

Teacher and School Leader Incentive Program

Frequently Asked Questions For the Fiscal Year 2021 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, as amended (ESEA), and other requirements governing the fiscal year (FY) 2021 TSL program competition announced in the *Federal Register* on July 9, 2021 (86 FR 36262, available at <https://www.federalregister.gov/documents/2021/07/09/2021-14714/applications-for-new-awards-teacher-and-school-leader-incentive-program>).

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.

The Department will provide additional or updated program guidance, as necessary, on its TSL web site, <https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/effective-educator-development-programs/teacher-and-school-leader-incentive-program/applicant-info-eligibility/>. 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 2021 TSL competition?

The eligibility rules governing who may apply for and receive a TSL award come from TSL's authorizing statute, section 2211(b)(1) of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

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

Under section 2211(b)(1) of the ESEA and the NIA, 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.

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), or Performance-Based Compensation System (PBCS), 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 applicant have high-need schools in order to participate in a TSL project?

Yes. Under Absolute Priority 2, which comes from section 2212(d)(1) of the ESEA, eligible applicants must concentrate project activities proposed to be assisted under the grant on teachers, principals, or other school leaders serving in high-need schools. Thus, the Department will not fund an application that does not identify any high-need schools.

A-5. Is a current Teacher and School Leader (TSL) grantee eligible to apply for a TSL grant award in the FY 2021 competition?

Yes. The NIA does not prohibit any eligible entity from applying. Thus, any current TSL grantee that is also an eligible entity described in the NIA is eligible to apply for a TSL grant in the FY 2021 competition. However, applicants should note that the Department does not provide funding for the same activities from multiple grants simultaneously. As a result, applications submitted by current TSL grantees must show that the requested funds will support new activities that are distinct from those funded by the existing grant.

Please note that Competitive Preference Priority 2 will award additional competitive preference points to new potential grantees (discussed in Question B4).

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

No. 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,” as defined in the NIA and in section 2211(b)(1) of the ESEA.

However, like any other nonprofit or for-profit entity, nonprofit or for-profit entities that operate private schools are eligible entities may apply, provided that they do so in partnership with other eligible partners in accordance with the definition of an eligible entity (see Question A-2 for definition of eligibility 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?

Yes, 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, separately, or as a consortium of two LEAs, or as a part of another application with another eligible entity or group of entities.

The Department will not give priority to any applications based on the type of eligible applicant. However, if after all applications are reviewed and scored and LEA 1 or LEA 2 would be participating in more than one project within the funding range, the Department will take appropriate measures to ensure that it does not fund projects in which any LEA would be implementing duplicative 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 *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) 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, private IHEs are not eligible applicants.

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

It depends. Per the definition of eligible entity in ESEA section 2211(b)(1), a State-funded IHE may apply if it is considered a “State educational agency or other State agency designated by the chief executive of a State to participate” (see Question A-2 for applicant eligibility).

To show that it satisfies this requirement, the State-funded IHE would first need to provide documentation that it is legally considered to be a State agency. This documentation could be 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, a State-funded IHE would need to include in its application a letter, affirmation, assurance, or other confirmation that the Governor of the State (i.e. the chief executive of the State) 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 Question A-2 as eligible to apply.

A-11. Given that LEAs may only receive a TSL grant twice, may an LEA that previously had two Teacher Incentive Fund (TIF) grants apply for a 2021 TSL grant?

Yes. ESEA section 2212(b)(3)’s limitation on receiving a grant only twice applies to LEAs that have received “a grant under this subpart, as amended by the Every Student Succeeds Act.” Thus, an LEA that has had prior TIF awards, which were made under different legal authority, may still apply for and receive a TSL grant through the 2021 competition.

However, please note that for the purposes of Competitive Preference Priority 2, “New Potential Grantees”, “the program” language in that priority, includes both TIF and TSL programs, because they are substantially the same.

A-12. 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. 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 and in the NIA. 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 that 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) or Performance Based Compensation Systems (PBCS).

B1-1. What is Absolute Priority 1?

Eligible applicants must propose a project to develop, implement, improve, or expand, in collaboration with teachers, principals, other School Leaders, and members of the public, a PBCS or HCMS.

Note: Under section 2212(c)(4) of the ESEA, applicants must describe how the eligible entity will develop and implement a fair, rigorous, valid, reliable, and objective process to evaluate educator performance under the system that is based in part on measures of student academic achievement, including the baseline performance against which evaluations of improved performance will be made. In responding to this priority, applicants are encouraged to describe how their project to develop, implement, improve, or expand a PBCS or HCMS will address this application requirement. In addition, applicants that propose to use grant funds, under ESEA section 2212(e)(2)(A), to develop or improve an evaluation and support system as part of an HCMS, in responding to this priority, should describe how such system (i) reflects clear and fair measures of educator performance, based in part on demonstrated improvement in student academic achievement; and (ii) provides educators with ongoing, differentiated, targeted, and personalized support and feedback for improvement, including professional development opportunities designed to increase effectiveness.

B1-2. What is the definition of a HCMS?

HCMS means a system by which an LEA makes and implements human capital decisions, such as decisions on preparation, recruitment, hiring, placement, retention, dismissal, compensation, professional development, tenure, and promotion, and that includes a performance-based compensation system.

B2. Absolute Priority 2— High Need Schools

B2-1. What is the definition of a “high-need school?”

“High-Need School” means a public elementary school or secondary school that is located in an area in which the percentage of students from families with incomes below the poverty line is 30 percent or more. For purposes of this competition, the term “High-Need School” is interpreted to mean a school with 50 percent or more of its enrollment from low-income families, based on eligibility for free or reduced price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use consistent with ESEA section 1113(a)(5) (20 U.S.C. 6313(a)(5)).

The definition of “poverty line” in ESEA section 8101(41) requires the Department to use poverty line data gathered by the U.S. Census Bureau. However, the Department has determined that the school-level poverty-line data required by the definition of “high-need school” are unavailable; the U.S. Census Bureau reports these data only by LEA. As such, to ensure that awards made under this competition still focus on schools that are high-poverty, the Secretary interprets “high-need school” by using the same poverty measure applicable to the definition of a “high-need school” for the past three TIF competitions and the first TSL competition. In prior competitions, a “high-need school” was a school with 50 percent or more of its enrollment from low-income families, based on eligibility for free or reduced price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use consistent with ESEA section 1113(a)(5) (20 U.S.C. 6313(a)(5)). Since the income of a family below the poverty line is much lower than the income a family needs to enable its children to be eligible for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act (the poverty measure used in all prior TIF and TSL competitions), we believe that use of the prior poverty measure to determine which schools are high-need is also a reasonable approach to implementing congressional intent for TSL.

B3. Competitive Preference Priority 1— Supporting Educators and Their Development

How could an applicant address Competitive Preference Priority 1 and how are points assigned?

A maximum of 5 additional points may be earned by applicants that address Competitive Preference Priority 1. Points under this Competitive Preference Priority will be assigned depending on the overall quality of an applicant’s response, including the applicant’s description of the services it will provide in response to the priority.

B4. Competitive Preference Priority 2— Increasing Educator Diversity

How could an applicant address Competitive Preference Priority 2 and how are points assigned?

A maximum of 5 additional points may be earned by applicants that address Competitive Preference Priority 1. Points under this Competitive Preference Priority will be assigned depending on the overall quality of an applicant’s response, including the applicant’s description of the services it will provide in response to the priority.

C. The Performance-Based Compensation System (PBCS)

C-1. Is there a required component of an applicant’s PBCS?

Yes. From the definition in ESEA section 2211(b)(4), a PBCS is a 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.

It may also optionally include—

(A) Differentiated levels of compensation, which may include bonus pay, on the basis of the employment responsibilities and success of effective teachers, principals, or other School Leaders in hard-to-staff schools or high-need subject areas; and

(B) Recognition of the skills and knowledge of teachers, principals, or other School Leaders as demonstrated through—

(I) Successful fulfillment of additional responsibilities or job functions, such as teacher leadership roles; and

(II) Evidence of professional achievement and mastery of content knowledge and superior teaching and leadership skills.

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

No. An applicant must only implement its PBCS in the high-need schools it identifies in its application.

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

Yes. In schools that are not considered high-need schools, an applicant could, as part of a PBCS, propose a differentiated salary structure, which may include bonuses and stipends to (1) teachers who teach in high-need subjects, (2) teachers who raise student academic

achievement, or (3) teachers who take on additional leadership responsibilities. See section 2212(e)(2)(D) of the ESEA.

C-4. How much additional compensation must the TSL-funded PBCS make available to educators?

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 must be consistent with the Uniform Guidance's cost principles in 2 CFR Part 200 subpart E.

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, as described by the purpose of the TSL program (see section 2211(a) of the ESEA). Applicants should also consider consulting existing research that offers guidance to educators on the levels of additional performance-based compensation that are appropriate, given an educator's performance and considering the local context.

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)" to mean a system of compensation for teachers, principals, or other School Leaders--

(i) That differentiates levels of compensation based in part on measurable increases in student academic achievement; and

(ii) Which may include--

(A) Differentiated levels of compensation, which may include bonus pay, on the basis of the employment responsibilities and success of effective teachers, principals, or other School Leaders in hard-to-staff schools or high-need subject areas; and

(B) Recognition of the skills and knowledge of teachers, principals, or other School Leaders as demonstrated through--

(I) Successful fulfillment of additional responsibilities or job functions, such as teacher leadership roles; and

(II) Evidence of professional achievement and mastery of content knowledge and superior teaching and leadership skills.

D. Requirements

D1. Requirement 1—Cost Sharing or Matching

D1-1. Must grantees secure cost share or matching funds to support their project activities?

Yes. Each grantee must meet the statutory cost share or matching requirement of their respective grant program. These funds may be provided in cash or through in-kind contributions. Applicants must include the required Budget Worksheet, which details their cost

share and matching contributions. Applicants should verify that their non-Federal budgets reflect the costs allocations appropriate to each program.

For the **Teacher and School Leader Incentive Fund (TSL) program**, applicants should provide from non-Federal sources, at least one-third (1/3) of the total cost of their project for each budget period in order to meet the 50 percent non-Federal matching requirement as outlined in section 2212(f) of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

D1-2. When must a grantee identify the required cost share or matching?

A grantee must identify the required cost share or matching funds at the time of application. Each applicant must provide a budget summary using the required *Budget Worksheet* and a budget narrative which identifies both federal and non-Federal costs for each budget period. This new *Budget Worksheet* is a change from years past and previously was not required. Submission of the required *Budget Worksheet* serves as confirmation that non-Federal funds have been secured and will be available at the time of award if the applicant is successful.

D1-3. May an applicant request that the Secretary reduce the required level of cost share or matching?

We understand that due to the unprecedented disruption caused by the COVID-19 pandemic, many entities are experiencing fiscal hardship. However, the Secretary **does not**, as a general matter, anticipate waiving this requirement. Furthermore, given the importance of cost-sharing to the long-term success and sustainability of the proposed project; applicants must identify appropriate matching funds in the proposed budget. An applicant that anticipates the need to seek a waiver, should include with the application, a request to reduce the matching requirement, along with a justification for the request.

D1-4. Should applicants submit just a Year 1 budget that includes cost share or matching, or submit a budget that includes cost share or matching that reflects the entire project performance period?

Applicants should submit a multi-year budget for the entire proposed project performance period. For TSL, submit a 3-year budget. This budget should include both Federal and non-Federal funds for each year of the project period.

D1-5. May more than one partner or other entity contribute toward the non-Federal cost share or matching?

Yes. Cost share or matching funds (cash or in-kind) may come from one or more entity or partner; not all partners are required to contribute towards cost share or matching.

D1-6. Are there limitations on the funds or in-kind contributions that may count towards meeting the cost share or matching requirement?

Yes. What can be appropriately included as matching funds are governed by the program statute and the cost principles found in Subpart E of 2 CFR part 200, the Uniform Guidance. The Uniform Guidance requires that funds used to meet cost share or matching requirements must be allowable as if they were paid for with Federal grant funds. See [2 CFR § 200.306\(b\)\(4\)](#).

D1-7. Do the requirements of “supplement, not supplant,” apply to cost share or matching funds?

Yes. In accordance with section 2212(g) of the ESEA, supplement-not-supplant provision provides that grantees must not use federal grant funds to pay for activities that are already being carried out, or must be carried out, by the grantee or its partners with other Federal, State or local funds. Non-Federal funds committed for the purposes of cost-share or matching must likewise supplement, not supplant, non-program funds that would be provided in the absence of the grant.

D1-8. 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 grant) to meet the cost share or matching requirement?

No. The Department will not approve the use of unrecovered indirect costs to meet program cost share or matching requirements. See 2 CFR § 200.306(c).

D1-9. What are some examples of acceptable in-kind contributions to help meet the non-Federal cost share or matching requirement?

Some examples of costs, services, or in-kind contributions that may be claimed as match are included in the list below. As noted in Question 6, any match cost item must be allowable under the Cost Principles of the Uniform Guidance as if it was paid for with Federal grant funds. This is not an exhaustive list.

1. Personnel costs associated with the management or administration of the project.
2. Personnel costs associated with the time that project participants engage in 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. Project planning activities, including participation in professional learning communities.
 - e. Formative or summative evaluation activities and costs of reviewing research-based practices relating to the project.
3. Non-personnel costs relating to the implementation, management, or administration of the project that are discounted or provided, including, but not limited to:
 - a. Training-related supplies.
 - b. Project-related communications.
 - c. Technology integral to the project.
 - d. Purchases, upgrades, or licensing fees needed for project data management systems.

D2. Requirement 2 – Supplement-Not-Supplant

D2-1. Does TSL have a supplement-not-supplant provision?

Yes. In accordance with section 2212(g) of the ESEA, funds made available under this program must be used to supplement, and not supplant, other Federal or State funds that would otherwise be expended to carry out activities under this program.

Consistent with ESEA Section 8101(30)(C), the Secretary considers schools funded by the Department of Interior's Bureau of Indian Education to be LEAs, and the funds that these schools receive from the Department of Interior's annual appropriation are not funds that would otherwise be expended to carry out activities under this program. Further, the prohibition against supplanting also means that grantees seeking to charge indirect costs to TSL funds will need to use their negotiated restricted indirect cost rates. See 34 CFR 75.563 for more information.

D3. Requirement 3—Subgrantees

D3-1. May an applicant use TSL funds to award to a subgrant?

Yes. Under 34 CFR 75.708(b) and (c), a grantee under this competition may award subgrants to directly carry out project activities described in its application to the following types of entities: LEAs, SEAs, nonprofit organizations or for-profit organizations. The grantee may award subgrants to entities it has identified in an approved application.

D4. Requirement 4—Renewal

D4-1. Will I automatically receive a continuation award after Year 3 of the grant?

No. Under section 2212(b)(2) of the ESEA, the Secretary may renew a TSL grant for up to two additional years if the grantee demonstrates to the Secretary that the grantee is effectively using funds. Such renewal may include allowing the grantee to scale up or replicate the successful program.

Please note that during the third year of the project period for grants awarded under this competition, if the Department exercises the option to offer an opportunity for renewals, the Department will provide grantees with information on the renewal process. This additional funding is intended not only to support continuation of approved project activities, but also to encourage scaling, replication, and sustainability efforts and strategies. In making decisions on whether to award a two-year renewal award, we intend to review performance data submitted in regularly required reporting, as well as potentially request narrative information to be assessed using selection criteria from 34 CFR 75.210.

E. The Selection Criteria

E-1. 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.

F. Budgets

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

Applicants may apply for a TSL grant for up to three years. Except in unusual circumstances, awards are expected to be made for a single budget period of 12 months.

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 or 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 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. 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.

F-5. 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-6. 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, which would include State or other Federal funds that support an HCMS (which includes its PBCS).

A grantee’s use of local funds is not affected by the TSL “supplement, not supplant” requirement. 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, which is a requirement that an applicant must address in its application. See section 2212(c)(8) of the ESEA.

F-7. 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 directly pursuant to the negotiation and in anticipation of the TSL grant award where such costs are necessary for efficient and timely performance of the scope of work when these costs were incurred not more than 90 days before the Department’s award. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the TSL grant award. See 34 CFR § 75.263 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. For example, if the Department issues an award to the applicant on September 30, 2021, the grantee may reimburse itself for costs that are reasonable, necessary, and allowable charges to the TSL grant that were incurred on or after July 2, 2021.

However, until notified of its receipt of a TSL 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-8. 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-9. 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-10. 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-11. 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-12. 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 at a temporary rate of ten percent (10%) and that rate should be applied to all direct salaries and wages. However, the applicant must expeditiously take steps to obtain an indirect cost rate agreement after the grant award is made.

F-13. Assuming that an applicant submits 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?

The rules allow for a temporary indirect cost rate of 10% of budgeted salaries and wages and require the grantee to submit an indirect cost rate proposal within 90 days after issuance of the grant award notification (see 34 CFR § 75.560(c)). Additionally, applicants are encouraged to have an accountant calculate a proposed indirect cost rate using current information in the audited financial statements, actual cost data or the Internal Revenue Service Form 990. Applicants should use this proposed rate in the application materials and indicate the documentation used to calculate the rate. Guidance related to calculating an indirect cost rate can be found on ED's website at:

<http://www.ed.gov/about/offices/list/ocfo/fipao/icgindex.html>.

F-14. If a grantee did not propose charging indirect costs to its TSL grant in the budget that it included in its application, may it still do so after receiving its award?

If the requested budget does not include estimated indirect costs, they will not be included in the budget approved by the Department that forms the basis of the grant award. This means that, after award, a grantee would only have funds with which to charge indirect costs to the grant if the approved direct costs of the grantee's project for any budget period exceed the grantee's actual direct costs. Where this occurs, the grantee may submit a requested budget revision to the Department program office to use the excess funds budgeted for direct costs to cover its indirect costs.

F-15. 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-16. 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 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-17. 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, TSL 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 costs associated with administering or implementing other components of the HCMS.

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

G-1. What flexibility does the competition exception in [34 CFR § 75.135\(b\)](#) provide for applicants for Department discretionary grant awards?

Under 34 CFR § 75.135(b), applicants are permitted 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, and thus, use the small-purchase procurement procedures in [2 CFR § 200.320\(b\)](#) (including the definition of "simplified acquisition threshold" in [2 CFR § 200.88](#)), unless prohibited by State or local law.

This provision includes procurements, for example, for project evaluations issued in response to a competition's selection criteria. 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. 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.

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, or add new vendors to the grant, 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).