[a] State may require a subgrantee to submit reports in a manner and format that assists the State \* \* \*.” Upon intradepartmental review of the language in proposed § 76.722, we thought it prudent to clarify that we do

not intend for this language to grant to States any authority that they do not already have to collect information from LEAs to help States carry out their responsibilities under the Department's programs. That is, a State may only require its LEAs to submit reports in a particular manner or format if that State has the requisite authority to do so under its State laws and regulations. In implementing proposed § 76.722, the Department expects that each State will take into account the capacity of their LEAs to submit reports in the manner and format determined appropriate by the State.

*Changes:* None.

#### Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, the Secretary must determine whether this regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. The Department has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those we have determined to be necessary for administering the requirements of the Department's State-administered programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

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

#### Summary of Potential Costs and Benefits

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (71 FR 24828). We include additional discussion of potential costs and benefits in the section of this preamble titled *Analysis of Comments*.

#### Paperwork Reduction Act of 1995

The paperwork burden in § 76.720(c)(3)(iii) is approved under the PRA as part of the burden in the Annual Mandatory Collection of Elementary and Secondary Education Data for ED*Facts* (1875-0240).

#### Intergovernmental Review

These regulations affect State-administered programs of the Department that are subject to Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for these programs.

#### Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

#### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. These final regulations do not impose any Federal mandates on any State, local, or tribal governments, or the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

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(Catalog of Federal Domestic Assistance Number does not apply.)

#### List of Subjects in 34 CFR Part 76

Elementary and secondary education, Reporting and recordkeeping requirements.

Dated: January 22, 2007.

**Margaret Spellings**,  
*Secretary of Education*.

■ For the reasons discussed in the preamble, the Secretary amends part 76 of title 34 of the Code of Federal Regulations as follows:

#### PART 76—STATE-ADMINISTERED PROGRAMS

■ 1. The authority citation for part 76 is revised to read as follows:

**Authority:** 20 U.S.C. 1221e-3 and 3474, unless otherwise noted.

■ 2. Section 76.720 is revised to read as follows:

#### § 76.720 State reporting requirements.

(a) This section applies to a State's reports required under 34 CFR 80.40 (Monitoring and reporting of program performance) and 34 CFR 80.41 (Financial reporting), and other reports required by the Secretary and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

(b) A State must submit these reports annually unless—

(1) The Secretary allows less frequent reporting; or

(2) The Secretary requires a State to report more frequently than annually, including reporting under 34 CFR 80.12 (Special grant or subgrant conditions for "high-risk" grantees) or 34 CFR 80.20 (Standards for financial management systems).

(c)(1) A State must submit these reports in the manner prescribed by the

Secretary, including submitting any of these reports electronically and at the quality level specified in the data collection instrument.

(2) Failure by a State to submit reports in accordance with paragraph (c)(1) of this section constitutes a failure, under section 454 of the General Education Provisions Act, 20 U.S.C. 1234c, to comply substantially with a requirement of law applicable to the funds made available under that program.

(3) For reports that the Secretary requires to be submitted in an electronic manner, the Secretary may establish a transition period of up to two years following the date the State otherwise would be required to report the data in the electronic manner, during which time a State will not be required to comply with that specific electronic

submission requirement, if the State submits to the Secretary—

(i) Evidence satisfactory to the Secretary that the State will not be able to comply with the electronic submission requirement specified by the Secretary in the data collection instrument on the first date the State otherwise would be required to report the data electronically;

(ii) Information requested in the report through an alternative means that is acceptable to the Secretary, such as through an alternative electronic means; and

(iii) A plan for submitting the reports in the required electronic manner and at the level of quality specified in the data collection instrument no later than the date two years after the first date the State otherwise would be required to

report the data in the electronic manner prescribed by the Secretary.

(Authority: 20 U.S.C. 1221e-3, 1231a, and 3474)

■ 3. Section 76.722 is revised to read as follows:

**§ 76.722 Subgrantee reporting requirements.**

A State may require a subgrantee to submit reports in a manner and format that assists the State in complying with the requirements under 34 CFR 76.720 and in carrying out other responsibilities under the program.

(Authority: 20 U.S.C. 1221e-3, 1231a, and 3474)

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